

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time

*(Veterans' Affairs)*

**VETERANS' AFFAIRS LEGISLATION AMENDMENT BILL  
(NO. 2) 1995**

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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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*(Veterans' Affairs)*

## A BILL

FOR

### **An Act to amend the law relating to veterans' affairs, and for related purposes**

The Parliament of Australia enacts:

#### **Short title**

1. This Act may be cited as the *Veterans' Affairs Legislation Amendment Act (No. 2) 1995*.

#### **5 Commencement**

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Item 5 in Schedule 1 commences as set out in item 7 in that Schedule.

(3) If this Act receives the Royal Assent before 4 July 1996:

(a) items 17 and 22 in Schedule 2 commence on 4 July 1996; and

(b) items 18 and 23 in Schedule 2 are taken not to have been enacted.

(4) If this Act does not receive the Royal Assent before 4 July 1996, 5  
paragraph (c) of item 16, item 17, paragraph (c) of item 21 and item 22 in  
Schedule 2 are taken not to have been enacted.

### **Amendments**

3.(1) The *Defence Service Homes Act 1918* is amended in accordance  
with the applicable items in Schedule 1 and item 7 in that Schedule has effect 10  
according to its terms.

(2) The *Veterans' Entitlements Act 1986* is amended in accordance with  
the applicable items in Schedules 2 and 3 and item 4 in Schedule 3 has effect  
according to its terms.

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## SCHEDULE 1

Subsection 3(1)

### AMENDMENTS OF THE DEFENCE SERVICE HOMES ACT 1918

#### 1. Subsection 4(1):

Insert:

***“Consumer Credit Codes commencing day*** means the earliest day on which any of the Consumer Credit Codes of the States or Territories comes into force.

***court*** means a court of summary jurisdiction.

***guarantee*** includes indemnity (other than one arising under a contract of insurance).

***guarantor*** means a person who has given or gives a guarantee to the Bank in relation to a subsidised advance.

***mortgage*** includes:

- (a) any interest in, or power over, property securing obligations of a borrower or guarantor; and
- (b) the Bank's title to land or goods that are subject to a sale by instalments.

***mortgagor*** means a person who has given or gives a mortgage to the Bank in relation to a subsidised advance.

***other portfolio agreement*** has the same meaning as in the agreement.

***portfolio contract of sale*** has the same meaning as in the agreement.

***portfolio mortgage*** has the same meaning as in the agreement.

***portfolio supplementary agreement*** has the same meaning as in the agreement.

***subsidised advance contract*** means an agreement for the provision of a subsidised advance whether or not the Commonwealth has terminated the subsidy in respect of the advance.

***subsidised advance loan account*** has the same meaning as in the agreement.”.

#### 2. Subsection 4(1) (definition of *agreement*):

After “Schedule 1A” insert “and by any other agreement”.

#### 3. After section 4C:

Insert:

#### Exclusion of Consumer Credit Codes in relation to subsidised advances

“4D.(1) Except as provided by Part IIIA and section 35A, this Act does not exclude or limit the concurrent operation of the Consumer Credit Codes of the States and Territories.

**SCHEDULE 1—continued**

“(2) Nothing in subsection 23A(2) or section 23H is intended to make matters referred to in that subsection or section subject to the Consumer Credit Codes of the States and Territories.”.

**4. After Part III:**

Insert:

**“PART IIIA—UNJUST TRANSACTIONS**

**Power to reopen unjust transactions**

“23A.(1) Subject to this Part, if a court is satisfied, on the application of a borrower, mortgagor or guarantor, that, in the circumstances relating to the relevant contract, mortgage or guarantee, at the time it was entered into or changed (whether or not by agreement), the contract, mortgage or guarantee or the change was unjust, the court may re-open the transaction that gave rise to the contract, mortgage, guarantee or change.

“(2) This section does not apply to, or to a change in:

- (a) the annual percentage rate or rates of interest under a contract or mortgage or the method of calculating any such rate or rates of interest or of calculating any amount of interest under the contract or mortgage; or
- (b) an establishment fee or charge, or other fee or charge, in respect of which an application may be made under section 23F.

