

1987-88

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

DEFENCE LEGISLATION AMENDMENT BILL (NO 2) 1988

EXPLANATORY MEMORANDUM

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

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OUTLINE

This Bill deals with the following matters:

- a. it proposes to amend the Defence Act 1903:
 - (1) to place the office of Vice Chief of the Defence Force on a statutory basis;
 - (2) to decriminalise the wearing by members of the public of articles of Defence uniforms;
 - (3) to enable controls to be exercised over claims for salvage made by crews of naval ships;
 - (4) to exempt certain employees of Defence small arms factories from State and Territory firearms licensing laws;
 - (5) to make provision for instructors in the Australian Cadet Corps;
- b. it proposes to amend the Defence Act 1903 and related legislation so that an officer holding senior rank may be required to render 12 months service following his promotion;
- c. it proposes to amend the Defence Force Discipline Act 1982 to remove the upper limit on the amount of reparations that may be ordered by a court martial or Defence Force magistrate;
- d. it proposes to amend the Defence Force Retirement and Death Benefits legislation;
 - (1) to ensure that certain provisions continue to give effect to the intended policy; and
 - (2) to improve the administration of the legislation and ensure consistency with the Superannuation Acts, where appropriate; and
- e. it proposes to make other amendments of a statute law revision nature.

FINANCIAL IMPACT

The amendments made by sections 10 and 42 regarding officers' resignations will ensure that a minimum of 12 months' service will be rendered by senior officers after promotion. This will result in deferring for a period the commencement of payment of pension to the officers concerned but no figure could reasonably be estimated of the saving to the Commonwealth.

The amendment made by section 22 is expected to eliminate the institution of civil court proceedings to recover the balance of the loss or damage suffered by the Commonwealth occasioned by the commission of a service offence in cases where the loss or damage exceeded the amount that the offender could have been ordered, by a court martial or Defence Force magistrate, to pay (in a case where recovery of the amount so ordered is appropriate). No figure could reasonably be estimated of the saving to the Commonwealth.

The amendment made by section 25 to ensure that the provisions relating to the transition from the DFRB scheme (1948) to the DFRDB scheme (1973) do not operate with regard to re-ntered recipient members will prevent the payment of additional unintended benefits to pensioners but no figure could reasonably be estimated of the saving to the Commonwealth.

NOTES ON CLAUSESPART I - PRELIMINARYClause 1 - Short Title

Formal

Clause 2 - Commencement

This clause provides for the coming into operation of the various provisions of the Bill.

Subclause (1) provides for many provisions of the Bill to come into operation on the day on which the Bill receives Royal Assent.

The remaining subclauses provide for the other provisions of the Bill to come into operation as follows:

- a. subclause (2): the provisions relating to salvage are to come into operation when proclaimed, because of the requirement to make regulations;
- b. subclause (3): the provision relating to the transition from the DFRB scheme (1948) to the DFRDB scheme (1973) are deemed to have commenced on 1 October 1972 (the date of commencement of the latter scheme);
- c. subclause (4): the provisions relating to eligible employment for the purposes of the DFRB and DFRDB schemes are deemed to have commenced on 1 July 1978 (the date of commencement of relevant provisions of the Northern Territory (Self-Government) Act 1978).

PART II - AMENDMENT OF AIR FORCE ACT 1923Clause 3 - Principal Act

Formal

Clause 4 - Interpretation

This clause omits an obsolete definition.

PART III - AMENDMENT OF DEFENCE ACT 1903Clause 5 - Principal Act

Formal

Clause 6 - Interpretation

This clause omits obsolete definitions.

Clause 7 - Insertion of new section 9AA

This clause inserts new section 9AA.

New section 9AA - Vice Chief of the Defence Force

This clause puts the appointment of the Vice Chief of the Defence Force (VCDF) on a statutory basis.

Subsection (1) empowers the Governor-General to appoint the VCDF.

Subsection (2) provides that the VCDF is responsible for a part of the Defence Force administration specified by the Chief of the Defence Force and other functions determined by the latter.

Clause 8 - Remuneration and allowances

Section 9B of the Principal Act makes provision for the remuneration and allowances of chiefs of staff. This clause amends section 9B to make similar provision for the VCDF.

