

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

DEFENCE LEGISLATION AMENDMENT BILL 1987

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1985-86-87

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 18 March 1987

(*Minister for Defence*)

A BILL

FOR

**An Act to amend certain legislation relating to the Defence
Force, and for other purposes**

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

- 5 1. This Act may be cited as the *Defence Legislation Amendment Act 1987*.

Commencement

- 10 2. (1) Sections 1, 2, 3, 9 and 10, subsection 13 (1), sections 23, 24 and 25, subsection 26 (1), sections 27, 29, 31, 33, 34, 35, 36, 42, 43, 44, 45, 52, 53, 54, 55 and 58, subsection 61 (1), section 62, subsection 69 (1) and Parts IX and X shall come into operation on the day on which this Act receives the Royal Assent.

MR

(2) Sections 46 and 47 shall be deemed to have come into operation immediately after the commencement of Part X of the *Defence Force Retirement and Death Benefits Act 1973*.

(3) Subsection 37 (1) and Part VI shall be deemed to have come into operation immediately after the commencement of section 21 of the *Defence Force (Retirement and Death Benefits Amendments) Act (No. 2) 1977*. 5

(4) Subsection 37 (2) and sections 38, 39, 40 and 41 shall be deemed to have come into operation on 3 July 1985.

(5) Sections 48, 49, 56 and 57 shall come into operation on the day on which this Act receives the Royal Assent or, if this Act receives the Royal Assent on or after 1 July 1987, those sections shall be deemed to have come into operation on 30 June 1987. 10

(6) The remaining provisions of this Act shall come into operation on such day as is, or on such respective days as are, fixed by Proclamation. 15

PART II—AMENDMENTS OF THE AIR FORCE ACT 1923

Principal Act

3. The *Air Force Act 1923*¹ is in this Part referred to as the Principal Act.

4. Sections 4B and 4C of the Principal Act are repealed and the following sections are substituted: 20

Permanent Air Force

“4B. The Permanent Air Force consists of:

- (a) officers appointed to, and airmen enlisted in, that force; and
- (b) officers and airmen transferred to that force from: 25
 - (i) the Air Force Emergency Force; or
 - (ii) the Australian Air Force Reserve.

Air Force Emergency Force

“4C. The Air Force Emergency Force consists of:

- (a) officers appointed to, and airmen enlisted in, that force; and 30
- (b) officers and airmen transferred to that force from:
 - (i) the Permanent Air Force; or
 - (ii) the Australian Air Force Reserve.”.

Australian Air Force Reserve

5. Section 4D of the Principal Act is amended by omitting subsections (4), (5) and (6) and substituting the following subsection: 35

“(4) The Air Force Active Reserve, the Air Force General Reserve and the Air Force Specialist Reserve respectively consist of:

- (a) officers appointed to, and airmen enlisted in, that part of the Australian Air Force Reserve; and
- (b) officers and airmen transferred to that part of the Australian Air Force Reserve from:
 - 5 (i) the Permanent Air Force;
 - (ii) the Air Force Emergency Force; or
 - (iii) another part of the Australian Air Force Reserve.”.

Service of the Permanent Air Force

10 6. Section 4G of the Principal Act is amended by omitting subsection (2).

7. Section 4H of the Principal Act is repealed and the following section is substituted:

Service of the Air Force Emergency Force

15 “4H. (1) Members of the Air Force Emergency Force are not bound to render continuous full time air-force service otherwise than:

- (a) as provided by subsection (2); or
- (b) while they are members of a part of that force called out for continuous full time service under section 50D or 51 of the Defence Act.

20 “(2) A member of the Air Force Emergency Force may, at any time, voluntarily undertake to render continuous full time air-force service for a period specified by the member and, if the undertaking is accepted, the member is bound to render continuous full time air-force service for:

- (a) the specified period; or
- 25 (b) such periods within the specified period as the Chief of the Air Staff directs, in writing.”.

Service of the Australian Air Force Reserve

8. Section 4J of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsection:

30 “(1) Members of the Australian Air Force Reserve are not bound to render continuous full time air-force service otherwise than:

- (a) as provided in this section; or
- (b) while they are members of a part of that force called out for continuous full time service under section 50E, 50F or 51 of the Defence Act.”; and

35 (b) by omitting subsection (7).

Delegation

9. Section 8A of the Principal Act is amended by inserting after subsection (3) the following subsection:

“(3A) The delegate is, in the exercise of a power delegated under this section, subject to the directions of the Chief of the Air Staff.”.

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PART III—AMENDMENTS OF THE DEFENCE ACT 1903**Principal Act**

10. The *Defence Act 1903*² is in this Part referred to as the Principal Act.

Interpretation

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11. Section 4 of the Principal Act is amended by omitting “or in pay” (wherever occurring) from the definition of “Officer” in subsection (1).

Term of appointment of officers

12. Section 10A of the Principal Act is amended:

(a) by omitting from subsection (4) “any part of the Regular Army Emergency Reserve is called out for continuous full time military service” and substituting “the Regular Army Emergency Reserve, or any part of that force or of the Australian Army Reserve, is called out for continuous full time service”; and

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(b) by omitting from subsection (5) “military”.

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Resignation of officers

13. (1) Section 17 of the Principal Act is amended by inserting in subparagraph (2) (c) (ii) “to Australia” after “transport,” (last occurring).

(2) Section 17 of the Principal Act is amended:

(a) by omitting from paragraph (2) (b) “or” (last occurring); and

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(b) by adding at the end of subsection (2) the following word and paragraph:

“; or (d) in the case of an officer of the Regular Army Emergency Reserve or the Australian Army Reserve—it is tendered during a period for which the part of the force to which the officer belongs is called out for continuous full time service.”.

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Permanent Military Forces

14. Section 32 of the Principal Act is amended by omitting subsections (2), (3) and (4) and substituting the following subsections:

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“(2) The Australian Regular Army consists of:

(a) officers appointed to, and soldiers enlisted in, that force; and

(b) officers and soldiers transferred to that force from:

- (i) any other part of the Permanent Military Forces; or
- (ii) the Australian Army Reserve.

“(3) The Regular Army Supplement consists of:

- (a) officers appointed to, and soldiers enlisted in, that force; and
- (b) officers and soldiers transferred to that force from:
 - (i) any other part of the Permanent Military Forces; or
 - (ii) the Australian Army Reserve.

“(4) The Regular Army Emergency Reserve consists of:

- (a) officers appointed to, and soldiers enlisted in, that force; and
- (b) officers and soldiers transferred to that force from:
 - (i) any other part of the Permanent Military Forces; or
 - (ii) the Australian Army Reserve.”.

Australian Army Reserve

15. Section 32A of the Principal Act is amended by omitting subsections (4) and (5) and substituting the following subsections:

“(4) The Active Australian Army Reserve consists of:

- (a) officers appointed to, and soldiers enlisted in, that force; and
- (b) officers and soldiers transferred to that force from:
 - (i) the Permanent Military Forces; or
 - (ii) the Inactive Australian Army Reserve.

“(5) The Inactive Australian Army Reserve consists of:

- (a) officers appointed to, and soldiers enlisted in, that force; and
- (b) officers and soldiers transferred to that force from:
 - (i) the Permanent Military Forces; or
 - (ii) the Active Australian Army Reserve.”.