**Matters to be considered by court**

“23B.(1) In determining whether a term of a particular contract, mortgage or guarantee in relation to a subsidised advance is unjust in the circumstances relating to it at the time it was entered into or changed, a court is, subject to subsection (2), to have regard to the public interest (including the public interest in the continued provision of assistance to eligible persons by means of subsidised advances by the Bank) and to all the circumstances of the case and may have regard to the following:

- (a) the consequences of compliance, or non-compliance, with all or any of the provisions of the contract, mortgage or guarantee;
- (b) the relative bargaining power of the parties;
- (c) whether or not, at the time the contract, mortgage or guarantee was entered into or changed, its provisions were the subject of negotiation;
- (d) whether or not it was reasonably practicable for the applicant to negotiate for the alteration of, or to reject, any of the provisions of the contract, mortgage or guarantee or the change;

**SCHEDULE 1—continued**

- (e) whether or not any of the provisions of the contract, mortgage or guarantee impose conditions that are unreasonably difficult to comply with, or not reasonably necessary for the protection of the legitimate interests of a party to the contract, mortgage or guarantee;
- (f) whether or not any mortgagor (other than the borrower) or guarantor, or a person who represented that mortgagor or guarantor, was reasonably able to protect the interests of that mortgagor or guarantor because of his or her age or physical or mental condition;
- (g) whether or not the mortgagor who was the borrower, or a person who represented that mortgagor, was reasonably able to protect the interests of that mortgagor because of his or her physical or mental condition;
- (h) the form of the contract, mortgage or guarantee and the intelligibility of the language in which it is expressed;
- (i) whether or not, and if so when, independent legal or other expert advice was obtained by the borrower, mortgagor or guarantor;
- (j) the extent to which the provisions of the contract, mortgage or guarantee or change and their legal and practical effect were accurately explained to the borrower, mortgagor or guarantor and whether or not the borrower, mortgagor or guarantor understood those provisions and their effect;
- (k) whether the Bank or any other person exerted or used unfair pressure, undue influence or unfair tactics on the borrower, mortgagor or guarantor and, if so, the nature and extent of that unfair pressure, undue influence or unfair tactics;
- (l) whether the Bank took measures to ensure that the borrower, mortgagor or guarantor understood the nature and implications of the transaction and, if so, the adequacy of those measures;
- (m) whether the terms of the transaction or the conduct of the Bank is justified in the light of the risks undertaken by the Bank;
- (n) the terms of other comparable transactions involving persons other than the Bank who provide credit;
- (o) any other relevant matter.

“(2) In determining whether a term of a particular contract, mortgage or guarantee is unjust in the circumstances relating to it at the time it was entered into or changed, a court:

(a) is to have regard to:

- (i) the fact that the Bank and the Commonwealth have entered into an agreement for the provision by the Bank of subsidised advances; and

**SCHEDULE 1—continued**

- (ii) the fact that the Bank is required to provide a subsidised advance if the requirements of this Act and the agreement are satisfied; and
  - (iii) the fact that the interest rates applicable to subsidised advances and loans secured by specified portfolio assets are determined under this Act; and
  - (iv) the fact that, in some circumstances, the Bank would not provide advances to an eligible person if the making of the advance were assessed on ordinary commercial lending criteria instead of the criteria set out in this Act or the agreement; but
- (b) is not to have regard to:
- (i) any inequality in bargaining power between the Corporation or the Bank, and the borrower, that arose because the borrower was able to obtain a subsidised advance from the Corporation or Bank and not from another financial institution; or
  - (ii) the borrower's age.

“(3) For the purposes of paragraph (1)(f) or (g), a person is taken to have represented a mortgagor or guarantor if the person represented the mortgagor or guarantor, or assisted the mortgagor or guarantor to a significant degree, in the negotiations process before, or at, the time the mortgage or guarantee was entered into or changed.

**Unforeseen circumstances**

“23C. In determining whether a contract, mortgage or guarantee in relation to a subsidised advance is unjust, a court is not to have regard to any injustice arising from circumstances that were not reasonably foreseeable when the contract, mortgage or guarantee was entered into or changed.

**Conduct**

“23D. In determining whether to grant relief in respect of a contract, mortgage or guarantee that it finds to be unjust, a court may have regard to the conduct of the parties to the proceedings in relation to the contract, mortgage or guarantee since it was entered into or changed.

**Orders on reopening of transactions**

“23E. If a court reopens a transaction under section 23A, it may do any one or more of the following, despite any settlement of accounts or any agreement purporting to close previous dealings and create a new obligation:

- (a) reopen an account already taken between the parties;



**SCHEDULE 1—continued**

- (b) relieve the borrower and any guarantor from payment of any amount in excess of the amount that the court, having regard to the risk involved and all other circumstances, considers to be reasonably payable;
- (c) set aside either wholly or in part, or revise or alter, an agreement made or mortgage or guarantee given in connection with the transaction;
- (d) order that the Bank take any steps that are necessary to discharge the mortgage;
- (e) give judgment for, or make an order in favour of, a party of any amount that, having regard to the relief (if any) that the court thinks fit to grant, is justly due to the party under the contract, mortgage or guarantee;
- (f) give judgment or make an order against a person for delivery of goods to which the contract, mortgage or guarantee relates and which are in the person's possession;
- (g) make ancillary or consequential orders.

