

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

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*(As read a first time)*

**DEFENCE LEGISLATION AMENDMENT BILL (No. 2) 1988**

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1987-88

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA  
THE SENATE

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*(Presented and read a first time, 13 October 1988)*

(MINISTER FOR THE ARTS, SPORT, THE ENVIRONMENT, TOURISM AND TERRITORIES,  
SENATOR RICHARDSON)

**A BILL**

FOR

**An Act to amend certain Acts relating to Defence**

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 (No. 2) 1988*.

**Commencement**

- 10       **2.** (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (2)** Section 18 commences on a day to be fixed by Proclamation.
- (3)** Section 25 shall be taken to have commenced on 1 October 1972.
- (4)** Sections 29 and 36 shall be taken to have commenced on 1 July 1978.

(5) Part IX shall be taken to have commenced on 18 December 1987.

## **PART II—AMENDMENT OF AIR FORCE ACT 1923**

### **Principal Act**

3. In this Part, “Principal Act” means the *Air Force Act 1923*<sup>1</sup>.

### **Interpretation**

4. Section 2 of the Principal Act is amended by omitting the definition of “this Act”.

## **PART III—AMENDMENTS OF DEFENCE ACT 1903**

### **Principal Act**

5. In this Part, “Principal Act” means the *Defence Act 1903*<sup>2</sup>.

### **Interpretation**

6. Section 4 of the Principal Act is amended by omitting from subsection (1) the definitions of “District Commandant”, “Military District”, “Sub-district” and “This Act”.

7. After section 9A of the Principal Act the following section is inserted:

### **Vice Chief of the Defence Force**

“9AA. (1) The Governor-General may appoint an officer of an arm of the Defence Force to be Vice Chief of the Defence Force.

“(2) Subject to section 8, the Vice Chief of the Defence Force shall, under the Chief of the Defence Force, be responsible for such part of the administration of the Defence Force in respect of which the Chief of the Defence Force has responsibility, whether alone or jointly with the Secretary, as the Chief of the Defence Force specifies in writing, and shall have such other functions as the Chief of the Defence Force determines in writing.”.

### **Remuneration and allowances**

8. Section 9B of the Principal Act is amended by adding at the end the following subsection:

“(4) In this section, ‘chief of staff’ includes the Vice Chief of the Defence Force.”.

### **Acting appointments**

9. (1) Section 9C of the Principal Act is amended:

(a) by inserting in subsection (1) “, Vice Chief of the Defence Force” after “Chief of the Defence Force”;

- (b) by omitting subsections (2) to (6) and substituting the following subsection:

“(2) Anything done by or in relation to an officer purporting to act under an appointment under subsection (1) is not invalid merely because:

- (a) the occasion for the appointment had not arisen;
- (b) there was a defect or irregularity in connection with the appointment;
- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.”.

(2) Notwithstanding the amendments of section 9C of the Principal Act made by this section, that section as in force immediately before it was so amended continues to apply to any appointment of a person to act that was in force immediately before the commencement of this section as if that section had not been amended.

#### **Resignation of officers**

10. Section 17 of the Principal Act is amended by inserting after paragraph (2) (b) the following paragraph:

- “(ba) in the case of an officer who holds the rank of colonel or a higher rank—the officer has not completed a period of 12 months’ service in the rank that the officer holds as a substantive rank, being a period commencing on the day on which the officer was promoted to that rank;”.

#### **Repeal of section 35**

11. Section 35 of the Principal Act is repealed.

#### **Interpretation**

12. Section 58A of the Principal Act is amended by omitting the definition of “cadet” and substituting the following definition:

- “‘cadet’ means an officer, instructor or cadet in the Australian Cadet Corps, the Naval Reserve Cadets or the Air Training Corps, and includes a person who has ceased to be such an officer, instructor or cadet, whether by reason of death or otherwise;”.

#### **Australian Cadet Corps**

13. Section 62 of the Principal Act is amended:

- (a) by omitting from paragraph (2) (a) “and”;
- (b) by inserting after paragraph (2) (a) the following paragraph:

“(aa) persons appointed in accordance with the regulations to be instructors in that body; and”;
- (c) by inserting in subsection (3) “or instructor” after “officer”;
- (d) by inserting in subsection (8) “, instructor” after “officer”.