16. (1) Sections 36 to 42A (inclusive) of the Principal Act are repealed and the following sections are substituted:

Enlistment of soldiers

“36. (1) A person may volunteer to serve as a soldier in a particular part of the Army:

- (a) for a fixed period; or
- (b) until attaining retiring age.

“(2) If accepted for service in that part of the Army, the person shall take and subscribe, as prescribed, an oath or affirmation in the appropriate prescribed form.

“(3) The taking and subscribing of the oath or affirmation:

- (a) constitutes the enlistment of the person in that part of the Army for that period or until attaining retiring age, as the case may be; and

- (b) binds the person to serve in the Army in accordance with the tenor of the oath or affirmation.

Extension of period of enlistment

“37. (1) Where a soldier is enlisted in the Army otherwise than until attaining retiring age, the soldier may volunteer to extend the period of his or her enlistment: 5

- (a) by a fixed period; or
(b) until attaining retiring age.

“(2) If the offer is accepted, the period for which the soldier is enlisted is, by force of this subsection, extended accordingly. 10

Discharge of soldiers who are enlisted otherwise than until attaining retiring age

“38. (1) A soldier who is enlisted in the Australian Regular Army or Regular Army Supplement for a fixed period is, subject to subsections (3), (4) and (6), entitled to a discharge at the end of the period. 15

“(2) A soldier who is enlisted in the Regular Army Emergency Reserve or Australian Army Reserve for a fixed period is, subject to subsections (3), (5) and (6), entitled to a discharge at the end of the period or on earlier claiming a discharge under subsection (7).

“(3) Where the period for which a soldier is enlisted ends during a time of war or defence emergency, the period for which the soldier is enlisted is, by force of this subsection, extended until the end of that time. 20

“(4) Where the period for which a soldier of the Australian Regular Army or Regular Army Supplement is enlisted ends during a period for which the Regular Army Emergency Reserve, or any part of that force or of the Australian Army Reserve, is called out for continuous full time service, the period for which the soldier is enlisted is, by force of this subsection, extended until the end of the last-mentioned period. 25

“(5) Where the period for which a soldier of the Regular Army Emergency Reserve or Australian Army Reserve is enlisted ends during a period for which the part of the force to which the soldier belongs is called out for continuous full time service, the period for which the soldier is enlisted is, by force of this subsection, extended until the end of the last-mentioned period. 30

“(6) The regulations may make additional provision for the extension of the periods for which soldiers are enlisted. 35

“(7) Subject to subsection (8), a soldier who is enlisted in the Regular Army Emergency Reserve or Australian Army Reserve for a fixed period may claim a discharge before the end of the period if the soldier gives at least 3 months written notice to his or her commanding officer of his or her intention to claim a discharge. 40

“(8) A soldier may not claim a discharge under subsection (7) during:

- (a) a time of war or defence emergency;
- (b) a period during which the part of the force to which the soldier belongs is called out for continuous full time service; or
- (c) a period for which the soldier has volunteered to render continuous full time military service.

Discharge of soldiers who are enlisted until attaining retiring age

“39. (1) A soldier who is enlisted in the Army until attaining retiring age is entitled to a discharge before attaining retiring age on claiming a discharge under subsection (2).

“(2) Subject to subsections (4), (5) and (6), a soldier who is enlisted in the Army until attaining retiring age may claim a discharge before attaining retiring age if the soldier gives at least the appropriate period of notice, in writing, to his or her commanding officer of his or her intention to claim a discharge.

“(3) In subsection (2), ‘appropriate period of notice’ means:

- (a) in relation to a soldier of the Australian Regular Army or Regular Army Supplement—12 months or such lesser period as the Chief of the General Staff determines, in writing, in relation to the soldier, or a class of soldiers in which the soldier is included, having regard to such matters as are prescribed; or
- (b) in relation to a soldier of the Regular Army Emergency Reserve or Australian Army Reserve—3 months.

“(4) A soldier may not claim a discharge under subsection (2) during:

- (a) a time of war or defence emergency;
- (b) in the case of a soldier of the Australian Regular Army or Regular Army Supplement—a period for which the Regular Army Emergency Reserve, or any part of that force or of the Australian Army Reserve, is called out for continuous full time service; or
- (c) in the case of a soldier of the Regular Army Emergency Reserve or Australian Army Reserve—a period:
 - (i) during which the part of the force to which the soldier belongs is called out for continuous full time service; or
 - (ii) for which the soldier has volunteered to render continuous full time military service.

“(5) A soldier of the Australian Regular Army or Regular Army Supplement may not claim a discharge under subsection (2):

- (a) if the Chief of the General Staff certifies, in writing, that the discharge of the soldier would, in the opinion of the Chief of the General Staff, seriously prejudice the ability of the Army to carry out military operations that it is carrying out or may be required to carry out; or
- (b) in the case of a soldier:

- (i) who is engaged in, or has completed, in whole or in part, a course of special training, a period of employment on special duties or a period of service outside Australia; or
- (ii) who was appointed outside Australia or whose transport, or whose family's transport, to Australia was at the expense of the Commonwealth;

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the soldier has not completed the period of service that the Chief of the General Staff has determined, in writing, the soldier is required to complete.

“(6) Where the Chief of the General Staff directs, in writing, that a soldier of the Australian Regular Army or Regular Army Supplement should not claim a discharge under subsection (2) until the soldier has complied with a specified condition, the soldier may not claim a discharge under the subsection until the soldier has complied with the condition.

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Discharge of soldiers rendering service under Part IV

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“40. A soldier rendering service under Part IV is entitled to a discharge at the end of the time of war.

Soldier entitled to discharge to be released

“41. A soldier who becomes entitled to a discharge shall be released from service in the Army as soon as is reasonably practicable, but remains bound to serve until discharged.”

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(2) Sections 37 and 38 of the Principal Act as amended by subsection (1) apply in relation to a soldier who enlisted, or re-engaged to serve, in the Army under section 36 of the Principal Act and, in the case of a soldier who so re-engaged to serve, applies as if the period for which the soldier had enlisted or last enlisted, as the case may be, had been extended by the period of that re-engagement and the period of any earlier re-engagement since the soldier enlisted or last enlisted, as the case may be.

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(3) Notwithstanding the repeal of sections 36 and 37 of the Principal Act made by subsection (1), subsections 37 (2) and (3) of the Principal Act continue to apply in relation to a person who enlisted, or re-engaged to serve, in the Army before the commencement of this section, both in relation to the period of that enlistment or re-engagement and any period by which the enlistment is extended under section 37 of the Principal Act as amended by subsection (1).

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(4) Where a soldier gave notice to his or her commanding officer under subsection 40 (1) or 41 (1) of the Principal Act, section 38 of the Principal Act as amended by subsection (1) applies in relation to the notice as if that section had been in force when the notice was given and the notice had been given under subsection (7) of that section.

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(5) Section 41 of the Principal Act as amended by subsection (1) applies in relation to a soldier who became entitled to a discharge under the Principal Act.

Discharge of soldiers for prescribed reasons

17. Section 44 of the Principal Act is amended:

(a) by omitting from subsection (1) "A soldier" and substituting "Subject to the regulations, a soldier"; and

5 (b) by omitting paragraph (1) (a) and substituting the following paragraph:

"(a) that the soldier has not completed the period for which the soldier is enlisted; or".

Service of the Permanent Military Forces

10 18. Section 45 of the Principal Act is amended by omitting from paragraph (2) (b) "such service under section 46" and substituting "continuous full time service under section 50D".