**A court may review unconscionable fees and charges**

“23F.(1) Subject to this Part, if a court is satisfied on the application of a borrower, mortgagor or guarantor that:

- (a) an establishment fee or charge in respect of the relevant contract, mortgage or guarantee; or
- (b) a fee or charge payable on early termination of the relevant contract, mortgage or guarantee; or
- (c) a fee or charge for a prepayment of an amount under the relevant contract, mortgage or guarantee;

is unconscionable, the court may annul or reduce the fee or charge and may make ancillary or consequential orders.

“(2) In determining whether an establishment fee or charge is unconscionable, the court is to have regard to whether the amount of the fee or charge is equal to the Bank's reasonable costs of determining an application for credit and the initial administrative costs of providing the credit or is equal to the Bank's average reasonable costs of those things in respect of that class of contract.

“(3) For the purposes of this section, a fee or charge payable on early termination of, or a prepayment of an amount under, the relevant contract, mortgage or guarantee is unconscionable if, and only if, it appears to the court that it exceeds a reasonable estimate of the Bank's loss arising from the early termination or prepayment, including the Bank's average reasonable administrative costs in respect of such a termination or prepayment.

## SCHEDULE 1—continued

### Time limit

“23G.(1) An application under section 23A may not be brought more than 2 years after the relevant contract, mortgage or guarantee is rescinded or discharged or the Bank writes off the relevant debt, whichever occurs first.

“(2) An application under section 23F may not be brought more than 2 years after the relevant fee or charge is charged under the contract, mortgage or guarantee or the Bank writes off the relevant debt, whichever occurs first.

### Exceptions

“23H.(1) This Part does not apply to:

- (a) a change to a contract, mortgage or guarantee if the change was made by, or as a result of, the enactment of this Part, section 35A, any other Act or an amendment of the agreement; or
- (b) a contract, mortgage or guarantee under which the borrower, mortgagor or guarantor is not an individual; or
- (c) a contract under which the borrower is borrowing for a purpose that is not wholly or predominantly a personal, domestic or household purpose; or
- (d) a mortgage or guarantee that secures or guarantees obligations under a contract:
  - (i) under which the borrower is not an individual; or
  - (ii) under which the borrower is borrowing for a purpose that is not wholly or predominantly a personal, domestic or household purpose; or
- (e) a contract, mortgage or guarantee that was entered into before the commencement of this paragraph.

“(2) For the purposes of this section:

- (a) investment by a borrower is not a personal, domestic or household purpose; and
- (b) the predominant purpose for which an individual is borrowing is:
  - (i) the purpose for which more than one-half of the amount borrowed is intended to be used; or
  - (ii) if the amount borrowed is intended to be used to obtain goods, services or rights in relation to, or interests in, real property for use for different purposes—the purpose for which the goods, services, rights or interests are intended to be most used.

### Legal and financial assistance

“23J.(1) A person who has made, or proposes to make, an application under section 23A or 23F may apply to the Attorney-General for a grant of assistance under this section in respect of the application.

## SCHEDULE 1—continued

“(2) If such an application for assistance is made, the Attorney-General, or an officer of the Australian Public Service authorised in writing by the Attorney-General, may, if he or she is satisfied that it would involve hardship to the applicant to refuse the application for assistance and that, in all the circumstances, it is reasonable that the application for assistance should be granted, authorise the grant by the Commonwealth to the person, either unconditionally or subject to any conditions that the Attorney-General or officer determines, of such legal or financial assistance in relation to the application under section 23A or 23F, as the case may be, as the Attorney-General or officer determines.

### **Jurisdiction of courts**

“23K. The courts of summary jurisdiction of the States are invested with federal jurisdiction, and (subject to the Constitution) jurisdiction is conferred on the courts of summary jurisdiction of the Territories, with respect to matters arising under this Part.

### **Definition**

“23L. In this Part:

*unjust* includes unconscionable, harsh or oppressive.”.

