

1990

THE PARLIAMENT OF THE COMMONWEALTH
OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DEFENCE LEGISLATION AMENDMENT BILL 1990

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Defence,
Senator the Hon. Robert Ray)



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Defence Legislation Amendment Bill 1990

OUTLINE

This Bill deals with the following matters:

- a. It proposes to amend the Defence Act 1903 and Naval Defence Act 1910:
 - . to remove restrictions on the Chief of the Defence Force's power to make single service command appointments and organisational arrangements;
 - . to remove redundant provisions dealing with seniority; and
 - . to modify provisions relating to the enlistment of soldiers and sailors to enable the open-ended enlistment scheme to operate more effectively.
- b. It proposes to amend the Defence Force Discipline Act 1982 to replace obsolete references to the offence of rape with references to the current ACT provisions that have replaced that former offence.
- c. It proposes to amend the Statute Law (Miscellaneous Provisions) Act (No. 1) 1985 to remove an unnecessary provision dealing with allotments.
- d. It proposes to amend Defence Force Retirement and Death Benefits legislation to increase the orphans' benefit from \$702 to \$5000.
- e. It proposes to amend several Acts to replace references to the Joint Intelligence Organisation with references to the Defence Intelligence Organisation.

FINANCIAL IMPACT

It is estimated that the amendments made by clause 4 and Schedule 2 will increase the amount of pension benefits payable to orphans by approximately \$600,000 per year.

The other provisions in the Bill are not expected to have any significant financial impact.

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NOTES ON CLAUSES

Clause 1 - Short title

1. Formal.

Clause 2 - Commencement

2. This clause provides that the amendments relating to command commence on Proclamation, the amendments increasing orphans' benefits commence on 30 June 1989, and the amendment to section 85ZL of the Crimes Act 1914 (to reflect the Defence Intelligence Organisation name change) commences at the same time as that section. The remainder of the Bill commences on Royal Assent.

Clause 3 - Amendments of legislation about the administration of the Defence Force

3. This clause provides that the Acts specified in Schedule 1 are amended as set out in that Schedule.

Clause 4 - Amendments of legislation about defence pensions

4. This clause provides that the Acts specified in Schedule 2 are amended as set out in that Schedule, and provides that the amendments do not reduce any previous payments.

Clause 5 - Amendments about references to the Defence Intelligence Organisation

5. This clause provides that the Acts specified in Schedule 3 are amended as set out in that Schedule.

SCHEDULE 1 - AMENDMENTS OF LEGISLATION ABOUT THE ADMINISTRATION
OF THE DEFENCE FORCE

Provisions relating to the command power of the Chief of the
Defence Force

6. Subsection 9(4) of the Defence Act 1903 provides that the Chief of the Defence Force may appoint an officer to command a part of the Defence Force consisting of more than one arm of the Defence Force, and that the chief of staff of an arm of the Defence Force may appoint an officer to command a part of that arm. Section 32C of the Defence Act provides that the Chief of the Defence Force may establish parts of the Defence Force consisting of members of more than one arm of the Defence Force. Section 33 of the Defence Act provides for the organisation of the Army to be determined by the Chief of the General Staff where there is insufficient provision made by the Defence Act or regulations. Section 23 of the Naval Defence Act 1910 corresponds to section 33 of the Defence Act.

7. These provisions restrict the Chief of the Defence Force's appointment and organisational authority to joint forces and joint service units, and oblige the Chief of the Defence Force to implement single service appointments and organisational arrangements through the single service chiefs of staff. However, under current arrangements for the command of Defence Force operations, this restriction is no longer appropriate as the Chief of the Defence Force commands operations involving single service appointments and organisational arrangements.

8. This Schedule removes the inappropriate restrictions on the Chief of the Defence Force's command power by omitting subsection 9(4) and repealing sections 32C and 33 of the Defence Act, and repealing section 23 of the Naval Defence Act.

9. There is no requirement to replace these provisions as command appointments and organisational arrangements for the Defence Force can be made under the command power contained in subsection 9(2) of the Defence Act. This power is subject to Ministerial directions issued under section 8 of the Defence Act.

Provisions relating to seniority

10. Section 19 of the Defence Act provides for the seniority of members of the Army in their respective ranks to be prescribed, or failing provision in the regulations, to be determined by the Chief of the General Staff. Section 14 of the Naval Defence Act contains a corresponding provision for the Navy.

11. These provisions are unnecessary as seniority can be determined by a chief of staff through his or her command power under subsection 9(2) of the Defence Act.

