Defence Legislation Amendment Bill (No. 2) 1988

Date Introduced: 13 October 1988
House: Senate
Presented by: Senator the Hon. Graham Richardson, Minister for Arts, Sport, the Environment, Tourism and Territories

Digest of Bill

Purpose
The Bill will amend a number of Acts to introduce amendments to many areas associated with the defence forces. The main amendments will clarify the law relating to salvage by a warship, enable a resignation by a senior officer to be refused if made within a year of appointment to that rank, and remove the offence of members of the public wearing military uniforms (other than emblems).

Background
Legally, salvage has two meanings. First, the services provided that saves, or contributes to the ultimate saving of, a vessel, its cargo or lives where they are in danger at sea. The service must be performed voluntarily and not under a legal duty. The term can also mean the reward payable for successful salvage service. The concept of salvage does not exist on land, where voluntary service to save life or property does not give a right to a reward. As noted in the second reading speech, it is very rare for an Australian warship to salvage ships and cargo, though the navy is often involved in rescues at sea. This is largely because commanders are instructed to leave salvage work to commercial vessels, and, as a matter of policy, salvage is not sought when the navy saves lives. The most recent salvages of ships occurred in 1955 and 1972.

The current ban on wearing uniforms dates from the Second World War when the measure was adopted on the grounds of national security. Since then, the government has been selling surplus defence equipment on a regular basis and the situation has been reached where the equipment, including military clothing, is sold to the general public while it remains illegal to wear defence uniforms. To prevent people from being able to pass themselves off as a member of the military, the ban on wearing military emblems will remain.

Section 17 of the Defence Act 1903 allows the Chief of the General Staff to refuse the resignation of an officer if it is tendered in time of war or defence emergency, the resignation would seriously prejudice the ability to carry out military operations or, if the officer is engaged in a training course or has been posted overseas at the Commonwealth's expense, if the course or posting period has not ended. The proposal is to expand this range to prevent officers of the rank of colonel or equivalent from leaving within a year of
promotion to that rank. The rational behind the move is to prevent the loss of senior personnel who may be encouraged to leave early because of the higher pension available at the higher rank. (The rate of pension being dependent on the final salary level). No similar restriction applies to people employed under the Public Service Act 1922.

Main Provisions

Defence Act 1903
Clause 10 will amend section 17 of this Act to allow the Chief of the General Staff to refuse a resignation from a colonel or higher rank if the person has not served at least a year since appointment to that rank.

Section 83 of this Act will be amended to remove the prohibition on wearing military uniforms. Under the amended section it will be an offence, with a maximum fine of $200 to wear or supply a military emblem, or an emblem capable of being taken as a military emblem, or to display a defence flag (clause 83). The penalty for bringing contempt on a military uniform will be increased from $40 to $200 (clause 17 which will amend section 84 of the Act).

A new Part IXB, titled salvage claims, will be inserted into this Act by clause 18. Proposed section 117A will make it clear that the crew as well as the Commonwealth may sue for salvage. The claim by the crew must be approved by the Chief of Naval Staff and can be conducted only by the Australian Government Solicitor. Apportionment of the salvage is dealt with in proposed section 117AA. First, the costs of the salvage will be met. Any residue will be apportioned in accordance with any agreement between the owners, the Commonwealth and the crew. However, if a court or tribunal has made a decision on apportionment, that decision will be followed. In the absence of a decision or an agreement, the general rule is that the Commonwealth will receive 80% and the crew the remainder, though where the crew has rendered exceptional service in the salvage the Minister may increase the crew’s share to 25%. After meeting the cost of the claim on behalf of the crew, the salvage is to be distributed amongst the crew according to the regulations (proposed section 117AB).

Defence Force Discipline Act 1982
Clause 22 will amend section 84 of this Act to remove the limit on reparations that a court martial or a defence magistrate may impose. The limit will remain for summary bodies.

Naval Defence Act 1910
Clause 43 will amend section 13 of this Act to implement the same amendment as contained in clause 10 in respect to captains and higher ranks.
For further information, if required, contact the Law and Government Group.

1 February 1989

Bills Digest Service
Legislative Research Service

This Digest does not have any official legal status. Other sources should be consulted to determine the subsequent official status of the Bill.

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