

# War Pensions Amendment Act 1988

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## **An Act to amend the War Pensions Act 1954**

### **BE IT ENACTED by the Parliament of New Zealand as follows:**

#### **1 Short Title and commencement**

- (1) This Act may be cited as the War Pensions Amendment Act 1988, and shall be read together with and deemed part of the War Pensions Act 1954 (hereinafter referred to as the principal Act).
- (2) This Act shall come into force on the 1st day of April 1989.

#### **2 Interpretation**

- (1) Section 2(1) of the principal Act is hereby amended by repealing the definition of the term “Board”.
- (2) The said section 2(1) is hereby amended by inserting, in their appropriate alphabetical order, the following definitions:

“‘Advisory Board’ means the War Pensions Advisory Board established under section 5a of this Act:

“‘Claims panel’ means a district claims panel established under section 15 of this Act.”.

### 3 Delegation of Secretary's powers

The principal Act is hereby amended by inserting, after section 4, the following section:

#### “4a

- “(1) The Secretary may from time to time, either generally or particularly, delegate in writing to any official or employee of the Department such of the Secretary's powers, functions, and discretions under this Act as the Secretary determines, other than—
- “(a) The powers, functions, and discretions conferred on the Secretary by sections 14(2) to (5), 16(4), 19, 21 to 27, 34, 35, 35a, 48, 66a, and 85 of this Act; and
  - “(b) The power of delegation conferred by this subsection.
- “(2) Any delegation under this section may be made to—
- “(a) A specified person; or
  - “(b) A person of a specified class; or
  - “(c) The holder for the time being of a specified office or appointment; or
  - “(d) The holders for the time being of offices or appointments of a specified class.
- “(3) Subject to any general or special directions given or conditions or restrictions imposed by the Secretary, the person to whom any powers, functions, and discretions are delegated may exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.
- “(4) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with its terms in the absence of proof to the contrary.
- “(5) A delegation under this section shall not affect the exercise of any power, function, or discretion by the Secretary.
- “(6) If the Secretary by whom any delegation under this section is made ceases to hold office, the delegation shall continue to have effect as if made by the Secretary's successor in office.
- “(7) Every delegation under this section shall be revocable at will, but any such revocation shall not take effect until it has been communicated to the delegate.
- “(8) Nothing in this section or in any delegation made under this section shall limit or affect the provisions of section 5 of this Act.”

### 4 New sections inserted

The principal Act is hereby amended by inserting, after section 5, the following sections:

**“5a War Pensions Advisory Board**

“(1) There is hereby established a Board to be called the War Pensions Advisory Board.

“(2) The Advisory Board shall be a body corporate with perpetual succession and a common seal, and may hold real and personal property, and sue and be sued, and do and suffer all such acts and things as bodies corporate may lawfully do and suffer.

“(3) The Advisory Board shall consist of—

“(a) The Secretary for War Pensions:

“(b) The Dominion President for the time being of the New Zealand Returned Services’ Association (Incorporated):

“(c) A medical member (who shall be a registered medical practitioner) appointed by the Minister.

**“5b Term of office of appointed member**

The appointed member of the Advisory Board shall hold office during the Minister’s pleasure, but shall not hold office for a continuous period of more than 3 years without reappointment.

**“5c Extraordinary vacancies**

“(1) The appointed member of the Advisory Board may at any time resign by written notice to the Minister.

“(2) The powers of the Advisory Board shall not be affected by any vacancy in its membership.

**“5d Presiding member**

“(1) The presiding member of the Advisory Board shall be the Secretary for War Pensions who shall preside at all meetings of the Advisory Board at which he or she is present.

“(2) In the absence of the presiding member from any meeting of the Advisory Board, the person appointed to attend the meeting in the presiding member’s place pursuant to section 5e(1) of this Act shall be the presiding member for that meeting.

“(3) In the absence from any meeting of both the presiding member and any person appointed to attend the meeting in the presiding member’s place, the members present shall appoint one of their number to be the presiding member for that meeting.

**“5e Deputies of members**

“(1) The Secretary for War Pensions may appoint any official or employee of the Department to attend any meeting of the Advisory Board in the Secretary’s place.