Clause 9 - Acting appointments

Section 9C of the Principal Act makes provision for the appointment of acting chiefs of staff. Sub-clause (1) amends section 9C to make similar provision for an acting VCDF. The opportunity is taken to omit certain subsections which duplicate universal provisions now contained in section 33A of the Acts Interpretation Act 1901 and to include a provision which safeguards the validity of an appointment in certain circumstances.

Sub-clause (2) is a transitional provision which continues the application of section 9C, as in force before amendment, to earlier appointments.

Clause 10 - Resignation of officers

Section 17 of the Principal Act prescribes the procedure for dealing with resignations of officers of the Army including a description of the circumstances in which the Chief of the General Staff is authorised to reject the resignation of an officer.

This clause adds a further circumstance in which a resignation may be rejected, namely, where an officer who has been promoted to Colonel or a higher rank has not completed 12 months service in the rank after his or her promotion to the rank.

Clause 11 - Repeal of section 35

Section 35 of the Principal Act empowers the Governor-General to authorise the raising of a military force for service in time of war. In an earlier form (as section 31) this provision provided power to raise the 1st and 2nd AIF. Having regard to section 50C of the Principal Act (which now provides that members of the Army may be required to serve either within or beyond the territorial limits of Australia), the need to raise a special military force when a requirement for military service outside Australia arises in time of war has disappeared.

This clause repeals section 35 accordingly.

Clause 12 - Interpretation

The amendment proposed by clause 13 will add instructors to the classes of members of the Australian Cadet Corps.

This clause makes a consequential amendment to section 58A of the Principal Act by inserting a reference to instructors in the Australian Cadet Corps in the definition of "cadet".

Clause 13 - Australian Cadet Corps

The membership of the Naval Reserve Cadets and the Air Training Corps comprises officers, instructors and cadets whereas the Australian Cadet Corps does not have instructors.

This clause amends section 62 to provide for instructors in the Australian Cadet Corps.

Clause 14 - Conveyance by railway and tramway

This clause omits an obsolete reference to District Commandant from section 66 of the Principal Act.

Clause 15 - Improper use of service decorations

Section 80B of the Principal Act creates certain offences regarding the improper wearing, etc, of service decorations.

This clause increases the maximum fine for those offences from \$100 to \$200, for consistency with the increased fines provided by the amendment of section 83 proposed by clause 16.

Clause 16 - Unauthorised use, possession or supply of emblems or flags

Section 83 of the Principal Act creates offences of using or wearing, or making, supplying or offering to supply, Defence Force uniforms and emblems (including flags). The offences extend to similar articles belonging to forces of any other part of the Queen's dominions and, in time of war or defence emergency, to forces of allied countries and to other uniforms or emblems specified by the Minister. Section 83 derives from a National Security Regulation which was designed to cover a wide range of activities during World War 2.

Section 83 was intended to be adequate in both peace and war but this is difficult to achieve in one set of offences because there is a great difference between the controls necessary in wartime and those appropriate in peacetime. Section 83 provides too wide a range of offences for peacetime and subclause (1):

- a. omits all reference to wartime requirements and articles belonging to the forces of other countries;
- b. decriminalises the wearing of Defence Force uniforms;
- c. creates separate offences of:

- (1) using or wearing Defence Force emblems, etc;
- (2) making, supplying or offering to supply emblems, etc; and
- (3) flying and displaying Defence Force flags;

so that the offences may be more closely tailored to the kinds of conduct which should be proscribed.

New subsection (1) re-creates the offence of using or wearing a defence emblem without authority. The maximum penalty is increased to a fine of \$200. The offence of using or wearing a defence uniform is omitted.

New subsection (2) re-creates the offence of making, supplying or offering to supply a defence emblem without authority. The maximum penalty is increased to a fine of \$500. The offences of making, supplying or offering to supply defence uniforms or flags are omitted.

New subsection (3) re-creates the offence of flying or displaying a defence flag without authority. The maximum penalty is increased to a fine of \$200.

New subsection (3A) re-enacts so much of existing subsection (3) as is not concerned by new subsections (1), (2) and (3).

The remainder of subclause (1) makes consequential amendments to section 83 and increases, to a fine of \$200, the maximum penalty for the offence in existing subsection (4).

Subclause (2) ensures that authorisations given to persons under the existing subsection 83 (3) for making, supplying or offering to supply defence emblems do not lapse because of the amendments.

