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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DEFENCE FORCE SUPERANNUATION LEGISLATION AMENDMENT BILL
1991

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Defence
Science and Personnel, the Hon Gordon Bilney, MP)

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GENERAL OUTLINE

1. The Military Superannuation and Benefits Bill 1991 establishes a new superannuation scheme ("MSBS") for members of the Defence Force to be implemented from 1 October 1991. That Bill makes consequential amendments to the Defence Force Retirement and Death Benefits Act 1973 ("DFRDB Act") which, inter alia, have the effect of making the scheme under that Act a closed scheme. That is to say that the only persons who will be permitted to join that scheme will be pensioner re-entrants who choose not to join MSBS and a couple of rare classes of re-entrants.

2. The purpose of this Bill is to make some further amendments of the DFRDB Act to improve its administration by removing uncertainties about the operation of certain provisions and to make some minor improvements to the scheme.

3. Where appropriate, corresponding amendments are made to the Defence Forces Retirement Benefits Act 1948 ("DFRB Act") which still operates to provide pensions to members who retired from the Defence Force before 1 October 1972, the dependants of members of the DFRB scheme who died before that date and dependants of pensioners under that Act who have died.

Amendments to the DFRDB Act

4. The amendments, in brief, are as follows:

- a. Changes to the constitution and manner of appointment of the Defence Force Retirement and Death Benefits Authority ("Authority") which administers the scheme under the DFRDB Act to reflect its more limited role.
- b. Compulsory cessation of contributions by members who have reached or reach 40 year's effective service.
- c. Provision of specific power for the Authority to classify and reclassify members for invalidity purposes in certain cases of death.
- d. Continuation of payment to a spouse of a deceased pensioner, for a period immediately after the death of the pensioner, of a pension at the rate previously payable to the deceased pensioner.
- e. Changes in the nature of benefits payable to members who retire a second time.

- f. Amendments consequent on the coming into operation of the Superannuation Act 1990.

Amendments to the DFRB Act

5. The amendments are similar to those in subparagraphs (c), (d) and (f).

FINANCIAL IMPACT

6. The proposed amendments to the two Acts will have a small impact on the costs of the DFRDB and DFRB schemes.
7. Continuation of payment of a full pension to the spouse of a deceased pensioner for six pay periods after his or her death will result in increased costs of \$160,000 per annum. Some of this additional cost will be offset by administrative savings.
8. The estimated cost of providing a commutation option for re-entered DFRDB pensioners on their subsequent retirement from the Defence Force would be around \$88,000 per annum.
9. The DFRDB revenue foregone as a result of the cessation of contributions for members with 40 years service will amount to \$36,000 in the first year after this amendment.
10. The other changes in the Bill will have a minimal cost impact.

NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clauses 1 and 2 - Short title and commencement

11. These clauses provide for the short title and commencement of the legislation.

12. The provisions relating to the Superannuation Act 1990 are taken to have commenced on 1 July 1990 (the date of commencement of the scheme under that Act).

PART 2 - AMENDMENTS OF THE DEFENCE FORCE RETIREMENT AND DEATH BENEFITS ACT 1973

Clause 3 - Principal Act

13. This clause defines an expression used in Part 2 of the Bill to refer to the DFRDB Act.

Clause 4 - Interpretation

14. **Subclause (1)** defines certain expressions used in the Bill.

15. **Subclause (2)** makes an amendment consequent on the inclusion of proposed section 18A.

Clause 5 - Constitution of Authority

16. Section 8 of the DFRDB Act provides for the constitution of the DFRDB Authority, appointments being made by the Governor-General. This clause amends section 8 to transfer this power to the Minister.

Clause 6 - Deputies of members

17. Section 9 of the DFRDB Act provides for the Governor-General to appoint deputies of members of the Authority. This clause amends section 9 to transfer this power to the Minister.

Clause 7 - Termination of appointment

18. Section 11 of the DFRDB Act provides for the Governor-General to terminate appointments of members of the Authority for specified reasons. This clause amends section 11 to transfer this power to the Minister.

Clause 8 - Resignation of members

19. Section 12 of the DFRDB Act provides that members and deputy members of the Authority may resign in writing addressed to the Governor-General. This clause amends section 12 to transfer this role to the Minister.

