

Defence Force (Retirement and Death Benefits Amendments) Act (No. 2) 1979

No. 135 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 (No. 2) 1979*.¹ Short title

2. This Act shall come into operation on the day on which it receives the Royal Assent.¹ Commencement

PART II—AMENDMENT OF THE DEFENCE FORCES RETIREMENT BENEFITS ACT 1948

3. In this Part, the *Defence Forces Retirement Benefits Act* 1948² is referred to as the Principal Act. Principal Act

4. Section 53 of the Principal Act is amended by adding at the end thereof the following sub-section: Reclassification in respect of incapacity

“(4) In this section, ‘pensioner’ includes a person who is classified as Class C by reason of his having been reclassified (whether before or after the commencement of this sub-section) under sub-section (1) of this section, whether or not the person is entitled to a pension.”

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

5. In this Part, the *Defence Force Retirement and Death Benefits Act* 1973³ is referred to as the Principal Act. Principal Act

6. Section 24 of the Principal Act is amended— Commutation of retirement pay

(a) by inserting in paragraph (a) of sub-section (2A) “or section 32A of this Act” after “section”; and

- (b) by inserting in paragraph (a) of sub-section (2A) “or invalidity pay, as the case may be” after “retirement pay”.

Class A and
Class B
invalidity
pay

7. Section 31 of the Principal Act is amended by inserting in sub-section (1) “(whether on his retirement or by reason of his having been reclassified under sub-section 34 (1))” after “section 30”.

Class C
invalidity
benefit

8. Section 32 of the Principal Act is amended by inserting in sub-sections (1) and (2) “(whether on his retirement or by reason of his having been reclassified under sub-section 34 (1))” after “section 30”.

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

Commutation
of Class C
invalidity
pay

“32A. (1) This section applies to a member of the scheme who—

- (a) is retired after the commencement of this section; and
(b) on his retirement, is classified as Class C under section 30 and is entitled to invalidity pay.

“(2) A member of the scheme to whom this section applies may, by notice in writing given to the Authority, within a period of one year after becoming entitled to invalidity pay, or within such further period as the Authority, in special circumstances, allows, elect to commute a portion of his invalidity pay in accordance with this section.

“(3) An election under sub-section (2) by a member of the scheme to whom this section applies shall specify the amount that is to be payable to him by virtue of the commutation.

“(4) The amount specified in an election under sub-section (2) by a member of the scheme to whom this section applies shall not be an amount that, together with—

- (a) any amount or amounts specified in any previous election or elections by the member, under this section or section 24 of this Act, to commute a portion or portions of his invalidity pay or retirement pay, as the case may be, reduced by any amount or amounts required under paragraph 62 (4) (a) of this Act, to be paid by the member to the Commonwealth in respect of that commutation or those commutations; and
(b) any amount paid to the member in pursuance of an application, under section 74 of the previous Act, to commute a portion of any pension payable to him under that Act reduced by—
(i) any amount or amounts required, under paragraph 62 (4) (a) of this Act, to be paid by the member to the Commonwealth; and
(ii) any amount or amounts required, under sub-section 69 (1B) or 69 (3A) of the previous Act, to be paid by the

member to the Defence Forces Retirement Benefits Fund established under the previous Act,

in respect of that commutation,

exceeds 4 times the amount per annum of the invalidity pay to which the member of the scheme was entitled on retirement.

“(5) Where a member of the scheme to whom this section applies makes an election under this section—

- (a) there shall be paid to him by the Commonwealth an amount equal to the amount specified in the election as the amount that is to be payable to him by virtue of the commutation; and
- (b) the amount per annum of the invalidity pay payable to him, on and after the day on which the election takes effect, is the amount per annum that, but for this paragraph, would be payable reduced by an amount calculated by dividing the amount referred to in paragraph (a) by the expectation of life factor that, having regard to the age and sex of the person on the day on which the election takes effect, is applicable to him under Schedule 3.