**Conveyance by railway and tramway**

14. Section 66 of the Principal Act is amended by omitting "District Commandant or commanding officer, or another officer deputed by either of them" and substituting "commanding officer or an officer authorised in writing by a commanding officer to sign such passes".

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**Improper use of service decorations**

15. Section 80B of the Principal Act is amended by omitting "\$100" and substituting "\$200".

**Unauthorised use, possession or supply of emblems or flags**

16. (1) Section 83 of the Principal Act is amended:

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(a) by omitting subsections (1), (2) and (3) and substituting the following subsections:

"(1) A person (other than a member of the Defence Force) shall not, without the written authority of the Minister, or of a person authorised in writing by the Minister, use or wear a defence emblem or an emblem so nearly resembling a defence emblem as to be capable of being mistaken for such an emblem.

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Penalty: \$200.

"(2) A person shall not, without the written authority of the Minister, or of a person authorised in writing by the Minister, make, supply or offer to supply, a defence emblem or an emblem so nearly resembling a defence emblem as to be capable of being mistaken for such an emblem.

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Penalty: \$500.

"(3) A person (other than a member of the Defence Force in the course of his or her duties) shall not, without the written authority of the Minister, or of a person authorised in writing by the Minister, fly or display a defence flag.

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Penalty: \$200.

"(3A) An authority under subsection (1), (2) or (3) shall be subject to such limitations (if any) as are specified in the authority.";

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(b) by omitting from subsection (4) "\$100" and substituting "\$200";

(c) by omitting from subsection (5) "wear a uniform or emblem to which this section applies" and substituting "use or wear a defence emblem or fly a defence flag";

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(d) by omitting from subsection (6) "uniform or emblem" and substituting "emblem or flag";

(e) by omitting subsection (7) and substituting the following subsection:

"(7) In this section:

'defence emblem' means an emblem of the Defence Force or an arm of the Defence Force;

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'defence flag' means a flag of the Defence Force or an arm of the Defence Force;

‘emblem’ includes a badge, a regimental or other similar distinctive mark, an armlet or an accoutrement;

‘flag’ includes an ensign or a standard.”.

5 (2) Any authority given for the purposes of subsection 83 (1) of the Principal Act, being an authority that was in force immediately before the commencement of this section, continues in force on and after that commencement as if it were an authority under section 83 of the Principal Act as amended by this section.

**Penalty for bringing contempt on uniform**

10 17. Section 84 of the Principal Act is amended:

(a) by omitting “or employs any other person so to wear that uniform or dress”;

(b) by omitting “\$40” and substituting “\$200”.

18. After Part IXA of the Principal Act the following Part is inserted:

15 **“PART IXB—SALVAGE CLAIMS**

**Interpretation**

“117. (1) In this Part, unless the contrary intention appears:

20 ‘member of the crew’, in relation to a Naval ship, means any member of the Defence Force, whether an officer or a sailor, who belonged to, and was on board, the ship at the time the salvage services were rendered and includes any other member of the Defence Force who was on board the ship at that time and who took part in the rendering of such services;

‘Naval ship’ means a ship belonging to the Australian Navy;

25 ‘officer’ means an officer of the Australian Navy;

‘salvage’ includes all expenses properly incurred by a Naval ship in the performance of salvage services;

30 ‘salvage services’ means any act or activity undertaken to assist a vessel or property in danger in whatever waters the act or activity takes place;

‘vessel’ means any ship, craft or structure capable of navigating the high seas.

35 “(2) Where, before a claim for salvage in respect of salvage services rendered by a Naval ship is commenced or settled, a person who was the commanding officer of that ship at the time when the ship rendered salvage services:

(a) dies; or

40 (b) is absent from duty or from Australia or is, for any other reason, unable to act or continue to act on behalf of the members of the crew in accordance with subsection 117A (3);

the Chief of Naval Staff shall, by instrument in writing, appoint a member of the crew of that ship to act on that person's behalf.

