

1993

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DEFENCE LEGISLATION AMENDMENT BILL 1993

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Defence Science and Personnel,

Senator the Hon. John Faulkner)



Defence Legislation Amendment Bill 1993

OUTLINE

This Bill deals with the following matters:

- a. It proposes to amend the Defence Act 1903 to:
 - modify a provision covering superannuation determinations to reflect the fact that they are no longer "interim";
 - modify the right of appeal from Conscientious Objection Tribunals to reflect current policy; and
 - streamline procedures covering command and discipline where forces of Australia and other countries are serving together.
- b. It proposes to amend the Defence Force (Home Loans Assistance) Act 1990 to provide a special benefit for members of the Defence Force allotted for warlike service.
- c. It proposes to amend the Military Superannuation and Benefits Act 1991 to remove an unintended double benefit.
- d. It proposes to amend the Royal Australian Air Force Veterans' Residences Act 1953 and the Services Trust Funds Act 1947 to enable trustees of trust funds established under these Acts to be appointed by a Minister rather than by the Governor-General.

Defence Legislation Amendment Bill 1993

FINANCIAL IMPACT

Precise costing is not possible for the amendments to the Defence Force (Home Loans Assistance) Act because future deployments cannot be predicted.

However, the additional cost of these amendments over the next 5 financial years is estimated to be:

1993/4	\$7,000
1994/5	\$20,000
1995/6	\$32,000
1996/7	\$45,000
1997/8	\$58,000

These costs would be met within the current Defence program.

The cost to revenue of the unintended double benefit would be approximately \$4.8 million if the proposed amendments to the Military Superannuation and Benefits Act were not made.

The other provisions of this Bill are not expected to have any significant financial impact.

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NOTES ON CLAUSES

PART 1 (CLAUSES 1 and 2) - PRELIMINARY

1. This Part provides for a short title and for the Act to commence on Royal Assent.

**PART 2 (CLAUSES 3 to 9) - AMENDMENTS OF THE DEFENCE ACT
1903 ("THE PRINCIPAL ACT")**

Modification of section 52 of the Principal Act to reflect the fact that
superannuation determinations are no longer "interim"

2. Section 52 of the Principal Act enables ministerial determinations to be made providing an "interim" superannuation benefit.
3. The original purpose of section 52 was to provide members of the Defence Force with a 3% productivity benefit on an interim basis. However, section 52 is now the authority for ministerial determinations to provide ongoing superannuation benefits.
4. Clauses 4 and 5 amend section 52 and a related heading by removing the word "interim", to reflect the fact that the determinations made under section 52 are no longer interim in nature and cover a variety of ongoing superannuation benefits.
5. Clause 5 also includes a provision to put the validity of previous determinations beyond doubt and substitutes the current title of the Superannuation (Productivity Benefit) Act 1988.

Modification of conscientious objection right of appeal under section 61CZD

6. Part IV of the Principal Act contains a legislative scheme to deal with conscientious objection to military conscription. Under that scheme, questions of conscientious objection are determined by Conscientious Objection Tribunals.

7. Division 5 of Part IV provides for Administrative Appeals Tribunal ("AAT") review of Conscientious Objection Tribunal decisions and appeals from the AAT to the Federal Court on questions of law and, with the leave of that Court, on any other ground.

8. The provision for appeals from the AAT to the Federal Court on grounds other than questions of law is contrary to current administrative law policy, under which it is the AAT's role to provide final merits review.

9. Clause 6 amends section 61CZD of the Principal Act (contained in Division 5 of Part IV), to restrict conscientious objection appeals from the AAT to the Federal Court to questions of law.

Streamlining of procedures covering command and discipline where forces of Australia and other countries are serving together

10. Section 116C of the Principal Act enables mutual powers of command and discipline to be exercised where a part of the Australian Defence Force ("ADF") is serving together with a part of the force of a country to which that section applies.

11. For the purposes of section 116C, forces are "serving together" only where there is a declaration to that effect by the Governor-General or a person authorised by the Governor-General. The current wording requires a declaration each and every time the provisions of the section are to be invoked.

12. Recently, there have been a number of occasions where ADF units have served in combined operations with units from the armed forces of other countries. It is likely that this trend will continue.

13. Where an ongoing requirement for mutual powers of command and discipline can be anticipated, eg between Australian and New Zealand units, there is a requirement for a standing declaration so that the relevant provisions of section 116C apply whenever the respective forces are in fact serving together.

