Defence Legislation Amendment Bill 1987

Date Introduced: 18 March 1987
House: House of Representatives
Presented by: Hon. Kim Beazley, M.P. Minister for Defence

Digest of Bill

Purpose

The Bill will amend a range of defence-related legislation, in particular, to provide for the limited call-out of the Reserve Forces in circumstances which fall short of a defence emergency; to provide for long-term enlistment of members of the Defence Forces; and to alter arrangements under retirement and death benefits legislation.

Background

Citizen forces have existed in Australia since early colonial times. Prior to the 1850s, local volunteer groups were formed to counter perceived threats from convicts, Aborigines and bushrangers. The outbreak of the Crimean War in 1854 and the withdrawal of part of the Imperial Garrison led to the establishment of Volunteer Forces in New South Wales, Victoria and South Australia. In 1870, the last of the British troops were withdrawn and a small regular defence force was raised. This was backed by unpaid 'volunteers' and a paid or partially paid militia which subsequently went to the Sudan and Boer Wars. At Federation, regular and citizen forces were brought into a single defence system. Both prior to and since World War II, the citizen forces have been regarded as essentially for the defence of Australia. By the end of 1945, the regular forces, some of which had been subject to restrictions on overseas deployment, were consolidated into the Australian Regular Army under a single set of terms and conditions. The Regular Army was now available for deployment to trouble spots anywhere abroad or, if necessary, at home. As a result, the citizen forces became a considerably lesser source of military strength.\(^1\) The consequential frustration of their members was remarked upon by the Millar Committee of Inquiry into the Citizen Military Forces (CMF) in its Report of 1974.\(^2\)

In 1964, legislation was enacted to permit the call-out, by proclamation, of the CMF, now known as the Reserve Forces, for continuous service in a 'time of war or in time of defence emergency' (section 50A of the Defence Act 1903). However, at present the Reserves cannot be legally activated to augment the Regular Force in situations which fall short of war or defence emergency. The Millar Committee recommended that the role of the Reserves be strengthened and given more immediate relevance by making it directly responsible with the Regular Army for the ground defence of
Australia. The Committee also proposed that the *Defence Act* 1903 be amended to provide for call-out of the Army Reserves without the declaration of a defence emergency. While defence planning for both lower-level and, in the longer term, more substantial conflict has become increasingly dependent on the ready availability and capacity provided by the Reserves, the 'call-out' proposal was not implemented.

The issue of the role of the Reserves was canvassed by the Dibb Review of Australia's Defence Capabilities. Tabled in the Parliament in June 1986, the Review considered that priority in defence planning should be given to training and exercising for low-level contingencies that are credible on the basis of current regional military capacity. These are described in the Review as covering low-level harassment and raids through to more concentrated conflict, but well short of attempted military invasion, and directed at securing political concessions from Australia, rather than attaining any military advantage. At present, Reserve units comprise the majority of the Regional Surveillance forces such as the North West Mobile Force (NORFORCE). It was the opinion of the Review that in low-level conflict the Reserve element, because of its specialist local knowledge, would play a critical role in the protection of military installations, assets and settlements in the north of Australia. Accordingly, the Review recommended a legislative provision which would enable a limited call-out of the Reserves in circumstances falling short of a defence emergency. This, it argued, would allow for full exploitation of the Reserve Forces in the provision of an effective defence capability as well as providing for Reservists a renewed sense of purpose to overcome the prevailing lack of morale which has led to problems of organisation, recruitment and training.

