

1991

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

DEFENCE FORCE SUPERANNUATION LEGISLATION AMENDMENT BILL
1991

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be Moved on Behalf of the Government

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

DEFENCE FORCE SUPERANNUATION LEGISLATION AMENDMENT BILL
1991
(Amendments)

GENERAL OUTLINE

1. The purpose of the Defence Force Superannuation Legislation Amendment Bill 1991 is to make amendments of the Defence Force Retirement and Death Benefit Act 1973 ("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.

2. It is the purpose of the proposed amendments to correct some erroneous references in the Bill and to clarify two matters.

FINANCIAL IMPACT

3. It is the intention that the amendments ensure that the Bill attains its original object.

NOTES ON AMENDMENTS

Amendment (1)

4. This amendment inserts a missing word.

Amendment (2)

5. 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.

6. 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 a member's pension on a subsequent retirement is reduced by deducting from his or her aggregate effective service "such periods as the Authority considers appropriate in the circumstances".

7. 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.

8. Clause 12 of the Bill amends section 24 by providing (in effect) for the person's benefit 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.

9. Proposed subsection 24(5) inserted by clause 12 provides that a pension on a 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 24(6). Subparagraph (5)(e)(ii) assumes the election to have been made "within the period specified in subsection (1AA)"; that is, within the period of 3 months before retirement to 12 months after retirement. This does not specify a particular date but, unless the exact date on which an election to commute is identified by the Act, it is not possible to calculate the residual pension with certainty because the rate of residual pension is based upon age at the date of the election.

10. This proposed amendment has the effect that the election is assumed to have been made on the day following the second or subsequent retirement.

Amendments (3) to (6)

11. These proposed amendments correct erroneous references.

Amendment (7)

12. Section 57 of the Defence Forces Retirement Benefits Act 1948 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.

13. 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.

14. Among other things, clause 28 of the Bill inserts into section 57 a new subsection (3A) which applies section 57 to the latter class of person. An unintended effect of the proposed subsection (3A) is to include all persons classified as Class C, whereas it was the intention that the amendment apply only to those classified as Class C as a result of a reclassification under section 53 of the Act.

15. This proposed amendment inserts appropriate words to restrict the operation of new subsection (3A) accordingly.