14. Clause 7 amends section 116C by omitting subsection (5) and inserting new subsections (5), (5A), (5B) and 5(C). The changes enable standing declarations to be made so that forces are considered to be "serving together" for the purposes of section 116C whenever they are in fact serving together.

15. This facility would only be utilised for countries where past experience or planned commitments indicate an ongoing operational requirement for mutual powers of command and discipline. Where there was no such requirement, one-off declarations would continue to be used.

16. Clause 8 makes a drafting amendment.

17. Clause 9 amends section 120A, to replace an authorisation provision in section 116C with a more precise delegation provision. This requires the Governor-General's delegate to be an officer of at least Major-General (or equivalent) rank.

PART 3 (CLAUSES 10 to 15) - AMENDMENTS OF THE DEFENCE FORCE (HOME LOANS ASSISTANCE) ACT 1990 ("THE PRINCIPAL ACT")

18. The Principal Act establishes a scheme to provide for the payment of home loan subsidies to eligible members of the Defence Force.

19. This Part amends the Principal Act to provide a special benefit in the form of a more generous subsidy period for members who perform service which is declared by the Minister to be "warlike" service.

20. The new benefit for warlike service will be available to members who have been allotted for warlike service in Cambodia, Somalia, former Yugoslavia, and any future operation declared as "warlike". The new benefit is distinct from the special benefits that apply for previous operational service.

21. The special benefit for members who perform warlike service consists of a subsidy period which is from 2 to 11 years longer than the period applying for normal service. This comprises waiver of the "basic service" qualifying period of 6 years and an additional subsidy period ranging from 2 to 5 years, depending on the length of warlike service. The maximum subsidy period is also increased from 20 to 25 years.

22. Clauses 11 and 12 amend section 3 of the Principal Act and insert new sections 3B and 3C. These changes provide for the definition of 'warlike service' and 'warlike service member' as well as the requirements for declaration of warlike service and allotment to that service.

23. Declarations of warlike service, which are disallowable instruments, will be made by the Minister. There is provision for retrospective declarations but retrospective revocations or variations which would reduce entitlements are prohibited.

24. Clause 13 amends section 12 of the Principal Act to exempt warlike service members from the requirement to complete 6 months of effective full-time service before an entitlement certificate is issued. (The amendments made by clause 14 create the possibility of a subsidy entitlement before the end of the 6 month period.)

25. Section 23 of the Principal Act sets out the subsidy periods for the various classes of eligible person. The subsidy period is based on the "entitlement period", which is currently defined in subsection 23(3).

26. Clause 14 amends subsection 23(3) and adds new subsections (4), (5), (6) and (7).

27. The new subsection 23(4) ensures that persons with 2 or more possible entitlement periods would have the benefit of the longest of those periods.

28. The other changes to section 23 create a new category of "entitlement period", to cover persons who are or have been warlike service members. Those members have a subsidy period equal to the sum of completed years (if any) of effective full-time service and the period calculated in accordance with the following table:

<u>Duration of Total Period or Periods of Warlike Service</u>	<u>Additional Years of Subsidy</u>
Up to and including 3 months warlike service	2
From 3 months to and including 6 months warlike service	3
From 6 months to and including 9 months warlike service	4
More than 9 months warlike service	5

29. A maximum subsidy period of 25 years applies to persons within this new class.

30. Subsections 23(6) and (7) make special provision for members who have been on warlike service and repatriated through wounds, injury or illness. They will have an entitlement based on the period they had expected to be on warlike service, or the period for which their unit was actually deployed, whichever is less.

31. Clause 15 amends section 24 of the Principal Act, to ensure that widows and widowers of members who have been on warlike service do not have their subsidy period reduced through application of subsections 24(3) and (4). (Subsections 24(3) and (4) increase the subsidy period for certain widows and widowers where the basic service period has applied but could only operate to the detriment of widows and widowers of warlike service members.)

**PART 4 (CLAUSES 16 to 18) - AMENDMENT OF THE MILITARY
SUPERANNUATION AND BENEFITS ACT 1991 ("THE PRINCIPAL
ACT")**

32. The Principal Act established a new military superannuation and benefits ("MSB") scheme for members of the Defence Force. The MSB Scheme came into operation on 1 October 1991 and covers all persons who enter the Defence Force from that date. It also covers members of the previous scheme under the Defence Force Retirement and Death Benefits Act 1973 ("the DFRDB Act") who have elected to transfer to the MSB Scheme.