12. This Schedule repeals section 19 of the Defence Act and section 14 of the Naval Defence Act.

Provisions relating to the discharge of soldiers and sailors who are enlisted until attaining retiring age

13. Sections 36 and 37 of the Defence Act provide that soldiers may enlist or extend their period of enlistment until they attain their retiring age. Corresponding provisions are contained in sections 25 and 26 of the Naval Defence Act. This scheme of open ended enlistments is an alternative to the practice of enlistment and re-enlistment for fixed periods.

14. Section 39 of the Defence Act and section 28 of the Naval Defence Act provide that a soldier or sailor who has enlisted until retiring age may claim his or her discharge on giving the appropriate period of notice. The appropriate period is 12 months (or such lesser period as is determined by the relevant chief of staff) in the case of a soldier or sailor in the permanent forces, or 3 months in the case of a soldier or sailor in the reserve forces. Provision is also made for the circumstances where discharge may not be claimed.

15. The Schedule amends section 39 of the Defence Act and section 28 of the Naval Defence Act to modify and clarify the powers that may be exercised in relation to soldiers and sailors claiming discharge, in order to ensure the more effective operation of the scheme of open ended enlistment. The following changes are made:

a. The Schedule inserts a new provision so that a soldier or sailor in the permanent forces who has enlisted until retirement age does not have a right to claim a discharge during the first 6 years of service, or such lesser period as the relevant chief of staff determines. In making a determination the chief of staff must have regard to the ability of the respective Service to carry out its current and future operations, the size and composition of the Service, and training of the Service. This provision does not exclude the various reasons for discharge that are prescribed by the regulations.

b. The Schedule inserts a new requirement that a claim for discharge cannot be withdrawn or varied except with the approval of the relevant chief of staff. In making a determination the chief of staff must have regard to the ability of the respective Service to carry out its current or future operations and the management of personnel. This provision is necessary to ensure that a claim for discharge cannot be used to avoid a posting and then be withdrawn.

c. The Schedule also clarifies the date when discharge is claimed, and corrects a drafting error in the delegation provision in the Defence Act (subsection 120A(4)).

Provisions relating to the Defence Force Discipline Act 1982

16. Section 63 of the Defence Force Discipline Act 1982 provides that the Attorney-General's approval is required before criminal proceedings can be instituted in relation to certain specified offences. These specified offences include various Territory offences. (This term is defined by subsection 3(1) to be criminal laws that apply in the ACT.) Rape is one of the specified Territory offences covered by section 63. However, the offence of rape has been replaced in the ACT by various sexual assault offences.

17. Division 2 of Part VII of the Defence Force Discipline Act deals with the jurisdiction of military summary authorities, and excludes from that jurisdiction various prescribed offences which are more appropriately dealt with by a Court Martial or Defence Force Magistrate. Section 104 provides that a reference to a prescribed offence for the purposes of Division 2 includes the (former) ACT offence of rape.

18. This Schedule replaces the references to rape in sections 63 and 104 with references to the ACT sexual assault offences which have replaced that former offence.

19. The Schedule also amends section 63 by replacing the requirement for the Attorney-General's consent to proceedings with a requirement for the consent of the Director of Public Prosecutions.

Provision relating to the Statute Law (Miscellaneous Provisions)
Act (No. 1) 1985

20. The unproclaimed amendment to subsection 58B(1) of the Defence Act that was made by the Statute Law (Miscellaneous Provisions) Act (No. 1) 1985 was intended to enable a determination under section 58B to cover voluntary allotments of pay by members of the Defence Force. It has now been established that legislative cover is not required for such allotments.

21. The Schedule omits the amendment to subsection 58B(1) of the Defence Act. This will have no effect on the ability of members to make allotments.

SCHEDULE 2 - AMENDMENTS OF LEGISLATION ABOUT DEFENCE PENSIONS

22. Section 43 of the Defence Force Retirement and Death Benefits Act 1973, and sections 55, 57 and 58 of the Defence Forces Retirement Benefits Act 1948 provide a fixed amount of \$702 as part of the orphans' benefits under both Acts.

23. This Schedule amends those provisions by increasing the fixed amount of the orphans' benefits from \$702 to \$5000, with effect from 30 June 1989. The total benefit payable to orphans of a deceased serving member would be the amount the member would have received as a Class A invalidity pensioner, and the total benefit payable to orphans of a deceased pensioner (or, where he had died, his widow) would be the pension payable to that pensioner.

SCHEDULE 3 - AMENDMENTS ABOUT REFERENCES TO THE DEFENCE
INTELLIGENCE ORGANISATION

24. (1) As a consequence of the streamlining of Defence intelligence arrangements, in particular the merging of the functions of the Joint Intelligence Organisation with the intelligence group in Defence Force Headquarters, the Joint Intelligence Organisation is to be re-named the "Defence Intelligence Organisation". This Schedule makes consequential amendments to the various Commonwealth Acts which mention the Joint Intelligence Organisation.