

EXPLANATORY STATEMENT

Issued by authority of the Minister for Defence Personnel

Defence Force Retirement and Death Benefits Act 1973

Defence Force Retirement and Death Benefits Regulations 2017

The *Defence Force Retirement and Death Benefits Act 1973* (the Act) makes provision for, and in relation to, a scheme for retirement and death benefits for members of the Defence Force.

Section 131 of the Act, provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which, by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The purpose of the *Defence Force Retirement and Death Benefits Regulations 2017* (the Regulations) is to repeal the *Defence Force Retirement and Death Benefits Regulations 1973* and *Defence Force Retirement and Death Benefits (Annual Rates of Pay) Regulations 1979* before they sunset on 1 October 2017. The Regulations would replace those with one regulation in substantially the same form, but with modern language and drafting compliance to ensure the continuation of benefits to existing members of the scheme

There are no substantive changes which will affect the establishment or calculation of a final annual pay rate at retirement; or which will affect the rate, indexation, or calculation of a benefit for surviving spouses in post-retirement marital or couple relationships. These calculations and benefits will continue as currently provided.

The Commonwealth Superannuation Corporation, and the Pay and Administration Branch in the Department of Defence have been consulted during the remake of the Regulations.

The Office of Best Practice Regulation was consulted and advised that no Regulation Impact Statement is required (OBPR ID 22583).

The authorising Act specifies no conditions that need to be fulfilled before the Regulations can be made.

The Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Regulations would commence on the day after it is registered on the Federal Register of Legislation and the details of the Regulations are set out in the [Attachment](#).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Defence Force Retirement and Death Benefits Regulations 2017

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Defence Force Retirement and Death Benefits Regulations 2017* (the Regulations) is to repeal the *Defence Force Retirement and Death Benefits Regulations 1973* and *Defence Force Retirement and Death Benefits (Annual Rates of Pay) Regulations 1979* before they sunset on 1 October 2017. The Regulations would replace those with one regulation similar in substance to ensure the continuation of benefits to existing members of the scheme, but with modern language and drafting compliance.

There are no substantive changes which will affect the establishment or calculation of a final annual pay rate at retirement; or which will affect the rate, indexation, or calculation of a benefit for surviving spouses in post-retirement marital or couple relationships. These calculations and benefits will continue as currently provided.

Human rights implications

The Regulations preserves existing arrangements and does not engage any of the applicable rights or freedoms.

Conclusion

The Regulations are compatible with human rights and does not raise any human rights issues.

Minister for Defence Personnel, the Honourable Dan Tehan MP

Details of the Regulations are as follows:

Section 1 – Name

This section provides that the title of the instrument is the *Defence Force Retirement and Death Benefits Regulations 2017*.

Section 2 – Commencement

This section provides for the Regulations to commence on the day after the instrument is registered.

Section 3 – Authority

The Regulations are made under the *Defence Force Retirement and Death Benefits Act 1973*.

Section 4 – Schedules

This section provides that each instrument as set out in the Schedule is amended or repealed as specified.

Section 5 - Definitions

This section provides definitions of words and phrases used in the Regulations.

Section 6 – Annual pay applicable to a member of the Defence Force on a day

This section prescribes pay related matters for contributing members to establish a final annual pay rate at retirement.

Subsection 1 applies to public office holders paid under a determination by the Remuneration Tribunal.

Subsections 2 and 3 apply to all other members of the Australian Defence Force, excluding Chaplains.

Subsection 4 provides the meaning of the term ‘rank’ for the purpose of calculating an annual rate of pay.

Subsection 5 provides how to establish a final annual rate of pay for Chaplains, as they do not formally hold a rank.

Section 7 – Benefits for certain spouses in post-retirement marital or couple relationships – pension

This section applies to surviving spouses, who were in a relationship of less than 3 years with a pension recipient, and whose relationship commenced after the pension recipient turned 60 years of age.

The section prescribes a rate of pension the surviving spouse will receive, for the purposes of subsection 6BA (3) of the Act. The section also sets the indexation rate applied to the prescribed rate for a pension benefit paid to these surviving spouses and how the indexation rate is calculated.

Section 8 – Benefits for certain spouses in post-retirement marital or couple relationships – lump sum payment

This section applies to surviving spouses who were in a relationship of less than 3 years with a pension recipient, and whose relationship commenced after the pension recipient turned 60 years of age.

The section prescribes the method and factors, and formula to be used for calculating a lump sum payment to which this surviving spouse is entitled for the purposes of subsection 6BA(3) of the Act.

Schedule 1- Repeals

Section 1 – The whole of the Regulations

This provision repeals *the Defence Force Retirement and Death Benefits (Annual Rates of Pay) Regulations 1979*.

Section 2- The whole of the Regulations

This provision repeals the *Defence Force Retirement and Death Benefits Regulations 1973*.