“(2) The Dominion President of the New Zealand Returned Services’ Association (Incorporated) may appoint an officer or the chief executive officer of that association to attend any meeting of the Advisory Board in the place of the Dominion President.

“(3) The Minister may from time to time appoint a deputy for the medical member, who shall be a registered medical practitioner; and the person appointed shall hold office at the Minister’s pleasure and may act in place of the medical member for whom he or she is the deputy while that member is unable to attend any meeting of the Advisory Board.

“(4) Every person appointed under this section to deputise for a member of the Advisory Board, while so acting, shall be deemed to be a member of the Advisory Board; and the fact that any deputy attends a meeting shall be conclusive proof of the deputy’s authority to do so.

#### **“5f Meetings of Advisory Board**

“(1) Meetings of the Advisory Board shall be held at such times and places as the Advisory Board or the presiding member may from time to time appoint.

“(2) At any meeting of the Advisory Board the quorum shall be 2 members.

“(3) Every matter to be decided at a meeting of the Advisory Board shall be determined by a majority of the votes of the members present and voting on it.

“(4) At any meeting of the Advisory Board the person for the time being acting as the presiding member shall have a deliberative vote and, if the voting is equal, shall also have a casting vote.

“(5) Subject to this Act and to the rules of the Advisory Board, the Advisory Board may regulate its own procedure.

#### **“5g Administrative services**

All secretarial and administrative services required for the purposes of the Advisory Board shall be supplied by the Department.

#### **“5h Fees and travelling allowances**

“(1) The Advisory Board is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.

“(2) There may be paid to the members of the Advisory Board (other than officials and employees of the Department), out of the Consolidated Account, from money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951; and that Act shall apply accordingly.

#### **“5i Functions of Advisory Board**

The Advisory Board shall have the following powers and functions:

- “(a) On its own initiative or at the request of the Minister to advise the Minister on policies to be applied in respect of war pensions and allowances:
- “(b) To approve guidelines for the determination and assessment of war pensions to be used by medical examiners and claims panels:
- “(c) Generally to consider and advise on any other matter which assists the administration of war pensions or that the Minister refers to it:
- “(d) To administer the War Pensions Medical Research Trust Fund established under section 18i of this Act:
- “(e) To consider applications for payments from the War Pensions Medical Research Trust Fund, and to determine the persons to whom grants, awards, or fellowships are to be made under section 18l of this Act:
- “(f) Such other powers and functions as may be conferred or imposed on it by this Act or any other enactment:
- “(g) To make rules for the conduct of its own business.”

## 5 Abolition of War Pensions Boards

- (1) Sections 6 and 7 of the principal Act are hereby repealed.
- (2) The principal Act is hereby amended—
  - (a) By omitting from the definition of the term “dependant” in section 2(1) the word “Board” in both places where it occurs, and substituting in each case the word “Secretary”:
  - (b) By omitting from section 10(1) the words “War Pensions Board or”:
  - (c) By omitting from section 10(3) the words “, subject to subsection (2) of section 7 of this Act,”:
  - (d) By omitting from section 11(1) the words “War Pensions Board or”:
  - (e) By omitting from section 12 the words “of any War Pensions Board or”:
  - (f) By omitting from section 13 the words “, the War Pensions Boards,”:
  - (g) By omitting from sections 17(3), 18(1) and (2)(c), 19(1), 22, 23(1), 24, 26(2), 27, 30(2), 31(3), 36(2), 39(3), 43(5) and (7), 46(1) and (2), 50, 53(2), 54(2), 55(1), 59(1), 61(1), 66(1), 66a(2) and (3), 66b(1)(b) and (c), 66c(1), 66d(2)(a), 66e(3), 66g(1) and (4), 66h, 67(1)(a) and (c), 67(2), 68(1)(a) and (3), 69(3), 71(1) and (4), 72, 73, 74(2), 75a(2), (3), (5), and (6), 76, 78, 78c, 81(1) and (2), 85(2), 85a(1), 86(2), (2a), (2c), and (3), 87(2), 89(1), 94(2), 96(2)(a), and 97(3) and (4) the words “a War Pensions Board” wherever they occur, and substituting in each case the words “the Secretary”:
  - (h) By omitting from sections 17(3) and 18(2)(c) and the second proviso to section 19(1) the word “Board” wherever it thirdly occurs, and substituting in each case the words “Secretary or Appeal Board”:

- (i) By omitting from sections 23(2), 25(2), 31a, 37, 41(1), 47, 49(2), 51(1), 52(1), 56(1) and (2), 61a, 63(1) and (2), 66j(1), 66k(1), 70, 74(1), 75a(1), 78b, and 80b(b) the words “a War Pensions Board may, in its” wherever they occur, and substituting in each case the words “the Secretary may, in the Secretary’s”:
  - (j) By omitting from sections 25(2), 74(3), and 75 the words “the Board may, in its” wherever they occur, and substituting in each case the words “the Secretary may, in the Secretary’s”:
  - (k) By omitting from sections 26(2), 31(3), 39(3), 43(1), 46(2), 50, 51(1), 52(1), 53(1) and (2), 59(2), 61(1) and (3), 66g(1) and (2), 66h, 66j(1) and (2), 66k(1) and (2), 68(1)(a), 71(1) and (2), 72, 74(1), 78a(1) and (2), 81(2), 84, 84a(1), 85(2), and 87(2) the words “the Board” wherever they occur, and substituting in each case the words “the Secretary”:
  - (l) By omitting from sections 38, 40(b), 86(2b), and 87(1) the words “a War Pensions Board, in its” wherever they occur, and substituting in each case the words “the Secretary, in the Secretary’s”:
  - (m) By omitting from sections 66c(2), 66g(2), 68(4), 71(2), and 84a(1) the words “a Board” wherever they occur, and substituting in each case the words “the Secretary”:
  - (n) By omitting from sections 85(2)(b) and (c) and 85a(1) the word “Board’s” wherever it occurs, and substituting in each case the word “Secretary’s”:
  - (o) By omitting from sections 27, 46(1), 53(1), 59(1), 61(1), 73, and 81(2) the word “it” wherever it occurs in relation to a War Pensions Board, and substituting in each case the words “the Secretary”.
- (3) Section 29 of the principal Act is hereby amended—
- (a) By omitting from subsection (1) the words “a War Pensions Board is satisfied that the services of an attendant are indispensable it may, in its”, and substituting the words “the Secretary is satisfied that the services of an attendant are indispensable the Secretary may, in the Secretary’s”:
  - (b) By omitting from subsection (2) the words “a War Pensions Board may, in its discretion, extend”, and substituting the words “the Secretary may, in the Secretary’s discretion, extend”.
- (4) Section 66i of the principal Act is hereby amended—
- (a) By omitting the words “War Pensions Board”, and substituting the word “Secretary”:
  - (b) By omitting the word “it”, and substituting the words “the Secretary”.
- (5) Section 77 of the principal Act is hereby amended—
- (a) By omitting the words “a War Pensions Board may, in its”, and substituting the words “the Secretary may, in the Secretary’s”:

- (b) By omitting from paragraph (b) the word “Board”, and substituting the word “Secretary”:
  - (c) By omitting the words “and may, in its”, and substituting the words “and may, in the Secretary’s”.
- (6) Section 83 of the principal Act is hereby amended by omitting the words “a War Pensions Board of its investigations, the Board shall continue its investigations”, and substituting the words “the Secretary of the investigation of the claim, the Secretary shall continue the investigation”.
- (7) Section 87a of the principal Act is hereby amended—
- (a) By omitting the words “a War Pensions Board”, and substituting the words “the Secretary”:
  - (b) By omitting the words “Board in its”, and substituting the words “Secretary in the Secretary’s”:
  - (c) By omitting the words “the Board” where they secondly occur, and substituting the words “the Secretary”.
- (8) Section 92(a) of the principal Act is hereby amended by omitting the words “a War Pensions Board, or an Appeal Board, or the Secretary”, and substituting the words “an Appeal Board, the Secretary, a national review officer, or a claims panel”.

