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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
THE HOUSE OF REPRESENTATIVES

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REPATRIATION ACTS AMENDMENT BILL 1979

EXPLANATORY MEMORANDUM

(Circulated by the Minister for Veterans' Affairs,  
the Honourable E. Adermann, M.P.)



## INTRODUCTION

### GENERAL DESCRIPTION OF REPATRIATION ACTS AMENDMENT BILL 1979

- (i) The Repatriation Acts Amendment Bill 1979 will reorganize the Repatriation Appeal System.
- It establishes the Repatriation Review Tribunal as the single final body for the review of decisions on Repatriation entitlement and assessment matters.
  - It provides for the reference of matters of principle from the Repatriation Review Tribunal to the Administrative Appeals Tribunal.
  - It provides access to the Federal Court of Australia, for the determination of questions of law.
- (ii) The proposals in this Bill contrast with the existing appeal provisions.
- Currently there are four (4) War Pension Entitlement Appeal Tribunals and four (4) Assessment Appeal Tribunals. Each Tribunal operates independently with no machinery to ensure overall consistency in their decisions or in their interpretations of law.
  - Over the years, marked differences have developed in the hearing of proceedings, between assessment and entitlement appeals.
  - There is no access to a higher tribunal, either administrative or judicial, for clarification of issues arising in appeal proceedings.
- (iii) The single Tribunal provided for in the Bill will ensure greater uniformity and consistency in decision-making and this, together with the additional access to the Administrative Appeals Tribunal and the Federal Court of Australia will provide a more effective system for reviewing claims of veterans and their dependants.
- (iv) The single Tribunal, combining the functions of both the existing Entitlement and Assessment Appeal Tribunals, has necessitated some changes in Tribunal structure but the basic elements of the existing system have been retained.
- The Repatriation Review Tribunal will comprise a President, a number of Deputy Presidents and a number of other members who will be appointed by the Governor-General.

(ii)

- . The President must be a legal practitioner enrolled for not less than 5 years and will be responsible for the operation of the Tribunal.
  - . Deputy Presidents must hold legal qualifications and, in the absence of the President, will preside at the hearing of a proceeding before the Tribunal.
  - . When hearing a proceeding in respect of an entitlement matter, the Tribunal will normally consist of a Deputy President, a Services Member appointed from lists of names of persons submitted by organisations representing returned soldiers, and a third member.
  - . When the Tribunal is hearing a proceeding in respect of an assessment matter, the third Member will be a medical practitioner.
- (v) The salary and allowances of the President, Deputy Presidents and Members will be subject to the Remuneration Tribunal Act 1973.
- (vi) The procedures of the Tribunal will remain informal.
- . The proposed amendments require the President (or the Presiding Member) to conduct the proceedings with as little formality and as much expedition as the Repatriation Act and proper consideration of the issue permit.
  - . The hearings will be in private, although, should the applicant wish, the presiding member may permit part, or all, of the hearing in public.
  - . The Tribunal must act according to substantial justice and take into account difficulties resulting from such factors as the passage of time and the absence of or deficiency in the official records, in ascertaining the existence of any fact, cause or circumstance.
- (vii) The Tribunal will record its decisions and reasons for decisions in writing. Such documents will be served on both the applicant and the Repatriation Commission.
- (viii) When a case is being heard by the Tribunal, both the applicant and the Repatriation Commission are entitled to appear and be represented by a person other than a legal practitioner.

(iii)

- (ix) The procedure for reviewing a decision of the Repatriation Commission or a Repatriation Board will follow those which apply under the existing arrangements to entitlement matters.
- . A person applying for a review of a decision made by the Repatriation Commission or a Repatriation Board, may, from 1 July 1979, apply to the Repatriation Review Tribunal. The evidence, documents and reports used by the Repatriation Commission or a Board in reaching the decision will be forwarded to the Tribunal.
  - . The Tribunal will review the evidence before it, calling for additional information, such as further medical information, as appropriate.
  - . In reaching its decision, the Tribunal will either affirm or set aside the Repatriation Commission or Repatriation Board decision. If it sets aside the Commission or Board decision, it will substitute its own decision in accordance with the Act.
  - . If, during the proceedings, further relevant evidence is furnished by the applicant either prior to the appeal or during the appeal, the Tribunal will adjourn the hearing and refer the case back to the Repatriation Commission with the additional evidence for reconsideration.
  - . In assessment cases, the Tribunal may, before referring the case back to the Repatriation Commission, vary the assessment, having regard to the records and evidence on which the Commission or Board reached the original decision, pending completion of the review by the Commission of the new evidence.
  - . Should the Repatriation Commission affirm the original decision the Tribunal will proceed with the hearing of the application.
- (x) There is provision for review by the Repatriation Commission of a decision the subject of an application for review by the Tribunal.
- . Where because of the lapse of time since the making of the decision or because of other special circumstances, the Repatriation Commission considers that it should review the original decision before an application for review is heard by the Tribunal, the Commission shall notify the Tribunal and proceed with the review and the Tribunal will postpone its hearing of the proceeding pending the review by the Commission.
  - . Should the Repatriation Commission affirm the original decision the Tribunal will proceed with the hearing of the application for review.

- . Should the Repatriation Commission not affirm the original decision, it must give notice of its decision to the applicant, who, if he is not satisfied with the decision, may within 3 months, notify the Tribunal accordingly, when the Tribunal will be required to proceed with the hearing.
- (xi) At any time after an unfavourable decision by the Tribunal the applicant may submit to the Repatriation Commission further evidence with respect to his claim.
- . If the Repatriation Commission is satisfied that the evidence would have been relevant to the decision previously made, it will reconsider the claim
  - . If the Repatriation Commission is not satisfied that the new evidence is relevant it will notify the applicant. The applicant may then seek a review by the Tribunal if, in the President's opinion, the further evidence would have been relevant to the making of the original decision.
- (xii) If the Tribunal, in the absence of the applicant, reaches a decision which is adverse to the applicant and he can, within 3 months of being notified of that decision, satisfy the Tribunal that he or his representative was, due to circumstances outside his control, prevented from attending the hearing of the proceedings, and requests the Tribunal to rehear those proceedings, the Tribunal will re-open the case and rehear it.
- (xiii) Where, at any time after a decision of the Tribunal, the Repatriation Commission forms the view that evidence given in the relevant proceedings was false, the Commission may refer the matter to the Tribunal, together with a statement of the grounds for the Commission's opinion, and the Tribunal may, if it thinks fit, rehear those proceedings.
- (xiv) The various binding periods in respect of assessment decisions contained in the Principal Act have been retained.
- (xv) When both the appellant and the Repatriation Commission consent the Tribunal may dismiss an appeal - either before or during the hearing.
- (xvi) Provisions inserted into the Principal Act in 1929 which dealt with the individual's right to have access to information from his records have been retained.
- (xvii) New provisions not contained in the Principal Act enable certain proceedings before the Tribunal to be lifted up to the Administrative Appeals Tribunal.