Clause 17 - Penalty for Bringing Contempt on Uniform

Section 84 of the Principal Act creates offences of wearing a Defence Force uniform, etc, in such manner, etc, as to be likely to bring contempt on it.

Clause 17 omits the reference to employing someone to commit any of the offences (because provision for aiders and abettors is made by section 5 of the Crimes Act 1914) and increases the maximum fine for the offences from \$40 to \$200 for consistency with the increased fines provided by the amendments of section 83 proposed by clause 16.

Clause 18 - Insertion of new Part

This clause inserts new Part IXB.

Part IXB - SALVAGE CLAIMS

The purpose of proposed new Part IXB is to clarify the power of the Government to control the exercise by the crew of HMA ships of their right to claim salvage for the salvage of property at sea and to put on a proper legal basis the administrative arrangements that are followed when the crew of a warship exercises that right.

It is proposed that, when one of HMA ships renders salvage services to a vessel in circumstances that give the crew of the naval ship an entitlement to claim salvage from the owners of the salvaged vessel, the following rules apply:

- a. The right of the crew of the naval ship to pursue a claim for salvage to be subject to the consent of the Chief of Naval Staff.
- b. The commanding officer to be empowered to act on behalf of the crew in the pursuit and settlement of salvage claims.
- c. The distribution of the crew's share to be apportioned according to a prescribed scale, with provision for recognition of specially meritorious service.

New Section 117 - Interpretation

Sub-section (1) defines expressions used in the new Part.

Sub-section (2) empowers the Chief of Naval Staff to appoint some other member of the crew to act if the commanding officer is unable to do so.

Sub-section (3) provides that the commanding officer continues to act as such notwithstanding that he has ceased to be commanding officer or has ceased to be a member of the Navy.

New Section 117A - Salvage Claims by Crew of Naval Ships

Sub-section (1) restates the right of the crew of a naval ship to claim salvage without affecting the right of the Crown to claim salvage.

Sub-section (2) provides firstly that any claim by the crew requires the written approval of the Chief of Naval Staff. The purpose of this is to restrict the pursuit of claims by members of the crew to those where the service has been of an important character. The subsection provides secondly that any claim is to be commenced and prosecuted by the Australian Government Solicitor (who would, of course, be prosecuting any claim on behalf of the Commonwealth).

Sub-section (3) provides that where the Chief of Naval Staff approves the making of a claim by the crew, the commanding officer is authorised to instruct the Australian Government Solicitor to act on behalf of the crew. The purpose of this is to avoid a situation where each member of the crew (which may number several hundred members) would have to individually instruct the Australian Government Solicitor to act on his or her behalf.

New Section 117AA - Apportionment of Salvage Between the Commonwealth and Crew Members

Sub-section (1) provides that where there is a salvage claim on behalf of the crew the Commonwealth's expenses in providing the salvage services is to be deducted from the total amount payable to the Commonwealth and crew and the balance is to be divided between the Commonwealth and crew in accordance with any apportionment that may have been made by a court or other tribunal, otherwise on the basis of 80% to the Commonwealth and 20% to the crew.

Sub-section (2) empowers the Minister to order an increase in the amount of salvage to be paid to the crew where he is of opinion that the members of the crew have rendered exceptional services in carrying out the salvage, provided that the total amount for the crew does not exceed 25%.

New section 117AB - Apportionment of Salvage amongst Crew Members

This section provides for the Commonwealth's expenses in pursuing the crew's claim to be deducted from the crew's portion of the salvage and for the balance to be apportioned among the crew in accordance with the regulations. It is intended that the regulations would provide for apportionment on the basis of shares (generally according to rank in order to recognize skill, experience, responsibilities, etc). The apportionment which it is proposed to prescribe is set out in the Attachment.

Clause 19 - Immunity from Certain State and Territory Laws

Section 123 of the Principal Act (inserted by the Defence Legislation Amendment Act 1987) provides that a member of the Defence Force is not bound by State and Territory laws which would require him to have a licence to use any Commonwealth property or to register any property belonging to the Commonwealth or to have a licence to do anything in the course of his duties as a member.

Officers of the Small Arms Factory at Lithgow are from time to time required, in the performance of their duties, to transport semi-automatic and other small arms away from the factory, eg, for demonstration or testing purposes. It would not be practical for weapons to be transported for factory purposes by defence personnel (who would be exempted from State and Territory laws by section 123 of the Principal Act).