### **5. After section 35:**

Insert:

### **Modifications of agreement and other instruments**

“35A.(1) Despite clause 8.1 of the agreement and anything contained in any subsidised advance contract or in any portfolio mortgage, portfolio contract of sale, portfolio supplementary agreement or other portfolio agreement:

- (a) a subsidised advance or an amount owed to the Bank under a loan secured by a specified portfolio asset is repayable in equal monthly instalments comprising principal and interest; and
- (b) interest on each subsidised advance and each amount owed under a loan secured by a specified portfolio asset is to be:
  - (i) charged in arrears; and
  - (ii) calculated by applying the applicable annual percentage rate divided by 365 to the outstanding daily balance of the subsidised advance loan account; and
- (c) if the Commonwealth terminates the interest subsidy in respect of a subsidised advance contract:
  - (i) the Bank may terminate the contract and any associated portfolio mortgage, portfolio contract of sale, portfolio supplementary agreement or other portfolio agreement; and

**SCHEDULE 1—continued**

- (ii) if the Bank does so, it is entitled to demand repayment of, and recover by action in any court or under the mortgage, the principal and interest and any other money owing under the contract, mortgage or agreement.

“(2) Clause 1.1 of the agreement has effect as if the definition of ‘Rest Day’ were omitted and the following definition were substituted:

“‘Rest Day’: means, in respect of a Specified Portfolio Asset or a Subsidised Advance, the fifth day of each month on which principal and accrued interest will be due and payable in respect of the relevant Subsidised Advance Loan Account.’.

“(3) Any reference to a rest day in any mortgage relating to a subsidised advance, or in any portfolio mortgage, portfolio contract of sale, portfolio supplementary agreement or other portfolio agreement, is taken to be a reference to a rest day as defined by subsection (2).

“(4) The agreement has effect as if Part B of Schedule D were omitted.”.

**6. Section 45:**

Add at the end:

“(2) Subsection (1) does not apply to any agreement made, whether before or after the commencement of this subsection but before 1 September 1996, between the Commonwealth and the Bank that amends, or otherwise affects, the operation of clause 8.1 or 11 of the agreement.”.

**7. Commencement, transitional and saving provisions**

(1) Item 5 commences on the day (the effective day) that is the latest of the following days:

- (a) the day on which this Act receives the Royal Assent;
- (b) the Consumer Credit Codes commencing day;
- (c) 1 September 1996.

(2) The Bank is taken to have been entitled at all times before the commencement of this item, and must after that commencement and before the effective day, calculate and charge interest in respect of subsidised advances, and amounts owed under loans secured by specified portfolio assets, in the manner prescribed by the agreement despite anything in the Consumer Credit Codes of any of the States and Territories.

(3) The Bank and the Commonwealth are to try, so far as possible, to arrange for a notice explaining the effect on and after the effective day of subsections 35A(1) to (3) of the *Defence Service Homes Act 1918* to be given to each borrower, mortgage or guarantor.

**SCHEDULE 1**—continued

(4) Expressions used in this section that are defined by subsection 4(1) of the *Defence Service Homes Act 1918* have the same meanings as in that subsection.

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## SCHEDULE 2

Subsection 3(2)

### AMENDMENTS OF THE VETERANS' ENTITLEMENTS ACT 1986 TO EXTEND ELIGIBILITY FOR INCOME SUPPORT SUPPLEMENT TO PEOPLE CARING FOR RECIPIENTS OF INCOME SUPPORT SUPPLEMENT

**1. Subsection 5H(1) (definition of *adjusted income*):**

Insert after paragraph (c):

“(ca) any instalment of pension payable to the person under subsection 30(2); and”.

**2. Paragraph 5PA(1)(a):**

After “service pension” insert “, income support supplement”.

**3. Subsection 5PA(2):**

After “service pension” insert “, income support supplement”.

**4. Paragraph 39C(ab):**

After “45AB” insert “or 45AC”.

**5. Point 41-CA8:**

After “Part III” in paragraph (c) insert “, Part IIIA”.

**6. Point 42-DA8:**

After “Part III” in paragraph (c) insert “, Part IIIA”.

**7. Point 43-DA8:**

After “Part III” in paragraph (c) insert “, Part IIIA”.

**8. After section 45AB:**

Insert:

**Eligibility for income support supplement (person other than war widow or war widower caring for handicapped recipient of income support supplement)**

“45AC.(1) A person is eligible for income support supplement if the person:

- (a) is an Australian resident; and
- (b) is in Australia; and
- (c) personally provides constant care for a severely handicapped recipient of income support supplement.