## **6 Repealing provision for additional member of War Pensions Appeal Boards**

- (1) Section 8 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:
- “(3) Two members of each Appeal Board shall be registered medical practitioners and one of those members shall be appointed as a representative of the members of the forces on the nomination of the New Zealand Returned Services’ Association (Incorporated).”
- (2) The said section 8 is hereby amended—
- (a) By omitting from subsection (5) the words “a War Pensions Board”, and substituting the words “the Secretary”:
  - (b) By omitting from subsection (6) (as added by section 3(4) of the War Pensions Amendment Act 1973) the words “additional member appointed”, and substituting the words “member appointed as a representative of the members of the forces”:
  - (c) By omitting from subsection (7) (as so added) the words “additional member appointed”, and substituting the words “member appointed as a representative of the members of the forces”.
- (3) Section 3(2) of the War Pensions Amendment Act 1973 is hereby consequentially repealed.

## 7 New sections substituted

- (1) The principal Act is hereby amended by repealing sections 14 and 15, and substituting the following sections:

### “14 Claims for war pensions or allowances

- “(1) All claims for or in respect of pensions or allowances under this Act shall be made in writing.
- “(2) A claimant for a pension for death or disablement of a member of the forces allegedly caused by or attributable to or aggravated by service may be required by the Secretary, if it is appropriate to the circumstances of the case, to produce a medical report from the claimant’s or, as the case may be, the deceased member of the force’s own medical practitioner which sets out with particularity the nature of the condition from which the deceased member of the forces died, or which occasions the claimant’s disability.
- “(3) As soon as practicable after receiving a claim under this section, the Secretary shall consider it and may either—
- “(a) Grant a pension or allowance in accordance with the provisions of this Act; or
- “(b) Decline the claim on the grounds that the claimant is not entitled to a pension or allowance under this Act.
- “(4) The claimant shall be forthwith advised of the decision to grant or decline the claim, and shall at the same time be supplied with a written explanation of the reason or reasons for the decision.
- “(5) If a claimant, whose right of appeal under section 16 of this Act against a decision made under subsection (3) of this section has not been exercised and has lapsed, satisfies the Secretary that, because of additional evidence becoming available or for any other reason, it is desirable in the interests of justice that the claim should be reconsidered, the Secretary shall accept from the claimant a fresh claim; and any such claim shall be dealt with in accordance with section 15e of this Act.

### “15 District claims panels

- “(1) For every district of the Department there is hereby established a district claims panel.
- “(2) Each district claims panel shall consist of—
- “(a) An official or employee of the Department appointed from time to time by the Secretary; and
- “(b) A person appointed from time to time by the Secretary on the nomination of the Dominion Executive Committee of the New Zealand Returned Services’ Association (Incorporated).

“(3) There may be paid to the member of the claims panel appointed under subsection (2)(b) of this section, out of the Consolidated Account from money appropriated by Parliament for the purpose, remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951 as if the panel were a statutory board within the meaning of that Act; and that Act shall apply accordingly.

**“15a Delegation of Secretary’s powers to claims panels and national review officers**

“(1) The Secretary may from time to time, either generally or particularly, delegate in writing to any claims panel, or national review officer appointed under section 15c of this Act, such of the Secretary’s powers, functions, and discretions under sections 14(2) to (4), 19, 21 to 27, 34, 35, 35a, 48, and 66a of this Act and (in the case of a delegation to a national review officer) sections 14(5), 16(4), and 85 of this Act as the Secretary determines.

“(2) Subject to any general or special directions given or conditions or restrictions imposed by the Secretary, the claims panel or national review officer to which or to whom any powers, functions, and discretions are delegated may exercise them in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

“(3) Every claims panel or national review officer purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with its terms in the absence of proof to the contrary.

“(4) A delegation under this section shall not affect the exercise of any power, function, or discretion by the Secretary.

“(5) If the Secretary by whom any delegation under this section is made ceases to hold office, the delegation shall continue to have effect as if made by the Secretary’s successor in office.

“(6) Every delegation under this section to a specified claims panel shall continue to have effect notwithstanding any change in the membership of the panel.

“(7) Every delegation under this section shall be revocable at will, but any such revocation shall not take effect until it has been communicated to the delegate.