Repeal of sections 46 and 48

19. Sections 46 and 48 of the Principal Act are repealed.

15 **Service of the Australian Army Reserve**

20. Section 50 of the Principal Act is amended by omitting from paragraph (1) (b) "such service under section 50A" and substituting "continuous full time service under section 50E, 50F".

Repeal of sections 50A and 50B

20 21. Sections 50A and 50B of the Principal Act are repealed.

22. After section 50C of the Principal Act the following heading and sections are inserted:

"Division 4—The Calling Out of the Forces

Calling out of Emergency Forces

25 "50D. (1) Where the Governor-General considers it desirable to do so for the defence of Australia, the Governor-General may, by notice in the *Gazette*, call out the Emergency Forces, or any part of the Emergency Forces, for continuous full time service.

30 "(2) Where the Emergency Forces are, or a part of the Emergency Forces is, called out by a notice under subsection (1), then, except in time of war or defence emergency, a member of the Emergency Forces, or of that part of the Emergency Forces, is, while the notice is in force in relation to the Emergency Forces or a part of the Emergency Forces in which the member is included, bound to render continuous full time naval, military or
35 air-force service, as the case requires, under this subsection for such period as a chief of staff directs, in writing, in relation to the member or a class of members in which the member is included.

"(3) Where a member of the Emergency Forces has completed a period of 12 consecutive months' service under subsection (2), the member shall

be released from service under that subsection as soon as is reasonably practicable, but remains bound to render service under that subsection until released.

“(4) Where a member of the Emergency Forces is released from service under subsection (2) (whether by virtue of subsection (3) or otherwise), the member is not again bound to render service under subsection (2) until the expiration of a period equal to the period of continuous full time service under that subsection completed by the member immediately before that release.

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“(5) Nothing in subsection (3) or (4) shall be taken to prevent a member of the Emergency Forces from being bound to render continuous full time naval, military or air-force service otherwise than under subsection (2).

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“(6) In time of war or defence emergency, a member of the Emergency Forces is bound to render continuous full time naval, military or air-force service, as the case requires, under this subsection for such period as a chief of staff directs, in writing, in relation to the member or a class of members in which the member is included.

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Calling out of Reserve Forces in time of war or defence emergency

“50E. (1) Where, in time of war or defence emergency, the Governor-General considers it desirable to do so for the defence of Australia, the Governor-General may, by Proclamation, call out the Reserve Forces, or any part of the Reserve Forces, for continuous full time service.

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“(2) Where the Reserve Forces are, or a part of the Reserve Forces is, called out by a Proclamation under subsection (1), a member of the Reserve Forces, or of that part of the Reserve Forces, is, while the Proclamation is in force in relation to the Reserve Forces or a part of the Reserve Forces in which the member is included, bound to render continuous full time naval, military or air-force service, as the case requires, under this section for such period as a chief of staff directs, in writing, in relation to the member or a class of members in which the member is included.

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Calling out of Reserve Forces otherwise than in time of war or defence emergency

“50F. (1) Where, otherwise than in time of war or defence emergency, the Governor-General considers it desirable to do so for the defence of Australia, the Governor-General may, by Proclamation, call out any part of the Reserve Forces for continuous full time service.

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“(2) A Proclamation under subsection (1) shall specify the period (not being a period exceeding 3 months) during which the Proclamation is to be in force.

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“(3) Where a Proclamation under subsection (1) is in force (whether by virtue of a Proclamation under this subsection or otherwise), the Governor-General may, by Proclamation, extend the period during which the first-

mentioned Proclamation is to be in force by a period not exceeding 3 months.

5 “(4) Where a part of the Reserve Forces is called out by a Proclamation under subsection (1), a member of that part of the Reserve Forces is, while the Proclamation is in force in relation to a part of the Reserve Forces in which the member is included, but subject to subsections (5) and (6), bound to render continuous full time naval, military or air-force service, as the case requires, under this section for such period as a chief of staff directs, in writing, in relation to the member or a class of members in which the member is included.

10 “(5) Where a member of the Reserve Forces has completed a period of 12 consecutive months’ service under this section, the member shall be released from service under this section as soon as is reasonably practicable, but remains bound to render service under this section until released.

15 “(6) Where a member of the Reserve Forces is released from service under this section (whether by virtue of subsection (5) or otherwise), the member is not again bound to render service under this section until the expiration of a period equal to the period of continuous full time service under this section completed by the member immediately before that release.

20 “(7) Nothing in subsection (5) or (6) shall be taken to prevent a member of the Reserve Forces from being bound to render continuous full time naval, military or air-force service otherwise than under this section.

Reasons for Proclamation to be communicated to the Parliament etc.

25 “50G. (1) A Proclamation under subsection 50E (1) or 50F (1) or (3) shall state the reasons for the making of the Proclamation.

“(2) Where the Governor-General makes a Proclamation under subsection 50E (1) or 50F (1) or (3), the Governor-General shall forthwith communicate the reasons for the making of the Proclamation to each House of the Parliament.

30 “(3) Where the Governor-General makes a Proclamation under subsection 50E (1) or 50F (1) during a session of the Parliament while a House of the Parliament is not sitting, the House shall, within 10 days after the making of the Proclamation, meet to receive the Governor-General’s communication under subsection (2) in relation to the Proclamation.”.

35 **Repeal of section 85**

23. Section 85 of the Principal Act is repealed.

Penalty against raising forces without authority

24. Section 118 of the Principal Act is amended by omitting “the Governor-General” and substituting “or under this Act or any other Act”.

25. After section 118A of the Principal Act the following section is inserted:

Enlistment of apprentices in time of war

“118B. In time of war, a person who is employed under articles of apprenticeship may volunteer to serve as a sailor, soldier or airman, and may enlist in the Australian Navy, the Australian Army or the Australian Air Force, notwithstanding anything contained in, or any obligation arising out of, those articles of apprenticeship.”.

Delegation

26. (1) Section 120A of the Principal Act is amended:

(a) by omitting from subsection (1) “sections 10 and 10B” and substituting “section 10”;

(b) by omitting subsection (2);

(c) by inserting in subsection (4) “17,” after “10C,”; and

(d) by inserting after subsection (6) the following subsection:

“(6A) The delegate is, in the exercise of a power delegated under this section, subject to the directions of the person who made the delegation.”.

(2) Section 120A of the Principal Act is amended:

(a) by inserting in subsection (4) “38,” after “26,”;

(b) by omitting from subsection (4) “46, 48,”; and

(c) by omitting from subsections (4), (4A) and (4B) “50B” and substituting “50D, 50E, 50F”.

27. After section 121 of the Principal Act the following sections are inserted:

Appointments etc. not invalid because of defect etc. in connection with appointment

“122. The appointment of an officer of the Australian Navy, the Australian Army or the Australian Air Force, the enlistment of a sailor, soldier or airman, and any extension of such an appointment or enlistment is not invalid because of a defect or irregularity in connection with the appointment, enlistment or extension, as the case may be.

Immunity from certain State and Territory laws

“123. A member of the Defence Force is not bound by any law of a State or Territory:

(a) that would require the member to have permission (whether in the form of a licence or otherwise) to use or to have in his or her possession, or would require the member to register, a vehicle, vessel, animal, firearm or other thing belonging to the Commonwealth; or

(b) that would require the member to have permission (whether in the form of a licence or otherwise) to do anything in the course of his or her duties as a member of the Defence Force.”.