This clause amends section 123 to provide an appropriate exemption from State and Territory laws.

New sub-section (2) empowers the Secretary (or an officer of the Public Service authorised by him) to declare a civilian officer or employee of the Department to be an authorised employee.

New sub-section (3) provides an authorised employee with an exemption from State and Territory gun licensing laws while in possession of a firearm in the performance of his duties.

PART IV - AMENDMENT OF DEFENCE FORCE DISCIPLINE ACT 1982

Clause 20 - Principal Act

Formal

Clause 21 - Interpretation

The Principal Act expresses the maximum amount of a fine that may be imposed on various classes of members of the Defence Force by various service tribunals in terms of the amount of a member's pay for a specified number of days. Sub-section 3(9) of the Principal Act provides that the amount of a day's pay is to be ascertained in accordance with the

regulations and sub-section 3(10) provides that the regulations may provide for this amount to be ascertained by reference to (inter alia) a determination under section 58B of the Defence Act 1903. (Under section 58B, the Minister for Industrial Relations is empowered to determine rates of salary and allowances and other financial conditions of service of members of the Defence Force).

Rates of salary and allowances, etc, may also be determined by the Defence Force Remuneration Tribunal under section 58H of the Defence Act and this clause amends sub-section 3(10) of the Principal Act by inserting a reference to section 58H of the Defence Act.

Clause 22 - Reparation Orders

Section 84 of the Principal Act empowers service tribunals to order a convicted person to pay reparations to a person who has sustained loss or damage through or by reason of the offence that was committed. Sub-section (2) imposes maximum limits on the amount of reparations which may be ordered. In the case of reparations which may be ordered by Defence Force magistrates or courts martial, this is 5 times the maximum amount of the fine that could have been imposed. No such limits apply to ordinary criminal courts and the reason for imposing the limits on service tribunals was doubt whether service tribunals should be concerned with reparations involving substantial sums.

In practice this has meant that where substantial sums should be ordered it is necessary for there to be the cost (and delay) of a separate civil court action. It also means that the service tribunal cannot, in sentencing the person, take into consideration the amount of reparations that the offender will be required to make. Finally, it seems inconsistent that a general court martial, for example, may impose life imprisonment but is subject to limits as to the amount of a reparation order.

This clause removes the limit on the amount of reparations that may be ordered by a court martial or Defence Force magistrate but retains the present limits on summary authorities.

Clause 23 - Arrangement for appointment of the holder of a judicial office of a State or the Northern Territory

Section 182 of the Principal Act provides that the Governor-General may make arrangements with the Governor of a State or the Administrator of a Territory for securing the services of a judge of the State or Territory as Judge Advocate General or Deputy Judge Advocate General.

This clause amends section 182 so that these administrative arrangements may be made at ministerial level instead of at vice regal level.

PART V - AMENDMENTS OF THE DEFENCE FORCE RETIREMENT AND DEATH BENEFITS ACT 1973

Clause 24 - Principal Act

Formal

Clause 25 - Interpretation

The Principal Act contains a number of provisions which were intended to operate as transitional arrangements for members who were contributing to the previous (1948) scheme and who were transferred to the present scheme on its commencement on 1 October 1972. It has become apparent that these provisions could also have the unintended effect of applying again in the event of such a member, having left the Service, re-entering the Service.

This clause removes the possibility of such a subsequent entitlement by adding to section 3 of the Principal Act a provision which restricts the application of the relevant provisions of the Principal Act to a member's period of service up to the point at which he or she first ceases to be a member.

Clause 26 - Contributions by Members of Scheme

This clause formally amends section 17 of the Principal Act to accord with changes of terminology in the Defence Act 1903 and Naval Defence Act 1910 made by sections 16 and 64 of the Defence Legislation Amendment Act 1987.

Clause 27 - Power of Authority to require persons to be medically examined, etc

Section 35 of the Principal Act provides that invalidity pay can be suspended where the recipient fails to attend a medical examination, or to provide information, required by the Defence Force Retirement and Death Benefits Authority ('the Authority'). The effects of the section are that invalidity pay is suspended from the intended date of the medical examination or the expiration of the period given to supply the information. This results in a technical overpayment of benefits paid in respect of any time after that date which must be recovered, which is a waste of administrative effort in those cases when the suspended invalidity pay is restored upon the member complying with the requirement.

