

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
HOUSE OF REPRESENTATIVES

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Presented and read a first time, 27 August 1981

*(Minister for Defence)*

## A BILL

FOR

### **An Act relating to retirement and death benefits in respect of members of the Defence Force**

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

#### **Short title, &c.**

5 **1. (1)** This Act may be cited as the *Defence Force Retirement and Death Benefits Amendment Act 1981*.

**(2)** The *Defence Force Retirement and Death Benefits Act 1973*<sup>1</sup> is in this Act referred to as the Principal Act.

#### **Commencement**

10 **2. (1)** Sections 1 and 2 shall come into operation on the day on which this Act receives the Royal Assent.

(2) Sub-sections 4 (1) and 7 (1) shall be deemed to have come into operation on 1 October 1972.

(3) Sub-sections 4 (2), 5 (1) and 6 (1) and sections 8 and 9 shall be deemed to have come into operation on 14 May 1981.

(4) Section 3 and sub-sections 5 (2), 6 (2) and 7 (2), (3) and (4) shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent. 5

### **Contributions by members of scheme**

3. Section 17 of the Principal Act is amended by inserting after sub-section (1) the following sub-section: 10

“(1A) Sub-section (1) does not apply to an eligible member of the Defence Force who—

- (a) was a recipient member immediately before he became an eligible member; and
- (b) is serving under an appointment or engagement for a period of less than one year that commenced after the commencement of this sub-section.”. 15

### **Amount of contributions on reduction in pay**

4. (1) Section 20 of the Principal Act is amended by inserting in sub-section (1) “, otherwise than by reason of the member ceasing to hold an acting or temporary rank,” after “changes”. 20

(2) Section 20 of the Principal Act is amended by inserting in sub-section (1) “or of the amendment of the Defence Force Retirement and Death Benefits (Annual Rates of Pay) Regulations made by section 9 of the *Defence Force Retirement and Death Benefits Amendment Act 1981*” after “rank”. 25

### **Commutation of retirement pay**

5. (1) Section 24 of the Principal Act is amended by inserting in paragraph (3) (b) “and sub-section 98K (1)” after “paragraph” (first occurring).

(2) Section 24 of the Principal Act is amended by inserting after sub-section (1) the following sub-section: 30

“(1A) Sub-section (1) does not apply to a recipient member who, after the commencement of this sub-section, became a person to whom sub-section 62 (1) or (2) applied.”.

### **Commutation of Class C invalidity pay**

6. (1) Section 32A of the Principal Act is amended by inserting in paragraph (5) (b) “and sub-section 98K (1)” after “paragraph” (first occurring). 35

(2) Section 32A of the Principal Act is amended by inserting after sub-section (1) the following sub-section:

“(1A) Sub-section (1) does not apply to a member of the scheme who, after the commencement of this sub-section, became a person to whom sub-section 62 (1) or (2) applied.”.

**Recipient member who becomes eligible member**

5 7. (1) Section 62 of the Principal Act is amended by inserting in sub-section (3) “or of a member of the scheme who was in receipt of a pension under the previous legislation that was cancelled under sub-section 69 (3) of the previous Act before he became a member of the scheme” after “applies”.

(2) Section 62 of the Principal Act is amended—

10 (a) by omitting from sub-section (1) “again becomes an eligible member of the Defence Force” and substituting “becomes an eligible member of the Defence Force serving under an appointment or engagement for a period of not less than one year”;

15 (b) by inserting in sub-section (2) “serving under an appointment or engagement for a period of not less than one year” after “Defence Force” (last occurring); and

(c) by omitting sub-section (4) and substituting the following sub-section:

20 “(4) Where a person to whom sub-section (1) applies commuted a portion of his retirement pay in accordance with section 24 of this Act or a portion of his invalidity pay in accordance with section 32A of this Act or a person to whom sub-section (2) applies commuted a portion of a pension payable to him under the previous legislation in accordance with section 74 of the previous Act, the period that, but for this sub-section, would be the total period of effective service applicable to him shall be reduced by such period as the Authority considers appropriate in the circumstances.”.

25 (3) The amendments made by paragraphs (2) (a) and (b) apply in relation to a person who becomes an eligible member of the Defence Force on or after the commencement of this sub-section.

30 (4) Notwithstanding the amendment made by paragraph (2) (c), sub-section 62 (4) of the Principal Act as in force immediately before the date of commencement of this sub-section continues to apply to an eligible member of the Defence Force to whom that sub-section applied immediately before that date until he ceases to be such a member.

35 8. After Part XA of the Principal Act the following Part is inserted:

**“PART XB—PROVISIONS RELATING TO CERTAIN MEMBERS OF THE DEFENCE FORCE**

**Interpretation**

“98H. In this Part—

40 ‘prescribed member’ means a person who was a member of the Defence Force at any time during the prescribed period;

'prescribed period' means the period that commenced on 1 October 1972 and ended on 13 May 1981.