Repeal of section 123BA

28. Section 123BA of the Principal Act is repealed.

Repeal of Part XV

29. Part XV of the Principal Act is repealed.

5 **Repeal of Schedule 2**

30. Schedule 2 to the Principal Act is repealed.

**PART IV—AMENDMENTS OF THE DEFENCE FORCE
DISCIPLINE ACT 1982**

Principal Act

10 31. The *Defence Force Discipline Act 1982*³ is in this Part referred to as the Principal Act.

Interpretation

32. Section 3 of the Principal Act is amended:

- 15 (a) by omitting “or in pay” (wherever occurring) from the definition of “officer” in subsection (1); and
(b) by omitting subsection (14).

Dealing with charge by subordinate summary authority

33. Section 111 of the Principal Act is amended by omitting from paragraph (2) (c) “who appointed him” and substituting “of the authority”.

20 **Election of trial or punishment**

34. (1) Section 131 of the Principal Act is amended:

(a) by inserting after subsection (2) the following subsections:

“(2A) Where:

- 25 (a) a summary authority convicts a person under paragraph 130 (1) (a) of an offence; and
(b) the summary authority is of the opinion that an elective punishment should be imposed on the person for the offence;
the summary authority shall give the person an opportunity to elect to be punished by a court martial or by a Defence Force magistrate for the offence.

30 “(2B) Where:

- 35 (a) a person convicted of an offence by a summary authority is given an opportunity, in accordance with subsection (2A), to elect to be punished by a court martial or by a Defence Force magistrate for the offence but fails to do so; or
(b) a person convicted of an offence by a summary authority elects under subsection (2A) to be punished by a court martial or by a Defence Force magistrate for the offence but

the summary authority considers that the exigencies of service do not permit the convening of a court martial or the reference of the conviction to a Defence Force magistrate; the summary authority shall take action under Part IV in relation to the convicted person.”;

- (b) by inserting in subsection (4) “, (2A)” after “(1)”;
- (c) by inserting in paragraph (7) (b) “(2A) or” before “(3)”;
- (d) by omitting from paragraph (7) (b) “or” (last occurring); and
- (e) by inserting after paragraph (7) (b) the following paragraph:

“(ba) a person convicted by a summary authority elects under subsection (2A) to be punished by a court martial or by a Defence Force magistrate but the summary authority considers that the exigencies of service do not permit the convening of a court martial or the reference of the conviction to a Defence Force magistrate; or”.

(2) Subsection 131 (2A) of the Principal Act as amended by subsection (1) applies in relation to a person who is convicted of an offence after the commencement of this section.

Review of action under Part IV

35. Section 162 of the Principal Act is amended:

- (a) by inserting after subsection (4) the following subsection:

“(4A) Where in a review it appears to the reviewing authority that a summary authority has imposed an elective punishment on a convicted person by virtue of paragraph 131 (2B) (b) in circumstances where the exigencies of service would have permitted the convening of a court martial or the reference of the conviction to a Defence Force magistrate, the reviewing authority shall quash that punishment.”; and

- (b) by omitting from subsection (5) “or (4)” and substituting “, (4) or (4A)”.

PART V—AMENDMENTS OF THE DEFENCE FORCE RETIREMENT AND DEATH BENEFITS ACT 1973

Principal Act

36. The *Defence Force Retirement and Death Benefits Act 1973*^a is in this Part referred to as the Principal Act.

Interpretation

37. (1) Section 3 of the Principal Act is amended:

- (a) by omitting “while the deceased person was a recipient member and not later than 5 years before the deceased person’s death” from sub-paragraph (e) (ii) (A) of the definition of “widow” in subsection

(1) and substituting “not later than 5 years before the deceased person’s death but after the deceased person became a recipient member and after the deceased person attained the age of 60 years”;

5 (b) by omitting “while the deceased person was a contributing member and not later than 3 years before the deceased person’s death” from sub-subparagraph (e) (ii) (B) of the definition of “widow” in subsection (1) and substituting “not later than 3 years before the deceased person’s death but before the deceased person became a recipient member or attained the age of 60 years, whichever last occurred”; and

10 (c) by omitting “while the deceased person was a contributing member but later than 3 years before the deceased person’s death” from sub-subparagraph (e) (ii) (C) of the definition of “widow” in subsection (1) and substituting “later than 3 years before the deceased person’s death but before the deceased person became a recipient member or attained the age of 60 years, whichever last occurred”.

(2) Section 3 of the Principal Act is amended by inserting after the definition of “service” in subsection (1) the following definition:

20 “‘service offence’ has the same meaning as in the *Defence Force Discipline Act 1982*”.

Continuity of service

38. Section 5 of the Principal Act is amended by omitting from subsection (1) all the words after “period” and substituting “that is deemed by section 6 to be a period of non-effective service in relation to the member”.

25 Non-effective service

39. Section 6 of the Principal Act is amended:

- (a) by inserting in subsection (1) “and ending before 3 July 1985” after “scheme” (last occurring); and
 (b) by adding at the end the following subsections:

30 “(3) Where a member of the scheme was on leave of absence without pay for a period:

(a) that commenced:

(i) on or after 3 July 1985; or

35 (ii) on or after the date of commencement of the scheme and ended on or after 3 July 1985; and

(b) that exceeded 21 consecutive days;

the period shall be deemed to be a period of non-effective service in relation to the member.

“(4) Where:

40 (a) the salary and allowances of a member of the scheme in respect of a period were, on or after 3 July 1985, forfeited, in whole or in part, under regulations made under the *Defence Act 1903*;

- (b) the period exceeded 21 consecutive days; and
- (c) an amount equal to the amount of the salary and allowances forfeited was not subsequently paid, and is not payable, under those regulations to the member;

the period shall be deemed to be a period of non-effective service in relation to the member. 5

“(5) Where:

- (a) a member of the scheme was in custody under the *Defence Force Discipline Act 1982* awaiting or undergoing trial for a service offence; 10
- (b) the period for which the member was in custody awaiting or undergoing trial:
 - (i) commenced:
 - (A) on or after 3 July 1985; or
 - (B) on or after the date of commencement of the scheme and ended on or after 3 July 1985; and 15
 - (ii) exceeded 21 consecutive days;
- (c) the member was subsequently convicted of the offence or another service offence at the trial; and
- (d) either of the following subparagraphs apply: 20
 - (i) the conviction was not quashed or set aside;
 - (ii) the conviction was quashed or set aside and:
 - (A) a conviction for another service offence was substituted; or
 - (B) the member was ordered to be tried again for the offence of which the member was convicted, or for another service offence, and was convicted of a service offence at the subsequent trial; 25

the period shall be deemed to be a period of non-effective service in relation to the member. 30

“(6) Where:

- (a) 2 or more consecutive periods of 24 hours or more would, but for paragraph (3) (b), paragraph (4) (b) or subparagraph (5) (b) (ii) or 2 or all of those provisions, be deemed to be periods of non-effective service in relation to a member of the scheme; and 35
- (b) the periods exceed, in the aggregate, 21 days;

the periods shall be deemed to be periods of non-effective service in relation to the member. 40

“(7) Where:

- (a) a period of 24 hours or more would, but for paragraph (3) (b), paragraph (4) (b) or subparagraph (5) (b) (ii), be

deemed to be a period of non-effective service in relation to a member of the scheme; and

- (b) the period is consecutive with a period that, under subsection (3), (4) or (5), is deemed to be a period of non-effective service in relation to the member;

the period shall be deemed to be a period of non-effective service in relation to the member.