This clause overcomes the problem by investing the Authority with power to determine a later date for commencement of the period of suspension. In practice this would be the day following the period covered by the latest invalidity pay paid to the member, thus avoiding the technical overpayment. The amendments made by this clause are based on amendments made to section 74 of the Superannuation Act 1976 by the Superannuation Legislation Amendment Act (no 2) 1986, and introduce a range of requirements concerning notifications to recipients similar to those in that Act. These amendments ensure proper administrative procedures in the reinstatement of suspended invalidity pay and in the various notifications to recipients concerning suspensions and reinstatements.

New sub-section (2) requires a notice (of medical examination or requirement to provide information) under subsection (1) to set out the effect of new subsection (3).

New sub-section (3) restates the existing subsection (3) (which empowers the Authority to suspend the invalidity pay) and empowers the Authority, by notice to the member, to determine the date of effect of the suspension, not being a day earlier than the day after the intended date of the medical examination or the expiration of the period given to supply the information.

New sub-section (4) requires a notice under sub-section (3) to set out the effect of new sub-sections (5B), (5D) and (5E).

New sub-section (5) provides that invalidity pay is not payable while suspended.

New sub-section (5A) empowers the Authority to revoke the suspension by notice to the member or to the member and a person acting on the member's behalf.

New sub-section (5B) provides that the member or a person acting on the member's behalf may request the Authority to revoke the suspension and in such a case the Authority may again, by notice, request the member to attend a medical examination or to provide the required information, as the case may be.

New sub-section (5C) requires a notice under sub-section (5B) to set out the effect of new sub-sections (5D) and (5E).

New sub-section (5D) deals with the outcome of a notice under sub-section (5B) where the member complies with the notice (or the Authority is satisfied that there was a reasonable excuse for his failure to comply), and requires the Authority to revoke the suspension with effect from the date of compliance (or the date on which the Authority became satisfied) or an earlier date, at the discretion of the Authority.

New sub-section (5E) deals with the outcome of a notice under sub-section (5B) where the member does not comply with the notice and the Authority is not satisfied that there was a reasonable excuse for the failure to comply and requires the Authority to refuse revocation.

New sub-sections (6A) and (6B) replace existing sub-section (2) and describe the circumstances in which a notice required to be given to a recipient member under section 35 of the Principal Act is to be deemed to have been given.

Clause 28 - Contributions by Members of Scheme

This clause formally amends section 62 of the Principal Act to accord with changes of terminology in the Defence Act 1903 and Naval Defence Act 1910 made by sections 16 and 64 of the Defence Legislation Amendment Act 1987.

Clause 29 - Eligible Employment

Section 71 of the Principal Act spells out the various forms of employment that constitute eligible employment for the purposes of the Act.

This clause makes a drafting amendment relating to employment by the Northern Territory Government.

Clause 30 - Recovery of Amount Payable to the Commonwealth

Section 126 of the Principal Act deals in a limited way with the recovery of moneys owing to the Commonwealth under the Act. It provides, with regard to unpaid contributions, that the Authority may negotiate for their payment by instalments, or the unpaid contributions may be deducted from benefits payable to the person under the Act. The section also provides that amounts owing to the Commonwealth under the Act may be recovered by the Commonwealth in a court of competent jurisdiction.

This clause amends sub-section 126(3) to clarify that unpaid contributions may be recovered in a court and to permit the Authority to proceed on behalf of the Commonwealth. It also adds sub-sections which provide for the recovery of overpaid benefits under the Act or the previous (1948) scheme either in a civil court or by deduction from benefits payable to the person concerned. The proposed new subsections are similar to subsections 156(4) to (6) of the Superannuation Act 1976.

Clause 31 - Recipient Member etc to Inform Authority if Becomes Eligible Member

Section 127 of the Principal Act provides that whenever a member of the present scheme who is entitled to retirement pay or invalidity pay, a person in receipt of a pension under the previous scheme or a person to whom a deferred benefit is applicable, becomes an eligible member of the Defence Force, he or she shall, within a period of 14 days after becoming a member, notify the Authority. A penalty of \$100 is prescribed for failure to comply with the provision.

