

1987-88

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DEFENCE LEGISLATION AMENDMENT BILL 1988

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Defence,
the Hon. Kim Beazley, M.P.)

Defence Legislation Amendment Bill 1988

Outline

The purpose of this Bill is to make 3 groups of amendments to Acts in the Defence portfolio:

- a. Commutation of pensions. To remove the disadvantage that members of the Defence Force cannot take formal action to commute their pensions under the Defence Force Retirement and Death Benefits Act 1973 until they have ceased serving. The amendment would permit members to elect commutation up to 3 months before retirement with effect from date of retirement;
- b. Defence Housing Authority. To increase the membership of the Authority. This would permit the appointment of a person to represent the spouses of members of the Defence Force and one other additional member;
- c. Open-ended enlistments and extensions of service. To make minor amendments to the Defence Act 1903 and Naval Defence Act 1910 in connection with the bringing into force of the Defence Legislation Amendment Act 1987.

Financial implications

It is estimated that the fees and travelling expenses of the two additional members of the Defence Housing Authority will be \$10,000 in the financial year 1988/89 and corresponding amounts in subsequent years. The other amendments have no financial implications.

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Notes on Clauses

PART I - PRELIMINARY

Clause 1 - Short title

Formal.

Clause 2 - Commencement

This clause provides for the commencement of the various parts of the Bill.

Subclause (1) provides for most of the provisions of the Bill to commence on Royal Assent.

Subclauses (2) and (3) provide for clauses 5 and 16 of the Bill, which amend new provisions of the Defence Act 1903 and Naval Defence Act 1910 inserted by the Defence Legislation Amendment Act 1987 (not yet in force), to commence immediately after those new sections commence.

PART II - AMENDMENTS OF THE DEFENCE ACT 1903

Clause 3 - Principal Act

Formal.

Clause 4 - Resignation of officers.

Section 17 of the Principal Act sets out circumstances in which the Chief of the General Staff may reject the resignation of an officer, including the case where the Chief of the General Staff has determined a return of service obligation that the officer is required to complete because the officer underwent "a course of special training". There is uncertainty as to the courses which may properly be characterised as special courses and the clause omits the word "special". A further amendment corrects a drafting error.

Clause 5 - Discharge of soldiers who are enlisted until attaining retiring age

Section 39 of the Principal Act (which was inserted by the Defence Legislation Amendment Act 1987 but is not yet in force) deals with the discharge of soldiers who are enlisted until retiring age. The section provides that a soldier may not claim a discharge in certain circumstances, including the case where the Chief of the General Staff has determined a return of service obligation that the soldier is required to complete because the soldier underwent "a course of special training". There is uncertainty as to the courses which may properly be characterised as special, and the clause omits the word "special". A further amendment corrects a drafting error.

PART III - AMENDMENT OF DEFENCE FORCE RETIREMENT AND DEATH BENEFITS ACT 1973

Clause 6 - Principal Act

Formal.

Clause 7 - Commutation of retirement pay

Under section 24 of the Principal Act, a person may, immediately after retirement from the Defence Force elect to commute a portion of his pension entitlement to a lump sum. Such an election is not effective until it is received by the Defence Force Retirement and Death Benefits Authority. If a person dies before making an election or before an election becomes effective, no lump sum payment to his or her dependants or estate is possible under the Principal Act.

Cases have occurred where former members have died during the critical period with consequent disadvantage to their dependants or estate. Potential retirees are currently advised to take out short term insurance to provide their dependants with a lump sum in the event of their death during the critical period.

The provisions of the Superannuation Act 1976 permit an election to be made under the Commonwealth superannuation scheme up to 3 months before an officer becomes entitled to pension. This becomes effective on retirement.

This clause amends section 24 to permit commutation election to be made up to 3 months before retirement with effect from the date of retirement.

Clause 8 - Commutation of Class C invalidity pay

Under section 32A of the Principal Act a person who, on retirement from the Defence Force on invalidity grounds, is classified as Class C (ie, as having less than 30% incapacity) may also elect to commute a portion of his pension entitlement to a lump sum.

This clause makes amendments to section 32A on similar lines to those made by clause 7.

PART IV - AMENDMENT OF DEFENCE HOUSING AUTHORITY ACT 1987

Clause 9 - Principal Act

Formal.

Clause 10 - Interpretation

This clause amends section 3 of the Principal Act consequent on the amendments made by clause 11.

Clause 11 - Constitution

Under section 12 of the Principal Act, the Defence Housing Authority comprises 9 members: the Chairperson, the Managing Director, 3 members of the Defence Force, a public servant and 3 other external members who have expertise in housing operations, property development or management, business management, etc.

Clause 11 amends section 12 of the Principal Act to increase the membership to 11 persons. One of the 2 additional members is to be the spouse of a member of the Defence Force (being a member who is rendering continuous full time service); the other additional member is to be an external member with appropriate qualifications.

Clause 12 - Termination of appointment

This clause amends section 21 of the Principal Act to provide for the circumstances in which the appointment of a member of the Authority (who was appointed on the basis that he or she is the spouse of a member of the Defence Force) is to be terminated.

Clause 13 - Acting appointments

This clause amends section 23 of the Principal Act to empower the Minister to appoint someone to act in the place of the member of the Authority who was appointed on the basis that he or she is the spouse of a member of the Defence Force.

PART V - AMENDMENT OF NAVAL DEFENCE ACT 1910

Clause 14 - Principal Act

Formal.

Clause 15 - Resignation of officers

Section 13 of the Principal Act sets out circumstances in which the Chief of Naval Staff may reject the resignation of an officer, including the case where the Chief of Naval Staff has determined a return of service obligation that the officer is required to complete because the officer underwent "a course of special training". There is uncertainty as to the courses which may properly be characterised as special courses and the clause omits the word "special". A further amendment corrects a drafting error.

Clause 16 - Discharge of sailors who are enlisted until attaining retiring age

Section 28 of the Principal Act (which was inserted by the Defence Legislation Amendment Act 1987 but is not yet in force) deals with the discharge of sailors who are enlisted until retiring age. The section provides that a sailor may not claim a discharge in certain circumstances, including the case where the Chief of Naval Staff has determined a return of service obligation that the sailor is required to complete because the sailor underwent "a course of special training". There is uncertainty as to the courses which may properly be characterised as special, and the clause omits the word "special". A further amendment corrects a drafting error.