“(8) Where:

- (a) a period of 24 hours or more would, but for paragraph (3) (b), paragraph (4) (b) or subparagraph (5) (b) (ii), be deemed to be a period of non-effective service in relation to a member of the scheme; and

- (b) the period is consecutive with a period that, under subsection (7) or this subsection, is deemed to be a period of non-effective service in relation to the member;

the period shall be deemed to be a period of non-effective service in relation to the member.”.

Invalidity or incapacity arising during absence without leave exceeding 60 days

40. Section 29 of the Principal Act is amended:

- (a) by omitting from paragraph (a) “and”; and
 (b) by inserting after paragraph (b) the following paragraph:

“(c) in a case where the period when the contributing member was absent without leave commenced on or after 3 July 1985 or commenced before that day and ended on or after that day—both of the following subparagraphs apply:

- (i) the salary and allowances of the member in respect of the period were forfeited under regulations made under the *Defence Act 1903*;
 (ii) an amount equal to the amount of the salary and allowances forfeited was not subsequently paid, and is not payable, under those regulations to the member;”.

Death of contributing member after 60 days absence without leave

41. Section 49 of the Principal Act is amended:

- (a) by omitting from paragraph (1) (a) “and” (last occurring); and
 (b) by inserting after paragraph (1) (a) the following paragraph:

“(aa) in a case where the member dies on or after 3 July 1985—both of the following subparagraphs apply:

- (i) the salary and allowances of the member in respect of the period of absence without leave are forfeited under regulations made under the *Defence Act 1903*;
 (ii) an amount equal to the amount of the salary and allowances forfeited is not subsequently paid, and is

not payable, under those regulations to the legal personal representative of the member; and”.

Interpretation

42. Section 50 of the Principal Act is amended by omitting paragraph (c) of the definition of “re-instated candidate” and substituting the following paragraph: 5

“(c) is a person referred to in subsection 10 (2), 11 (2) or 12 (2) of the Defence (Parliamentary Candidates) Act;”.

Effect of election under section 51

43. Section 52 of the Principal Act is amended by omitting from subsection (1) “subsection 10 (2), subsection 11 (2), subsection 12 (2) and paragraph 15 (4) (b)” and substituting “subsections 10 (2), 11 (2) and 12 (2)”. 10

Re-instated candidates to whom Part does not apply

44. Section 54 of the Principal Act is amended by omitting from subsection (1) “subsection 10 (2), subsection 11 (2), subsection 12 (2) and paragraph 15 (4) (b)” and substituting “subsections 10 (2), 11 (2) and 12 (2)”. 15

Circumstances in which person entitled to deferred benefits

45. Section 78 of the Principal Act is amended by omitting paragraph (3) (c) and substituting the following paragraph: 20

“(c) any period (not being a period of public employment referred to in paragraph (b)) occurring after the person ceased or last ceased to be an eligible member of the Defence Force and after the person has completed 20 years’ eligible employment.”. 25

Interpretation

46. Section 85 of the Principal Act is amended by omitting paragraph (a) of the definition of “period of previous contributory qualifying service” in subsection (1) and substituting the following paragraph: 30

“(a) any periods of service of the existing contributor before 1 October 1972 in respect of which, before that day, the existing contributor had contributed or was liable to contribute under the previous legislation, other than: 30

(i) any period that under the regulations is not to be taken into account for the purposes of this paragraph; 35

(ii) in a case where the existing contributor had, whether before or after that day, received or become entitled to receive, a refund of the contributions paid by the existing contributor under the previous legislation in respect of a period—that period; or 40

(iii) in a case where the existing contributor had, before that day, retired and did not, without a break in continuity of

service, again become a member of the Defence Force on continuous full-time service—any other period of service before the existing contributor so retired or last retired; and”.

5 **Certain periods of previous service deemed to be periods of effective service**

47. Section 91 of the Principal Act is amended:

(a) by omitting from subsection (1) “A period” and substituting “Subject to subsection (1A), a period”; and

10 (b) by inserting after subsection (1) the following subsection:

“(1A) Where a period would be a period of effective service in relation to a person by virtue of section 63 or 64 if the person were to make an election under subsection 63 (1) or 64 (1), as the case requires, and comply with subsection 63 (2) or 64 (2), as the case requires, subsection (1) of this section does not apply in relation to the period unless the period is also a period of effective service in relation to the person by virtue of section 63 or 64.”.

Interpretation

20 48. Section 98A of the Principal Act is amended by omitting from subsection (2) “6 State” and substituting “8”.

Increase in certain pensions

49. Section 98B of the Principal Act is amended:

(a) by omitting from subsection (1) “6 State” (wherever occurring) and substituting “8”;

25 (b) by omitting from subsection (1) “1974” and substituting “1985”;

(c) by omitting from subsection (3) “6 State” (wherever occurring) and substituting “8”; and

(d) by omitting from subsection (3) “1974” and substituting “1985”.

30 **PART VI—AMENDMENTS OF THE DEFENCE FORCE
(RETIREMENT AND DEATH BENEFITS AMENDMENTS) ACT
(No. 2) 1977**

Principal Act

50. The *Defence Force (Retirement and Death Benefits Amendments) Act (No. 2) 1977* is in this Part referred to as the Principal Act.

35 **Interpretation**

51. Section 21 of the Principal Act is amended by inserting in subsections (3) and (4) “of this section and subsection 37 (1) of the *Defence Legislation Amendment Act 1987*” after “subsection (1)”.

**PART VII—AMENDMENTS OF THE DEFENCE FORCES
RETIREMENT BENEFITS ACT 1948**

Principal Act

52. The *Defence Forces Retirement Benefits Act 1948*⁶ is in this Part referred to as the Principal Act.

5

Interpretation

53. Section 76 of the Principal Act is amended by omitting “, 12 (2) or 15 (4)” from paragraph (c) of the definition of “re-instated candidate” and substituting “or 12 (2)”.

Provisions applicable to re-instated candidates to whom Part does not apply

10

54. Section 80 of the Principal Act is amended by omitting from paragraph (1) (a) “, and paragraph 15 (4) (b),”.

Circumstances in which person entitled to deferred benefits

55. Section 82ZB of the Principal Act is amended by omitting paragraph (3) (c) and substituting the following paragraph:

15

“(c) a period (not being a period of public employment referred to in paragraph (b)) occurring after the person ceased or last ceased to be a member and after the person has completed 20 years’ eligible employment.”.

20

Interpretation

56. Section 83 of the Principal Act is amended by omitting from subsection (2) “6 State” and substituting “8”.

Increase in certain pensions

57. Section 84 of the Principal Act is amended:

25

- (a) by omitting from subsection (1) “6 State” (wherever occurring) and substituting “8”;
- (b) by omitting from subsection (1) “1974” and substituting “1985”;
- (c) by omitting from subsection (3) “6 State” (wherever occurring) and substituting “8”; and
- (d) by omitting from subsection (3) “1974” and substituting “1985”.

