Defence Legislation Amendment Bill 2011

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Law and Bills Digest Section

Contents

Purpose ......................................................................................................................... 2
Background ................................................................................................................... 2
    Australian Defence Force Cadets ........................................................................... 2
    Hickling review ...................................................................................................... 3
    Legal framework .................................................................................................... 3
    Response to review ................................................................................................ 4
Basis of policy commitment ....................................................................................... 4
Committee consideration ............................................................................................ 5
Position of major interest groups ............................................................................... 5
Financial implications ................................................................................................ 5
Key provisions ............................................................................................................ 6
    Australian Air Force Cadets .................................................................................. 6
    Australian Army Cadets ....................................................................................... 6
    Australian Navy Cadets ....................................................................................... 7
Defence Legislation Amendment Bill 2011

Date introduced: 18 August 2011
House: House of Representatives
Portfolio: Defence

Commencement: Sections 1–3 on the day of Royal Assent; Schedule 1 on a day to be fixed by Proclamation, but not later than six months after the Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/bills/. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose

The purpose of the Defence Legislation Amendment Bill 2011 (the Bill) is to amend the Air Force Act 1923 (Air Force Act), Defence Act 1903 (Defence Act) and the Naval Defence Act 1910 (Naval Defence Act) to provide that a Service Chief’s day to day administrative responsibility for cadets is subject to the direction of the Minister or the Chief of Defence Force.

Background

Australian Defence Force Cadets

The Australian Defence Force Cadets (ADFC) is a community-based youth development organisation focused on Defence customs, traditions and values.

Australian Defence Force Cadets and cadet staff are drawn from a diverse range of unique backgrounds and experiences. All are committed to providing and enjoying a positive and safe youth development experience, respecting the value and dignity of all people, and recognising the particular rights and needs of young people.¹

The ADFC is made up of three separate cadet organisations—Australian Army Cadets (AAC), Australian Air Force Cadets (AAFC) and Australian Navy Cadets (ANC). All three organisations are created by statute and are administered by the three Service Chiefs.


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Hickling review

On 6 June 2008, the then Minister for Defence, Joel Fitzgibbon MP, announced that an independent review of the ADFC Scheme would be undertaken.¹ The review was announced in response to the announcement by Comcare that it would take legal action in the Federal Court of Australia against the Australian Defence Force, in relation to the death of Cadet Nathan Francis during an Army cadet exercise.²

The then Parliamentary Secretary for Defence Support, Mike Kelly MP, announced the review team members on 20 August 2008.³ The review panel submitted their report to the Parliamentary Secretary on 24 November 2008. The report was passed to Defence for their response to the recommendations.⁴

That report is referred to as the ‘Hickling report’—named for the Chair of the review team, Lieutenant General Frank Hickling AO, CSC (Retired). The review into the ADFC was required to examine ‘the accountability, probity and transparency of the management of the ADFC to determine clear lines of responsibility and to ensure that the ADFC is achieving its specific objectives in an efficient and effective manner’.⁵

Legal framework

To this end, the Hickling report noted that under existing legislation the Service Chiefs are individually responsible for administering their respective cadet organisations. They are also held accountable under the law for the safety of cadet activities.⁶

However, despite the legal position, it is the Chief of Defence Force (CDF) who is perceived by Government, and the public, as being responsible for all matters concerned with the Australian Defence Force, including cadets. Likewise, the Secretary is accountable for the financial aspects of all Commonwealth resources, including those allocated to the ADFC. Unfortunately neither the CDF,

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¹. J Fitzgibbon (Minister for Defence) and M Kelly (Parliamentary Secretary for Defence Support), Australian Defence Force Cadet Scheme: independent review, joint media release, 6 June 2008, viewed 22 August 2011, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FEZNQ6%22
³. M Kelly (Parliamentary Secretary for Defence Support), Dr Kelly announces members of independent panel to review the ADF cadet scheme, media release, 20 August 2008, viewed 22 August 2011, http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A%22media%2Fpressrel%2FD2CR6%22
⁶. This was demonstrated by the legal proceedings arising from the death of Cadet Francis. Refer to footnote no. 3.

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nor the Secretary, has authority under the legislation governing cadet administration to direct the activities of the three cadet organisations. 8

The Hickling report recommended, amongst other things, legislative change so that the Chief of Navy, the Chief of Army and the Chief of Air Force would be required to administer their respective cadet organisations through the single authority of the Commander Australian Defence Force Cadets (COMADFC). 9 Once that legislative change was achieved, the CDF should appoint an officer to the position of COMADFC, with authority to administer the ANC, the AAC and the AAFC. 10

Response to review

The Department of Defence response was passed to the Parliamentary Secretary on 6 April 2009. The Department of Defence did not agree with the recommendations outlined above on the grounds that ‘the concept of COMADFC is not supported’. 11 However, the Department of Defence did agree to the Minister issuing a Directive to Service Chiefs and the Vice Chief of Defence Force detailing their accountabilities in relation to the administration of cadets.

Although the Hickling report had strongly recommended legislative amendment to remedy the situation it did note that ‘advice to the Review suggests that the process may be protracted and is subject to the level of priority allocated by Government’. 12

Basis of policy commitment

According to the Minister for Defence:

Currently, the Chief of Army, Chief of Navy and the Chief of Air Force are responsible for the administration of their respective cadet organisations, subject to the direction of the minister. This means that for cadet related policy to be enforceable, consistent and binding on each of the cadet organisations, the three service chiefs, the Secretary of the Department of Defence and the Chief of the Defence Force must agree and endorse the policy...