“(2) If:

- (a) a person is personally providing constant care for a severely handicapped recipient of income support supplement; and
- (b) the person temporarily ceases to provide that care; and

**SCHEDULE 2**—continued

(c) the period, or the total of the periods, for which the person ceases to provide that care is:

- (i) not more than 42 days in any calendar year; or
- (ii) another period that the Commission, for any special reason in the particular case, approves in writing;

the person does not cease to be eligible for income support supplement merely because of that cessation.

“(3) If:

(a) subsection (2) applies to a period during which a person ceases to provide care for a severely handicapped recipient of income support supplement so that the person does not cease to be eligible for income support supplement because of that cessation; and

(b) during that period the person is absent from Australia;

the person does not cease to be eligible for income support supplement because of that absence from Australia.

“(4) If:

(a) a person is personally providing constant care and attention for a severely handicapped recipient of income support supplement; and

(b) the person ceases to provide that care and attention in order to undertake training, education or employment; and

(c) the cessation does not exceed 10 hours per week;

the person does not cease to be eligible for income support supplement merely because of that cessation.

“(5) In this section:

***care*** includes attention and supervision.

***severely handicapped recipient of income support supplement*** means a person who:

(a) has a physical, intellectual or psychiatric disability; and

(b) because of that disability:

(i) requires frequent care in connection with his or her bodily functions; or

(ii) requires constant supervision to prevent injury to himself or herself or to another person;

permanently or for an extended period; and

(c) is receiving an income support supplement.



**SCHEDULE 2—continued**

**Income support payment may not be payable if rate of supplement is nil**

“45AD.(1) Subject to this section, an income support supplement is not payable to a person who is eligible for the supplement under subsection 45AC(1) if the person’s income support supplement rate would be nil.

Note: A person whose rate might otherwise be nil under the relevant Rate Calculator may not have a nil rate after the application of the financial hardship provisions (sections 52Y and 52Z).

“(2) Subsection (1) 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; or
- (b) Part 2.23 of the Social Security Act.

“(3) Subsection (1) does not apply to a person if the person’s rate is nil merely because of the operation of Part IIID.”.

**9. Section 45S:**

Repeal, substitute:

**How to work out the rate of income support supplement**

“45S. The rate at which a person’s income support supplement is payable is worked out:

- (a) in respect of a person other than a permanently blind war widow or a permanently blind war widower:
  - (i) if the person does not have a dependent child or dependent children—in accordance with point 45X-B1 in the Rate Calculator at the end of section 45X; or
  - (ii) if the person has a dependent child or dependent children—in accordance with point 45Y-B1 in the Rate Calculator at the end of section 45Y; or
- (b) in respect of a permanently blind war widow or a permanently blind war widower:
  - (i) if the person does not have a dependent child or dependent children—in accordance with point 45X-B2 in the Rate Calculator at the end of section 45X; or
  - (ii) if the person has a dependent child or dependent children—in accordance with point 45Y-B2 in the Rate Calculator at the end of section 45Y.”.

**10. Paragraphs 45V(1)(b) and (d):**

After “under” insert “the pharmaceutical allowance or”.

**SCHEDULE 2—continued**

**11. Subsection 45V(1):**

Add at the end:

“; and (g) then, to the amount of any increase under the pharmaceutical allowance Module.”.

**12. Paragraphs 45V(2)(b) and (d):**

After “under” insert “the pharmaceutical allowance or”.

**13. Subsection 45V(2):**

Add at the end:

“; and (f) then, to the amount of any increase under the pharmaceutical allowance Module.”.

**14. After section 45V:**

Insert:

**Application of income and assets test reductions for income tax purposes**

“45VA.(1) If:

- (a) the rate of income support supplement applicable to a person who is not permanently blind is worked out by using the Income Support Supplement Rate Calculator Where There Are Dependent Children at the end of section 45Y; and
- (b) the maximum basic rate applicable to the person is increased by an amount worked out under the pharmaceutical allowance Module of the Rate Calculator; and
- (c) the rate of income support supplement is to be reduced under the adjusted income test Module or the assets test Module of the Rate Calculator;

the reduction is to be applied:

- (d) first, to the rate of income support supplement apart from any increase under the pharmaceutical allowance Module; and
- (e) then, to the amount of any increase under the pharmaceutical allowance Module.

“(2) If:

- (a) the rate of income support supplement applicable to a person who is not permanently blind is worked out by using the Income Support Supplement Rate Calculator Where There Are Dependent Children at the end of section 45Y; and
- (b) the maximum basic rate applicable to the person is increased by an amount worked out under the pharmaceutical allowance Module of the Rate Calculator; and

**SCHEDULE 2—continued**

- (c) an amount of that income support supplement is to be reduced under section 59T (compensation recovery);  
the reduction is to be applied:
- (d) first, to that part of the amount that does not include the increase under the pharmaceutical allowance Module; and
- (e) then, to the amount of the increase under the pharmaceutical allowance Module.”.