30

PART VIII—AMENDMENTS OF THE NAVAL DEFENCE ACT 1910

Principal Act

58. The *Naval Defence Act 1910*⁷ is in this Part referred to as the Principal Act.

35

Interpretation

59. Section 3 of the Principal Act is amended by omitting “or in pay” from the definition of “officer”.

Term of appointment of officers

60. Section 9 of the Principal Act is amended:

- 5 (a) by omitting from subsection (4) "any part of the Naval Emergency Reserve Forces is called out for continuous full time naval service" and substituting "the Naval Emergency Reserve Forces, or any part of those forces or of the Australian Naval Reserve, is called out for continuous full time service"; and
- (b) by omitting from subsection (5) "naval".

Resignation of officers

10 61. (1) Section 13 of the Principal Act is amended by inserting in subparagraph (2) (c) (ii) "to Australia" after "transport," (last occurring).

(2) Section 13 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (b) "or" (last occurring); and
- 15 (b) by adding at the end of subsection (2) the following word and paragraph:
 - 20 " ; or (d) in the case of an officer of the Naval Emergency Reserve Forces or the Australian Naval Reserve—it is tendered during a period for which the part of the force to which the officer belongs is called out for continuous full time service".

Repeal of section 18

62. Section 18 of the Principal Act is repealed.

63. Sections 20, 21 and 22 of the Principal Act are repealed and the following sections are substituted:

25 **Permanent Naval Forces**

"20. The Permanent Naval Forces consist of:

- (a) officers appointed to, and sailors enlisted in, those forces; and
- (b) officers and sailors transferred to those forces from:
 - 30 (i) the Naval Emergency Reserve Forces; or
 - (ii) the Australian Naval Reserve.

Naval Emergency Reserve Forces

"21. The Naval Emergency Reserve Forces consist of:

- (a) officers appointed to, and sailors enlisted in, those forces; and
- (b) officers and sailors transferred to those forces from:
 - 35 (i) the Permanent Naval Forces; or
 - (ii) the Australian Naval Reserve.

Australian Naval Reserve

“22. The Australian Naval Reserve consists of:

- (a) officers appointed to, and sailors enlisted in, that force; and
- (b) officers and sailors transferred to that force from:
 - (i) the Permanent Naval Forces; or
 - (ii) the Naval Emergency Reserve Forces.”.

5

64. (1) Sections 25 to 29 (inclusive) of the Principal Act are repealed and the following sections are substituted:

Enlistment of sailors

“25. (1) A person may volunteer to serve as a sailor in a particular part of the Navy:

10

- (a) for a fixed period; or
- (b) until attaining retiring age.

“(2) If accepted for service in that part of the Navy, the person shall take and subscribe, as prescribed, an oath or affirmation in the appropriate prescribed form.

15

“(3) The taking and subscribing of the oath or affirmation:

- (a) constitutes the enlistment of the person in that part of the Navy for that period or until attaining retiring age, as the case may be; and
- (b) binds the person to serve in the Navy in accordance with the tenor of the oath or affirmation.

20

Extension of period of enlistment

“26. (1) Where a sailor is enlisted in the Navy otherwise than until attaining retiring age, the sailor may volunteer to extend the period of his or her enlistment:

25

- (a) by a fixed period; or
- (b) until attaining retiring age.

“(2) If the offer is accepted, the period for which the sailor is enlisted is, by force of this subsection, extended accordingly.

30

Discharge of sailors who are enlisted otherwise than until attaining retiring age

“27. (1) A sailor who is enlisted in the Permanent Naval Forces for a fixed period is, subject to subsections (3), (4) and (6), entitled to a discharge at the end of the period.

35

“(2) A sailor who is enlisted in the Naval Emergency Reserve Forces or Australian Naval Reserve for a fixed period is, subject to subsections (3), (5) and (6), entitled to a discharge at the end of the period or on earlier claiming a discharge under subsection (7).

“(3) Where the period for which a sailor is enlisted ends during a time of war or defence emergency, the period for which the sailor is enlisted is, by force of this subsection, extended until the end of that time.

5 “(4) Where the period for which a sailor in the Permanent Naval Forces is enlisted ends during a period for which the Naval Emergency Reserve Forces, or any part of those forces or of the Australian Naval Reserve, is called out for continuous full time service, the period for which the sailor is enlisted is, by force of this subsection, extended until the end of the last-mentioned period.

10 “(5) Where the period for which a sailor in the Naval Emergency Reserve Forces or Australian Naval Reserve is enlisted ends during a period for which the part of the forces or force to which the sailor belongs is called out for continuous full time service, the period for which the sailor is enlisted is, by force of this subsection, extended until the end of the last-mentioned period.

15 “(6) The regulations may make additional provision for the extension of the periods for which sailors are enlisted.

20 “(7) Subject to subsection (8), a sailor who is enlisted in the Naval Emergency Reserve Forces or Australian Naval Reserve for a fixed period may claim a discharge before the end of the period if the sailor gives at least 3 months written notice to his or her commanding officer of his or her intention to claim a discharge.

“ (8) A sailor may not claim a discharge under subsection (7) during:

- 25 (a) a time of war or defence emergency;
- (b) a period during which the part of the forces or force to which the sailor belongs is called out for continuous full time service; or
- (c) a period for which the sailor has volunteered to render continuous full time naval service.

Discharge of sailors who are enlisted until attaining retiring age

30 “28. (1) A sailor who is enlisted in the Navy until attaining retiring age is entitled to a discharge before attaining retiring age on claiming a discharge under subsection (2).

35 “(2) Subject to subsections (4), (5) and (6), a sailor who is enlisted in the Navy until attaining retiring age may claim a discharge before attaining retiring age if the sailor gives at least the appropriate period of notice, in writing, to his or her commanding officer of his or her intention to claim a discharge.

“ (3) In subsection (2), ‘appropriate period of notice’ means:

- 40 (a) in relation to a sailor of the Permanent Naval Forces—12 months or such lesser period as the Chief of Naval Staff determines, in writing, in relation to the sailor, or a class of sailors in which the sailor is included, having regard to such matters as are prescribed; or

- (b) in relation to a sailor of the Naval Emergency Reserve Forces or Australian Naval Reserve—3 months.

“(4) A sailor may not claim a discharge under subsection (2) during:

- (a) a time of war or defence emergency;
- (b) in the case of a sailor of the Permanent Naval Forces—a period for which the Naval Emergency Reserve Forces, or any part of those forces or of the Australian Naval Reserve, is called out for continuous full time service; or 5
- (c) in the case of a sailor of the Naval Emergency Reserve Forces or Australian Naval Reserve—a period: 10
- (i) during which the part of the forces or force to which the sailor belongs is called out for continuous full time service; or
- (ii) for which the sailor has volunteered to render continuous full time naval service. 15

“(5) A sailor of the Permanent Naval Forces may not claim a discharge under subsection (2):

- (a) if the Chief of Naval Staff certifies, in writing, that the discharge of the sailor would, in the opinion of the Chief of Naval Staff, seriously prejudice the ability of the Navy to carry out naval operations that it is carrying out or may be required to carry out; or 20
- (b) in the case of a sailor:
- (i) who is engaged in, or has completed, in whole or in part, a course of special training, a period of employment on special duties or a period of service outside Australia; or 25
- (ii) who was appointed outside Australia or whose transport, or whose family’s transport, to Australia was at the expense of the Commonwealth;

the sailor has not completed the period of service that the Chief of Naval Staff has determined, in writing, the sailor is required to complete. 30

“(6) Where the Chief of Naval Staff directs, in writing, that a sailor of the Permanent Naval Forces should not claim a discharge under subsection (2) until the sailor has complied with a specified condition, the sailor may not claim a discharge under the subsection until the sailor has complied with the condition. 35

Discharge of sailors rendering service under Part IV of Defence Act

“29. A sailor rendering service under Part IV of the Defence Act is entitled to a discharge at the end of the time of war. 40

Sailor entitled to discharge to be released

“29A. A sailor who becomes entitled to a discharge shall be released from service in the Navy as soon as is reasonably practicable, but remains bound to serve until discharged.”.