Clause 9 - Meetings of Authority

20. Section 14 deals with meetings of the Authority specifying, inter alia, who is to chair meetings in the absence of the Chairman, namely, the Deputy Chairman, who is one of the other members of the Authority. With the introduction of MSBS, the Authority will be dealing more with administration and less with matters that have a policy content and it will be less important for the Chairman, who holds other important offices such as being a member of the Public Service Superannuation and MSBS boards of trustees, to attend every meeting of the Authority. It will frequently be appropriate for the deputy of the Chairman to attend these meetings on his behalf and clause 9 amends section 14 to allow the deputy of the Chairman to chair meetings of the Authority in the absence of the Chairman, taking priority over the Deputy Chairman.

Clause 10 - Contributions by members of scheme

21. This clause amends section 17 of the DFRDB Act in consequence of the proposed section 18A - see clause 11.

Clause 11 - New section 18A - Contributions not to be paid after 40 years of service

22. Under the DFRDB Act members are required to pay contributions for as long as they remain eligible members of the scheme. However the maximum benefits which may accrue to a member occur at 40 years of service, and further contribution is fruitless. Proposed section 18A requires contributions to cease after 40 years effective service.

Clause 12 - Commutation of retirement pay

23. Under section 62 of the DFRDB Act, where a pensioner re-enters and again becomes a contributor, his or her pension is cancelled. On subsequent retirement, the member's pension is freshly calculated, aggregating his or her effective service.

24. Under section 24, a member who is entitled to a pension on retirement may commute a portion of his or her pension. Where a member has previously commuted, subsection 24(1A) provides that the member may not again commute on a subsequent retirement and subsection 62(4) provides that the member's pension on a subsequent retirement is reduced by deducting from his or her aggregate effective service "such period as the Authority considers appropriate in the circumstances".

25. The intention is to ensure that a re-entrant who has previously commuted is not unduly advantaged or disadvantaged vis-a-vis a member of the same rank and length of service whose service is continuous. However the practice of adjusting the member's effective service and hence the rate of pension does not achieve an equitable result in some cases.

26. The clause amends section 24 by providing, in effect, for the person's benefits on a second or subsequent retirement to be a pension and lump sum calculated in the same proportion as the pension and lump sum on the person's original retirement.

27. Proposed **subsection (5)** provides that a pension on second or subsequent retirement is calculated in the normal way and the person is assumed to have elected to commute a portion of that pension, the amount to be commuted being described in proposed **subsection (6)** as the maximum amount commutable (unless the person previously commuted a lesser amount in which case a proportionately lesser amount applies). From the resultant lump sum there is deducted (proposed **subsection (7)**) the lump sum paid previously, adjusted according to consumer price increases in the intervening period.

Clause 13 - Classification in respect of incapacity

28. Section 30 of the DFRDB Act provides a system of classification of incapacity for civil employment of members retired on the ground of invalidity. The classification given governs the entitlements of the person under the Act.

29. In brief, the system provides for members retired on the ground of invalidity to be classified as A, B or C, according to their incapacity for civil employment. Persons classified as class A receive full incapacity benefits, with reduced benefits payable to persons classified class B or C. The condition of invalidity pensioners classified class A or B may be reviewed and their classifications may be altered.

30. This clause amends section 30 to clarify the power of the Authority to classify an invalidity retiree who died after his or her retirement but before being classified (so that the appropriate benefits may be paid to the surviving spouse and children).

Clause 14 - Reclassification in respect of incapacity

31. Section 34 of the DFRDB Act empowers the Authority to review the classification of an invalidity pensioner or former invalidity pensioner and thus allows account to be taken of any improvement or deterioration in the person's capacity for civil employment.

32. This clause amends section 34 to clarify the power of the Authority to reclassify an invalidity retiree who died after a review of his or her classification had begun (so that the

appropriate benefits may be paid to the surviving spouse and children).

Clause 15 - Invalidity benefits payable to certain contributors under Superannuation Act or the Superannuation Act 1990

33. This amendment is consequent on the passing of the Superannuation Act 1990.

Clause 16 - Widow's pension on death of recipient member

34. This clause amends section 39 of the DFRDB Act to provide for the surviving spouse of a deceased pensioner to receive pension at the rate formerly applicable to the deceased pensioner for the first 6 full fortnights after the pensioner's death; the pension then reverts to the (lower) normal rate applicable to a spouse.