(v)

- . An applicant before the Tribunal, or the Repatriation Commission, may at any time during the hearing of proceedings, request that the matter before the Tribunal be referred to the Administrative Appeals Tribunal on the grounds that it involves an important principle of general application under the Act.
- . If the matter before the Tribunal involves review of a decision by the Repatriation Commission, the hearing will be adjourned and the application forwarded to the President of the Repatriation Review Tribunal.
- . If the matter before the Tribunal involves review of a decision of a Repatriation Board, the Tribunal will adjourn the hearing and refer the case to the Repatriation Commission for review. On receipt of advice as to the Commission's decision on its review, the applicant may request the President of the Repatriation Review Tribunal to refer the matter to the Administrative Appeals Tribunal. Should the applicant not make such a request, his application for a reference to the Administrative Appeals Tribunal will lapse and the Repatriation Review Tribunal will continue with its hearing.
- . The President of the Repatriation Review Tribunal, if he considers that the matter which has been placed before him involves an important principle of general application under the Repatriation Act, may refer that matter to the Administrative Appeals Tribunal with a request for a review of that matter by that Tribunal.
- . Should the President of the Repatriation Review Tribunal refuse the request for a reference to the Administrative Appeals Tribunal, he will notify the applicant accordingly and furnish him with a statement of the reasons for his decision, in which case the original proceedings will be resumed.
- . The President of the Repatriation Review Tribunal may, in any case, of his own volition refer to the Administrative Appeals Tribunal a matter before the Repatriation Review Tribunal which he considers involves an important principle of general application and request that the matter be reviewed by the Administrative Appeals Tribunal.

- . Any such review shall be conducted by a Presidential Bench of the Administrative Appeals Tribunal and the President of that Tribunal may direct that the President of the Repatriation Review Tribunal be one of the persons to constitute that Tribunal.
- (xviii) The Bill also makes provision for access to the Federal Court of Australia.
- . The Repatriation Review Tribunal may, of its own motion or at the request of an applicant or the Repatriation Commission, and with the concurrence of the President, at any time refer to the Federal Court a question of law arising in proceedings before it.
  - . The Repatriation Commission or an applicant may appeal from a decision of the Tribunal to the Federal Court on a question of law.
  - . Provision is made to assist financially applicants who may be involved in an issue before the Federal Court. Where the President of the Tribunal, of his own volition or on the application of one of the parties, refers a question of law to the Federal Court of Australia, the costs of the applicant will be met by the Commonwealth. If the Repatriation Commission appeals to the Federal Court on a question of law, the applicant's costs will also be met by the Commonwealth. The Bill provides a discretion in the Federal Court of Australia as to costs where an unsuccessful applicant before the Tribunal pursues an appeal to the Federal Court on a question of law. There is also provision for an applicant to apply to the Attorney-General for assistance.
- (xix) Provision for a number of consequential amendments to the various Repatriation Acts is also contained in the Bill.



REPATRIATION ACTS AMENDMENT BILL 1979

EXPLANATORY MEMORANDUM

PART I - PRELIMINARY

Clause 1 - Short Title

1. Self-explanatory.

Clause 2 - Commencement

2. Sub-clause 2(1) enables clauses 1, 2 and 3, paragraph 4(a) and clause 26 to come into effect on the date of Assent. This is to deal with administrative arrangements such as the appointment of the President, Deputy Presidents and members of the Tribunal, and their familiarization with the system. Hearings are planned to commence 1 July 1979.

3. It may appear that, for a period, two Tribunal systems may be operating. In fact, it is desirable that existing appeals continue to be heard until 30 June 1979 and that the new Tribunal has sufficient time to develop its administrative functions and its operational and procedural arrangements. This system should ensure a smooth handover on 1 July 1979.

4. Sub-clause 2(2) provides for the other provisions of the Bill, including those repealing the provisions for the present Tribunals, to come into operation on 1 July 1979.

PART II - AMENDMENTS OF THE REPATRIATION ACT 1920

Clause 5 - Principal Act

5. Self-explanatory

Clause 4 - Interpretation

6. Clause 4 amends section 6 of the Principal Act, definitions, in two ways. In paragraph 4(a) it inserts the definition of "Tribunal". "Tribunal" is defined as the Repatriation Review Tribunal established by section 107VB of the proposed new Part IIIA.

7. Paragraph 4(b) adds a new subsection to section 6. This deals with the special provisions relating to residents of the Torres Strait Islands. They are entitled to an extra three months in respect of time limits for lodging appeals, etc. This avoids repetition which would otherwise be necessary whenever time limits are mentioned.

Clause 5 - Boards to consult and co-operate with Commission

8. Clause 5 amends section 15 of the Principal Act to replace the current references to the Appeal Tribunals with a reference to the Repatriation Review Tribunal and to include reference to decisions of the Administrative Appeals Tribunal on matters referred to that Tribunal under the proposed Part IIB.

Clause 6 - Delegation of Minister

9. Clause 6 inserts a new section 17A in the Principal Act authorising the Minister to delegate his powers under the Act. This is a standard provision common to many Acts of the Parliament

Clause 7 - Interpretation

10. Clause 7 amends section 23 of the Principal Act to omit the present definition of 'Appeal Tribunal'.

Clause 8 - Death or mental affliction of claimant

11. Clause 8 remakes section 24A of the Principal Act to allow a person approved by the Commission to pursue a claim or appeal on behalf of a mentally afflicted claimant. At present, section 24A is limited to a provision enabling a legal personal representative of a deceased claimant to pursue a claim and section 79 of the Principal Act deals with the position in respect of mentally afflicted persons. This amendment makes the one general provision to cover both cases. Section 79 is repealed by clause 15.

Clause 9 - Date of operation of determination of Commission on appeal

12. Paragraph 9(a) amends section 29 of the Principal Act to provide that the time limits applying in respect of eligibility for back-dating of pension apply from the date of service of a decision rather than from the date of the decision. Cases have arisen where the existing provision has been detrimental to claimants where there have been delays in service of notification of decisions.

13. Paragraph 9(b) repeals sub-section (2) of section 29 as it is now covered by the amendment made by clause 4 in respect of residents of the Torres Strait Islands.

Clause 10 - Review by Commission

14. Paragraph 10(a) amends sub-section 31(1) by deleting reference to 'under this Division'. It is no longer necessary to specify the Division since Divisions 2, 3 and 4 are repealed by the new Clause 15. The insertion of the words "other than a service pension" is then required as section 31 applies only in respect of disability pensions. Authority for review of service pensions lies in section 98 of the Repatriation Act.

15. Paragraph 10(b) amends section 31 of the Principal Act to incorporate the limitations on the Commission's power which have been applied under the existing provisions as a result of legal opinions. The amendment clarifies the limits of the Commission's authority.

16. The Commission may not review a pension entitlement arising from a decision of the Tribunal or of the Administrative Appeals Tribunal which has been favourable to an applicant. The Commission may not institute a review on an assessment case during a binding period. During that binding period, however, the applicant is always free to apply for an increase in his pension on the ground that his incapacity has worsened.

Clause 11 - Hearing and determination of claims, etc.

17. Paragraph 11(a) amends section 47 of the Repatriation Act by deleting references to an Appeal Tribunal or an Assessment Appeal Tribunal. It modifies sub-section 47(1) to describe the duties of the Board and the Commission only. The duties of the Tribunal will be set out in the new Part IIIA, inserted by clause 26.

18. Paragraph 11(b) sets out the principles to be applied by the Commission or a Board in determining a claim or an application under the Act. This clause removes the Tribunal from the provisions of section 47 as its duty is picked up under the proposed sections 107VG and 107VH. Section 47 would henceforth apply to Boards and the Commission with the proposed sections 107VG and 107VH governing the Tribunal.