“(3) Where, before a claim for salvage in respect of salvage services rendered by a Naval ship is commenced or settled, a person who was the commanding officer of that ship at the time when the ship rendered salvage services:

(a) ceases (otherwise than by reason of death) to be the commanding officer of that ship; or

(b) ceases (otherwise than by reason of death) to be a member of the Australian Navy;

that person shall, for the purposes of this Part, be taken to be the commanding officer of that ship until the claim for salvage is settled.

### **Salvage claims by crew of Naval ships**

“117A. (1) Without, by implication, affecting the right of the Commonwealth to claim salvage in respect of salvage services rendered by a Naval ship, the members of the crew of that ship may, subject to subsection (2), also claim salvage in respect of those services.

“(2) A claim for salvage on behalf of the members of the crew of a Naval ship:

(a) shall not be made without the prior written approval of the Chief Naval Staff; and

(b) shall be commenced and prosecuted only by the Australian Government Solicitor.

“(3) Where the Chief of Naval Staff approves the making of a claim for salvage in respect of salvage services rendered by a Naval ship on behalf of the members of the crew of that ship, the commanding officer of that ship is authorised, on behalf of each member of the crew of that ship:

(a) to instruct the Australian Government Solicitor to act for the members of the crew in relation to the claim; and

(b) to accept an offer in settlement of the claim.

“(3) An acceptance of an offer by the commanding officer is binding on each member of the crew.

### **Apportionment of salvage between the Commonwealth and crew members**

“117AA. (1) Where salvage is payable in respect of salvage services rendered by a Naval ship and a part of that salvage has been claimed on behalf of the members of the crew of that ship, the salvage so payable:

(a) shall be applied in meeting the expenses incurred by the Commonwealth in providing such salvage services; and

(b) to the extent that it is not so applied shall be apportioned between the Commonwealth and the members of the crew of the ship:

(i) if the apportionment between the Commonwealth and the members of the crew forms part of the terms of settlement



between the owners of the vessel or property saved, the Commonwealth and the members of the crew—in accordance with those terms;

- (ii) if a court or other tribunal has determined the apportionment between the Commonwealth and the members of the crew—in accordance with that determination; or
- (iii) in any other case—on the basis that the Commonwealth shall be entitled to receive 80% of the salvage not so applied and the members of the crew shall be entitled to receive 20% of the amount of salvage not so applied.

“(2) Where an amount of salvage would, but for this subsection, be apportioned between the Commonwealth and the members of the crew of a Naval ship in accordance with subparagraph (1) (b) (iii), but the Minister is of the opinion that the members of the crew have rendered exceptional services in the course of rendering the salvage services concerned, the Minister may, by instrument in writing, determine that the amount payable under that subparagraph to members of the crew shall be increased to an amount not exceeding 25% of the amount of salvage not applied in accordance with paragraph (1) (a) and the amount payable to the Commonwealth shall be decreased accordingly.

#### **Apportionment of salvage amongst crew members**

“117AB. Where salvage payable in respect of salvage services rendered by a Naval ship is, in accordance with section 117AA, to be apportioned between the Commonwealth and the members of the crew of that ship, the amount of salvage apportioned to the members of the crew:

- (a) shall be applied in meeting the costs of the Commonwealth in conducting the salvage claim on behalf of the members of the crew; and
- (b) to the extent that it is not so applied, shall be apportioned amongst the members of the crew in accordance with the regulations.”.

#### **Immunity from certain State and Territory laws**

19. Section 123 of the Principal Act is amended by adding at the end the following subsections:

“(2) The Secretary, or an officer within the meaning of the *Public Service Act 1922* authorised in writing by the Secretary, may, by instrument in writing, declare a person who is an officer or employee within the meaning of that Act and who is employed in the Department in, or in connection with, the manufacture of firearms, to be an authorised employee for the purposes of this subsection and where such a declaration is made in relation to a person the person continues to be an authorised employee for the purposes of this subsection while the person continues to be so employed.