Clause 17 - Set off against widow's pension in certain circumstances

35. After a pensioner dies, payments of the person's pension may continue to be paid into an account in a bank or other financial institution because of the time taken to notify the Authority and that institution may continue to pay money out of the account to the spouse. Legally, these transactions should cease on the death and payments then be made to the spouse. This clause inserts proposed section 40 into the DFRDB Act which indemnifies the various persons or institutions involved in such a transaction and eliminates the administrative costs involved in recovering such payments by allowing them to be set off against the pension payable to the spouse.

Clause 18 - Superannuation Act and the Superannuation Act 1990

36. This amendment is consequent on the passing of the Superannuation Act 1990.

Clause 19 - Death of recipient member etc. due to retirement disabilities etc.

37. Section 47 of the DFRDB Act provides that, where the death of a pensioner was due to the disease of injury that was the cause of his or her retirement on the ground of invalidity, the member is deemed to have been receiving a pension at the class A rate for the purpose of determining benefits payable to the surviving spouse and children. The class A rate is the highest invalidity rate under the Act.

38. The section applies only to invalidity pensioners and does not apply to a person who was formerly a pensioner, having been retired on the ground of invalidity, but who, because of a downgrading in invalidity classification, was not

in receipt of invalidity pension at the time of his or her death.

39. This clause amends section 47 to apply it to the latter class of person.

Clause 20 - Lump sum payments on or after death - members with only one period of effective service

40. Section 48 of the DFRDB Act prescribes the benefits payable to an estate where a serving member or a pensioner dies and is not survived by dependants. The section is unclear as to the benefit to apply in the case of a pensioner who re-enters and subsequently dies while serving or after his or her second retirement and is not survived by dependants.

41. This clause accordingly amends section 48 to specifically restrict its operation to cases where the person had one period of service and clause 21 deals with persons with more than one period of service.

Clause 21 - Lump sum payments on or after death - members with more than one period of effective service

42. This clause inserts proposed section 48A into the DFRDB Act for the reason given in the notes on clause 20.

43. **Subsection (1)** applies the clause to deceased members with more than one period of effective service.

44. **Subsection (2)** deals with the case where a serving member dies and no pension is payable to dependants and provides for a payment of 1.5 times the member's contributions during the last period of service.

45. **Subsection (3)** deals with the case where a pensioner dies and no pension is payable to dependants and provides for the payment of the difference between the pension paid and the member's contributions during the last period of service.

46. **Subsection (4)** provides that benefits are not payable under any other section.

47. **Subsections (5) and (6)** deal with the situations in subsections (2) and (3) except that pensions become payable to dependants who then die or otherwise cease to be entitled to pensions.

48. **Subsection (7)** deals with the case where, in respect of the person's previous service, the benefits paid were less than the person's contributions in respect of the previous service and provides that an additional amount equal to the difference is payable.

49. **Subsection (8)** specifies to whom the payments are to be made.

Clause 22 - Payment of refund of contributions or of lump sum payment to Board in discharge of liability under the Superannuation Act 1990

50. This amendment is consequent on the passing of the Superannuation Act 1990. The rules for the administration of the superannuation scheme under the Superannuation Act 1990 make provision for the deferral of contributions due under that Act by members of that scheme who become contributors under the DFRDB Act other than those who were entitled to a pension under the latter Act or the DFRB Act. On ceasing to be a contributor under the DFRDB Act, unless the person becomes entitled to a pension under that Act, the deferred contributions become payable.

51. This clause inserts proposed section 61A into the DFRDB Act which provides for the deferred contributions which have become payable to be deducted from the benefit payable under the DFRDB Act and paid to the Commonwealth Superannuation Board of Trustees.

Clause 23 - Recipient member who becomes eligible member

52. This clause amends section 64 of the DFRDB Act to remove the requirement for the Authority to adjust the effective service of former pensioners who retire a second time, because different provision is made by the amendments to section 24 of the Act made by clause 12.

Clause 24 - Rate of invalidity pay payable on reclassification during a prescribed year

53. Part XA of the DFRDB Act makes provision for increases in pensions in accordance with movements in the consumer price index. Because the ordinary provisions of that Part relate to pensions payable at the time of the increase, section 98F makes provision for the special case of an invalidity pensioner who is reclassified as to his or her degree of incapacity for civil employment during the course of a financial year and received a pension increase on the previous 1 July.

54. Section 98F should, but does not, also apply to a member originally classified as class A or B and entitled to invalidity pension who is downgraded to class C and ceases to be entitled to a pension and is subsequently reclassified to class B or A, because such a person was not a person in receipt of pension immediately before the last reclassification and may not have been entitled to a pension increase on the previous 1 July.