Clause 12 - Reasons for decisions of Commission or Board to be included in decision, etc.

19. Clause 12 remakes section 47A of the Principal Act which relates to the giving of decisions by determining authorities and the reasons for those decisions. Section 47A will henceforth apply only to Repatriation Boards and the Commission, as the proposed section 107VK will apply the same principles to the Tribunal.

Clause 13 - No action for making statements in proceedings, etc.

20. Clause 13 amends section 47B of the Principal Act consequent upon the amendment of section 47A by clause 12. It deals with protection of persons against legal action associated with statements, opinions, etc. made in proceedings.

Clause 14 - Medical Reports

21. Clause 14 amends section 48 of the Principal Act to omit reference to the present Appeal Tribunals and substitute reference to the Repatriation Review Tribunal. Section 48 sets out the duties of a medical practitioner reporting on any claim for pension under the Act.

Clause 15 - Repeal of Divisions 2, 3 and 4 of Part III

22. Clause 15 repeals Divisions 2, 3 and 4 of Part III of the Principal Act (i.e. sections 55 to 82 inclusive) which deal with the constitution and operation of the present Repatriation Appeal Tribunals. This repeal will take effect from 1 July 1979. All of the provisions of a like nature in respect of the Repatriation Review Tribunal will be contained in the proposed new Part IIIA.

Clauses 16 to 25 -

23. Clauses 16 to 25 make consequential amendments to various headings and provisions through the Repatriation Act resultant from the repeal of Divisions 2, 3 and 4 of Part III by clause 24.

Clause 26 -

24. Clause 26 provides for the insertion in the Principal Act of the proposed Parts IIIA, IIIB, and IIIC, dealing with the establishment and operation of the Repatriation Review Tribunal, references to the Administrative Appeals Tribunal and references and appeals to the Federal Court of Australia.

Proposed section 107VA - Interpretation

25. Section 107VA contains definitions in respect of the proposed Part IIIA.

Proposed section 107VB - Establishment of the Repatriation Review Tribunal

26. Section 107VB provides for the establishment of the Repatriation Review Tribunal, consisting of a President and such numbers of Deputy Presidents and other members as the Governor-General may determine.

Proposed section 107VC - Review of decisions refusing entitlement to pension, other than service pension

27. Section 107VC provides for a right of application as from 1 July 1979 to the Tribunal for the review of Repatriation Commission decisions as to pension entitlement and reflects the present provisions of sub-section 64(1) and sub-section 64(7AA) of the present Act.

Proposed section 107VD - Review of pension assessments other than service pension assessments

28. Section 107VD provides for the right of a person to apply to the Tribunal as from 1 July 1979 for review of a decision of the Repatriation Commission or a Repatriation Board in respect of a disability pension assessment. The section reflects the current provisions of sub-section 67(1) of the Repatriation Act.

Proposed section 107VE - Review of certain decisions refusing application for service pension under section 85

29. Section 107VE provides for a person to have the right to apply to the Tribunal as from 1 July 1979 for a review of a Commission decision refusing a Repatriation service pension sought on the grounds of permanent unemployability. This section reflects the current provisions of sub-section 70(1) of the Repatriation Act.

Proposed section 107VF - Application for review

30. Sub-section 107VF(1) provides that an application for review by the Tribunal of a decision by the Repatriation Commission or a Repatriation Board shall be in writing, shall set out a statement of the reasons for the application and shall be lodged with the Secretary of the Department of Veterans' Affairs. This differs from the current provisions in the Repatriation Regulations only in that it does not prescribe a form for the application. A simple letter clearly setting out a wish to seek review by the Tribunal will suffice.

31. Sub-section 107VF(2) requires the Secretary of the Department of Veterans' Affairs to:

- (a) notify the President of the Tribunal within 21 days of the lodgement of the application, and subsequently
- (b) to forward as soon as practicable, to the President of the Tribunal the application and all records and other documents relating to the application.

32. This is a more satisfactory administrative arrangement than having Tribunal appeals sent directly to the President. Firstly it allows the gathering of all relevant material to be passed on to the Tribunal in one move. Secondly it provides an opportunity for Commission to review the application, and, if appropriate, take action under the proposed Section 107VL. Thirdly, and most importantly, it places no onus on the applicant to seek out a proper official of the Tribunal, such as a registrar, in order to lodge his application.

Proposed section 107VG - Tribunal not bound by technicalities, etc.

33. Section 107VG picks up and applies to the Tribunal the provisions of sub-section 47(1), which will apply to the Repatriation Commission and Repatriation Boards. This provision is identical in terms to sub-section 47(1), other than in its introductory words which are adjusted to apply to the proceedings of the Tribunal.

Proposed section 107VH - Decision of Tribunal

34. Section 107VH applies to the Tribunal the principles applicable to the Repatriation Commission and Repatriation Boards under sub-section 47(2). The wording is substantially different in view of the different role of the Tribunal and the different proceedings before it. Sub-section 47(2) of the Principal Act requires the Commission or a Board to grant a claim or application, and the Commission to allow an appeal, as the case may be, unless it is satisfied beyond reasonable doubt that there are insufficient grounds for granting the claim or application or allowing the appeal. Section 107VH applies this principle to the Tribunal and requires that, where the Tribunal sets aside a decision under these circumstances, it shall substitute for that decision such decision as the Tribunal considers to be in accordance with the Act.

Proposed section 107VJ - Further evidence relating to incapacity

35. Section 107VJ relates to a Tribunal review of an assessment decision where the applicant introduces evidence which, in the view of the Tribunal, constitutes evidence of a change in the extent of the applicant's incapacity since the date of the Repatriation Board's or Commission's decision.

36. The Tribunal is authorized to hear the case on the basis of the evidence that was available to the Board or Commission at the time of the original decision. The Tribunal may then, after giving its decision, refer the case back to the Commission for consideration of the further evidence as to possible worsening of the applicant's incapacity.

Proposed section 107VK - Reasons for decision of Tribunal to be included in decision, etc.

37. Sub-section 107VK(1) restates, in respect of the Repatriation Review Tribunal, the principles set out in section 47A of the Principal Act and requires that the Tribunal furnish a written record of any decision, together with a statement of reasons for its decision.

38. Sub-section 107VK(2) requires that the decision shall be filed with the records of the case and that copies shall be served on the applicant and on the Commission.

39. The effect of this section will be to require the Tribunal to give reasons for its decision for both entitlement and assessment cases.

Proposed section 107VL - Review by Commission of decision the subject of application for review by Tribunal

40. In many cases, applications for review of decisions are made quite soon after the decisions. However, it is common for applications to be made some extended period of time after the initial decision.

41. Sub-section 107VL(1) provides that, in the latter cases, and in other special circumstances, the Commission may consider that it should review the original decision before the application is considered by the Tribunal. Should the Commission notify the Tribunal of this, the Tribunal will postpone its hearing of the proceeding pending the review by the Commission.

