

1990

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

SENATE

DEFENCE LEGISLATION AMENDMENT BILL (NO. 2) 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Defence,
Senator the Hon. Robert Ray)



Defence Legislation Amendment Bill (No. 2) 1990

OUTLINE

This Bill deals with the following matters:

- a. It proposes to amend Defence Force Retirement and Death Benefits legislation to entitle spouses of deceased members of the Defence Force to commute a portion of their pension, and to index the fixed element of children's (including orphans') pensions to movements in the Consumer Price Index.
- b. It proposes to amend the Defence Act 1903 to exempt Commonwealth-owned Defence companies from capital gains tax on assets acquired by the Commonwealth before the imposition of that tax, and to make associated depreciation adjustments.
- c. It proposes to amend the Defence Act 1903 and Naval Defence Act 1910 to remove obsolete provisions requiring the authorisation of the Governor-General in Council for certain procurement-related Defence activities.
- d. It proposes to make technical drafting amendments to the Defence Act 1903, the Control of Naval Waters Act 1918 and the Defence Housing Authority Act 1987.

FINANCIAL IMPACT

Indexing the children's (including orphans') pensions for the financial year from 1 July 1990 will cost approximately \$92,000. The future cost will depend on the rate of inflation.

Surviving spouses' right to commute pension could cost up to \$1.2 million in the first full year. This will be offset by reduced pension in future years.

The capital gains tax concession will reduce revenue by \$2.2 million this financial year. Future impact would depend on capital sales. This will be offset to some extent by increased revenue stemming from the associated depreciation adjustment.

The other provisions in the Bill are not expected to have any significant financial impact.

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NOTES ON CLAUSES

PART 1 - PRELIMINARY

Clause 1 - Short title

1. Formal.

Clause 2 - Commencement

2. This clause provides for sections 10, 11, 12, 13, 16, 17 and 18, which deal with indexation of children's pensions, to commence on 1 July 1990. Other sections commence on Royal Assent.

PART 2 - AMENDMENT OF THE
CONTROL OF NAVAL WATERS ACT 1918

Clause 3 - Principal Act

3. Formal.

Clause 4 - Interpretation

4. Section 2 of the Control of Naval Waters Act 1918 contains a definition of "defence land" which includes land dedicated by the Governor-General for public purposes under section 54 of the (repealed) Lands Acquisition Act 1955. The provision dealing with the Governor-General's power to dedicate land for public purposes is now contained in section 122 of the Lands Acquisition Act 1989. This clause replaces the reference to the repealed provision with a reference to the new provision.

PART 3 - AMENDMENTS OF THE
DEFENCE ACT 1903

Clause 5 - Principal Act

5. Formal.

Clause 6 - General powers for defence purposes

6. Section 63 of the Defence Act 1903 provides for authorisation from the Governor-General in Council for specified Defence works and procurement activities.

7. The Attorney-General's Department has advised that these provisions are unnecessary as, in their absence, the activities concerned (including procurement) can be validly carried out under the Commonwealth's normal executive power, without the requirement for specific Executive Council approval.

8. This clause therefore repeals the unnecessary provisions. However, the more general paragraph 63(f) of the Defence Act will be retained as a possible adjunct to the regulation-making power.

Clause 7 - Salvage claims by crew of Naval ships

9. Section 117A of the Defence Act, which provides for salvage claims by crews of naval ships, contains two subsections (3). The drafting change made by this clause corrects the numbering.

Clause 8 - New Section

10. This clause inserts a new section 122AA in the Principal Act.

New Section 122AA - Taxation consequences of disposals of assets to defence companies

11. The new section 122AA deals with the application of capital gains tax (CGT) and depreciation rules to the Commonwealth owned companies, Australian Defence Industries Pty Ltd (ADI) and Aerospace Technologies of Australia Pty Ltd (ASTA). At present, any Commonwealth assets transferred by the Commonwealth to ADI and ASTA are subject to the capital gains tax provisions of the Income Tax Assessment Act 1936. Had the Commonwealth been an ordinary holding company, the transfers to ADI and ASTA would have attracted roll-over relief for assets acquired before introduction of the tax, as the companies would be treated as subsidiaries.

