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VETERANS' ENTITLEMENTS (TRANSITIONAL PROVISIONS
AND CONSEQUENTIAL AMENDMENTS) AMENDMENT BILL 1986

Date introduced: 14 April 1986
House: House of Representatives
Presented by: Hon. Clyde Holding, M.P.,
Minister for Aboriginal Affairs

DIGEST OF BILL

Purpose

To provide for the delay in implementing the
Veterans' Entitlements (Transitional Provisions and
Consequential Amendments) Act 1986 (The Principal Act).

Background

In September 1982, the Minister for Veterans' Affairs announced that a comprehensive review of the repatriation legislation would be undertaken to provide simplified legislation covering all repatriation entitlements. On 9 February 1983, the Minister announced the establishment of an advisory committee to present the views of the veterans and their dependants. The Advisory Committee on Repatriation Legislation Review, chaired by Sir William Keys, reported in November 1983. A draft Veterans' Entitlement Bill (VEB), which was based on the recommendations of the Committee, was tabled in Parliament on 30 May 1985.

In the meantime, the High Court handed down judgement in the case of Repatriation Commission v O'Brien (58 ALR 119) on 27 February 1985. The Court decided that "evidence capable of raising a reasonable hypothesis" would be sufficient to establish a war-related death or incapacity. The Government subsequently amended the Repatriation Act 1920 to remove the effect of the decision. The amending Bill contained a sunset clause which subsequently had to be extended in order to coincide with the anticipated enactment of the VEB (see the Repatriation Legislation Amendment (Extension of Operation) Act 1985).
The VEB was intended to incorporate and amend more than 90 pieces of legislation, including the Repatriation Act 1920, many of which dated from immediately after World War I. After consultation with the veteran community, the draft VEB was amended and presented to Parliament for enactment on 16 October 1985.

In November 1985 the Senate requested that the House of Representatives make a number of amendments to the Bill. The request was not met by the House of Representatives, despite being pressed by the Senate. The Senate submitted new amendments to the House of Representatives in April 1986, which were agreed to by the House of Representatives on 17 April 1986. The VEB received the Royal Assent on 19 May 1986.

The Principal Act followed the same course between the House of Representatives and the Senate as the VEB, receiving the Royal Assent on 19 May 1986. Because of the delays encountered in the transition of the Principal Act through both Houses of Parliament, amendments, particularly to commencement dates, were required. Accordingly, this Bill was introduced on 14 April 1986.

Main Provisions

For a detailed analysis of the clauses of the Bill refer to the Explanatory Memorandum.

Clause 3 will amend section 6 of the Principal Act to extend the period in which a wife or child receiving a dependant's pension will be able to elect to receive a lump sum.

Section 20 of the Principal Act provides for applications for appeals under Acts which have been repealed by the Veterans' Entitlement Act 1986. Sub-section 20(4) of the Principal Act puts a limit on the time in which an appeal may be lodged. Clause 4 will amend sub-section 20(4) so that the alternative time limit of 6 December 1985 is removed and only the 3 month time limit from the date of the decision will remain.

The use of a new Guide to Assessment of Rates of Veterans' Pensions (the Guide) to determine incapacity, is provided for in section 27 of the Principal Act. Clause 5 will amend section 27 to delay the mandatory use of the Guide by four months (i.e. until 1 November 1986). The clause also provides for the Repatriation Commission to
refer to the Guide when determining the degree of incapacity of a veteran, before referral to the Guide becomes mandatory. In addition, where the Repatriation Commission has used the Guide to determine the degree of incapacity, the Veterans' Review Board and the Administrative Appeals Tribunal will be required to use the Guide when reviewing such a decision.

Clause 7 will make the same amendments to section 64 of the Principal Act, which provides for the introduction of the Guide when determining the incapacity of Australian mariners.

The Schedule to the Bill makes minor amendments to the

Defense Service Homes Act 1918
Public Service Act 1922
Seaman's War Pensions and Allowances Act 1940

For further information, if required, contact the Education and Welfare Group.

7 August 1986

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