



Defence Legislation Amendment Act 1988

No. 100 of 1988

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Defence Legislation Amendment Act 1988

No. 100 of 1988

An Act to amend certain Acts relating to Defence

[Assented to 2 December 1988]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Defence Legislation Amendment Act 1988*.

Commencement

2. (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Section 5 commences, or shall be taken to have commenced, as the case requires, immediately after the commencement of section 16 of the *Defence Legislation Amendment Act 1987*.

(3) Section 16 commences, or shall be taken to have commenced, as the case requires, immediately after the commencement of section 64 of that Act.

PART II—AMENDMENT OF DEFENCE ACT 1903

Principal Act

3. In this Part, “Principal Act” means the *Defence Act 1903*¹.

Resignation of officers

4. Section 17 of the Principal Act is amended:

- (a) by omitting from subparagraph (2) (c) (i) “special” (first occurring);
- (b) by omitting from subparagraph (2) (c) (ii) “or” (first occurring) and substituting “and”.

Discharge of soldiers who are enlisted until attaining retiring age

5. Section 39 of the Principal Act is amended:

- (a) by omitting from subparagraph (5) (b) (i) “special” (first occurring);
- (b) by omitting from subparagraph (5) (b) (ii) “or” (first occurring) and substituting “and”.

PART III—AMENDMENT OF DEFENCE FORCE RETIREMENT AND DEATH BENEFITS ACT 1973

Principal Act

6. In this Part, “Principal Act” means the *Defence Force Retirement and Death Benefits Act 1973*².

Commutation of retirement pay

7. Section 24 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsections:
 - “(1) A person who is, or is about to become, entitled to retirement pay may, by notice in writing given to the Authority, elect to commute a portion of his or her retirement pay in accordance with this section.
 - “(1AA) A notice under subsection (1) shall be given not earlier than 3 months before becoming entitled to retirement pay and not later than one year after becoming so entitled or such further period as the Authority, in special circumstances, allows.”;
- (b) by omitting “recipient member” (wherever occurring) and substituting “person”;
- (c) by omitting from paragraphs (2A) (a) and (b) “member” (wherever occurring) and substituting “person”;

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- (d) by omitting from subsection (2A) “was entitled” and substituting “was or will be entitled”;
- (e) by adding at the end of subsection (4) “or the day following the day on which the person retires, whichever is the later”.

Commutation of Class C invalidity pay

8. Section 32A of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:
 - “(1) This section applies to a member of the scheme who:
 - (a) is, or is to be, retired after the commencement of this section; and
 - (b) on retirement, is, or is likely to be, classified as Class C under section 30 and entitled to invalidity pay.”;
- (b) by omitting subsection (2) and substituting the following subsections:
 - “(2) A member of the scheme to whom this section applies may, by notice in writing given to the Authority, elect to commute a portion of his or her invalidity pay in accordance with this section.
 - “(2A) A notice under subsection (2) shall be given not earlier than 3 months before becoming entitled to invalidity pay and not later than one year after becoming so entitled or such further period as the Authority, in special circumstances, allows.”;
- (c) by omitting from subsection (4) “was entitled” and substituting “was or will be entitled”;
- (d) by inserting after subsection (5) the following subsection:
 - “(5A) If a member of the scheme:
 - (a) makes an election under this section before becoming entitled to invalidity pay; and
 - (b) is subsequently classified otherwise than as Class C under section 30;the election has no effect.”;
- (e) by adding at the end of subsection (6) “or the day following the day on which the member of the scheme retires, whichever is the later”.

PART IV—AMENDMENT OF DEFENCE HOUSING AUTHORITY ACT 1987

Principal Act

9. In this Part, “Principal Act” means the *Defence Housing Authority Act 1987*.

Interpretation

10. Section 3 of the Principal Act is amended by omitting from the definition of “appointed member” in subsection (1) “12 (1) (e)” and substituting “12 (1) (ca) or (e)”.