“(8) Nothing in this section or in any delegation made under this section shall limit or affect the provisions of section 5 of this Act.

**“15b Consideration of claims, etc., by district claims panel**

“(1) Where a claims panel is to consider any claim pursuant to a delegation under section 15a of this Act—

“(a) Every provision of this Act relating to claims for war pensions or allowances, so far as it is relevant to the claim, shall, with the necessary modifications, apply to and in respect of the consideration and determination or the claim:

“(b) The claims panel may require the claimant to undergo such medical examinations or assessments as may be reasonably necessary to enable the claims panel to consider the claim fairly:

“(c) The claims panel may require the claimant to attend and give evidence before the panel in support of the claim, and may accept evidence in person from the claimant or any other person whom the claimant wishes to present in support of the claim:

“(d) The claimant shall have the right to make written submissions to the claims panel in support of the claim.

“(2) Every decision of a claims panel shall be unanimous.

“(3) If there is no unanimity between the members of a claims panel on any claim, each member shall make a written record of the member’s opinion and the reasons for that opinion.

“(4) Where subsection (3) of this section applies, the claim, together with each member’s written opinion on the claim and all other relevant information, shall be forwarded to a national review officer appointed under section 15c of this Act for consideration.

#### “15c National review officers

The Secretary may from time to time appoint one or more officials or employees of the Department to be a national review officer.

#### “15d Review of decisions of district claims panel, etc

“(1) Any claimant who is dissatisfied with the decision of any claims panel may, within 3 months after being notified of the decision, apply to a national review officer for the decision to be reviewed.

“(2) On receiving an application under subsection (1) of this section or on receiving written opinions pursuant to section 15b(4) of this Act, the national review officer shall review the decision or consider the claim, as the case may require.

“(3) On reviewing a decision following an application under subsection (1) of this section, the national review officer may, in accordance with this Act,—

“(a) Confirm the decision; or

“(b) Amend or reverse the decision; or

“(c) Make such other decision as is appropriate to the circumstances of the case.

“(4) On considering a claim forwarded under section 15b(4) of this Act, the national review officer, after taking into account the opinions of the members of the claims panel, shall consider the claim and make a decision on it.

“(5) The provisions of section 15b(1)(a) to (d) of this Act, with the necessary modifications, shall apply in respect of the review of a decision and the consideration of a claim by a national review officer under this section.

“(6) If a national review officer requires a claimant to attend and give evidence in support of a claim, and the claimant or a person authorised by the claimant to represent the claimant does so, the Secretary, out of money appropriated by Parliament for the purpose, shall pay the actual and reasonable travelling and accommodation expenses (if any) incurred by the claimant or representative.

**“15e National review officer to determine whether fresh application on grounds of additional evidence should be accepted**

“(1) If an application for reconsideration of a claim is received under section 14(5) or section 16(4) of this Act, the Secretary or a national review officer (if authorised to do so pursuant to a delegation) shall determine, in accordance with whichever of those subsections is applicable, whether the fresh application should be accepted.

“(2) If a fresh claim is accepted under subsection (1) of this section, the Secretary or national review officer, as the case may be, shall refer the claim to the appropriate claims panel for consideration and decision; and in considering and deciding on the fresh claim it shall be dealt with in all respects as if it were an original claim.”

(2) The following enactments are hereby consequentially repealed:

- (a) Section 7 of the War Pensions Amendment Act 1963:
- (b) Section 2 of the War Pensions Amendment Act 1986.

**8 Appeals to War Pensions Appeal Board**

(1) Section 16 of the principal Act is hereby amended—

- (a) By omitting from subsection (1) the words “a War Pensions Board”, and substituting the words “the Secretary or a national review officer”:
- (b) By omitting from subsection (2) the words “of the War Pensions Board”:
- (c) By omitting from the proviso to subsection (4) the words “submitted to a War Pensions Board and”.

(2) Section 16 of the principal Act is hereby amended by adding the following subsections:

“(5) If any person has the right to apply for the review of any decision pursuant to section 15d of this Act, an Appeal Board shall not consider an appeal against the decision under this section until a national review officer has completed a review of the decision.

