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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

LAW AND JUSTICE LEGISLATION AMENDMENT BILL (NO. 2) 1992

EXPLANATORY MEMORANDUM

(Circulated by authority of the Hon. Michael Duffy, M.P.,
Attorney-General)



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LAW AND JUSTICE LEGISLATION AMENDMENT BILL (No. 2) 1992

GENERAL OUTLINE

This Bill makes amendments of a minor policy nature to legislation within the Attorney-General's portfolio and also makes some minor technical amendments to legislation.

The amendments to be made by the Bill will -

- (i) amend the Judges' Pensions Act 1968 to remove the current limitation, that a pension payable to the surviving spouse of a Judge or retired Judge ceases to be payable upon remarriage. Provision is also made for the reinstatement, in certain circumstances, of a pension which has ceased to be payable on remarriage;
- (ii) amend section 12 of the Defence Force Discipline Appeals Act 1955 to provide that the Minister, rather than the Governor-General, may approve leave of absence for members of the Defence Force Discipline Appeal Tribunal.
- (iii) make a number of minor amendments to the Family Law Act 1975 which will -
 - . amend the definition of 'order under this Act' in section 112AA for the purposes of Part XIII A to provide that a subpoena issued under the Rules of Court is an order under the Family Law Act;
 - . repeal sections 116A and 116B, which are redundant as legal aid bodies are now funded by grants under section 96 of the Constitution; and
 - . amend subsection 123(1)(u) to increase the maximum penalty which can be imposed for a breach of the Family Law Rules to the sum of \$5000.

FINANCIAL IMPACT STATEMENT

The amendments to the Judges' Pensions Act 1968 are expected to have a minor revenue impact, as pensions which would have ceased to be payable will now be payable. It is expected that the number of additional pensions payable will be small.

The other amendments will have no financial impact.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 - Short title

1. This clause provides for the Act to be cited as the Law and Justice Legislation Amendment Act (No. 2) 1992.

Clause 2 - Commencement

2. This clause provides that the Act will commence on the day on which it receives the Royal Assent.

PART 2 - AMENDMENT OF THE JUDGES' PENSIONS ACT 1968

Clause 3 - Principal Act

3. Clause 3 provides that for the purposes of Part 2, the Principal Act is the Judges' Pensions Act 1968.

Clause 4 - Pension to widow or widower on death of Judge

4. Clause 4 will amend section 7 by repealing subsection 7(2), which provides that a surviving spouse's pension ceases to be payable upon the remarriage of the surviving spouse.

Clause 5 - Pension to widow or widower on death of retired Judge

5. Clause 5 will amend section 8 by repealing subsection 8(2), which provides that a surviving spouse's pension ceases to be payable upon the remarriage of the surviving spouse.

Clause 6 - Insertion of new sections:

8A - Restoration of widow's or widower's pension entitlement if lost due to remarriage

8B - Notification of decision

6. Clause 6 will insert new sections 8A and 8B into the Judges' Pensions Act.

New Section 8A - Restoration of widow's or widower's pension entitlement if lost due to remarriage

7. New subsection 8A(1) will provide that a surviving spouse, who has lost her or his entitlement to a pension by virtue of having remarried, may apply to the Attorney-General for restoration of the pension.

8. New subsection 8A(2) will provide that the Attorney-General may direct that a pension be restored where he or she is satisfied that the applicant is in need or the restoration of the pension is otherwise justified.

9. New subsection 8A(3) will provide that the Attorney-General may, if special circumstances justify, direct that a pension be restored from a date earlier than the date of the application.

10. New subsection 8A(4) will provide that, where a date is specified under subsection 8A(3), the date must not be earlier than the commencement day of the Law and Justice Legislation Amendment Act (No.2) 1992.

11. New subsection 8A(5) will provide that, where the Attorney-General does not specify a date for the restoration of the pension, the pension is restored from the date of application.

12. New subsection 8A(6) contains definitions for the purpose of the section -

 "application day" is the day on which the application under subsection 8A(1) was made;

4.

,"commencement day" is the day on which the Law and Justice Legislation Amendment Act (No. 2) 1992 commences.

New Section 8B - Notification of decision

13. New subsection 8B(1) will provide that, where a decision is made under subsection 8A(1) not to restore the pension, the Attorney-General must give written notice of that decision. New subsection 8B(2) will provide that the written notice must include the reasons for the decision and notification of the applicant's entitlement to apply to the Administrative Appeals Tribunal for review of the decision under section 17A of the Judges' Pensions Act.

Clause 7 - Application for review

14. This clause will amend section 17A of the Judges' Pensions Act, which lists the decisions which are subject to review by the Administrative Appeals Tribunal, to provide that an application for review may be made to the Administrative Appeals Tribunal in respect of a refusal by the Attorney-General to restore a pension, or to restore a pension from a date before the application day.

PART 3 - AMENDMENT OF OTHER ACTS

Clause 8 - Amendment of other Acts

15. This clause will provide that the Acts specified in the Schedule are to be amended as set out in the Schedule.

SCHEDULE

DEFENCE FORCE DISCIPLINE APPEALS ACT 1955

Section 12 of the Defence Force Discipline Appeals Act will be amended by substituting "Minister" for "Governor-General". The amendment will simplify the process of approving leave of absence for members of the Defence Force Discipline Appeal Tribunal by providing that the Minister may approve leave of absence to members, rather than the Governor-General.

FAMILY LAW ACT 1975

Section 112AA - Interpretation

The Schedule will amend the definition of 'order under this Act' in section 112AA of the Family Law Act for the purposes of Part XIII A. This amendment will provide that a subpoena issued under the Rules of Court is an order under the Family Law Act. This will clarify that the enforcement provisions contained in Part XIII A will be applicable to breaches of a subpoena.

Section 116A - Financial Assistance Subject to Conditions.

The Schedule will repeal section 116A. This section is no longer required as legal aid bodies are now funded by grants under section 96 of the Constitution.

Section 116B - Payments Subject to Conditions.

The Schedule will repeal section 116B. This section is no longer required as legal aid bodies are now funded by grants under section 96 of the Constitution.

Section 123 - Rules of Court

The Schedule will amend subsection 123(1)(u) to increase the maximum penalty which can be imposed for a breach of the Family Law Rules to the sum of \$5000.