The Bill implements part of the Government’s response to the recommendations of the Hickling review. In essence, the Bill’s measures will:

- allow the Chief of the Defence Force, as well as the minister, to issue directions to the service chiefs in relation to the administration of their respective cadet schemes, and

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8. F Hickling (Chair), Review of the Australia Defence Force Cadets (ADFC) Scheme, op. cit., p. 15.
9. Ibid., paragraph 3.2, p. 33.
10. Ibid., paragraph 3.2, p. 33.
12. F Hickling (Chair), Review of the Australia Defence Force Cadets (ADFC) Scheme, op. cit., p. 16.

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Committee consideration

At the time of writing this Bills Digest, the Bill had not been referred to any Committee for inquiry and report.

Position of major interest groups

The Hinkling Review received some 200 written submissions from members of the public, as well as consulting widely with cadet units, cadet volunteer staff, parents and other interested parties. In addition:

In conducting the Review the panel had the benefit of some twenty seven reviews, studies, and project reports into the ADFC scheme since 1996. Without exception, the recommendations of these were sensible; and had they been implemented, would have led to improvements in the development, operation and sustainment of the ADFC. The evidence before the Review panel however suggests that implementation of the recommendations contained in this body of work has at best been patchy and in most cases non-existent.\(^\text{14}\)

It would appear, therefore, that the legislative amendments which are contained in the Bill are long overdue.

Financial implications

According to the Explanatory Memorandum, the Bill will have no additional impact on Commonwealth expenditure or revenue.\(^\text{15}\)

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14. F Hickling (Chair), Review of the Australia Defence Force Cadets (ADFC) Scheme, op. cit., p. 3.


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Key provisions

Australian Air Force Cadets

Section 8 of the Air Force Act relates to the AAFC.

Items 2–4 and 6–7 of the Bill amend section 8 of the Air Force Act by inserting new headings into the section for clarity of understanding. Items 8–9 amend subsection 8(9) and insert proposed subsection 8(10) respectively. Together these amendments operate so that the Chief of Air Force administers the AAFC, subject to any directions of the Minister, or any directions of the CDF. A direction of the CDF is subject to, and in accordance with any directions of the Minister.

Item 12 inserts proposed subsection 8A(1A) which provides that the CDF may delegate his or her powers to administer the AAFC to the Vice Chief of Defence Force.

Section 8A relates to the delegation of powers under the Air Force Act. Items 14–16 amend section 8A by omitting references to the Chief of Air Force and substituting the term ‘the person who made the delegation’ so that it is clear that any delegation of power in relation to the administration of the AAFC will be valid.

Australian Army Cadets

Section 62 of the Defence Act relates to the AAC. The section provides that, amongst other things:

- the AAC is constituted by officers of cadets, instructors of cadets, and volunteer cadets aged under 20 years
- regulations may make provision for and in relation to the organisation, maintenance, regulation, control and discipline of the AAC
- the Chief of Army is to Administer the AAC, subject to the regulations, to any determinations in force under section 58B and to the directions of the Minister.

Items 18–20 and 22–23 of the Bill amend section 62 of the Defence Act by inserting new headings into the section for clarity of understanding. Items 24–25 amend subsection 62(9) and insert proposed subsection 62(10) respectively. Together these amendments operate so that the Chief of Army administers the ACC, subject to any directions of the Minister, or any directions of the CDF. A direction of the CDF is subject to, and in accordance with any directions of the Minister.16

Existing section 120A relates to the delegation of powers under the Defence Act. Consistent with the other amendments to the Defence Act outlined above, Items 26–29, 31, 33 and 35 insert new headings into the section for clarity of understanding. Item 28 also inserts proposed subsection

16. This is in accordance with the terms of section 8 of the Defence Act which provides that the Minister for Defence has the general control and administration of the Defence Force.

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120A(3DA) which provides that the CDF may delegate his or her powers to administer the AAC to the Vice Chief of Defence Force.

Australian Navy Cadets

Section 38 of the Naval Defence Act relates to the ANC. The section provides that, amongst other things:

- the ANC is constituted by officers of cadets, instructors of cadets, and volunteer cadets aged under 20 years, and
- regulations may make provision for and in relation to the organisation, maintenance, regulation, control and discipline of the AAC.

Items 36–37 and 39 of the Bill amend section 38 of the Naval Defence Act by inserting new headings into the section for clarity of understanding. Item 41 repeals and substitutes subsection 38(7) so that regulations may make provision for, or in relation to, the organisation, maintenance, regulation, control and discipline of the ANC and in particular, to any determinations in force under section 58B.

Items 42–44 amend section 39 and insert proposed subsection 39(2) respectively. Together these amendments operate so that the Chief of Navy administers the ANC, subject to any directions of the Minister, or any directions of the CDF. A direction of the CDF is subject to, and in accordance with any directions of the Minister.

Item 48 inserts proposed subsection 44B(3A) which provides that the CDF may delegate his or her powers to administer the ANC to the Vice Chief of Defence Force.
Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2434.

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