“(3) A person who is an authorised employee for the purposes of subsection (2) does not contravene any law of the State or Territory that

would require the person to have permission (whether in the form of a licence or otherwise) to have in his or her possession a firearm by reason only of having such a firearm in his or her possession, without such permission, in the performance of his or her duties.”.

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

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##### **Principal Act**

20. In this Part, “Principal Act” means the *Defence Force Discipline Act 1982*<sup>3</sup>.

##### **Interpretation**

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21. Section 3 of the Principal Act is amended by inserting in subsection (10) “or 58H” after “58B”.

##### **Reparation orders**

22. Section 84 of the Principal Act is amended by omitting subsection (2) and substituting the following subsection:

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“(2) Where a person is convicted by a service tribunal that is a summary authority, the amount or the sum of the amounts that that person may be ordered to pay by that tribunal under this section shall not exceed:

- (a) where the person is a member of the Defence Force—the amount of the person’s pay for 14 days; or
- (b) in any other case—5 times the maximum fine that that tribunal could impose on the person.”.

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##### **Arrangement for appointment of the holder of a judicial office of a State or of the Northern Territory**

23. (1) Section 182 of the Principal Act is amended:

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- (a) by omitting from subsection (1) “Governor-General” and “Governor of that State or the Administrator of that Territory” and substituting “Minister” and “appropriate Minister of that State or that Territory” respectively;

- (b) by adding at the end the following subsection:

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“(3) In this section:

‘Minister’, in relation to the Northern Territory, means a person holding an office referred to in section 34 of the *Northern Territory (Self-Government) Act 1978*.”.

(2) Notwithstanding the amendment of section 182 of the Principal Act made by subsection (1), an arrangement that was in force immediately before the commencement of this section, continues in force on and after that commencement as if it had been made under that section as amended by this Act.

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

### Principal Act

24. In this Part, “Principal Act” means the *Defence Force Retirement and Death Benefits Act 1973*<sup>4</sup>.

### Interpretation

25. Section 3 of the Principal Act is amended by adding at the end the following subsection:

“(5) Where, at any time after 1 October 1972, an existing contributor:

(a) ceases to be an eligible member of the Defence Force; and

(b) after so ceasing to be such a member again becomes an eligible member of the Defence Force;

that person shall, for the purposes of sections 25, 33, 86, 87, 87A, 92 and 95, be taken not to be an existing contributor in respect of any period after he or she so ceases to be such a member.”.

### Contributions by members of scheme

26. Section 17 of the Principal Act is amended by omitting from paragraph (1A) (b) “engagement” and substituting “enlistment”.

### Power of Authority to require persons to be medically examined etc.

27. Section 35 of the Principal Act is amended:

(a) by omitting subsections (2), (3), (4) and (5) and substituting the following subsections:

“(2) A notice under subsection (1) shall set out the effect of subsection (3).

“(3) Where a recipient member fails to comply with a notice given under subsection (1) and the Authority is not satisfied that there was a reasonable excuse for the failure, the Authority may, by notice in writing given to the member, suspend the member’s invalidity pay with effect from such day as the Authority determines, being a day not earlier than:

(a) in a case where the first-mentioned notice required the member to submit to a medical examination on a day specified in the notice—the day next following that day; or

(b) in a case where the first-mentioned notice required the member to furnish information within a period specified in the notice—the day next following the end of that period.

“(4) A notice to a person under subsection (3) shall set out the effect of subsections (5B), (5D) and (5E).

“(5) Invalidity pay is not payable in respect of a period during which a suspension under subsection (3) is in force.

“(5A) Where:

- (a) the invalidity pay of a recipient member is suspended under subsection (3); and
- (b) the Authority, having regard to such matters as it considers relevant, is of the opinion that the suspension should be revoked;

the Authority may, by notice in writing given to the member or to the member and a person acting on the member's behalf, as the case may be, revoke the suspension with effect from such day as the Authority determines, being a day not later than the day on which the notice is given.

