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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES
DEFENCE LEGISLATION AMENDMENT BILL 1984
GOVERNMENT AMENDMENT

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Minister for Defence,
the Honourable Gordon Scholes)

Amendments of Clauses 35 and 36 and insertion of new Clause 68AA

Section 68 of the Defence Force Discipline Act 1982 provides for the regulations to specify the consequences of certain minor disciplinary punishments. Clause 35 of the Bill provides instead for the consequences of those punishments to be specified in rules made by a Chief of Staff. In making those rules, a chief of staff is to be subject to guidelines set out in the regulations.

The Senate Scrutiny of Bills Committee, in its Scrutiny of Bills Alert Digest No. 5 of 1984, has drawn attention to the fact that the rules made by a chief of staff under the amended provision will not be subject to disallowance by the Parliament. It had been assumed, in preparing the amendments, that the Senate would be satisfied with the fact that the chief of staff would be bound to make rules within the guidelines prescribed in regulations.

The proposed amendments insert into the Defence Force Discipline Act 1982 a new section 68AA which applies sections 48, 49 and 50 of the Acts Interpretation Act 1901 thus making the rules subject to tabling in and disallowance by the Parliament.

There will in consequence be no need for guidelines to be prescribed and the proposed amendments of clauses 35 and 36 remove the references to regulations.

Amendment of Clause 2 and insertion of new Clauses 83A and 84A

New clauses 83A and 84A propose amendments to sections 25 and 33 of the Defence Force Retirement and Death Benefits Act 1973 which are transitional provisions dealing with the rights of contributors under the previous scheme who continued to be contributors under the present scheme.

The position briefly is that, according to legal advice, sections 25 and 33 do not operate as intended. The purpose of the amendment is to restore the sections to their originally intended operation.

The Report of the Joint Committee on Defence Force Retirement Benefits Legislation (the Jess Committee) on which the present scheme is based, recommended that transitional arrangements should be made to ensure that, on compulsory transfer to the present scheme, no officer should receive, on retirement, a pension benefit less than that for which he was contributing under the previous scheme. Members other than officers could not be similarly placed.

Section 25 of the 1973 Act was intended to make provision accordingly. It applies when an officer, who had been a contributor when the previous scheme ceased, has completed a prescribed number of years service and retires under the present scheme in one of the following circumstances:

- a. having reached the prescribed retiring age;
- b. before reaching the prescribed retiring age in order to meet the needs of the Service;
- c. within 3 years of the prescribed retiring age in order to accept a resettlement opportunity; or
- d. being a non-Permanent Forces officer who retires under the present scheme while rendering continuous full time service.

In outline, section 25 requires a calculation of an officer's notional pension entitlement under the previous scheme on the last day of operation of the previous scheme on the basis of assuming that the officer had retired on that day but with the number of years of service rendered as at his actual retirement date. The result of the calculation is expressed as a percentage of the officer's rate of pay at the last day of operation of the previous scheme. Where this percentage is higher than his normal entitlement under the present scheme, expressed as a percentage of pay on retirement, the officer is considered to be in "detriment" and is permitted to purchase sufficient notional service to increase his entitlement under the present scheme to achieve the higher pension calculation.

The section operates by way of a notional application of certain provisions of the previous Act but fails to adequately modify those provisions with the result that:

- a. in the case of a Permanent Forces officer - instead of requiring his rank at the time of cessation of the previous scheme to be used to determine his notional eligibility under that scheme, the provisions erroneously require his current rank to be used; and
- b. in the case of a non-Permanent Forces officer rendering continuous full time service - instead of his actual age on retirement being used to determine his notional entitlement under the previous scheme, the provisions erroneously require the retirement age of a Permanent Forces officer of equivalent rank (which is a lower age in some cases) to be used.

The proposed amendments make the necessary modifications.

Section 33 of the Principal Act is similar to section 25 except that it relates to officers who retire on grounds of invalidity. The defects are similar and the proposed amendments make similar modification.

The amendment to clause 2 applies the amendments to section 25 and 33 with effect from 1 October 1972, the commencement date of the present scheme.