12. New section 122AA gives ADI and ASTA the same roll-over relief from CGT as that obtained by subsidiary companies within corporate groups in respect of all assets acquired by the Commonwealth before 20 September 1985 and transferred to ADI and ASTA in connection with their establishment. That is, the assets are deemed to have been acquired by ADI and ASTA before that date so as to retain their CGT exempt status. This is consistent with the approach adopted in the corporatisation of other Commonwealth bodies. In respect of the transfer of assets acquired by the Commonwealth after 19 September 1985, the CGT provisions apply from the date of transfer to ADI and ASTA.

13. An associated provision will ensure that, in calculating depreciation of assets deemed to have been acquired before the commencement of the CGT provisions, ADI and ASTA are treated as though the underlying ownership of the assets had not changed. That is, where ADI or ASTA acquired from the Commonwealth assets which the Commonwealth had acquired before the commencement of CGT, the value for the purposes of calculating depreciation is the depreciated value that would have applied had the Commonwealth been a taxpayer, ie the (pre 20 September 1985) depreciable assets will be notionally depreciated for the period they were held by the Commonwealth prior to their transfer to ADI and ASTA. The new section also provides that the accelerated rates of depreciation that otherwise would have applied to these assets does not apply. This avoids ADI and ASTA losing access to the available income tax deductions in respect of depreciation through application of the accelerated rates exhausting those deductions.

PART 4 - AMENDMENT OF THE
DEFENCE FORCES RETIREMENT BENEFITS ACT 1948

Clause 9 - Principal Act

14. Formal.

Clause 10 - Pension on death of member

15. Under the Principal Act, a child's pension is a composite amount, comprising a fixed, unindexed amount and an indexed amount expressed as a fraction of the retirement pay or invalidity pay which was, or would have been, payable to the deceased contributor. The fixed amount of an orphan's pension is \$5000 and for other children it is \$312.

16. This clause amends section 55 of the Principal Act so that the fixed elements of children's pensions are indexed annually in accordance with movements in the Consumer Price Index. The amendment is to apply so that the whole pension is indexed from 1 July 1990.

Clause 11 - Pension on death of pensioner

17. This clause amends section 57 of the Principal Act to index fixed elements of children's pensions.

Clause 12 - Pensions payable in respect of orphans

18. This clause amends section 58 of the Principal Act to index fixed elements of orphans' pensions.

Clause 13 - Increases in children's pensions

19. This clause amends section 84C of the Principal Act to provide the formula for indexation of children's (including orphans') pensions, with effect from 1 July 1990.

PART 5 - AMENDMENT OF THE
DEFENCE FORCE RETIREMENT AND DEATH BENEFITS ACT 1973

Clause 14 - Principal Act

20. Formal.

Clause 15 - New Section

21. This clause inserts a new section 41A in the Principal Act.

New Section 41A - Commutation of widow's pension

22. The new section provides the spouse of a contributor who dies with the option to commute a portion of the pension payable to that spouse. The portion of the pension that may be commuted is an amount not exceeding the equivalent of two years of the deceased contributor's annual rate of pay at the time of death. The amendment also provides for the calculation of the reduced residual pension that is payable if the spouse elects to commute.

23. The amendment applies to the spouse of any contributor who dies on or after the date the amendment comes into operation. Special provision is also made to enable the amendment to apply, if necessary, to a prescribed class of spouses with effect from a prescribed date, being a date on or after 15 October 1990.

Clause 16 - Eligible children other than orphans

24. This clause amends section 42 of the Principal Act to provide for indexation of the fixed elements of children's pensions, corresponding to the amendments made to the Defence Forces Retirement Benefits Act.

Clause 17 - Eligible orphans

25. This clause amends section 43 of the Principal Act to index fixed elements of orphans' pensions.

Clause 18 - Increase in certain pensions

26. This clause amends section 98B of the Principal Act to provide the formula for indexation of children's (including orphans') pensions, with effect from 1 July 1990.

PART 6 - AMENDMENT OF THE
DEFENCE HOUSING AUTHORITY ACT 1987

Clause 19 - Principal Act

27. Formal.

Clause 20 - Reimbursement of cost of complying with directions

28. This clause corrects a spelling error.

PART 7 - AMENDMENT OF THE
NAVAL DEFENCE ACT 1910

Clause 21 - Principal Act

29. Formal.

Clause 22 - Repeal of section 41

30. This clause repeals section 41 of the Principal Act, which corresponds to the unnecessary provisions in section 63 of the Defence Act that are repealed by clause 6.