33. The provisions covering the general administration and operation of the MSB Scheme are contained in the MSB Rules ("the Rules"). These Rules are contained in the Trust Deed that establishes the MSB Scheme in accordance with the Principal Act.

34. An element of the benefits payable under the MSB Scheme is the "member benefit", which is generally based on a member's contributions plus interest. Where a DFRDB member has transferred to the MSB Scheme, a notional amount based on contributions under the DFRDB (or earlier Defence Forces Retirement Benefits ("DFRB")) Scheme is credited for the purpose of the MSB Scheme "member benefit".

35. The "previous contributions" that form an element of the amount credited for a former DFRDB member's "member benefit" were originally defined to mean contributions made under the DFRDB or DFRB legislation less any such contributions refunded to the person under that legislation.

36. Operation of the MSB Scheme revealed unintended double benefits that flowed from the definition of previous contributions. The unintended benefit operates where former DFRDB members have re-entered the Defence Force and transferred to the MSB Scheme after having either:

retired with a DFRDB pension; or

separated from the Defence Force and transferred their benefits (under the DFRDB or DFRB Scheme) to a public sector superannuation scheme.

37. Under the original definition, the relevant contributions would be applied not only to a person's DFRDB or public sector superannuation benefit but also to the person's MSB benefit. That is, the person would retain the benefit for the first period of service for which the contributions were paid, and would also have the contributions and interest paid as an addition to the MSB benefit for the second period of service.

38. Military Superannuation and Benefits Instrument No.3 of 1993, which came into operation on 22 April 1993, prevents members who have separated from the Defence Force on or after that date from receiving the unintended double benefit. This was achieved by amending the definition of "previous contributions" to exclude contributions:

- made towards a pension under the DFRDB Act by a retirement pensioner under that Act; or
- relevant to a transfer value paid to a public sector superannuation scheme in respect of a person who was a contributor to either the DFRDB or DFRB Scheme.

39. This Part makes a transitional retrospective amendment which will prevent any member who had separated from the Defence Force prior to the commencement of Instrument No.3 of 1993 from taking advantage of the unintended double benefit.

40. An earlier Instrument (No.2 of 1992) contained a similar amendment to the definition of "previous contributions". This was effective from 27 May 1992 until 8 September 1992 and disallowed by the Senate on 9 September 1992. It is noted that Instrument No. 2 of 1992 was disallowed because it contained a further amendment to the definition of "previous contributions" relating to bought back service. That further amendment has now been dropped. The Senate's concern in relation to the amendment now proposed was that the MSB Board of Trustees be formally consulted. The Board has been consulted and has agreed to the amendment.

41. Clause 17 sets out the object of Part 4.

42. Clause 18 inserts a new section 51A in the Principal Act. New subsections 51A(1) and (2) apply the amended definition of "previous contributions" contained in Instrument No.3 of 1993 for the period between 1 October 1991 (the date of commencement of the MSB Scheme) and 21 April 1993 (the day before Instrument No. 3 of 1993 came into operation), except for the period between 27 May 1992 and 8 September 1992 (when Instrument No.2 of 1992 was effective).

43. New subsections 51A(3) and (4) enable the Commonwealth to recover any amount which is excluded by the substituted definition and which was paid out before the amendments were made. (All affected members have been advised that any double benefit paid before passage of this legislation will be repayable.)

**PARTS 5 AND 6 (CLAUSES 19 to 29) - AMENDMENTS OF THE
ROYAL AUSTRALIAN AIR FORCE VETERANS' RESIDENCES ACT
1953 AND THE SERVICES TRUST FUNDS ACT 1947 ("THE
PRINCIPAL ACTS")**

44. The Principal Acts provide for the establishment and administration of trusts which administer welfare funds for each Service of the Defence Force, and a trust which operates retirement units for ex-Air Force personnel.

45. At present the Principal Acts require the trustees and their deputies to be appointed by the Governor-General. This is not warranted by the nature of the trusts.

46. Clauses 22, 23 and 27 amend the Principal Acts to enable trustees and their deputies to be appointed by a Minister rather than by the Governor-General.

47. Clauses 24 and 29 contain transitional provisions to preserve existing appointments.

48. Clauses 20, 21, 26 and 28 make drafting amendments.