“(5B) Without limiting subsection (5A), where the invalidity pay of a recipient member is suspended under subsection (3), the member, or another person acting on the member's behalf, may, by notice in writing given to the Authority, request the Authority to revoke the suspension, and where such a request is made, the Authority shall, by notice in writing given to the member or to the member and the other person, as the case may be:

- (a) if the invalidity pay has been suspended by virtue of the relevant member's having failed to comply with a notice requiring the member to submit to a medical examination—require the member to submit to a medical examination by a medical practitioner at a time and place specified in the second-mentioned notice; or
- (b) if the invalidity pay has been suspended by virtue of the member's having failed to comply with a notice requiring the member to give information to the Authority (in this paragraph called ‘the original notice’)—require the member to give in writing to the Authority, within such period as is specified in the second-mentioned notice, such information as was required by the original notice to be given.

“(5C) A notice given by the Authority under subsection (5B) shall set out the effects of subsections (5D) and (5E).

“(5D) Where:

- (a) because of a request having been made to revoke the suspension of the invalidity pay of a recipient member, a notice under subsection (5B) is given to the member or to the member and another person; and
- (b) either:
  - (i) the member complies with the notice; or
  - (ii) the member fails to comply with the notice but the Authority is satisfied that there was a reasonable excuse for the failure;

the Authority shall, by notice in writing given to the member or to the member and the other person, as the case may be, revoke the suspension with effect from such day as the Authority determines, being a day not later than:

- (c) in a case to which subparagraph (b) (i) applies—the day on which the member so complied with the notice; or
- (d) in a case to which subparagraph (b) (ii) applies—the day on which the Authority became so satisfied.

“(5E) Where:

(a) because of a request having been made to revoke the suspension of the invalidity pay of a recipient member, a notice under subsection (5B) is given to the member or to the member and another person; and

(b) the member fails to comply with the notice and the Authority is not satisfied that there was a reasonable excuse for the failure;

the Authority shall, by notice in writing given to the member or to the member and the other person, as the case may be, refuse to revoke the suspension.”;

(b) by inserting after subsection (6) the following subsections:

“(6A) Where the Authority is required by this section to give a recipient member a notice, the notice shall be taken to have been given to the member if:

(a) the notice is served on the member personally;

(b) the notice is sent to the member by pre-paid post as a letter and the member acknowledges receipt of the letter; or

(c) where the Authority has caused all reasonable steps to be taken to ascertain a reliable address of the member, the notice is sent to the member by pre-paid post to:

(i) in a case where the Authority is satisfied that at least one reliable address of the member has been ascertained—that address or one of those addresses; or

(ii) in any other case—the last address of the member known to the Authority.

“(6B) A reference in subsection (6A) to a reliable address of a member shall be read as a reference to an address where, if a letter were sent to the member by pre-paid post to the address, the member would probably receive the letter.”.

### **Recipient member who becomes eligible member**

28. Section 62 of the Principal Act is amended by omitting from subsections (1) and (2) “engagement” and substituting “enlistment”.

### **Eligible employment**

29. Section 71 of the Principal Act is amended by omitting from paragraph (1) (b) “Administration of a Territory” and substituting “Northern Territory, by the Administration of a Territory (including the Northern Territory)”.

**Recovery of amounts payable to Commonwealth**

**30.** Section 126 of the Principal Act is amended:

- (a) by inserting in subsection (3) “, including an amount of unpaid contributions,” after “Act”;
- (b) by omitting from subsection (3) “Commonwealth” (second occurring) and substituting “Authority, on behalf of the Commonwealth”; 5
- (c) by adding at the end the following subsections:
  - “(4) Where, for any reason (including the making of, or cancellation of, an election under this Act), an amount of benefit has been paid that is not payable, or has become not payable, the amount so paid may be recovered by the Authority, on behalf of the Commonwealth, in a court of competent jurisdiction as a debt due and payable to the Commonwealth. 10
  - “(5) Where, for any reason (including the making of, or cancellation of, an election under this Act), an amount of benefit has been paid that is not payable, or has become not payable, and the person to whom that amount was paid is receiving, or is entitled to receive, a benefit, that amount, or such part of that amount as the Authority determines, may, if the Authority in its discretion so directs, be recovered by deduction from that benefit. 15
  - “(6) In subsections (4) and (5), ‘benefit’ includes pension or other money payable under the previous legislation.”. 20