42. Sub-sections 107VL(2) - 107VL(7) require the Tribunal, when it receives during proceedings before it, further evidence which was not available to the Repatriation Board or Commission when it made the original decision, to adjourn the hearing and refer the further evidence to the Commission with a request that the Commission review the original decision having regard to that further evidence. These provisions are based on the present sub-sections 64(4), 64(5) and 64(6) of the Repatriation Act but apply to both entitlement and assessment matters, whereas the present provisions apply only to entitlement matters. Where the application before the Tribunal relates to an assessment matter, the Tribunal may, having regard to the records and evidence on which the Commission or Board reached its decision, vary the assessment (i.e. give an interim decision) pending completion of the Commission's review. If the Commission, in any abovementioned review, affirms the original decision and notifies the Tribunal accordingly, the Tribunal shall proceed with the hearing of the original application before it. If the Commission does not affirm the original decision, it must give notice of its decision to the applicant who, if he is not satisfied with the decision, may within three months notify the Tribunal accordingly. In that case, the Tribunal will be required to proceed with the hearing of the application. However, that application shall be treated as an application for review of the Commission's later decision, rather than the original one which had been reviewed by the Commission.

Proposed section 107VM - Further evidence after adverse decision of Tribunal on application under section 107VC

43. Sub-section 107VM(1) provides that, at any time after the Tribunal has made a decision which affirms a Commission decision (i.e. the Tribunal decision was adverse to the applicant), the applicant may submit to the Repatriation Commission further evidence with respect to his claim. If the Commission is satisfied that that further evidence would have been relevant to the making of its original decision, it shall reconsider the claim.

44. Sub-section 107VM(2) provides that if the Commission is not satisfied that the further evidence would have been relevant to the making of the original decision, the Commission must notify the applicant accordingly. The applicant may then submit that further evidence to the President of the Repatriation Review Tribunal and request the President to notify him whether, in the President's opinion, that further evidence would have been relevant to the making of the original decision. If the President so notifies the applicant, section 107VC gives the applicant a further right to seek a review by the Tribunal. This provision is based on the existing sub-section 64(7) and 64(7AA).

Proposed section 107VN - Constitution of Tribunal for exercise of powers

45. Section 107VN provides that the Tribunal shall be constituted by the President or a Deputy President, a Services Member and one other Member. However, when the Tribunal is dealing with an application on an entitlement matter that the President considers of importance, he may constitute the Tribunal by the President, a Deputy President, and a Services Member.

46. When the matter before the Tribunal is the hearing of an application in respect of an assessment decision, the third Member must be a medical practitioner.

Proposed section 107VP - President responsible for arrangement of business

47. Section 107VP provides that the President is responsible for the efficient operations of the Tribunal and may give directions as to the arrangement of the Tribunal business or for the purpose of increasing the efficiency of the Tribunal.

Proposed section 107VQ - Members to constitute Tribunal

48. Section 107VQ authorises the President to give directions in writing from time to time as to the persons who are to constitute the Tribunal. Such directions may specify the particular proceedings for the purpose of which the Tribunal is to be constituted or may constitute the Tribunal for the purpose of dealing with such proceedings as may be allocated from time to time by the President.

Proposed section 107VR - Member ceasing to be a member, etc.

49. Sub-section 107VR(1) provides that, where the President has constituted the Tribunal and one of the members ceases to be available, the President may revoke the direction, reallocate the proceedings, or direct that the two remaining members shall constitute the Tribunal for the purposes of the proceedings allocated.

50. Sub-section 107VR(2) provides that a Tribunal constituted by two members shall not commence or continue a proceeding unless the applicant consents.



51. Sub-section 107VR(3) provides that, where the President directs that the two remaining members constitute the Tribunal, he shall specify whom, of the two members, shall be the presiding member during the period that direction is in force.

52. Sub-section 107VR(4) provides that, where a direction given by the President at any time reallocates an application the proceedings on which have already commenced, the Tribunal as so reconstituted may have regard to any record of the proceedings previously taken, including a record of evidence taken in the earlier proceedings.

Proposed section 107VS - Places of sittings

53. Sub-section 107VS(1) states that the Tribunal may hold sittings anywhere within Australia or in an External Territory.

54. Sub-section 107VS(2) requires the President to notify the Commission and the applicant of the time and place fixed for any hearing.

Proposed section 107VT - Presidential member to preside at hearing

55. Sub-section 107VT(1) provides that where the President is one of the members constituting the Tribunal for the purpose of a proceeding, he will preside.

56. Sub-section 107VT(2) allows that if the President is not included, the Deputy President who is included amongst the members constituting the Tribunal will preside.

Proposed section 107VU - Parties to proceeding before Tribunal

57. Sub-section 107VU(1) provides that an applicant may appear before the Tribunal in person or be represented at his own expense by a person other than a legal practitioner. However, he may make any submissions in writing and ask the Tribunal to proceed in his absence.

58. Sub-section 107VU(2) permits the Repatriation Commission to be represented at any hearing by a person other than a legal practitioner.

59. Section 107VU reflects the present provisions of section 72 of the Act.

Proposed section 107VV - Procedure of Tribunal

60. Sub-section 107VV(1) provides that the President may give directions in writing as to the procedures of the Tribunal generally with respect to proceedings before it. However, sub-section 107VV(2) states that, subject to those directions, a presiding member in a particular proceeding may give directions, whether in writing or otherwise, as to the procedure to be followed at any hearings of that proceeding.

61. Sub-section 107VV(3) requires the President and a presiding member when giving directions in relation to procedures to ensure the proceedings are conducted with as little formality and technicality and with as much expedition as the requirements of the Act and as proper consideration of the matters before the Tribunal permit.

Proposed section 107VW - Questions to be decided by majority of Tribunal

62. Sub-section 107VW(1) provides that a question before the Tribunal in any proceedings may be decided on a majority basis.

63. Sub-section 107VW(2) states that where the Tribunal is constituted in any proceedings by two members only and the two members cannot agree on a question arising, those proceedings shall be adjourned and the matter referred to the President for re-allocation under section 107VR.

Proposed section 107VX - Hearings to be in private except in special circumstances

64. Sub-section 107VX(1) provides that hearings generally shall be in private.

65. Sub-section 107VW(2) authorises the presiding member to give directions as to the persons (other than the appellant, his representative, or the Commission who have a right of appearance under section 107VU above), who may be present.

66. Sub-section 107VX(3) states however, that if requested by the applicant, the presiding member may permit the hearing or part of the hearing to be in public. Section 107VX reflects the present practice under which proceedings have always been conducted in private, but now permits hearings to be in public if the applicant so requests.

Proposed section 107VY - Powers of Tribunal

67. Sub-section VY(1) authorises the Tribunal to take evidence on oath or affirmation and to adjourn the hearing of a proceeding from time to time. Under Sub-section 107VY(2) the presiding member in relation to any proceeding may summon a person to give evidence or produce documents, require a person giving evidence to take an oath or affirmation and administer such an oath or affirmation. Sub-section 107VY(4) confers on the presiding member or on a person authorised by him the power of the Tribunal to take evidence on oath or affirmation in relation to the proceedings and that power may be exercised within or outside Australia.

Proposed section 107VZ - Request to Secretary for documents, etc.

68. Sub-section 107VZ(1) authorises the presiding member of the Tribunal in relation to any proceedings to request the Secretary, Department of Veterans' Affairs, at any time during

those proceedings to forward any documents to the Tribunal or to make any investigation or medical examination that the presiding member thinks necessary and to forward to the Tribunal a report of that investigation or examination.

69. Where the proceedings before the Tribunal relate to an assessment decision, sub-section 107VZ(2) authorizes the Tribunal to vary that assessment (i.e. make an interim decision) pending receipt of the information, etc. requested, having regard to the records and evidence on which the Commission or Board reached the original decision.

