To lay down and clarify principles to be applied in the determination of the disability classification or reclassification of members of the Defence Force retired on medical grounds.

Background

The Defence Force Retirement and Death Benefits Authority, together with its predecessor The Defence Forces Retirement Benefits Board, had developed a number of principles to be applied in exercising their discretion to determine degrees of incapacity in relation to civil employment of servicemen retired medically unfit.

Generally speaking the principles took into account the skills and experience of the servicemen relevant to civil employment and the extent to which these have been impaired by his medical condition. The Authority, having determined the incapacity, then classified the retiree for the purpose of benefits according to a percentage disability into A, B, or C. It could later reclassify the retired serviceman if his medical circumstances had changed. In a reclassification, only the changed impairment, due to or causally connected with disabilities at retirement, was taken into account.

In his Second Reading Speech the Minister indicated that the Bill is designed to correct an anomaly. He referred to a recent judgment of the Federal Court of Australia which ruled that any disabilities arising after separation from the Services should be recognized whether or not they existed at retirement.

Main Provisions

Clause 4 amends section 53 of the D.F.R.B. Act 1948. The changes clarify and limit the D.F.R.D.B. Authority's powers to reclassify a pensioner's percentage disability.
New sub-section (1A) requires the Authority to consider definite factors related to incapacity for civil employment, including:

Skills, qualifications and experience.
Reasonable employment prospects.
Degree of impairment.

New sub-section (1B) requires the Authority to consider only the disabilities causing retirement, impairments causally connected with these and relevant changes.

Clause 6 is a transitional provision whereby past reclassifications under the D.F.R.D.B. Act are deemed to have been made in accordance with the proposed amendments.

Clause 8 amends section 30 of the D.F.R.D.B. Act 1973 by adding a new sub-section 2 defining the factors which are to be taken into account in determining the percentage incapacity for civil employment.

Clause 9 amends section 34 of the D.F.R.D.B. Act so as to clarify and limit the D.F.R.D.B. Authority's powers to recategorise a pensioners percentage disability in the same way as outlined for Clause 4 above.

Clause 10 provides transitional provisions whereby past classifications and recategorisations under the D.F.R.D.B. Act are deemed to have been made in accordance with the proposed amendments.

Defence, Science & Technology Group

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LEGISLATIVE RESEARCH SERVICE