5 (2) Sections 26 and 27 of the Principal Act as amended by subsection
(1) apply in relation to a sailor who enlisted, or re-engaged to serve, in the
Navy under section 25 of the Principal Act and, in the case of a sailor who
so re-engaged to serve, applies as if the period for which the sailor had
10 enlisted or last enlisted, as the case may be, had been extended by the
period of that re-engagement and the period of any earlier re-engagement
since the sailor enlisted or last enlisted, as the case may be.

(3) Notwithstanding the repeal of sections 25 and 26 of the Principal
Act made by subsection (1), subsections 26 (2) and (3) of the Principal Act
15 continue to apply in relation to a person who enlisted, or re-engaged to
serve, in the Navy before the commencement of this section, both in relation
to the period of that enlistment or re-engagement and any period by which
the enlistment is extended under section 26 of the Principal Act as amended
by subsection (1).

(4) Where a sailor gave notice to his or her commanding officer under
20 subsection 29 (1) of the Principal Act, section 27 of the Principal Act as
amended by subsection (1) applies in relation to the notice as if that section
had been in force when the notice was given and the notice had been given
under subsection (7) of that section.

(5) Section 29A of the Principal Act as amended by subsection (1)
25 applies in relation to a sailor who became entitled to a discharge under the
Principal Act.

Discharge of sailors for prescribed reasons

65. Section 30 of the Principal Act is amended:

- 30 (a) by omitting from subsection (1) “A sailor” and substituting “Subject
to the regulations, a sailor”; and
(b) by omitting paragraph (1) (a) and substituting the following
paragraph:
“(a) that the sailor has not completed the period for which the
sailor is enlisted; or”.

35 66. Section 32 of the Principal Act is repealed and the following section
is substituted:

Service of the Naval Emergency Reserve Forces

“32. (1) Members of the Naval Emergency Reserve Forces are not
bound to render continuous full time naval service otherwise than:

- 40 (a) as provided by subsection (2); or

- (b) while they are members of a part of those forces called out for continuous full time service under section 50D or 51 of the Defence Act.

“(2) A member of the Naval Emergency Reserve Forces may, at any time, voluntarily undertake to render continuous full time naval service for a period specified by the member and, if the undertaking is accepted, the member is bound to render continuous full time naval service for: 5

- (a) the specified period; or
 (b) such periods within the specified period as the Chief of Naval Staff directs, in writing.” 10

Service of the Australian Naval Reserve

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

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) Members of the Australian Naval Reserve are not bound to render continuous full time naval service otherwise than: 15

- (a) as provided in this section; or
 (b) while they are members of a part of that force called out for continuous full time service under section 50E, 50F or 51 of the Defence Act.”; and

- (b) by omitting subsection (7). 20

Repeal of section 43

68. Section 43 of the Principal Act is repealed.

Delegation

69. (1) Section 44B of the Principal Act is amended:

- (a) by omitting from subsection (1) “sections 8 and 10” and substituting “section 8”; 25
 (b) by inserting in subsection (3) “13,” after “11,”; and
 (c) by inserting after subsection (6) the following subsection:

“(6A) The delegate is, in the exercise of a power delegated under this section, subject to the directions of the person who made the delegation.”. 30

- (2) Section 44B of the Principal Act is amended by inserting in subsection (3) “28,” after “17A,”.

Repeal of the Schedule

70. The Schedule to the Principal Act is repealed. 35

**PART IX—AMENDMENTS OF THE SERVICES TRUST FUNDS
ACT 1947**

Principal Act

5 71. The *Services Trust Funds Act 1947*⁸ is in this Part referred to as the Principal Act.

Interpretation

72. Section 4 of the Principal Act is amended by omitting the definitions of “child”, “the prescribed date” and “the time of war”.

Repeal of Part III

10 73. Part III of the Principal Act is repealed.

Repeal of section 33

74. Section 33 of the Principal Act is repealed.

**PART X—AMENDMENTS OF THE SUPPLY AND DEVELOPMENT
ACT 1939**

15 **Principal Act**

75. The *Supply and Development Act 1939*⁹ is in this Part referred to as the Principal Act.

Interpretation

76. Section 4 of the Principal Act is amended:

20 (a) by inserting after the definition of “Australia” the following definition:

25 “‘Commonwealth authority’ means a company or other body corporate incorporated under a law of the Commonwealth or of a State or Territory, being a company or body corporate in which the Commonwealth has a controlling interest;”;

(b) by inserting after the definition of “goods” the following definition:

 “‘industrial award’ means an industrial award as defined in subsection 7 (1) of the *Public Service Act 1922*;”;

(c) by inserting after the definition of “officer” the following definition:

30 “‘Secretary’ means the Secretary to the Department;”.

77. (1) Section 10 of the Principal Act is repealed and the following sections are substituted:

Employment of persons in connection with undertakings

35 “10. (1) The Secretary may employ such persons as the Secretary considers necessary in connection with any undertaking established by the Governor-General under section 9.

“(2) A person shall not be employed under subsection (1) for the performance of work of a kind that the Public Service Board has directed, in writing, is to be performed by persons appointed or employed under the *Public Service Act 1922*.

“(3) The *Public Service Act 1922* does not apply in relation to persons employed under subsection (1). 5

“(4) The terms and conditions of employment of persons employed under subsection (1) shall be as prescribed by, or determined in accordance with, the regulations.

“(5) A regulation, or a determination made under a regulation, made for the purposes of subsection (4) may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification: 10

(a) any of the provisions of:

(i) an Act;

(ii) any regulations or rules made under an Act; 15

(iii) a determination made under section 82D of the *Public Service Act 1922*;

(iv) an industrial award; or

(v) another determination made under a regulation made for the purposes of subsection (4); 20

as in force at a particular time or as in force from time to time; or

(b) any matter contained in any other instrument or writing existing at the time when the regulation or determination takes effect;

but a regulation, and a determination made under a regulation, made for the purposes of subsection (4) shall not, except as provided by this subsection, make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force from time to time. 25

“(6) Nothing in this section affects the application of the *Conciliation and Arbitration Act 1904* in relation to persons employed under subsection (1). 30

Transfer of persons where functions are to be performed by a Commonwealth authority

“10A. (1) Where the Minister certifies in writing that a function that has been performed by persons employed under subsection 10 (1) is to be performed by a Commonwealth authority, the Secretary may, by writing published in the *Gazette*, declare that specified persons or classes of persons are in the employment of the Commonwealth authority. 35

“(2) A person specified in, or included in a class of persons specified in, a declaration under subsection (1): 40

(a) on the day specified in the declaration for the purpose of this subsection, ceases to be employed under subsection 10 (1); and

(b) from and including that day, is employed by the Commonwealth authority specified in the declaration.

5 “(3) For the purpose of facilitating a transfer of persons to the employment of a Commonwealth authority, the Commonwealth authority may, notwithstanding anything in any other law (other than an industrial award), determine special terms or conditions of employment that are to apply in relation to the persons (other than terms and conditions with respect to superannuation).”