Proposed section 107VZA - Information may be made available to applicant

70. This is a remake of the present section 80 of the Act, which has been in use since 1929. In view of its long history and the principles upon which it is based, this section is retained in respect of the new Tribunal.

Proposed section 107VZB - Rehearing of proceeding of Tribunal on application under section 107VC

71. Section 107VZB provides that, where a decision of the Tribunal on an entitlement issue is favourable to the applicant, the Repatriation Commission may, within six months, submit to the Tribunal further evidence that the Commission is satisfied would have been relevant to the making of the decision by the Tribunal. The Commission may request the Tribunal to rehear the proceedings. This provision reflects the current provisions of sub-section 64(9) of the Repatriation Act and, apart from the question of false evidence dealt with later in section 107VZD, is the only ground by which the Repatriation Commission can seek to re-open a Tribunal decision that is favourable to the applicant.

Proposed section 107VZC - Effect of decision of Tribunal on application under section 107VD

72. Section 107VZC provides that a decision of the Tribunal on an assessment matter shall be binding on the applicant, the Commission and a Repatriation Board for such period as is specified by the Tribunal, being a period of not less than three years, or in the absence of such a specification, a period of six months. The provision goes on to permit the applicant to apply during that period for an increase in his pension assessment if he is of the opinion that his incapacity has increased since the date of the Tribunal decision. The equivalent provision in the present Act is section 69.

Proposed section 107VZD - Rehearing of proceeding by Tribunal

73. Sub-section 107VZD(1) authorizes the Tribunal to rehear a proceeding that was adverse to the applicant if the applicant,

within 3 months, satisfies the Tribunal that the applicant or his representative had been, due to circumstances beyond his control, unable to be present at the first hearing. This is the equivalent to the present section 80A of the Act.

74. Sub-section 107VZD(2) provides that the Commission may, if it forms the view that evidence in any concluded proceedings before the Tribunal was false in a material particular, refer the matter to the Tribunal and the Tribunal may, if it thinks fit, rehear the proceedings. This reflects the present sub-section 64(9) and section 71.

Proposed section 107VZE - Dismissal of application by consent

75. Section 107VZE authorises the Tribunal to dismiss an application without proceeding with its review if the Commission and the applicant both consent.

Proposed section 107VZF - Date of operation may be specified

76. Section 107VZF authorises the Tribunal and the Commission, where the Commission is reviewing a case the subject of an application to the Tribunal, or a case involving further evidence tendered after a decision of the Tribunal, to fix a date from which the decision is to operate.

Proposed section 107VZG - Limits of retrospective action

77. Section 107VZG specifies the limitations within which the Tribunal and the Commission may give retrospective application to a decision. This provision is identical in terms to the present section 78 of the Act and does not in any way vary the effect of the present provisions.

Proposed section 107VZH - Appointment of members to Tribunals

78. Sub-section 107VZH(1) provides for the appointment of members of the Tribunal by the Governor-General.

79. Sub-section 107VZH(2) provides that, of the members other than the President and Deputy Presidents, the Governor-General shall determine the number of persons to be appointed as Service members and the number of members who should be appointed as legally qualified medical practitioner members.

80. Under Sub-section 107VZH(3) Service members will be appointed from lists of nominations received by the Minister from time to time from organisations representing returned soldiers as defined in section 6 of the Repatriation Act.

81. Sub-section 107VZH(4) requires that the President be a full-time member.

82. Sub-section 107VZH(5) permits the appointment of other members as full-time or part-time members.

Proposed section 107VZJ - Qualifications for appointment of President and Deputy Presidents

83. Sub-section 107VZJ(1) provides that the President must be a legal practitioner and have been enrolled for no less than 5 years as a practitioner of the High Court, of another Federal Court or of the Supreme Court of a State or territory.

84. Sub-section 107VZJ(2) requires that Deputy Presidents must be legal practitioners of the High Court or of another Federal Court or of the Supreme Court of a State or Territory or must have obtained a degree in law from a university.

Proposed section 107VZK - Term of appointment

85. Sub-section 107VZK(1) provides that a member may be appointed for a term not exceeding 7 years, on such terms and conditions as the Governor-General determines, but is eligible for reappointment.

86. Sub-section 107VZK(2) prevents the appointment of a person if he has attained the age of 65 years or his appointment for a period extending beyond his 65th birthday.

87. Sub-section 107VZK(3) permits the appointment of a person as President for a term that would extend beyond his 65th birthday.

Proposed section 107VZL - Remuneration and allowances of members

88. Section 107VZL provides, in a standard provision, that the remuneration of members of the Tribunal shall be as determined by the Remuneration Tribunal and that members may be paid such allowances as are prescribed.

Proposed section 107VZM - Acting members

89. Sub-section 107VZM(1) provides for acting appointments to be made by the Minister to fill vacancies. Under sub-section 107VZM(2) such appointments may be expressed to take effect only in specified circumstances.

90. Sub-section 107VZM(3) specifies that a person who is qualified, may be appointed to act in the place of the President or a Deputy President. Provision is made under sub-section 107VZM(4) to permit a person to act for a period in excess of 12 months, or when the occasion for the vacancy has terminated, if his continued membership is necessary to complete proceedings before the Tribunal.

91. Sub-section 107VZM(5) sets out that a person acting as President or Deputy President shall hold all the powers, duties etc. of the office during that period.

92. Sub-section 107VZM(6) provides that the validity of any decision of the Tribunal or any act done by a person under an acting appointment cannot be challenged on the grounds that the occasion for the person to act as a member of the Tribunal has not arisen or that his appointment has ceased to have effect.

93. The Minister may determine under sub-section 107VZM(8) the terms and conditions, including remuneration, of a person appointed to act in place of an absent or unavailable member.

Proposed section 107VZN - Leave of absence

94. Section 107VZN provides that the Minister may grant leave of absence to full-time members upon such terms and conditions as the Minister determines.

Proposed section 107VZP - Resignation

95. Under Section 107VZP a member may resign his office by writing signed by him and delivered to the Governor-General.

Proposed section VZQ - Removal from office

96. Sub-section 107VZQ(1) provides that the Governor-General may remove a member of the Tribunal from office on receipt of an address from each House of the Parliament, in the same session of the Parliament, praying for the removal of the member on the ground of proved misbehaviour or incapacity.

97. Under Sub-section 107VZQ(2) the Minister may suspend a member from office on the ground of misbehaviour or incapacity.

98. Sub-section 107VZQ(3) requires that the Minister then cause a statement of the ground of suspension to be laid before each House of the Parliament within 7 sitting days of that House after the suspension.

99. Sub-section 107VZQ(4) provides that either House of Parliament may, within 15 sitting days of the tabling of the statement, by resolution declare that the member should be removed from office and, if each House passes such a resolution, the Governor-General shall remove that member from office.

100. Under sub-section 107VZQ(5) if at the expiration of 15 sitting days, a House of the Parliament has not passed such a resolution, the suspension is terminated.

101. Sub-section 107VZQ(6) provides that the suspension of a member does not affect any entitlement to be paid remuneration and allowances.

102. Sub-section 107VZQ(7) provides that the Governor-General shall remove a member from office if the member becomes bankrupt or, being a full-time member, engages without the consent of the Minister, in outside paid employment. Sub-section 107VZQ(8) authorises the Governor-General with the consent of a member who is an eligible employee for the purposes of the Superannuation Act, to retire the member from office on the ground of incapacity. The provisions of section 107VZQ reflect the present provisions of sections 61 and 62 of the Repatriation Act.