55. This clause amends section 98F by inserting subclause (3) which makes provision for the class of member described.

PART 3 - AMENDMENTS OF THE DEFENCE FORCES RETIREMENT BENEFITS ACT 1948

Clause 25 - Principal Act

56. This clause defines an expression used in Part 3 of the Bill to refer to the DFRB Act.

Clause 26 - Classification in respect of incapacity

57. Section 51 of the DFRB Act provides a system of classification of incapacity for civil employment of members retired on the ground of invalidity. The classification given governs the entitlements of the person under the Act.

58. In brief, the system provides for members retired on the ground of invalidity to be classified as A, B or C, according to their incapacity for civil employment. Persons classified as class A receive full incapacity benefits, with reduced benefits payable to persons classified class B or C. The condition of invalidity pensioners classified class A or B may be reviewed and their classifications may be altered.

59. This clause amends section 51 to clarify the power of the Authority to classify an invalidity retiree who died after his or her retirement but before being classified (so that the appropriate benefits may be paid to the surviving spouse and children).

Clause 27 - Reclassification in respect of incapacity

60. Section 53 of the DFRB Act empowers the Authority to review the classification of an invalidity pensioner or former invalidity pensioner and thus allows account to be taken of any improvement or deterioration in the person's capacity for civil employment.

61. This clause amends section 53 to clarify the power of the Authority to reclassify an invalidity retiree who died after a review of his or her classification had begun (so that the appropriate benefits may be paid to the surviving spouse and children).

Clause 28 - Pension on death of pensioner etc.

62. Section 57 of the DFRB Act provides that, where the death of an invalidity pensioner was due to the disease or injury which was the cause of his or her retirement, the member is deemed to have been receiving a pension at the class A rate for the purpose of determining benefits payable to the surviving spouse and children. The class A rate is the highest invalidity rate under the Act.

63. The section does not apply to a person who was formerly a pensioner, having been retired on the ground of invalidity, but who, because of a downgrading in invalidity

classification, was not in receipt of invalidity pension at the time of his or her death.

64. This clause amends subsection 57(3) and inserts subsection (3A) to apply the section to the latter class of person.

65. This clause also amends section 57, by the inclusion of subsection (3B), to provide for the surviving spouse of a deceased pensioner to receive pension at the rate formerly applicable to the deceased pensioner for the first 6 full fortnights after the pensioner's death; the pension then reverts to the (lower) normal rate applicable to a spouse.

Clause 29 - Set off against widow's pension in certain circumstances

66. After a pensioner dies, payments of the person's pension may continue to be paid to an account in a bank or other financial institution because of the time taken to notify the Authority and that institution may continue to pay money out of the account to the spouse. Legally, these transactions should cease on the death and payments then be made to the spouse. This clause inserts proposed section 57A into the DFRB Act which indemnifies the various persons or institutions involved in such a transaction and eliminates the administrative costs involved in recovering such payments by allowing them to be set off against the pension payable to the spouse.

Clause 30 - Special invalidity benefit to members under 18 years of age

67. This clause makes amendments to section 73 of the DFRB Act which are similar to those made by clause 26 to section 51 and by clause 27 to section 53, and the notes on those clauses explain the effect of new subclauses (1A) and (3AA), respectively, inserted into section 73.

Clause 31 - Rate of invalidity pension payable on reclassification during a prescribed year

68. Part VID of the DFRB Act makes provision for increases in pensions in accordance with movements in the consumer price index. Because the ordinary provisions of that Part relate to pensions payable at the time of the increase, section 84E makes provision for the special case of an invalidity pensioner who is reclassified as to his or her degree of incapacity for civil employment during the course of a financial year and received a pension increase on the previous 1 July.

69. Section 84E should, but does not, also apply to a member originally classified as class A or B and entitled to invalidity pension who is downgraded to class C and ceases to be entitled to a pension and is subsequently reclassified to

class B or A, because such a person was not a person in receipt of pension immediately before the last reclassification and may not have been entitled to a pension increase on the previous 1 July.

70. This clause amends section 84E by inserting subclause (3) which makes provision for the class of member described.

**PART 4 - AMENDMENTS OF THE DEFENCE (PARLIAMENTARY CANDIDATES)
ACT 1969**

Clause 32 - Principal Act

71. This clause defines an expression used in Part 4 of the Bill to refer to the Defence (Parliamentary Candidates) Act 1969.