**15. Point 45X-B1 (Method statement):**

- (a) Insert after Step 2:  
“*Step 2A.* Work out the amount per year (if any) of pharmaceutical allowance using MODULE DAA below.”.
- (b) Omit “and 2” from Step 3, substitute “, 2 and 2A”.

**16. Point 45X-B1 (Method statement):**

- (a) Insert after Step 7:  
“*Step 7A.* If the person is a war widow or a war widower, go to Step 8. If the person is neither a war widow nor a war widower, go to Step 12A.”.
- (b) Add at the end of Step 12 (but not as part of paragraph (c)) “Go now to Step 13.”.
- (c) Insert after Step 12:  
“*Step 12A.* Compare the adjusted income reduced rate (see Step 5) and the assets reduced rate (see Step 7): the person’s *provisional rate* is a rate equal to:
  - (a) whichever is the lower of those rates; or
  - (b) if those rates are the same—those rates.Go now to Step 13.”.
- (d) Omit “or 12” from Step 14, substitute “, 12 or 12A”.
- (e) Omit “or 12” from Note 3, substitute “, 12 or 12A”.

**17. Point 45X-B1 (Method statement—Step 12A):**

Omit, substitute:

- “*Step 12A.* Compare the adjusted income reduced rate (see Step 5) and the assets reduced rate (see Step 7): the person’s *conditional payment rate* is a rate equal to:
- (a) whichever is the lower of those rates; or
  - (b) if those rates are the same—those rates.
- Take away from the conditional payment rate any advance payment deduction (see Division 6 of Part IIID): the result is the person’s *provisional rate*.  
Go now to Step 13.”.

**SCHEDULE 2**—continued

**18. Point 45X-B1 (Method statement):**

Insert after Step 12:

“*Step 12A.* Compare the adjusted income reduced rate (see Step 5) and the assets reduced rate (see Step 7): the person’s *conditional payment* rate is a rate equal to:

- (a) whichever is the lower of those rates; or
- (b) if those rates are the same—those rates.

Take away from the conditional payment rate any advance payment deduction (see Division 6 of Part IIID): the result is the person’s *provisional rate*.

Go now to Step 13.”.

**19. Before Module E in the Income Support Supplement Rate Calculator where there are no dependent children at the end of Section 45X:**

Insert:

**“MODULE DAA—PHARMACEUTICAL ALLOWANCE**

*Eligibility for pharmaceutical allowance*

“45X-DAA1. Subject to points 45X-DAA2, 45X-DAA3, 45X-DAA4 and 45X-DAA6, an additional amount by way of pharmaceutical allowance is to be added to the maximum basic rate of income support supplement payable to a person who is eligible for that supplement under section 45AC.

*No pharmaceutical allowance during certain periods of absence*

“45X-DAA2. If a person:

- (a) has notified the Department that he or she will be absent from Australia for a period of 12 months or more; or
  - (b) has been absent from Australia for a period of 12 months or more; the person is not eligible to receive pharmaceutical allowance in respect of the period:
  - (c) beginning on the 1 January that first occurs after the person has left Australia; and
  - (d) ending on the day before:
    - (i) the day on which the person returns to Australia; or
    - (ii) the day on which the person notifies the Department of his or her return to Australia;
- whichever is the later.

**SCHEDULE 2—continued**

This point does not apply to a person who:

- (e) after notifying the Department that he or she will be absent from Australia for a period of 12 months or more, returns to Australia before the 1 January that first occurs after the person has left Australia; and
- (f) has notified the Department of his or her return to Australia before that 1 January.

*No pharmaceutical allowance if person receiving pharmaceutical allowance under the Social Security Act*

“45X-DAA3. 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*

“45X-DAA4. 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 45X-DAA5.

*Advance payment period*

“45X-DAA5. 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:

$$\frac{\text{amount of advance} \times 26}{\text{pharmaceutical allowance rate}}$$

where:

*amount of advance* is the amount of the advance paid to the person.  
*pharmaceutical allowance rate* is the yearly amount of pharmaceutical allowance that 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.

**SCHEDULE 2—continued**

*No pharmaceutical allowance if annual limit reached*

“45X-DAA6. Pharmaceutical allowance is not to be added to a person’s maximum basic rate 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, income support supplement or social security pension or benefit;
- the rate of pharmaceutical allowance the person attracts at various times depending on the person’s family situation.