**Waiving of contributions**

"98J. (1) Notwithstanding any other provision of this Act, where—

(a) throughout any part (in this sub-section referred to as the 'relevant part') of the prescribed period, a prescribed member held an acting or temporary rank; and 5

(b) the amount paid by, or deducted from the pay of, the member in respect of a contribution payable by him during the relevant part of the prescribed period was less than the amount of that contribution but was equal to the amount that would have been the amount of that contribution if the member had not held that acting or temporary rank, 10

that member or the personal representative of that member, as the case requires, is not liable to pay the difference between the amount of that contribution and the amount so paid or deducted unless— 15

(c) the member retired or died at the end of the relevant part of the prescribed period; and

(d) by reason of his retirement or death, a pension benefit, or a deferred benefit applicable under Division 3 of Part IX, became payable during the prescribed period. 20

"(2) In ascertaining, for the purposes of this Act, the amount of a refund of contributions or the amount of a lump sum required to be calculated by reference to contributions, the amount of a contribution a part of which, by virtue of sub-section (1), a member, or the personal representative of a member, is not liable to pay shall be taken to be reduced by the amount of that part. 25

"(3) Where—

(a) after the commencement of this section, a prescribed member, or the personal representative of a prescribed member, who, during the prescribed period, held an acting or temporary rank, is liable to pay an amount to the Commonwealth in respect of contributions that were payable by the member when he held that rank by reason that the amounts that were paid, or deducted, in respect of those contributions were calculated by reference to the contributions that would have been payable if the member had not held that rank; 30 35

(b) a benefit has become payable to or in respect of that member, being—

(i) invalidity pay payable to a member classified as Class A or Class B under section 30;

(ii) a widow's pension under section 38;

(iii) a child's pension under sub-section 42 (2) or 43 (2); or 40

(iv) a deferred benefit applicable under Division 3 of Part IX that is of the same nature, and payable in the same circumstances, as a pension referred to in sub-paragraph (i), (ii) or (iii); and

- (c) but for this sub-section, the amount of the liability referred to in paragraph (a) would exceed the amount that was payable to or in respect of the member during the prescribed period in respect of benefits referred to in paragraph (b) but was not paid during that period,

the amount of the liability referred to in paragraph (a) is reduced by the excess.

### **Variation of pension benefits**

“98K. (1) Subject to sub-section (3) but notwithstanding any other provision of this Act, where a prescribed member—

- (a) retired during the prescribed period; and  
(b) throughout a period that ended immediately before his retirement, held an acting or temporary rank,

the rate of any pension benefit payable, after 13 May 1981, to, or in respect of, that member shall be reduced by the difference between—

- (c) the amount that, but for this section and sub-sections 24 (3) and 32A (4), would be the amount per annum of the benefit; and  
(d) the amount that, but for this section and those sub-sections, would have been the amount per annum of the benefit if, immediately before the retirement of the member, he had not held that acting or temporary rank.

“(2) Subject to sub-section (3) but notwithstanding any other provision of this Act, where a prescribed member—

- (a) died during the prescribed period before retirement; and  
(b) throughout a period that ended immediately before his death, held an acting or temporary rank,

the rate of any widow’s pension or child’s pension payable, after 13 May 1981, in respect of that member shall be reduced by the difference between—

- (c) the amount that, but for this section, would be the amount per annum of that pension; and  
(d) the amount that, but for this section, would have been the amount per annum of that pension if, immediately before the death of the member, he had not held that acting or temporary rank.

“(3) Sub-sections (1) and (2) do not apply in relation to—

- (a) a rate of pension benefit that has been calculated by reference to another rate of pension benefit that has been reduced in accordance with either of those sub-sections; or  
(b) a rate of pension benefit that has been reduced in accordance with either of those sub-sections and increased in accordance with Part XA.

“(4) In this section, ‘pension benefit’ includes a deferred benefit applicable under Division 3 of Part IX.

**Commutation of retirement pay and invalidity pay**

“98L. (1) Notwithstanding any other provision of this Act, where a prescribed member—

- (a) retired during the prescribed period;
- (b) throughout a period that ended immediately before his retirement, held an acting or temporary rank; and 5
- (c) has made—
  - (i) an election under section 24 in respect of retirement pay; or
  - (ii) an election under section 32A in respect of invalidity pay,

the member may make— 10

- (d) a further election under section 24 in respect of retirement pay; or
- (e) a further election under section 32A in respect of invalidity pay,

as the case may be, before 1 September 1982.

“(2) For the purposes of this Act, where a prescribed member who has made— 15

- (a) an election or elections under section 24 in respect of retirement pay; or

- (b) an election or elections under section 32A in respect of invalidity pay,

makes a further election under section 24 or 32A, as the case may be, that he would not have been entitled to make but for sub-section (1), that further election shall, notwithstanding sub-sections 24 (4) and 32A (6), as the case may be, be deemed to have taken effect on the day on which that first-mentioned election or the earliest of those first-mentioned elections took effect.”. 20

**Amendment of regulation**

9. (1) Regulation 4 of the *Defence Force Retirement and Death Benefits (Annual Rates of Pay) Regulations* is amended by adding at the end thereof the following sub-regulation: 25

“(7) A reference in this regulation to the annual rate of salary of a member on a day under the *Defence Force (Salaries) Regulations* shall be construed as a reference to the amount that would be the annual rate of salary of the member on that day under those Regulations if the expression ‘rank’, when used in those Regulations, had the meaning given to that expression by sub-section 3 (1) of the *Defence Force Retirement and Death Benefits Act* 1973 and did not have the meaning given to that expression by sub-regulation 4 (3) of those Regulations.”. 30 35

(2) The amendment made by sub-section (1) applies in relation to 14 May 1981 and all subsequent days.

(3) Nothing in this section prevents the amendment or repeal by a regulation under the *Defence Force Retirement and Death Benefits Act* 1973 of the regulation amended by sub-section (1) as so amended. 40

**NOTE**

1. No. 81, 1973, as amended. For previous amendments, see No. 59, 1974; No. 96, 1975; No. 33, 1976; Nos. 13 and 161, 1977; No. 36, 1978; and Nos. 15 and 135, 1979.