10 (2) A person who, immediately before the commencement of this section, was engaged in employment under the Principal Act in connection with an undertaking established by the Governor-General under the Principal Act shall, on the commencement of this section, be deemed to have been employed by the Secretary under subsection 10 (1) of the Principal Act as amended by subsection (1) of this section in connection with the undertaking.

15 (3) Any direction by the Public Service Board in force under subsection 10 (1) of the Principal Act immediately before the commencement of this section shall, after the commencement of this section, be deemed to have been given by the Public Service Board under subsection 10 (2) of the Principal Act as amended by subsection (1) of this section.

20 (4) Regulations in force under the Principal Act for the purposes of subsection 10 (2) of the Principal Act immediately before the commencement of this section shall, after the commencement of this section, be deemed to have been made for the purposes of subsection 10 (4) of the Principal Act as amended by subsection (1) of this section.

25 78. After section 26 of the Principal Act the following section is inserted:

Delegation by Secretary

“26A. (1) The Secretary may, either generally or as otherwise provided by the instrument of delegation, by writing, delegate to an officer all or any of his or her powers under this Act, other than this power of delegation.

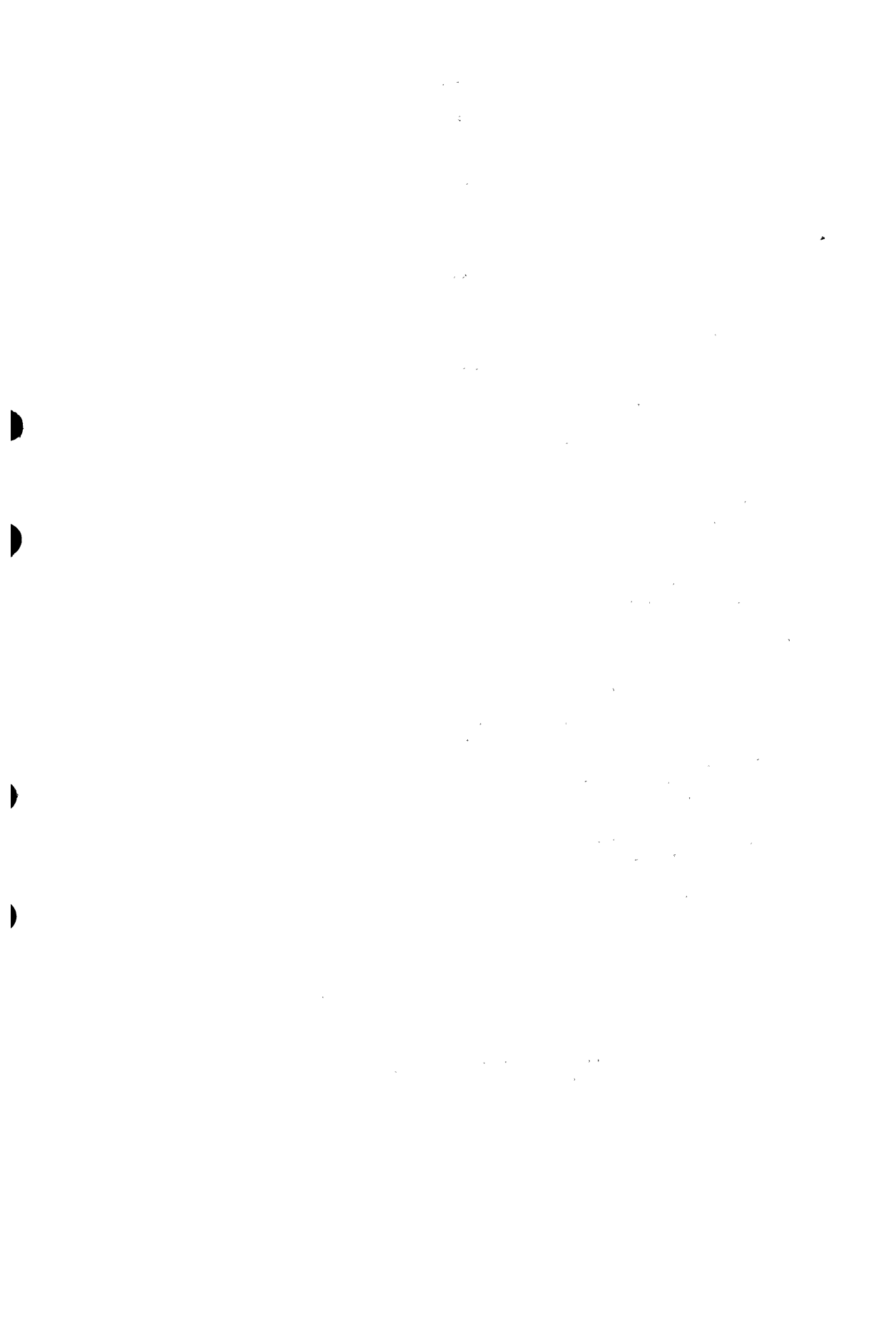
30 “(2) A power delegated under subsection (1) shall, when exercised by the delegate, be deemed to have been exercised by the Secretary.

“(3) The delegate is, in the exercise of a power delegated under subsection (1), subject to the directions of the Secretary.

35 “(4) The delegation of a power under subsection (1) does not prevent the exercise of the power by the Secretary.”

NOTES

1. No. 33, 1923, as amended. For previous amendments, see No. 74, 1939; No. 12, 1941; No. 80, 1950; No. 15, 1952; No. 73, 1956; No. 94, 1964; No. 50, 1965; No. 216, 1973 (as amended by No. 20, 1974); No. 96, 1975 (as amended by No. 164, 1984); No. 138, 1976; No. 134, 1979; No. 61, 1981; No. 153, 1982; and No. 164, 1984.
2. 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; and No. 76, 1986.
3. No. 152, 1982, as amended. For previous amendments, see No. 164, 1984; Nos. 65 and 193, 1985; Nos. 28 and 76, 1986.
4. 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; and No. 93, 1986.
5. No. 161, 1977.
6. No. 31, 1948, as amended. For previous amendments, see No. 37, 1949; No. 73, 1950; No. 29, 1951; No. 93, 1952; No. 80, 1953; No. 20, 1954; No. 19, 1955; No. 24, 1956; No. 95, 1957; No. 46, 1958; No. 103, 1959; No. 67, 1962; No. 103, 1963; Nos. 25, 98 and 135, 1965; No. 70, 1966; Nos. 55, 56 and 128, 1968; No. 61, 1969; No. 34, 1970; No. 47, 1971; No. 82, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 96, 1975; Nos. 13 and 161, 1977; No. 36, 1978; Nos. 15 and 135, 1979; No. 92, 1981; Nos. 76 and 164, 1984; No. 65, 1985; and No. 93, 1986.
7. 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; and No. 76, 1986.
8. No. 23, 1947, as amended. For previous amendments, see No. 67, 1950; No. 216, 1973 (as amended by No. 20, 1974); No. 96, 1975; No. 36, 1978; No. 61, 1981; and No. 164, 1984.
9. No. 6, 1939, as amended. For previous amendments, see Nos. 40 and 71, 1939; No. 9, 1944; No. 18, 1948; No. 93, 1966; No. 216, 1973 (as amended by No. 20, 1974); No. 96, 1975; No. 91, 1976; No. 80, 1982; and No. 65, 1985 (as amended by No. 193, 1985).





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