Clause 33 - Interpretation

Clause 34 - Re-instatement of officers

Clause 35 - Re-instatement of enlisted members

Clause 36 - Re-instatement of members rendering continuous full-time service

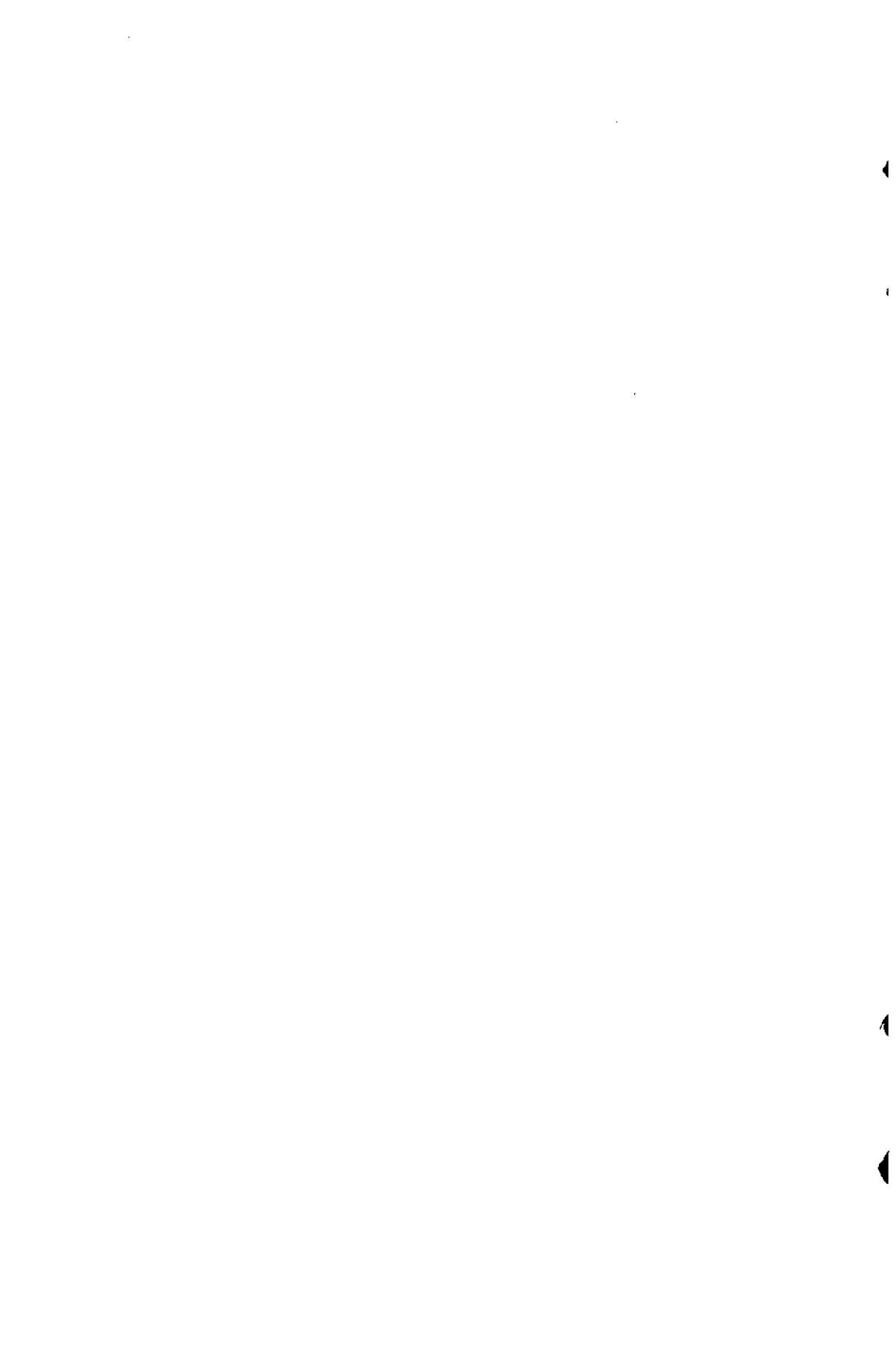
72. These amendments are consequent on the introduction of MSBS. Each amendment inserts into the Act references to provisions of the Military Superannuation and Benefits Rules which deal with persons who resigned under the Act in order to become a candidate for a Parliament.

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