**Recipient member etc. to inform Authority if becomes eligible member**

**31.** Section 127 of the Principal Act is amended by adding at the end the following subsection: 25

“(2) Subsection (1) does not apply to an eligible member of the Defence Force who:

- (a) was a recipient member immediately before he or she became an eligible member; and
- (b) is serving an appointment or enlistment for a period of less than one year that commenced after the commencement of this subsection.”. 30

**32.** After section 128 of the Principal Act the following section is inserted:

**Cancellation of elections**

“128A. Where:

- (a) a person makes an election (whether before or after the commencement of this section) under section 24, 32A, 69 or 76 or is deemed by subsection 128 (2) to have made such an election;
- (b) that person, or another person whom the Authority has, under subsection 128 (2), allowed to make an election under a provision of this Act on behalf of the first-mentioned person, makes an 35 40

application to the Authority not later than 3 months after the day on which the election is made or is deemed to have been made, or within such further period as the Authority, in special circumstances, allows, requesting that the Authority cancel the election; and

(c) the Authority, having regard to such matters (if any) as it considers relevant, is satisfied that the election should be cancelled; the Authority may direct that the election shall be cancelled and, if it so directs, this Act has effect as if the election had not been made.”.

#### **Attachment of benefits**

33. Section 130 of the Principal Act is amended by omitting the penalty set out at the foot of subsection (8) and substituting the following penalty:

“Penalty:

(a) if the offender is a natural person—\$100 or imprisonment for 3 months; or

(b) if the offender is a body corporate—\$500.”.

### **PART VI—AMENDMENTS OF DEFENCE FORCES RETIREMENT BENEFITS ACT 1948**

#### **Principal Act**

34. In this Part, “Principal Act” means the *Defence Forces Retirement Benefits Act 1948*<sup>5</sup>.

#### **Power to require invalid pensioners to be medically examined and to furnish information as to employment**

35. Section 53B of the Principal Act is amended:

(a) by omitting subsections (2), (3), (4) and (5) and substituting the following subsections:

“(2) A notice under subsection (1) shall set out the effect of subsection (3).

“(3) Where a person fails to comply with a notice given under subsection (1) and the Authority is not satisfied that there was a reasonable excuse for the failure, the Authority may, by notice in writing given to the person, suspend the person’s pension with effect from such day as the Authority determines, being a day not earlier than:

(a) in a case where the first-mentioned notice required the person to submit to a medical examination on a day specified in the notice—the day next following that day; or

(b) in a case where the first-mentioned notice required the person to furnish information within a period specified in the notice—the day next following the end of that period.

“(4) A notice to a person under subsection (3) shall set out the effect of subsections (5B), (5D) and (5E).

“(5) Pension is not payable in respect of a period during which a suspension under subsection (3) is in force.

“(5A) Where:

- (a) the pension of a person is suspended under subsection (3); and
- (b) the Authority, having regard to such matters as it considers relevant, is of the opinion that the suspension should be revoked;

the Authority may, by notice in writing given to the person or to the person and a person acting on the person's behalf, as the case may be, revoke the suspension with effect from such day as the Authority determines, being a day not later than the day on which the notice is given.

“(5B) Without limiting subsection (5A), where the pension of a person (in this subsection called the ‘relevant person’) is suspended under subsection (3), the relevant person, or another person acting on the relevant person's behalf, may, by notice in writing given to the Authority, request the Authority to revoke the suspension, and where such a request is made, the Authority shall, by notice in writing given to the relevant person or to the relevant person and the other person, as the case may be:

- (a) if the pension has been suspended by virtue of the relevant person's having failed to comply with a notice requiring the relevant person to submit to a medical examination—require the relevant person to submit to a medical examination by a medical practitioner at a time and place specified in the second-mentioned notice; or
- (b) if the pension has been suspended by virtue of the relevant person's having failed to comply with a notice requiring the relevant person to give information to the Authority (in this paragraph called ‘the original notice’)—require the relevant person to give in writing to the Authority, within such period as is specified in the second-mentioned notice, such information as was required by the original notice to be given.