Constitution

11. Section 12 of the Principal Act is amended:

(a) by inserting after paragraph (1) (c) the following paragraph:

“(ca) the spouse of a member of the Defence Force, being a member of the Defence Force who is rendering continuous full-time service;”;

(b) by omitting from paragraph (1) (e) “3” and substituting “4”;

(c) by inserting after subsection (1) the following subsection:

“(1A) In paragraph (1) (ca):

‘spouse’, in relation to a person, includes a person of the opposite sex who, although not legally married to the first-mentioned person, lives with that person as the husband or wife of that person on a genuine domestic basis.”.

Termination of appointment

12. Section 21 of the Principal Act is amended by inserting after paragraph (2) (a) the following paragraph:

“(aa) a person appointed as a member referred to in paragraph 12 (1) (ca) ceases to come within the description in that paragraph;”.

Acting appointments

13. Section 23 of the Principal Act is amended by omitting from subsection (2) “12 (1) (e)” and substituting “12 (1) (ca) or (e)”.

PART V—AMENDMENT OF NAVAL DEFENCE ACT 1910

Principal Act

14. In this Part, “Principal Act” means the *Naval Defence Act 1910*.

Resignation of officers

15. Section 13 of the Principal Act is amended:

(a) by omitting from subparagraph (2) (c) (i) “special” (first occurring);

(b) by omitting from subparagraph (2) (c) (ii) “or” (first occurring) and substituting “and”.

Discharge of sailors who are enlisted until attaining retiring age

16. Section 28 of the Principal Act is amended:

(a) by omitting from subparagraph (5) (b) (i) “special” (first occurring);

(b) by omitting from subparagraph (5) (b) (ii) “or” (first occurring) and substituting “and”.

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NOTES

1. No. 20, 1903, as amended. For previous amendments, see No. 12, 1904; No. 15, 1909; Nos. 30 and 37, 1910; No. 15, 1911; No. 5, 1912; No. 36, 1914; No. 3, 1915; No. 36, 1917; Nos. 16 and 47, 1918; No. 1, 1927; No. 50, 1932; No. 45, 1934; Nos. 13, 38, 70 and 74, 1939; No. 4, 1941; No. 11, 1945; No. 78, 1947; No. 35, 1948; No. 71, 1949; No. 80, 1950; Nos. 19 and 59, 1951; No. 98, 1952; No. 20, 1953; No. 72, 1956; No. 92, 1964; No. 51, 1965; No. 93, 1966; No. 33, 1970; No. 216, 1973 (as amended by No. 20, 1974); No. 96, 1975 (as amended by No. 164, 1984); Nos. 4 and 20, 1977; Nos. 19 and 155, 1979; No. 132, 1979 (as amended by No. 80, 1982); No. 70, 1980; Nos. 61 and 178, 1981; No. 80, 1982; No. 153, 1982 (as amended by No. 164, 1984); No. 39, 1983; Nos. 164 and 165, 1984; Nos. 65 and 193, 1985; No. 76, 1986; and No. 65, 1987.
2. 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; Nos. 15 and 135, 1979; Nos. 61, 92 and 144, 1981; No. 164, 1984; No. 65, 1985; No. 93, 1986; and No. 65, 1987.
3. No. 101, 1987.
4. No. 30, 1910, as amended. For previous amendments, see No. 16, 1911; No. 21, 1912; No. 45, 1918; No. 45, 1934; No. 35, 1948; No. 72, 1949; No. 14, 1952; No. 93, 1964; No. 53, 1965; No. 93, 1966; No. 24, 1968; No. 14, 1971; No. 216, 1973 (as amended by No. 20, 1974); No. 96, 1975 (as amended by No. 164, 1984); No. 133, 1979; No. 61, 1981; No. 153, 1982 (as amended by No. 164, 1984); No. 39, 1983; Nos. 164 and 165, 1984; No. 65, 1985; No. 76, 1986; and No. 65, 1987.

*[Minister's second reading speech made in—
House of Representatives on 27 April 1988
Senate on 24 May 1988]*