Proposed section 107VZR - Application of Superannuation Act and Officers' Rights Declaration Act

103. Sub-section 107VZR(1) provides that, for the purposes of the Superannuation Act, the removal of a member from office on the ground of incapacity shall be deemed to be retirement on the ground of invalidity. Sub-section 107VZR(2) applies the provisions of the Officers' Rights Declaration Act to appointees to the Tribunal from the Commonwealth Public Service.

Proposed section 107VZS - Delegation

104. This section authorises the President to delegate any of his powers to a Deputy President.

Proposed section 107VZT - Protection of members and witnesses

105. Section 107VZT confers on a member of the Tribunal in the performance of his duties as a member the same protection and immunity as a Justice of the High Court. It extends to a witness before the Tribunal the same protection and makes him subject to the same liabilities as a witness in proceedings before the High Court. A person representing an applicant (i.e. an advocate) is given the same protection as a barrister receives before the High Court.

Proposed section 107VZU - Failure of witness to attend

106. Section 107VZU provides that a person summoned to appear as a witness before the Tribunal who, without reasonable excuse, fails to attend is liable to a penalty of \$1000 or imprisonment for 3 months.

Proposed section 107VZV - Refusal to be sworn or to answer questions

107. Section 107VZV provides that a person appearing as a witness before the Tribunal who, without reasonable excuse, fails to take an oath or affirmation or refuses or fails to answer a question when so required by the presiding member; or refuses or fails to produce a document that he is required by summons to produce, shall be guilty of an offence and liable to a fine of \$1000 or imprisonment for 3 months.

Proposed section 107VZW - Contempt of Tribunal

108. Section 107VZW provides that any person who insults a member of the Tribunal in relation to the exercise of the member's powers or functions, interrupts a proceeding of the Tribunal, creates a disturbance in or near the place where the Tribunal is sitting, or does any act in respect of the Tribunal that would, in the case of a court, constitute contempt of court shall be guilty of an offence and liable to a fine of \$1000 or 3 months' imprisonment.

Proposed section 107VZX - Payment of expenses and allowances in respect of attendances

109. Sub-section 107VZX(1) provides that an applicant attending a hearing before the Tribunal shall be entitled to such expenses and such allowances for loss of salary, wages or earnings as are prescribed (i.e. by regulations).

110. Sub-section 107VZX(2) provides that a person who accompanies an applicant before the Tribunal as an attendant is, subject to such conditions as the Commission determines, entitled to be paid such of his expenses and allowances in respect of salary or wages to the extent that the Commission considers reasonable.

111. Sub-section 107VZX(3) specifies that where the Tribunal is of the opinion that an application before it is frivolous, it may declare that neither the applicant nor any attendant accompanying him is entitled to receive any payment under this section. This section is modelled on the present section 72 of the Act.

Proposed section 107VZY - Fees for witnesses

112. Sub-section 107VZY(1) provides that a person summoned to appear as a witness before the Tribunal shall be entitled to be paid witness fees and expense allowances in accordance with the regulations.

113. Sub-section 107VZY(2) states that, subject to sub-section (3) a witness summoned at the request of an applicant shall be paid by the applicant and, in other cases, a witness shall be paid by the Commonwealth. However sub-section 107VZY(3) specifies that the Tribunal may, in its discretion, order the payment of fees and allowances to a witness summoned on the request of an applicant.

Proposed section 107VZZ - Staff to assist President

114. Section 107VZZ provides that any staff required to assist the President shall be persons appointed or employed under the Public Service Act 1922. Such staff would be on the establishment of the Department of Veterans' Affairs and made available to the President.



Proposed section 107VZZA - Annual report

115. Section 107VZZA requires the President to present to the Minister at the close of each financial year a report of the operations of the Tribunal during that year and requires the Minister to table that report before both Houses of Parliament within 15 sitting days.

Proposed section 107VZZB - Reference of decisions to Administrative Appeals Tribunal

116. Under sub-section 107VZZB(1) the President of the Repatriation Review Tribunal may refer an application for a review of a Commission decision to the President of the Administrative Appeals Tribunal on the grounds that the matter involves important principles of general application within the Repatriation Act.

117. Sub-section 107VZZB(2) directs the Repatriation Review Tribunal not to commence a hearing, or adjourn it, if the President has referred the matter to the Administrative Appeals Tribunal.

118. Sub-section 107VZZB(3) permits the applicant or the Commission, at any time during a hearing, to request the Tribunal to refer a Commission decision to which the proceeding relates to the Administrative Appeals Tribunal or, if the decision under review is that of a Repatriation Board, to the Commission for a review of the decision.

119. Sub-section 107VZZB(4) provides that where an application is made under the preceding sub-section, the Repatriation Tribunal will, where the application refers to a Commission decision, adjourn the hearing and refer the application to the President of the Repatriation Review Tribunal. In any other case, the Repatriation Review Tribunal will adjourn the hearing and refer the decision to the Commission for a review.

120. Sub-section 107VZZB(5) provides that an applicant may, within three months of being notified of a Commission decision under the previous sub-sections, notify the President of the Repatriation Review Tribunal requesting that the decision of the Commission be referred to the Administrative Appeals Tribunal for review.

121. Sub-section 107VZZB(6) provides that, if no notification is received under sub-section (5) the application will be considered to have lapsed.

122. Under Sub-section 107VZZB(7) the President of the Repatriation Review Tribunal shall consider requests and applications under sub-sections (4) and (5) above. If he considers that the matter is one that involves important principles of general application, he will refer the decision to the President of the Administrative Review Tribunal with his reasons for so doing. In any other case the President may refuse the request for a reference and notify the applicant accordingly, giving his reasons.

123. Sub-section 107VZZB(8) requires that the President of the Administrative Review Tribunal, on receipt of the request from the President of the Repatriation Review Tribunal, shall direct that the review of the matter be undertaken by the Administration Appeal Tribunal and notify the President of the Repatriation Review Tribunal accordingly.

124. Sub-section 107VZZB(9) gives authority to the President of the Administrative Appeals Tribunal to nominate for the purpose of the hearing, the President of the Repatriation Review Tribunal as a non-presidential member of the Administrative Appeals Tribunal.

125. Sub-section 107VZZB(10) provides that the President of the Repatriation Review Tribunal shall forward to the Administrative Appeals Tribunal all relevant documents and other records.

126. Sub-section 107VZZB(11) provides that the Administrative Appeals Tribunal may have regard to any record of the proceeding before the Repatriation Review Tribunal, including a record of any evidence taken, concerning the case in hand.

#### Section 107VZZC - Constitution of Administrative Appeals Tribunal

127. Section 107VZZC specifies that a matter referred to the Administrative Appeals Tribunal shall be heard by a Presidential Bench of that Tribunal.

#### Section 107VZZD - Additional powers of Administrative Appeals Tribunal

128. Section 107VZZD provides that, in addition to its powers under the Administrative Appeals Tribunal Act 1975, the Tribunal may in any proceedings on a reference from the Repatriation Review Tribunal, at any time remit that review back to the Repatriation Review Tribunal with directions and the Repatriation Review Tribunal is required when conducting its review to comply with those directions.