“(6) For the purposes of this section, an election shall be deemed to have been made, and shall take effect, on the day on which the notice of election is received by the Authority.”

10. Section 34 of the Principal Act is amended by adding at the end thereof the following sub-section:

Reclassification in respect of incapacity

“(5) In this section, ‘recipient member’ means a member of the scheme who is entitled to invalidity pay and includes a member of the scheme who—

- (a) is classified as Class C by reason of having been reclassified (whether before or after the commencement of this sub-section) under sub-section (1); and

- (b) is not, after being so reclassified, entitled to invalidity pay,

but does not include a member of the scheme who is retired after the commencement of this sub-section and, on his retirement, is classified as Class C under section 30.”

11. Section 35 of the Principal Act is amended by adding at the end thereof the following sub-section:

Power of Authority to require persons to be medically examined, &c.

“(7) This section does not apply in relation to a member of the scheme who—

- (a) is retired after the commencement of this sub-section; and
- (b) on his retirement, is classified as Class C under section 30 and is entitled to invalidity pay.”

Widow's
pension on
death of
recipient
member

12. Section 39 of the Principal Act is amended—

- (a) by inserting “or a portion of his invalidity pay under section 32A” after “retirement pay under section 24”;
- (b) by inserting “or invalidity pay, as the case may be,” after “retirement pay” (third occurring); and
- (c) by inserting “or invalidity pay, as the case may be” after “retirement pay” (last occurring).

Eligible
children
other than
orphans

13. Section 42 of the Principal Act is amended—

- (a) by inserting in sub-section (3) “or a portion of his invalidity pay under section 32A” after “retirement pay under section 24”;
- (b) by inserting in sub-section (3) “or invalidity pay, as the case may be,” after “retirement pay” (third occurring); and
- (c) by inserting in sub-section (3) “or invalidity pay, as the case may be” after “retirement pay” (last occurring).

Eligible
orphans

14. Section 43 of the Principal Act is amended—

- (a) by inserting in sub-section (3) “or a portion of his invalidity pay under section 32A” after “retirement pay under section 24”;
- (b) by inserting in sub-section (3) “or invalidity pay, as the case may be,” after “retirement pay” (third occurring); and
- (c) by inserting in sub-section (3) “or invalidity pay, as the case may be” after “retirement pay” (last occurring).

Death of
recipient
member due
to retirement
disabilities

15. Section 47 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(2) This section does not apply in relation to a member of the scheme who—

- (a) is retired after the commencement of this sub-section; and
- (b) on his retirement, is classified as Class C under section 30 and is entitled to invalidity pay.”

Lump sum
payments on
or after
death of
certain
members

16. Section 48 of the Principal Act is amended—

- (a) by inserting in sub-section (5) “or invalidity pay” after “the amount of retirement pay”;
- (b) by inserting in sub-section (5) “or 32A” after “section 24”;
- (c) by inserting in sub-section (5) “or invalidity pay, as the case may be,” after “a portion of the retirement pay”; and
- (d) by inserting in sub-section (5) “or 32A (5) (a), as the case may be,” after “24 (3) (a)”.

17. Section 62 of the Principal Act is amended—

- (a) by inserting in sub-section (4) “or a portion of his invalidity pay in accordance with section 32A of this Act” after “section 24 of this Act”;
- (b) by omitting from paragraph (a) of sub-section (4) “or pension” and substituting “, invalidity pay or pension, as the case may be,”; and
- (c) by omitting from paragraph (a) of sub-section (4) “or his pension” and substituting “, invalidity pay or pension, as the case may be,”.