“(5C) A notice given by the Authority under subsection (5B) shall set out the effects of subsections (5D) and (5E).

“(5D) Where:

- (a) because of a request having been made to revoke the suspension of the pension of a person (in this subsection called the ‘relevant person’), a notice under subsection (5B) is given to the relevant person or to the relevant person and another person; and

(b) either:

- (i) the relevant person complies with the notice; or



- (ii) the relevant person fails to comply with the notice but the Authority is satisfied that there was a reasonable excuse for the failure;

the Authority shall, by notice in writing given to the relevant person or to the relevant person and the other person, as the case may be, revoke the suspension with effect from such day as the Authority determines, being a day not later than:

- (c) in a case to which subparagraph (b) (i) applies—the day on which the relevant person so complied with the notice; or
- (d) in a case to which subparagraph (b) (ii) applies—the day on which the Authority became so satisfied.

“(5E) Where:

- (a) because of a request having been made to revoke the suspension of the pension of a person (in this subsection called the ‘relevant person’), a notice under subsection (5B) is given to the relevant person or to the relevant person and another person; and
- (b) the relevant person fails to comply with the notice and the Authority is not satisfied that there was a reasonable excuse for the failure;

the Authority shall, by notice in writing given to the relevant person or to the relevant person and the other person, as the case may be, refuse to revoke the suspension.”;

- (b) by omitting subsection (7) and substituting the following subsections:

“(7) Where the Authority is required by this section to give a person a notice, the notice shall be taken to have been given to the person if:

- (a) the notice is served on the person personally;
- (b) the notice is sent to the person by pre-paid post as a letter and the person acknowledges receipt of the letter; or
- (c) where the Authority has caused all reasonable steps to be taken to ascertain a reliable address of the person, the notice is sent to the person by pre-paid post to:
  - (i) in a case where the Authority is satisfied that at least one reliable address of the person has been ascertained—that address or one of those addresses; or
  - (ii) in any other case—the last address of the person known to the Authority.

“(8) A reference in subsection (7) to a reliable address of a person shall be read as a reference to an address where, if a letter were sent to the person by pre-paid post to the address, the person would probably receive the letter.

“(9) In this section, ‘invalidity benefit’ includes pension payable under section 73.”.

**Eligible employment**

36. Section 82U of the Principal Act is amended by omitting from paragraph (1) (b) "Administration of a Territory" and substituting "Northern Territory, by the Administration of a Territory (including the Northern Territory)".

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**Attachment of pensions**

37. Section 85A of the Principal Act is amended by omitting the penalty set out at the foot of subsection (8) and substituting the following penalty:

"Penalty:

- (a) if the offender is a natural person—\$100 or imprisonment for 3 months; or
- (b) if the offender is a body corporate—\$500."

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**Recovery of contributions**

38. Section 86 of the Principal Act is amended by omitting "Board" and substituting "Authority".

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39. After section 86 of the Principal Act the following section is inserted:

**Cancellation of elections**

"86A. Where:

- (a) a person makes an election (whether before or after the commencement of this subsection) under section 74, 82R or 82Z;
- (b) that person makes an application to the Authority not later than 3 months after the day on which the election is made, or within such further period as the Authority, in special circumstances, allows, requesting that the Authority cancel the election; and
- (c) the Authority, having regard to such matters (if any) as it considers relevant, is satisfied that the election should be cancelled;

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the Authority may direct that the election shall be cancelled and, if it so directs, this Act has effect as if the election had not been made."

**PART VII—AMENDMENTS OF NAVAL DEFENCE ACT 1910****Principal Act**

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40. In this Part, "Principal Act" means the *Naval Defence Act 1910*.

**Interpretation**

41. Section 3 of the Principal Act is amended by omitting the definition of "this Act".

**Resignation of officers**

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42. Section 13 of the Principal Act is amended by inserting after paragraph (2) (b) the following paragraph:

"(ba) in the case of an officer who holds the rank of captain or a higher rank—the officer has not completed a period of 12 months'

service in the rank that the officer holds as a substantive rank, being a period commencing on the day on which the officer was promoted to that rank;”.