Section 107VZZE - Reference to decisions of Repatriation Review Tribunal to be read as including references to decisions of Administrative Appeals Tribunal, etc

129. Section 107VZZE provides that decisions of the Administrative Appeals Tribunal on matters referred to it are to have the same effect as decisions of the Repatriation Review Tribunal throughout the Act.

Section 107VZZF - Effect of decision of Administrative Appeals Tribunal on proceeding before the Repatriation Review Tribunal

130. Section 107VZZF states that if the Administrative Appeal Tribunal, when conducting the proceedings on a reference from the Repatriation Review Tribunal, proceeds to deal with the case to finality without remitting it back to the Repatriation Review Tribunal, the proceedings before the Repatriation Review Tribunal are deemed to have been closed.

Section 107VZZG - Reference of questions of law to Federal Court of Australia

131. The Repatriation Review Tribunal is empowered under sub-section 107VZZG(1), of its own motion or at the request of an applicant or the Commission, to refer to the Federal Court of Australia any question of law arising in proceedings before the Tribunal. A reference can only be made with the concurrence of the President of the Tribunal.

132. Under Sub-section 107VZZG(4), the Tribunal will not make a decision to which the question before the Federal Court is relevant while the reference is pending. Neither shall it proceed in a manner or make a decision which is inconsistent with the opinion of the Federal Court on the matter.

Section 107VZZH - Appeal to Federal Court of Australia from decisions of the Tribunal

133. Section 107VZZH provides that an applicant before the Tribunal, or the Commission, may appeal to the Federal Court of Australia on a question of law from a decision of that Tribunal. The Federal Court may make an order on the case as it thinks appropriate. That order may affirm or set aside the Tribunal decision or it may remit the case to be heard again by the Tribunal.

Section 107VZZJ - Documents to be sent to Federal Court of Australia

134. Section 107VZZJ provides that, when a question of law is referred to the Federal Court or an appeal to that Court is instituted, the Tribunal is required to send to the Court all documents and other records relating to the proceedings before the Tribunal and these are to be returned by the Federal Court at the conclusion of the proceedings.

Section 107VZZK - Costs in connection with references and appeals to the Federal Court of Australia

135. Section 107VZZK provides that, where the Tribunal refers a question of law to the Federal Court of Australia, or the Commission institutes an appeal to the Federal Court of Australia, the costs of the applicant shall be met by the Commonwealth. Where the applicant himself institutes an appeal to the Federal Court of Australia, costs lie at the discretion of the Court.

Section 107VZZL - Legal Assistance

136. Section 107VZZL empowers the Attorney-General to grant legal assistance to an applicant in proceedings before the Federal Court of Australia if the Attorney-General thinks that a refusal of such assistance would cause hardship to the applicant. This provision is based on section 69 of the Administrative Appeals Tribunal Act.

PART III - AMENDMENTS OF THE INTERIM FORCES BENEFITS ACT 1947

Clause 27 - Principal Act

137. Self-explanatory.

Clause 28.- Interpretation

138. Self-explanatory.

Clause 29 - War Pensions for male members of the Interim Forces

139. Clause 29 amends the references in section 6 of the Interim Forces Benefits Act to the provisions of the Repatriation Act that extend to members of the Interim Forces, following the repeal of Divisions 2, 3 and 4 of Part III of the Repatriation Act by clause 15 of this Bill.

Clause 30 - War pensions for female members of the Interim Forces

140. Clause 30 amends the references in section 7 of the Interim Forces Benefits Act to the provisions of the Repatriation Act that extend to members of the Interim Forces, following the repeal of Division 2, 3 and 4 of Part III of the Repatriation Act by clause 15 of this Bill.

Clause 31 - Application of Parts IIIA, IIIB, and IIIC of the Repatriation Act

141. Clause 31 inserts in the Interim Forces Benefits Act a new section 7AA, applying to the Interim Forces Benefits Act the new provisions of the Repatriation Act setting up the new Repatriation Review Tribunal and providing right of access to the Administrative Appeals Tribunal and the Federal Court of Australia.

Clause 32 - Formal Amendments

142. Self-explanatory.

PART IV - AMENDMENTS OF THE REPATRIATION (FAR EAST STRATEGIC RESERVE) ACT 1956

Clause 33 - Principal Act

143. Self-explanatory.

Clause 34 - Extension of certain provisions of Repatriation Act

144. Clause 34 amends section 7 of the Repatriation (Far East Strategic Reserve) Act to delete the references to Divisions 2, 3 and 4 of Part III of the Repatriation Act repealed by clause 15 of this Bill. It inserts a new sub-section to provide for the extension in respect of the Repatriation (Far East Strategic Reserve) Act of the new provisions of the Repatriation Act providing for the new Repatriation Review Tribunal and for the right of access to the Administrative Appeals Tribunal and the Federal Court of Australia.

PART V - AMENDMENTS OF THE REPATRIATION (SPECIAL OVERSEAS SERVICE) ACT 1962

Clause 35 - Principal Act

145. Self-explanatory.

Clause 36 - Extension of certain provisions of the Repatriation Act

146. Clause 36 amends section 7 of the Repatriation (Special Overseas Service) Act to delete the references to Divisions 2, 3 and 4 of Part III of the Repatriation Act repealed by clause 15 of this Bill. It inserts a new sub-section to provide for the extension in respect of the Repatriation (Special Overseas Service) Act of the new provisions of the Repatriation Act providing for the new Repatriation Review Tribunal and for the right of access to the Administrative Appeals Tribunal and the Federal Court of Australia.

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

Clause 37 - Principal Act

147. Self-explanatory.

Clause 38 - Interpretation

148. Clause 38 amends section 3 of the Seaman's War Pensions and Allowances Act to delete the definitions of the present Tribunals and insert a definition of the Repatriation Review Tribunal.

Clause 39 - Pensions Committees to consult and co-operate with Commission

149. Clause 39 amends section 4A of the Seaman's War Pensions and Allowances Act to delete reference to the decisions of the present Tribunals and to insert an equivalent reference to decisions of the Repatriation Review Tribunal and of the Administrative Appeals Tribunal on matters referred to that Tribunal.

Clause 40 - Form of decision of Commission or Pensions Committee

150. Clause 40 repeals those provisions of the Seaman's War Pensions and Allowances Act which refer to appeals to the present Tribunals. It remakes section 8A of the Act, requiring the Repatriation Commission and Seaman's Pensions and Allowances Committees to give notification of their decisions in respect of claims and applications for entitlement and assessment and to furnish reasons for those decisions. This is the equivalent to the new section 47A of the Repatriation Act, inserted by clause 12 of this Bill.

Clause 41 - No action for making statements under proceedings etc.

151. Clause 40 amends section 8B of the Seaman's War Pensions and Allowances Act consequent upon the remake of section 8A.

Clause 42 - Medical reports

152. Clause 42 amends section 14 of the Seaman's War Pensions and Allowances Act to delete the present definition of an appeal Tribunal and substitute a new definition in respect of the new Repatriation Review Tribunal. Section 14 of the Act sets out the duties of a medical practitioner reporting on a claim under the Act.

Clause 43

153. Clause 43 provides for insertion in the Seaman's War Pensions and Allowances Act of a new Part IV dealing with review by the Repatriation Review Tribunal of decisions made by the Repatriation Commission and Pensions Committees.

Proposed section 34 - Tribunal may review decisions refusing entitlement to pension

154. Section 34 provides a right of appeal to the Repatriation Review Tribunal in respect of decisions of the Repatriation Commission on claims for entitlement to pension under the Act. The section mirrors the proposed section 107VC in the Repatriation Act.