The Dibb Review forms the foundation of the Government's White Paper, *The Defence of Australia* 1987, tabled in the Parliament in March 1987. The Government subscribes to a policy of self-reliance. This policy is based on a strategy of 'defence in depth', designed to give priority to meeting any credible level of threat in Australia's area of direct military interest by utilising both defensive and offensive capabilities. Within this framework, the Government has directed that adequate and appropriate capabilities exist within the Defence Force to deal with low-level threats. Priority will continue to be given to the Reserve Forces, with the current defence program providing for an Army Reserve of 26,000. Increases in the Reserve components of the Navy and Air Force will bring the total Reserve strength to over 30,000. The Dibb Review's 'call-out' recommendation has been accepted by the Government and will be implemented by this Bill. In the Second Reading Speech, the Minister pointed out that section 51 of the *Defence Act* 1903, which provides for call-out in aid of the civil power, expressly prohibits the call-out or use of the Reserve Forces in connection with an industrial dispute.

**Main Provisions**

**Amendments of the Air Force Act 1923**

The amendments are generally directed towards bringing the Act into line with the proposed new provisions of the *Defence Act*, 1903 relating to long term enlistment and the new call out provisions.
Amendments of the Defence Act 1903 (the Principal Act).

Sections 36 to 42A of the Principal Act deal mainly with the enlistment, engagement, re-engagement and discharge of soldiers. Clause 16 will repeal these sections and substitute new sections 36 to 42A. Volunteers will be able to serve as soldiers in the Permanent Forces or the Reserves for a fixed period or until retiring age (proposed section 36). A similar provision will enable the voluntary extension of the period of enlistment where enlistment was for a fixed period (proposed section 37). Generally, a soldier who is enlisted for a fixed period will be entitled to a discharge at the end of that period, except in time of war or defence emergency or when the Regular Army Emergency Reserve or the Australian Army Reserve is called out. Other exceptions may be provided by regulation (proposed section 38).

A soldier who is enlisted until retiring age will generally be entitled to claim an early discharge on giving appropriate notice. Similar exceptions to those for discharge from a fixed period of service will apply. In addition, an early discharge may not be claimed if, in the opinion of the Chief of General Staff, it would seriously prejudice the ability of the Army to carry out military operations or if the soldier has yet to complete an obligatory period of service following a course of special training, employment on special duties or overseas service (proposed section 39). Wartime Army conscripts will have a right of discharge at the end of the time of war (proposed section 40). Any soldier entitled to a discharge will be released as soon as reasonably practicable, but will remain bound to serve until then (proposed section 41).

Clause 22 will insert a new Division 4 into the Principal Act which will deal with the calling out of the Defence Forces. The power of call out will be vested in the Governor-General who may, when considering that it is desirable to do so for the defence of Australia, call out the Reserve Forces for continuous fulltime service in times short of war or a defence emergency. The Governor-General’s Proclamation will be required to specify the period of call out, which is not to exceed 3 months. This period may be extended by Proclamation for no more than 3 months at a time. While the Proclamation remains in force, members of the Reserve Forces to which the call out applies will be bound to render continuous fulltime naval, military or airforce service as directed by a Chief of Staff in writing. However, a member who has completed 12 months’ consecutive service will be entitled to be released from service. A member who has been released from service under this clause will not be bound to render service again until a period of time equal to the previous period of service has elapsed (proposed section 50F). The Governor-General will be required to state and communicate the reasons for a Proclamation under this clause to Parliament. If Parliament is not sitting, it must meet within 10 days after the Proclamation to receive the Governor-General’s communication (proposed section 50G).

Members of the Defence Force will not be bound by State or Territory laws that would require members to have permission to use, have in their possession or register certain things belonging to the Commonwealth or to do anything in the course of performing Defence Force duties (new section 123 which will be inserted by clause 27).
Amendments of the Defence Force Retirement and Death Benefits Legislation

Generally, the amendments have been introduced to ensure conformation with other legislation and with original policy intentions. In the area of pension increases, amendments will reflect the altered basis of calculation by the Australian Statistician of the consumer price index.

Amendments of the Naval Defence Act 1910

In general, the amendments propose new provisions for the call out of the Australian Naval Reserve and for long-term enlistment in, and discharge from, the Navy, corresponding with proposed amendments to the Defence Act 1903.

References


For further information, if required, contact the Defence Group.

30 March 1986  Bills Digest Service
Legislative Research Service

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