Recipient
member who
becomes
eligible
member

18. Section 98B of the Principal Act is amended—

- (a) by omitting paragraph (a) of sub-section (4) and substituting the following paragraphs:

Increase in
certain
pension
benefits

- “(a) in relation to a pensioner who is a recipient member to whom invalidity pay is payable—the rate at which invalidity pay was payable to the pensioner immediately before the commencement of the relevant prescribed year or, if a notional rate of invalidity pay is applicable to the pensioner in accordance with sub-section (5) and the notional rate of invalidity pay so applicable immediately before the commencement of that year is lower than the rate at which invalidity pay was payable to the pensioner immediately before the commencement of that year, the notional rate of invalidity pay so applicable immediately before the commencement of that year;
- “(ab) in relation to a pensioner who is the widow of a recipient member to whom, immediately before his death, invalidity pay was payable—a rate equal to five-eighths of the rate at which invalidity pay would have been payable to the deceased recipient member immediately before the commencement of the relevant prescribed year if he had not died or, if a notional rate of invalidity pay is applicable to the deceased recipient member in accordance with sub-section (5) and the notional rate of invalidity pay so applicable immediately before the commencement of that year is lower than the rate at which invalidity pay would have been payable to the deceased recipient member before the commencement of that year if he had not died, a rate equal to five-eighths of the notional rate of invalidity pay so applicable immediately before the commencement of that year;

- “(ac) in relation to a pensioner who is the widow of a person who, immediately before his death, was a contributing member—the rate at which pension benefit was payable to the pensioner immediately before the commencement of the relevant prescribed year;”;
- (b) by omitting paragraph (d) of sub-section (4) and substituting the following paragraph:
- “(d) in relation to a pensioner to whom sub-section 42 (2) or 43 (2) applies—the rate at which pension benefit referred to as additional pension was payable immediately before the commencement of the relevant prescribed year to the pensioner under whichever of those sub-sections is applicable;”;
- (c) by omitting from paragraph (e) of sub-section (4) “a recipient member to whom, immediately before his death, retirement pay was payable” and substituting “a deceased recipient member”;
- (d) by inserting in paragraph (e) of sub-section (4) “or invalidity pay, as the case may be,” after “retirement pay” (second, third, fourth, fifth and last occurring); and
- (e) by inserting before paragraph (a) of sub-section (5) the following paragraphs:
- “(aa) a notional rate of invalidity pay is applicable to a recipient member if and only if that member—
- (i) is a member of the scheme who—
- (A) was retired after the commencement of section 32A; and
- (B) on his retirement, was classified as Class C under section 30; and
- (ii) has not elected under section 32A to commute his invalidity pay to the maximum extent permitted under that section,
- and the notional rate of invalidity pay applicable to the member at a particular time is the rate at which invalidity pay would have been payable to him at that time if he had so commuted his invalidity pay immediately upon his retirement;
- “(ab) a notional rate of invalidity pay is applicable to a deceased recipient member if and only if that deceased member—
- (i) was a member of the scheme who—
- (A) was retired after the commencement of section 32A; and
- (B) on his retirement, was classified as Class C under section 30; and

(ii) had not, before his death, elected under section 32A to commute his invalidity pay to the maximum extent permitted under that section, and the notional rate of invalidity pay applicable to the deceased member at a particular time is the rate at which invalidity pay would have been payable to him at that time if he had not died and if he had so commuted his invalidity pay immediately upon his retirement;”.

19. Section 98G of the Principal Act is amended by omitting from sub-section (1) “Section 24 does” and substituting “Sections 24 and 32A do”.

Com-
mutation of
pension
benefits
during a
prescribed
year

20. Section 128 of the Principal Act is amended by adding at the end of sub-section (3) “or to make an election under section 32A to commute a portion of the member’s invalidity pay”.

Extension of
periods of
elections

21. Schedule 3 to the Principal Act is amended—

Schedule 3

- (a) by omitting “Section 24” and substituting “Sections 24 and 32A”; and
- (b) by inserting “AND CLASS C INVALIDITY PAY” after “RETIREMENT PAY”.

NOTES

1. Act No. 135, 1979; assented to 23 November 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; No. 36, 1978; and No. 15, 1979.
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; No. 36, 1978; and No. 15, 1979.