Before 1981, a re-entered recipient member was required to again contribute under the present scheme and his or her benefits were cancelled regardless of the period of re-entry. The Principal Act was amended in 1981 to provide that such a member is required to contribute and have his or her benefit cancelled only if the re-entry is for a period of not less than one year.

Section 127 is now inconsistent with the provisions covering contributions and benefits or re-entered recipient members and this clause amends section 127 to require a re-entered recipient to inform the Authority of his or her re-entry only where that re-entry is for a period of not less than one year.

Clause 32 - Insertion of New Section

This clause inserts new section 128A into the Principal Act.

New Section 128A - Cancellation of Elections

New section 128A provides that a member of the scheme who elects to pay a transfer value into the scheme or to commute his or her benefits on retirement or to preserve benefits on exit from the scheme may apply to the Authority not later than 3 months afterwards (or within a further period if the Authority in special circumstances allows) to cancel the election and the Authority may, if satisfied that the election should be cancelled, direct accordingly. Section 157(3) of the Superannuation Act 1976 makes similar provision.

Clause 33 - Attachment of Benefits

Section 130 of the Principal Act makes provision for the attachment of benefits to meet a debt which is the subject of a court order. Subsection 130(8) provides that it is an offence if the person in whose favour deductions are being made under the section fails to notify the Authority immediately the judgement debt is satisfied.

This clause amends the maximum penalty for the offence from \$100 or imprisonment for 14 days to \$100 or imprisonment for 3 months and provides a penalty of \$500 where the offender is a body corporate.

PART VI - AMENDMENTS OF DEFENCE FORCES RETIREMENTS BENEFITS ACT 1948

Clause 34 - Principal Act

Formal

Clause 35 - Power of Authority to require persons to be medically examined, etc

Section 53B of the Principal Act provides that invalidity pay can be suspended where the recipient fails to attend a medical examination, or to provide information, required by the Defence Force Retirement and Death Benefits Authority ('the Authority'). The effects of the section are that invalidity pay is suspended from the intended date of the medical examination or the expiration of the period given to supply the information. This results in a technical overpayment of benefits paid in respect of any time after that date which must be recovered, which is a waste of administrative effort in those cases when the suspended invalidity pay is restored upon the member complying with the requirement.

This clause overcomes the problem by investing the Authority with power to determine a later date for commencement of the period of suspension. In practice this would be the day following the period covered by the latest invalidity pay paid to the member, thus avoiding the technical overpayment. The amendments made by this clause are based on amendments made to section 74 of the Superannuation Act 1976 by the Superannuation Legislation Amendment Act (No 2) 1986, and introduce a range of requirements concerning notifications to recipients similar to those in that Act. These amendments ensure proper administrative procedures in the reinstatement of suspended invalidity pay and in the various notifications to recipients concerning suspensions and reinstatements.

New sub-section (2) requires a notice (of medical examination or requirement to provide information) under subsection (1) to set out the effect of new subsection (1).

New subsection (3) restates the existing subsection (3) (which empowers the Authority to suspend the invalidity pay) and empowers the Authority, by notice to the member, to determine the date of effect of the suspension, not being a day earlier than the day after the intended date of the medical examination or the expiration of the period given to supply the information.

New subsection (4) requires a notice under subsection (3) to set on the effect of new subsections (5B), (5D) and (5E).

New subsection (5) provides that invalidity pay is not payable while suspended.

New subsection (5A) empowers the Authority to revoke the suspension by notice to the member or to the member and a person acting on the member's behalf.

New subsection (5B) provides that the member or a person acting on the member's behalf may request the Authority to revoke the suspension and in such a case the Authority may again, by notice, request the member to attend a medical examination or to provide the required information, as the case may be.

New subsection (5C) requires a notice under subsection (5B) to set out the effect of new subsections (5D) and (5E).

New subsection (5D) deals with the outcome of a notice under subsection (5B) where the member complies with the notice (or the Authority is satisfied that there was a reasonable excuse for his failure to comply) and requires the Authority to revoke the suspension with effect from the date of compliance (or the date on which the Authority became satisfied) or an earlier date, at the discretion of the Authority.

New subsection (5E) deals with the outcome of a notice under subsection (5B) where the member does not comply with the notice and the Authority is not satisfied that there was a reasonable excuse for the failure to comply and requires the Authority to refuse revocation.

New subsections (7) and (8) replace existing subsection (2) and describe the circumstances in which a notice required to be given to a recipient member under section 35 of the Principal Act is to be taken to have been given.