*Social Security Act payments taken into account*

“45X-DAA7. In points 45X-DAA5 and 45X-DAA6:

***advance pharmaceutical allowance*** includes advance pharmaceutical allowance under the Social Security Act.

***pharmaceutical allowance*** includes pharmaceutical allowance under the Social Security Act.

*Rate of pharmaceutical allowance—double rate*

“45X-DAA8. Subject to point 45X-DAA9, the rate of pharmaceutical allowance is twice the amount of the rate stated in point 45X-DAA9.

*Rate of pharmaceutical allowance—standard rate*

“45X-DAA9. The rate of pharmaceutical allowance for a person is \$67.60 per year if:

- (a) the person is a recipient of income support supplement under section 45AC; and
- (b) the person is a member of a couple; and
- (c) the person’s partner is eligible for pharmaceutical allowance under Part III, Part IIIA or Part VIIA of this Act or under the Social Security Act; and

## SCHEDULE 2—continued

- (d) the person is not a member of an illness separated couple or a respite care couple.

Note 1: For *member of a couple* and *partner* see section 5E; for *illness separated couple* see subsection 5R(5) and for *respite care couple* see subsection 5R(6).

Note 2: The amount stated in point 45X-DAA9 is adjusted annually in line with CPI increases under section 59L.”.

### 20 Point 45Y-B1 (Method statement):

Omit Step 1, substitute:

“*Step 1.* Work out the amount of the person’s maximum basic rate using MODULE C below and add the amount per year (if any) of pharmaceutical allowance using MODULE CA below.”.

### 21. Point 45Y-B1 (Method statement):

- (a) Insert after Step 5:

“*Step 5A.* If the person is a war widow or a war widower, go to Step 6. If the person is neither a war widow nor a war widower, go to Step 10A.”.

- (b) Add at the end of Step 10 (but not as part of paragraph (c)) “Go now to Step 11.”.

- (c) Insert after Step 10:

“*Step 10A.* Compare the adjusted income reduced rate (see Step 3) and the assets reduced rate (see Step 5): the person’s *provisional rate* is a rate equal to:

- (a) whichever is the lower of those rates; or
- (b) if those rates are the same—those rates.

Go now to Step 11.”.

- (d) Omit “or 10” from Step 17, substitute “, 10 or 10A”.

### 22. Point 45Y-B1 (Method statement—Step 10A):

Omit, substitute:

“*Step 10A.* Compare the adjusted income reduced rate (see Step 3) and the assets reduced rate (see Step 5): the person’s *conditional payment rate* is a rate equal to:

- (a) whichever is the lower of those rates; or
- (b) if those rates are the same—those rates.

Take away from the conditional payment rate any advance payment deduction (see Division 6 of Part IIID): the result is the person’s *provisional rate*.

Go now to Step 11.”.

**SCHEDULE 2**—continued

**23. Point 45Y-B1 (Method statement):**

Insert after Step 10:

“*Step 10A.* Compare the adjusted income reduced rate (see Step 3) and the assets reduced rate (see Step 5): the person’s ***conditional payment rate*** is a rate equal to:

- (a) whichever is the lower of those rates; or
- (b) if those rates are the same—those rates.

Take away from the conditional payment rate any advance payment deduction (see Division 6 of Part IIID): the result is the person’s ***provisional rate***.

Go now to Step 11.”.

**24. After Module C in the Income Support Supplement Rate Calculator where there are dependent children at the end of Section 45Y:**

Insert:

***“MODULE CA—PHARMACEUTICAL ALLOWANCE***

***Eligibility for pharmaceutical allowance***

“45Y-CA1. Subject to points 45Y-CA2, 45Y-CA3, 45Y-CA4 and 45Y-CA6, an additional amount by way of pharmaceutical allowance is to be added to the maximum basic rate of income support supplement payable to a person who is eligible for that supplement under section 45AC.

***No pharmaceutical allowance during certain periods of absence***

“45Y-CA2. If a person:

- (a) has notified the Department that he or she will be absent from Australia for a period of 12 months or more; or
- (b) has been absent from Australia for a period of 12 months or more; the person is not eligible to receive pharmaceutical allowance in respect of the period:
- (c) beginning on the 1 January that first occurs after the person has left Australia; and
- (d) ending on the day before:
  - (i) the day on which the person returns to Australia; or
  - (ii) the day on which the person notifies the Department of his or her return to Australia;whichever is the later.