“(6) The Appeal Board shall not make a decision in respect of an appeal brought against any decision made under section 23 of this Act unless it has first obtained and considered a report on the general circumstances of the appellant made by a social worker (as defined in section 2 of the Department of Social Welfare Act 1971) or a welfare officer employed by the New Zealand Returned Services’ Association (Incorporated).”

## 9 Appeals to Social Security Appeal Authority

- (1) Section 16a(1) of the principal Act (as inserted by section 5(1) of the War Pensions Amendment Act 1973) is hereby amended by omitting the words “a War Pensions Board or”.
- (2) Section 16a(2) of the principal Act (as so inserted) is hereby amended—
  - (a) By omitting the words “Social Security Commission”, and substituting the words “Director-General of Social Welfare”:
  - (b) By omitting the words “the War Pensions Board or, if the appeal is against the decision or determination of the Secretary under section 84a or section 90 of this Act, to”.
- (3) Section 16a of the principal Act (as so inserted) is hereby amended by adding the following subsection:

“(3) If any person has the right to apply for the review of any decision pursuant to section 15d of this Act, the Social Security Appeal Authority shall not consider an appeal against the decision under this section until a national review officer has completed a review of the decision.”

## 10 Abolition of War Pensions Medical Research Trust Board and transfer of functions to War Pensions Advisory Board

- (1) The principal Act (as amended by section 2 of the War Pensions Amendment Act 1968) is hereby amended—
  - (a) By repealing the definition of the term “Board” in section 18 A:
  - (b) By repealing sections 18b, 18c, 18d, 18e, 18f, 18g, 18h, 18q, and 18s:
  - (c) By omitting from section 18i the words “subsection (5) of section 85”, and substituting the words “section 85(2)(e)”:
  - (d) By omitting from section 18j(1)(a) the words “subsection of section 85”, and substituting the words “section 85(2)(e)”:
  - (e) By omitting from sections 18j, 18k, 18l, 18m, 18o, and 18r the word “Board” wherever it occurs, and substituting in each case the words “Advisory Board”:
  - (f) By omitting from section 18l(1)(b) and (3)(b) the word “Board’s”, and substituting the words “Advisory Board’s”.
- (2) The principal Act (as so amended) is hereby amended by repealing section 18n, and substituting the following section:

### “18n

- “(1) All money received by the Advisory Board or by an employee of the Department on behalf of the Advisory Board shall as soon as practicable after its receipt be paid into such bank account or accounts of the Advisory Board as the Advisory Board from time to time determines.

- “(2) No such money shall be withdrawn from the bank except by cheque signed by an employee of the Department approved for the purpose by the Advisory Board and countersigned by another such employee or by a member of the Advisory Board approved for the purpose by the Advisory Board.”
- (3) Part II of the First Schedule to the Public Bodies Contracts Act 1959 is hereby amended by omitting the item relating to the War Pensions Medical Research Trust Board, and substituting the following item:  
“The War Pensions Advisory Board  
1988 , No. 149—The War Pensions Amendment Act 1988.”
- (4) The First Schedule to the Official Information Act 1982 (as substituted by section 23(1) of the Official Information Amendment Act 1987) is hereby amended by omitting the items relating to War Pensions Boards and the War Pensions Medical Research Trust Board, and substituting the following item:  
“War Pensions Advisory Board”.
- (5) The War Pensions Amendment Act (No. 2) 1986 is hereby consequentially repealed.
- (6) On the commencement of this section—
- (a) All real and personal property belonging to or vested in the War Pensions Medical Research Trust Board shall become vested in the Advisory Board subject to all encumbrances, liens, and other interests to which it is subject on the date of such commencement:
  - (b) All money payable to the War Pensions Medical Research Trust Board shall become payable to the Advisory Board:
  - (c) All liabilities, contracts, and engagements, and rights and authorities of any nature whatever, of the War Pensions Medical Research Trust Board shall become liabilities, contracts, engagements, rights, and authorities of the Advisory Board:
  - (d) All proceedings pending by or against the War Pensions Medical Research Trust Board may be carried on, completed, and enforced by or against the Advisory Board.
- (7) All references to the War Pensions Medical Research Trust Board in any security or other document whatever subsisting immediately before the date of commencement of this section, or in any notice or other communication served, given, or sent before, on, or after that date in relation to any such security or other document shall, unless the context otherwise requires, be read as references to the Advisory Board.