New subsection (9) reproduces as much of existing subsection (7) as is still required.

Clause 36 - Eligible Employment

Section 82D of the Principal Act spells out the various forms of employment that constitute eligible employment for the purposes of the Act.

This clause makes a drafting amendment relating to employment by the Northern Territory Government.

Clause 37 - Attachment of Pensions

Section 85A of the Principal Act makes provision for the attachment of pensions to meet a debt which is the subject of a court order. Subsection 85A(8) provides that it is an offence if the person in whose favour deductions are being made under the section fails to notify the Authority immediately the judgement debt is satisfied.

This clause inserts a maximum penalty of \$500 where the offender is a body corporate.

Clause 38 - Recovery of Contributions

This clause replaces a reference to the Defence Forces Retirement Benefits Board (which has been abolished) with a reference to the Defence Force Retirement and Death Benefits Authority.

Clause 39 - Insertion of New Section

This clause inserts new section 86A into the Principal Act.

New Section 86A - Cancellation of Elections

New section 86A provides that a member of the scheme who elects to pay a transfer value into the scheme or to commute his or her benefits on retirement or to preserve benefits on exit from the scheme may apply to the Authority not later than 3 months afterwards (or within a further period if the Authority in special circumstances allows) to cancel the election and the Authority may, if satisfied that the election should be cancelled, direct accordingly. Section 157(3) of the Superannuation Act 1976 makes similar provision.

PART VII - AMENDMENTS OF NAVAL DEFENCE ACT 1910Clause 40 - Principal Act

Formal

Clause 41 - Interpretation

This clause omits an obsolete definition.

Clause 42 - Resignation of Officers

Section 13 of the Principal Act prescribes the procedure for dealing with resignations of officers of the Navy including a description of the circumstances in which the Chief of Naval Staff is authorised to reject the resignation of an officer.

This clause adds a further circumstance in which a resignation may be rejected, namely, where an officer who has been promoted to Captain or a higher rank has not completed 12 months service in the rank after his or her promotion to the rank.

Clause 43 - Power to Build Ships and Construct Docks etc for Naval Purposes

This clause omits an obsolete subsection.

Clause 44 - Determination of Conditions of Employment

This clause omits an obsolete sub paragraph.

PART VIII - AMENDMENT OF WAR SERVICE ESTATES ACT 1942Clause 45 - Principal Act

Formal

SALVAGE - APPORTIONMENT AMONG CREW

It is intended that the regulations provide for the apportionment of salvage among the commanding officer and members of the crew to be on the basis of shares (according to rank in order to recognize skill, experience, responsibilities, etc) as set out in the following table:

APPORTIONMENT OF SALVAGE

<u>Rank</u>	<u>Shares</u>
Rear Admiral	28
Commodore	26
Captain	24
Commander	22
Lieutenant Commander	20
Lieutenant)	18
Warrant Officer)	
Sub-Lieutenant)	16
Chief Petty Officer)	
Petty Officer	14
Leading Seaman	12
Able Seaman)	10
Any Other Rank)	

2. The apportionment to be qualified as follows:
 - a. The commanding officer (with whom the major responsibility, including the safety of his ship and crew, lies) to receive the shares for his rank multiplied by 2.
 - b. Where the commanding officer recommends that extraordinary personal endeavour by a member of the crew warrants recognition, the Chief of Naval Staff to be empowered to authorize an increase in the member's number of shares not exceeding an additional 3 shares.

Clause 46 - Interpretation

This clause revises definitions to accord with amendments made to the Defence Act 1903 in connection with the commencement in 1985 of the Defence Force Discipline Act 1982.

Clause 47 - Disposition of Property to Operate as Discharge

Drafting amendments.

Clause 48 - Exemption of Commonwealth from Liability

Drafting amendments.

Clause 49 - Payments to Public Trustee or Curator of Intestate Estates

Drafting amendment.

Clause 50 - Attachment of War Service Estates

Drafting amendment.

Clause 51 - Regulations

This clause omits an obsolete subsection.

PART VIII - AMENDMENT OF STATUTE LAW
(MISCELLANEOUS PROVISIONS) ACT 1987

Clause 52 - Principal Act

Formal

Clause 53 - Amendment of Schedule 1

This clause corrects a spelling error.