**Power to build ships and construct docks etc. for naval purposes**

- 5      **43.** Section 41 of the Principal Act is amended by omitting subsection (2).

**Determination of conditions of employment**

- 44.** Section 42A of the Principal Act is amended by omitting paragraph (4) (a).

10      **PART VIII—AMENDMENTS OF WAR SERVICE ESTATES ACT 1942**

**Principal Act**

- 45.** In this Part, “Principal Act” means the *War Service Estates Act 1942*.

15      **Interpretation**

- 46.** Section 4 of the Principal Act is amended:

- (a) by omitting from subsection (1) the definitions of “member” and “war service” and substituting the following definitions:

20                      “‘member’ means a person who is or has been a member of the Defence Force, and includes:

- (a) a person who is or has been a member of a nursing service or women’s auxiliary or other service established in connection with the Defence Force; and

- 25                      (b) any person who accompanies or has accompanied any part of the Defence Force on active service and is or was, while so accompanying that part, in the pay of the Commonwealth and:

- 30                                      (i) in respect of a period before 3 July 1985—was subject to naval, military or air force law; and

- (ii) in any other case—is or was a ‘defence civilian’ within the meaning of the *Defence Force Discipline Act 1982*;

35                      ‘war service’:

- (a) in relation to a member not being a member of the Defence Force—means any service as a member in time of war; and

- 40                      (b) in relation to a person who is or was a member of the Defence Force:

- (i) in respect of any service before 3 July 1985—has the same meaning that it had in the *Defence Act 1903* immediately before 3 July 1985; and
  - (ii) in any other case—means any service in time of war and includes active service within the meaning of the *Defence Force Discipline Act 1982*;”;
- (b) by inserting in subsection (1) the following definitions:
  - “‘active service’:
    - (a) in respect of any service before 3 July 1985—has the same meaning that it had in the *Defence Act 1903* immediately before 3 July 1985; and
    - (b) in any other case—has the same meaning as in the *Defence Force Discipline Act 1982*;
  - ‘time of war’ has the same meaning as in the *Defence Act 1903*;
  - ‘war’ has the same meaning as in the *Defence Act 1903*;”;
- (c) by omitting subsection (2).

#### **Disposition of property to operate as discharge**

47. Section 8 of the Principal Act is amended by omitting “Australia” (wherever occurring) and substituting “the Commonwealth”.

#### **Exemption of Commonwealth from liability**

48. Section 9 of the Principal Act is amended by omitting “Australia” (wherever occurring) and substituting “the Commonwealth”.

#### **Payments to Public Trustee or Curator of Intestate Estates**

49. Section 10 of the Principal Act is amended by omitting from subsection (1) “Australia” (wherever occurring) and substituting “the Commonwealth”.

#### **Attachment of war service Estate**

50. Section 12 of the Principal Act is amended by omitting “Australia” and substituting “the Commonwealth”.

#### **Regulations**

51. Section 15 of the Principal Act is amended by omitting subsection (2).

### **PART IX—AMENDMENT OF STATUTE LAW (MISCELLANEOUS PROVISIONS) ACT 1987**

#### **Principal Act**

52. In this Part, “Principal Act” means the *Statute Law (Miscellaneous Provisions) Act 1987*.

## **Amendment of Schedule 1**

**53.** Schedule 1 to the Principal Act is amended by omitting “*Defence Force Re-organisation Act 1975*” and substituting “*Defence Force Re-organization Act 1975*”.

## **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; No. 164, 1984; and No. 65, 1987.
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; No. 76, 1986; No. 65, 1987; and Nos. 67, 75 and , 1988.
3. No. 152, 1982, as amended. For previous amendments, see No. 164, 1984; Nos. 65 and 193, 1985; Nos. 28 and 76, 1986; and No. 65, 1987.
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; No. 93, 1986; No. 65, 1987; and No. , 1988.
5. 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; No. 93, 1986; and No. 65, 1987.
6. 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; No. 65, 1987; and No. , 1988.
7. No. 57, 1942, as amended. For previous amendments, see No. 39, 1943; and No. 96, 1975.
8. No. 141, 1987.



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