## **11 Pensions for surviving spouses of deceased members**

- (1) The principal Act is hereby amended by omitting the heading before section 32 and by repealing sections 32 to 35, and 35a, and substituting the following heading and sections:

*Pensions for Surviving Spouses of Deceased Members***“32 Maximum rates of surviving spouses’ pensions**

- “(1) Except as provided in subsection (2) of this section, the rate of the pension payable to the surviving spouse of a deceased member of the forces in respect of his or her death shall not exceed the appropriate rate specified in the Fourth Schedule to this Act.
- “(2) Where the surviving spouse has a child or children of the member dependent upon him or her the Secretary may, in the Secretary’s discretion, increase the pension otherwise payable to the surviving spouse by a parent’s allowance at a rate not exceeding the appropriate rate specified in the said Fourth Schedule.
- “(3) A parent’s allowance in respect of any child—
- “(a) Shall commence on such day as the Secretary determines, being not earlier than the first day of the pay period in which the child is born:
- “(b) Where the child is over the age of 16 years, may be granted or continued, as if the child had not attained that age, during any period during which a pension is payable to or on behalf of the child in accordance with section 43 of this Act:
- “(c) In the event of the death of the child, shall continue to such day as the Secretary determines, being not later than the end of the second pay period following the pay period in which the child dies.

**“33 Rate of pension for surviving spouse who is a bona fide resident of New Zealand**

Except as otherwise provided in this Act, the rate of the pension payable to the surviving spouse of a deceased member of the forces in respect of his or her death shall, if and so long as she or he is a bona fide resident of New Zealand, be the maximum appropriate rate prescribed in the Fourth Schedule to this Act.

**“34 Surviving spouse not entitled to pension in certain cases**

Notwithstanding anything to the contrary in this Act, the surviving spouse of a member of the forces shall not be entitled to a pension in respect of his or her death if—

- “(a) The death of the member occurred within one year after the date of the marriage; and
- “(b) At the date of the marriage the member had not, in the opinion of the Secretary, a reasonable expectation of surviving for at least one year thereafter.

**“35 Pensions to surviving spouses to cease on remarriage**

- “(1) A pension payable to the surviving spouse of a member of the forces shall cease on his or her remarriage.

- “(2) Notwithstanding anything to the contrary in subsection (1) of this section, on the remarriage of a surviving spouse while in receipt of a pension under this Part of this Act the Secretary may, in the Secretary’s discretion, continue the pension at such rate, not exceeding the maximum rate of pension payable to a surviving spouse, and for such period, not exceeding 2 years, as the Secretary thinks fit. Any such pension may at any time be reviewed by the Secretary.
- “(3) In any case to which subsection (2) of this section applies the Secretary may, in the Secretary’s discretion, instead of continuing the pension, pay to the surviving spouse a lump sum gratuity not exceeding 2 years’ pension.
- “(4) For the purposes of this Act and any other enactment a pension payable to a person under subsection (2) of this section shall be deemed to be a pension payable to the surviving spouse of a member of the forces.
- “(5) For the purposes of this section, ‘remarriage’ includes a relationship which the Secretary regards as a remarriage under section 77(a) of this Act.

**“35a Reinstatement of surviving spouse’s pension**

- “(1) Notwithstanding anything in section 35 of this Act, where a pension payable to the surviving spouse of a member of the forces has ceased under that section because of remarriage and that remarriage has subsequently terminated or irreconcilably broken down within 5 years after the date of remarriage, the Secretary may, in the Secretary’s discretion, reinstate the pension previously payable.
- “(2) The rate of any pension reinstated under subsection (1) of this section shall be the appropriate rate specified in the Fourth Schedule to this Act as if the pension had been granted under section 32 of this Act.”
- (2) The following enactments are hereby consequentially repealed:
- (a) So much of the Fourth Schedule to the War Pensions Amendment Act 1960 as relates to section 32 of the principal Act:
  - (b) Section 3 of the War Pensions Amendment Act 1975:
  - (c) Section 3 of the War Pensions Amendment Act 1983:
  - (d) Section 13 of the Social Security Amendment Act 1984.