## SCHEDULE 2—continued

This point does not apply to a person who:

- (e) after notifying the Department that he or she will be absent from Australia for a period of 12 months or more, returns to Australia before the 1 January that first occurs after the person has left Australia; and
- (f) has notified the Department of his or her return to Australia before that 1 January.

*No pharmaceutical allowance if person receiving pharmaceutical allowance under the Social Security Act*

“45Y-CA3. 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*

“45Y-CA4. 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 45Y-CA5.

*Advance payment period*

“45Y-CA5. 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:

$$\frac{\text{amount of advance} \times 26}{\text{pharmaceutical allowance rate}}$$

where:

*amount of advance* is the amount of the advance paid to the person.  
*pharmaceutical allowance rate* is the yearly amount of pharmaceutical allowance that 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.

**SCHEDULE 2—continued**

*No pharmaceutical allowance if annual limit reached*

“45Y-CA6. Pharmaceutical allowance is not to be added to a person’s maximum basic rate 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, income support supplement or social security pension or benefit;
- the rate of pharmaceutical allowance the person attracts at various times depending on the person’s family situation.

*Social Security Act payments taken into account*

“45Y-CA7. In points 45Y-CA5 and 45Y-CA6:

*advance pharmaceutical allowance* includes advance pharmaceutical allowance under the Social Security Act.

*pharmaceutical allowance* includes pharmaceutical allowance under the Social Security Act.

*Rate of pharmaceutical allowance—double rate*

“45Y-CA8. Subject to point 45Y-CA9, the rate of pharmaceutical allowance is twice the amount of the rate stated in point 45Y-CA9.

*Rate of pharmaceutical allowance—standard rate*

“45Y-CA9. The rate of pharmaceutical allowance for a person is \$67.60 per year if:

- (a) the person is a recipient of income support supplement under section 45AC; and
- (b) the person is a member of a couple; and
- (c) the person’s partner is eligible for pharmaceutical allowance under Part III, Part IIIA or Part VIIA of this Act or under the Social Security Act; and

**SCHEDULE 2—continued**

- (d) the person is not a member of an illness separated couple or a respite care couple.

Note 1: For *member of a couple* and *partner* see section 5E; for *illness separated couple* see subsection 5R(5) and for *respite care couple* see subsection 5R(6).

Note 2: The amount stated in point 45Y-CA9 is adjusted annually in line with CPI increases under section 59L.”.

**25. Paragraph 58A(3A)(a):**

After “pension” insert “or income support supplement”.

**26. Subsection 58K(1) (paragraph (ab) of Note):**

After “44-CA1A” insert “, 45X-DAA2, 45Y-CA2”.

**27. Subsection 59L(1):**

Omit “PA (service pension) rate”, substitute “the rate of pharmaceutical allowance payable to a service pensioner or a recipient of income support supplement”.

**28. After subparagraph 118A(1)(a)(i):**

Insert:

“(ia) an income support supplement under section 45AC; or”.

**29. Subsection 118B(1A):**

After “Part III” insert “or an income support supplement under Part IIIA”.

**30. Subsection 118D(1) (Note 2):**

After “service pension” insert “or income support supplement”.

**31. Paragraph 118F(2)(a):**

After “pension” insert “or an income support supplement under section 45AC”.

**32. Section 118L (definition of *pharmaceutical allowance rate*):**

After “service pension” insert “, or an income support supplement under section 45AC”.

**33. Section 118L (Note):**

Insert before the last dot point:

- “ points 45X-DAA8 and 45Z-DAA9 of Income Support Supplement Rate Calculator Where There Are No Dependent Children;  
points 45Y-CA8 and 45Y-CA9 of Income Support Supplement Rate Calculator Where There Are Dependent Children;”.

**SCHEDULE 2—continued**

**34. Paragraph 118Q(1)(a):**

After “service pensioner” insert “or a recipient of income support supplement under section 45AC”.

**35. Subparagraph 118R(b)(i):**

After “service pensioner” insert “or a recipient of income support supplement under section 45AC”.

**36 Paragraph 118S(2)(a):**

After “service pensioner” insert “or a recipient of income support supplement under section 45AC”.

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**SCHEDULE 3**

Subsection 3(2)

**OTHER AMENDMENTS OF THE VETERANS' ENTITLEMENTS  
ACT 1986**

**1. After paragraph 8(1)(e):**

Insert:

“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.”.

**2. After paragraph 70(5)(d):**

Insert:

“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.”.

**3. After paragraph 70(5A)(d):**

Insert:

“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.”.

**4. Application:**

The amendments made by this schedule apply only for the purposes of claims made on or after 1 June 1994.







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