

## Provisions of the *Veterans' Entitlements Act 1986*

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### Part II—Pensions, other than service pensions, for veterans and their dependants

#### Division 2—Eligibility for pension

##### 13 Eligibility for pension

(1) Where:

- (a) the death of a veteran was war-caused; or
- (b) a veteran has become 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.

- (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.

- (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:
    - (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.

- (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 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);

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
- (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.

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).

Note 2: A payment of arrears of periodic compensation is not a lump sum compensation payment (see subsection 30B(2)).

*Lump sum payment—Safety, Rehabilitation and Compensation Act (section 137)*

(2) If:

- (a) a lump sum payment is made under section 137 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 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 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.

*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:

$$\frac{\text{Pension to be reduced}}{\text{Pensions payable}} \times \text{Excess compensation payable}$$

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 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:

$$\frac{\text{Pension to be reduced}}{\text{Total pensions payable}} \times \text{Total compensation payable}$$

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.

(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.

## **Part IV 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:
    - (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 included in the relevant class of persons—a reference in those sections to the rate at which pension under this Part 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 pensions are being paid or are payable.
- (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.