**12 Pension to surviving spouse or child of deceased member whose death not attributable to service**

The principal Act is hereby amended by repealing section 48, and substituting the following section:

**“48**

Notwithstanding anything in this Act, where any member of the forces has died, whether before or after the commencement of this section, from any cause not attributable to his or her service as a member of the forces, and—

“(a) At the date of his or her death the member was in receipt of a permanent pension under this Part of this Act at a rate not less than 70 percent of the maximum rate of pension that would be payable in respect of his or her total disablement; or

“(b) At the date of his or her death the member was not in receipt of such a pension, but the Secretary is of the opinion that, if he or she had not died, he or she could have been granted a permanent pension at a rate not less than 70 percent of that maximum rate,—

the Secretary may, in the Secretary’s discretion, grant a pension to or on behalf of the surviving spouse or any dependent child or dependent children of the member in all respects as if the death of the member were attributable to his or her service.”

### **13 Classes of persons entitled to claim economic pension**

Section 58 of the principal Act is hereby amended by repealing subsections (1) and (2), and substituting the following subsections:

“(1) Claims for the grant of an economic pension under this Part of this Act may be made only by or on behalf of—

“(a) A member of the forces who is in receipt of a pension under Part II of this Act in respect of his or her disablement; or

“(b) The surviving spouse of a deceased member of the forces who is in receipt of a pension under Part II of this Act in respect of the death of the member; or

“(c) The widowed mother of a deceased member of the forces who is in receipt of a pension under Part II of this Act in respect of the death of the member; or

“(d) Any person who is in receipt of a pension under section 55 or section 56 of this Act in respect of his or her own disablement, or any surviving spouse or widowed mother who is in receipt of a pension under either of those sections in respect of the death of his or her spouse or her son, as the case may be, or any person who is disqualified from receiving any such pension under section 56 of this Act by reason only that the pension received by him or her from an overseas Government is not less than the pension that would be payable under Part II of this Act to or in respect of a member of the New Zealand forces.

“(2) For the purposes of this section the spouse or widowed mother of a member of the forces who is officially reported as missing shall be deemed to be the surviving spouse or widowed mother, as the case may be, of a deceased member of the forces.”

**14 Amending Fourth and Sixth Schedules**

- (1) The Fourth Schedule to the principal Act (as substituted by section 4(1) of the War Pensions Amendment Act (No. 3) 1986) is hereby amended—
  - (a) By omitting the word “widow” wherever it occurs, and substituting in each case the words “surviving spouse”:
  - (b) By omitting the word “mother’s” wherever it occurs, and substituting in each case the word “parent’s”.
- (2) The Sixth Schedule to the principal Act (as so substituted) is hereby amended—
  - (a) By omitting from clause 2(e) and (f) the word “widow”, and substituting in each case the words “surviving spouse”:
  - (b) By omitting from clause 2(f) the word “mother’s”, and substituting the word “parent’s”:
  - (c) By omitting from clause 2(i) the word “widow”, and substituting the words “surviving spouse or widowed mother”:
  - (d) By omitting from clause 2(i) the words “her husband or son”, and substituting the words “his or her spouse or her son”.

**15 Applications made before commencement of this Act**

Any claim made under the principal Act before the commencement of this Act which, on the commencement of this Act, has not been determined by a War Pensions Board shall be dealt with under the principal Act as amended by this Act.

**16 Amending Income Tax Act 1976**

Section 343(1) of the Income Tax Act 1976 is hereby amended by omitting from the 4th proviso (as added by section 9(1) of the Income Tax Amendment Act (No. 2) 1986) the words “Social Security Commission established by the Social Security Act 1964 or, as the case may be, a War Pensions Board established under the War Pensions Act 1954”, and substituting the words “Director-General of Social Welfare or the Secretary for War Pensions, as the case may require”.

This Act is administered in the Department of Social Welfare.