Proposed section 35 - Tribunal may review pension assessments

155. Section 35 provides a right of appeal to the Tribunal from decisions of the Seaman's Pensions and Allowances Committees and the Repatriation Commission in respect of assessment of pension under the Act. This proposed section mirrors the proposed section 107VD in the Repatriation Act.

Proposed section 36 - Decision of Tribunal

156. Section 36 authorises the Repatriation Review Tribunal to deal with appeals under the Seaman's War Pensions and Allowances Act and empowers the Tribunal to affirm the decision under review or to set it aside and substitute such decision as the Tribunal considers to be in accordance with the Seaman's War Pensions and Allowances Act.

Proposed section 37 - Application of certain provisions of the Repatriation Act

157. Section 37 provides for the application in respect of review of cases under the Seaman's War Pensions and Allowances Act of the new provisions in the Repatriation Act setting up the Repatriation Review Tribunal and providing rights of access to the Administrative Appeals Tribunal and to the Federal Court of Australia. Some of the sections in respect of the Repatriation Review Tribunal are excepted from this application, but they are ones dealing with rights of appeal under the Repatriation Act, the equivalent to which are inserted as the proposed section 34 and 35 of the Seaman's War Pensions and Allowances Act mentioned above, and those provisions dealing with the application of section 47 under the Repatriation Act. There is no equivalent to section 47 under the Seaman's War Pensions and Allowances Act. Decisions in respect of claims and applications under the War Pensions and Allowances Act are made on the normal civil law basis and the provision relating to the Tribunal's decision making power is set out in the proposed new section 36 above.

Clause 44 - Commission may review pensions, etc.

158. Clause 44 amends the Repatriation Commission's powers to review claims and decisions under the Act and to impose on that power the same limitations as are imposed under the Repatriation Act by the proposed amendments of section 31 of that Act contained in clause 10 of this Bill.

PART VII - AMENDMENT OF THE REPATRIATION ACTS  
AMENDMENT ACT 1978

Clause 45 - Principal Act

159. Self-explanatory.

Clause 46 -

160. Clause 46 amends section 37 of the Repatriation Acts Amendment Act 1978 to delete the present reference to the Assessment Appeal Tribunal and insert a reference to the Repatriation Review Tribunal.

PART VIII - TRANSITIONAL

Clause 47 - Interpretation

161. Clause 47 is the first of a number of transitional provisions designed to protect the rights of the persons affected by the transition to the new provisions and inserts in respect of those transitional provisions a definition in respect of the existing War Pensions Entitlement Appeal Tribunals.

Clause 48 - Appeals lodged but not determined before commencement of this Part

162. Clause 48 provides that entitlement and assessment appeals lodged under the present provisions of the Act, but not determined by the existing Tribunals as at 1 July 1979, shall be treated as though they are applications for review by the Repatriation Review Tribunal under the new provisions.

Clause 49 - Applications of Part IIIA of the Repatriation Act to decisions of former Tribunals

163. Clause 49 provides that those new provisions of the Act enabling the re-opening of decisions already made by the Repatriation Review Tribunal shall apply in respect of determinations made before 1 July 1979 by the existing Repatriation Tribunals. Unsuccessful appellants before the existing Tribunals will have the same right to re-open their cases before the Repatriation Review Tribunal as will those whose applications have been rejected by that Tribunal.

Clause 50 - Decisions of former Tribunals not affected by amendments made by section 15

164. The Repatriation Commission's right under section 31 of the Repatriation Act to review decisions made by the existing Repatriation Tribunals will be subject to the same limitations as will apply in respect to its right to review decisions of the Repatriation Review Tribunal.

Clause 51 - Furnishing of copies of determinations, etc., before commencement of this Part

165. Clause 51 will apply to appellants before the Repatriation Review Tribunal whose right of appeal or eligibility for retrospective payment of pension depends upon the lodging of an appeal within three months of receiving a copy of a decision. In the case of those whose decision or determination is made before 1 July 1979, this clause provides that the furnishing to those persons of a copy of that decision or determination shall be deemed to be a decision served upon them within the terms of the new provisions.



Clause 52 - Approval under Repatriation Act to continue in force

166. Clause 52 ensures that an approval given before 1 July 1979 under the present section 24A for the legal personal representative of a deceased person, or for some other person, to pursue a claim on behalf of a deceased claimant, and under section 79 by one of the existing Tribunals for a person to act as a representative of an appellant who has died or become mentally afflicted, continues in force after 1 July 1979. The new section 24A of the Act inserted by clause 8 of this Bill will apply to cases arising after 1 July 1979.

SCHEDULE

COMPARATIVE TABLE OF PRESENT SECTIONS OF REPATRIATION ACT  
AND PROVISIONS OF BILL RELATING TO RIGHTS OF  
APPLICANT BEFORE TRIBUNAL

TOPIC	PRESENT PROVISIONS	PROVISION OF BILL (Proposed new section)
Rights of appeal:-		
. On entitlement to pension	64(1)	107VC(1)
. On assessment decision	67(1)	107VD(1)
. On refusal of service pension for permanent unemployability	70(1)	107VE
Form of appeal:-		
. On refusal of claim for entitlement to pension	64(1)	107VF(1)
. On a decision on assessment of pension	67(1)	107VF(1)
. On refusal of service pension for permanent unemployability	70(1)	107VF(1)
Tribunal to decide claim if no further evidence	64(3)	107VH
Tribunal to refer new evidence to Commission	64(4)	107VL(2)
Commission to consider new evidence	64(5)	107VL(3)
If Commission determination is adverse to applicant, Tribunal to hear and decide appeal	64(6)	107VL(3)
Commission empowered to reconsider at any time a matter decided by Tribunal adverse to applicant	64(6A)	No specific provision. Commission right retained under s.31.
Applicant's right to submit to Commission further evidence after adverse decision by Tribunal	64(7)	107VM(1)
Applicant's right to approach Tribunal if Commission decision on further evidence is adverse	64(7AA) 64(7AB)	107VM(2) 107VC(2)

TOPIC	PRESENT PROVISIONS	PROVISION OF BILL
Right of applicant to re-open an adverse decision if unable to present at Tribunal hearing.	80A	107VZD(1)
Applicant's right of access to information	80	107VZA
Tribunal to notify decision and give reasons	47(A) 64(8) 68	107VK
Date of operation of decision	78	107VZF 107VZG
Right of Commission to submit further evidence to Tribunal to re-open proceeding	64(9)	107VZB
Right of Commission to submit to Tribunal evidence that Tribunal decision was affected by evidence false in a material particular	64(9) 71	107VZD(2)
Decision of Tribunal on assessment matters binding on Commission and applicant	69(1)	107VZC(1)
Right of applicant to lodge further claim during binding period if incapacity worsens.	69(2)	107VZC(2)
Applicant's right to attend hearings.	72(1)	107VU(1)
Commission may be represented at hearings.	72(2)	107VU(2)
Applicant's entitlement to expenses, loss of salary, etc.	72(3) 72(4B)	107VZX(1)
Payment of expenses for attendant	72(4)	107VZX(2)
Frivolous appeals	72(4A)	107VZX(3)
Right of an approved person to pursue an appeal on behalf of a deceased claimant or of mentally afflicted claimant	79	Clause 8 (new s.24A)