

# Defence Force (Retirement and Death Benefits Amendments) Act 1979

No. 15 of 1979

An Act to amend the *Defence Forces Retirement Benefits Act 1948* and the *Defence Force Retirement and Death Benefits Act 1973*.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

## PART I—PRELIMINARY

1. This Act may be cited as the *Defence Force (Retirement and Death Benefits Amendments) Act 1979*.<sup>1</sup> Short title
2. This Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup> Commencement

## PART II—AMENDMENTS OF THE DEFENCE FORCES RETIREMENT BENEFITS ACT 1948

3. In this Part, the *Defence Forces Retirement Benefits Act 1948*<sup>2</sup> is referred to as the Principal Act. Principal Act
4. Section 53 of the Principal Act is amended— Reclassification in respect of incapacity
  - (a) by omitting from sub-section (1) “accordingly as if he were being classified under section 51” and substituting “in the appropriate classification set out in sub-section (2) of section 51 according to the percentage of his incapacity in relation to civil employment”; and
  - (b) by inserting after sub-section (1) the following sub-sections:
    - “(1A) In determining, for the purposes of sub-section (1), the percentage of incapacity in relation to civil employment of a pensioner, the Authority shall have regard to the following matters only:
      - (a) the vocational, trade and professional skills, qualifications and experience of the pensioner;
      - (b) the kinds of civil employment which a person with skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;

- (c) the degree to which any physical or mental impairment of the pensioner, being a prescribed physical or mental impairment, has diminished the capacity of the pensioner to undertake the kinds of civil employment referred to in paragraph (b);
- (d) such other matters (if any) as are prescribed for the purposes of this sub-section.

“(1B) In sub-section (1A), ‘prescribed physical or mental impairment’, in relation to a pensioner, means—

- (a) a physical or mental impairment of the pensioner that was the cause, or one of the causes, of the invalidity or physical or mental incapacity by reason of which the pensioner was retired, whether or not that impairment has changed, for better or worse, since that retirement; or
- (b) any other physical or mental impairment of the pensioner causally connected with a physical or mental impairment referred to in paragraph (a).”.

Special  
invalidity  
benefit to  
members  
under 18  
years of age

5. Section 73 of the Principal Act is amended—

- (a) by omitting from sub-section (3) “accordingly” and substituting “in the appropriate classification set out in sub-section (1) according to the percentage of his incapacity in relation to civil employment”;

- (b) by inserting after sub-section (3) the following sub-sections:

“(3A) In determining, for the purposes of sub-section (3), the percentage of incapacity in relation to civil employment of a pensioner, the Authority shall have regard to the following matters only:

- (a) the vocational, trade and professional skills, qualifications and experience of the pensioner;
- (b) the kinds of civil employment which a person with skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;
- (c) the degree to which any physical or mental impairment of the pensioner, being a prescribed physical or mental impairment, has diminished the capacity of the pensioner to undertake the kinds of civil employment referred to in paragraph (b);
- (d) such other matters (if any) as are prescribed for the purposes of this sub-section.

“(3B) In sub-section (3A), ‘prescribed physical or mental impairment’, in relation to a pensioner, means—

- (a) a physical or mental impairment of the pensioner that was the cause, or one of the causes, of the invalidity or

physical or mental incapacity by reason of which the pensioner was retired, whether or not that impairment has changed, for better or worse, since that retirement; or

- (b) any other physical or mental impairment of the pensioner causally connected with a physical or mental impairment referred to in paragraph (a).”; and
- (c) by omitting from sub-section (4) “the last preceding sub-section” and substituting “sub-section (3)”.

**6.** Where a person is, immediately before the date of commencement of this Act, to be deemed, for any purpose of the Principal Act, to be classified as Class A, Class B or Class C by reason of his having been reclassified as Class A, Class B or Class C, as the case may be, under sub-section 53 (1) or 73 (3) of the Principal Act as in force at any time before that date, the Principal Act as amended by this Act shall apply to him, on and after that date, as if he had been so reclassified under that sub-section of the Principal Act as amended by this Act. Transitional

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

**7.** In this Part, the *Defence Force Retirement and Death Benefits Act* Principal Act 1973<sup>3</sup> is referred to as the Principal Act.

**8.** Section 30 of the Principal Act is amended by adding at the end thereof the following sub-section: Classification  
in respect of  
incapacity

“(2) In determining, for the purposes of sub-section (1), the percentage of incapacity in relation to civil employment of a member of the scheme, the Authority shall have regard to the following matters only:

- (a) the vocational, trade and professional skills, qualifications and experience of the member;
- (b) the kinds of civil employment which a person with the skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;
- (c) the degree to which the physical or mental impairment of the member that is the cause of the invalidity or physical or mental incapacity by reason of which he has been retired has diminished the capacity of the member to undertake the kinds of civil employment referred to in paragraph (b);
- (d) such other matters (if any) as are prescribed for the purposes of this sub-section.”.

**9.** Section 34 of the Principal Act is amended—

Reclassifi-  
cation in  
respect of  
incapacity

- (a) by omitting from sub-section (1) “accordingly as if he were being classified under section 30” and substituting “in the appropriate classification set out in section 30 according to the percentage of his incapacity in relation to civil employment”; and
- (b) by inserting after sub-section (1) the following sub-sections:

“(1A) In determining, for the purposes of sub-section (1), the percentage of incapacity in relation to civil employment of a recipient member, the Authority shall have regard to the following matters only:

- (a) the vocational, trade and professional skills, qualifications and experience of the recipient member;
- (b) the kinds of civil employment which a person with skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;
- (c) the degree to which any physical or mental impairment of the recipient member, being a prescribed physical or mental impairment, has diminished the capacity of the recipient member to undertake the kinds of civil employment referred to in paragraph (b);
- (d) such other matters (if any) as are prescribed for the purposes of this sub-section.

“(1B) In sub-section (1A), ‘prescribed physical or mental impairment’, in relation to a recipient member, means—

- (a) a physical or mental impairment of the recipient member that was the cause, or one of the causes, of the invalidity or physical or mental incapacity by reason of which the recipient member was retired, whether or not that impairment has changed, for better or worse, since that retirement; or
- (b) any other physical or mental impairment of the recipient member causally connected with a physical or mental impairment referred to in paragraph (a).”.

Transitional

**10.** (1) Where a person is, immediately before the date of commencement of this Act, classified as Class A, Class B or Class C by reason of his having been so classified under section 30 of the Principal Act as in force at any time before that date, the Principal Act as amended by this Act shall apply to him, on and after that date, as if he had been so classified under section 30 of the Principal Act as amended by this Act.

(2) Where a person is, immediately before the date of commencement of this Act, to be deemed, for any purpose of the Principal Act, to be classified as Class A, Class B or Class C by reason of his having been reclassified as Class A, Class B or Class C, as the case may be, under section 34 of the Principal Act as in force at any time before that date, the

Principal Act as amended by this Act shall apply to him, on and after that date, as if he had been so reclassified under section 34 of the Principal Act as amended by this Act.

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#### NOTES

1. Act No. 15, 1979; assented to 19 March 1979.
2. Act No. 31, 1948, as amended. For previous amendments *see* Act 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; and No. 36, 1978.
3. Act No. 81, 1973, as amended. For previous amendments *see* Act No. 59, 1974; No. 96, 1975; No. 33, 1976; Nos. 13 and 161, 1977; and No. 36, 1978.