To effect amendments on various subjects to a number of Acts dealing with defence matters.

This is an omnibus Bill which effects a number of amendments to various pieces of defence legislation and makes consequential amendments and drafting changes to such legislation and to related Acts. Details of these latter provisions are covered in the Explanatory Memorandum circulated by the authority of the Minister.

The Bill removes the obligation of members of the Emergency Force of each arm of the Defence Force to render annual service but enables the respective Chiefs of Staff to require, by instrument in writing, that members of the Emergency Forces render service (other than continuous full-time service) for purposes of training. These changes are effected:

- in respect of the Air Force by amendment to Section 4H and insertion of a new Section 4HA in the Air Force Act 1923 (clauses 4 and 5)
- in respect of the Army by amendment to Section 45 and insertion of a new Section 48A in the Defence Act 1903 (clauses 10 and 13)
- in respect of the Navy by amendment to Section 32 and insertion of a new Section 32AA in the Naval Defence Act 1910 (clauses 102 and 103).

The power of the Minister for Defence to determine financial conditions of service for members of the Defence Force is to be expanded by amendments to Section 58B of the
Defence Act 1903 contained in clause 18 of the Bill. This power will now extend to making determinations:

(a) authorising deductions from salary or allowances;
(b) defining generally the meanings of words and expressions used in determinations made under Section 58B;
(c) referring to other laws and instruments as in force at a particular time or from time to time; and
(d) imposing a liability on a person in specified circumstances to pay an amount to the Commonwealth.

Although the Senate Standing Committee for the Scrutiny of Bills in its Alert Digest No. 5 of 1984 describes this as a minor expansion of the power of the Minister it should be noted that to date the only power vested in the Minister has been to make beneficial determinations. The power proposed to be conferred by the new Section 58B(1)(g) when read in conjunction with the new Section 58B(1A) would allow the Minister to make a determination authorising a deduction from a member's salary and allowances in respect of an alleged debt without providing the member with any statutory means for contesting the validity of the basis on which the Minister was advised to make such determination.

Clause 19 inserts 2 new Divisions in Part IIIA of the Defence Act 1903 consisting of Sections 58F to 58Y inclusive. The effect of these provisions is to establish an independent Defence Force Remuneration Tribunal, with power to determine financial conditions of service for members of the Defence Force and to establish the position of Defence Force Advocate.

The Defence Force Remuneration Tribunal is to consist of a Deputy President of the Conciliation and Arbitration Commission, and two other persons - one a person experienced in industrial relations and the other a person who is a former member of the Defence Force (Section 58G). The Tribunal is given jurisdiction to determine salaries and salary-related allowances for the Defence Force and is required to review these matters at least every 2 years (Section 58H). The office of Defence Force Advocate is established by Section 58S with the function of preparing matters for reference to the Tribunal by the Chief of the Defence Force and of preparing submissions to the Tribunal.
on behalf of the Defence Force. The Defence Force Advocate will also represent the Defence Force in any proceedings before the Tribunal (Section 58T).

Clause 20 of the Bill amends Section 83 of the Defence Act 1903 by dispensing with the requirement for collectors of military insignia, etc. to obtain authorization for having these articles in their possession. The offence of wearing without lawful authority remains as does the prohibition on the manufacture, sale, supply and use of military uniforms and insignia without lawful authority.

The Bill also contains a number of amendments to the Defence Force Discipline Act 1982. Section 6 of that Act provided for the making of regulations in relation to detainees and detention centres. In his Second Reading Speech the Minister refers to amendments to the Defence Force Discipline Act 1982 providing for "inclusion of provisions which were originally intended to be provided for by subordinate legislation" and advises that "these amendments are adequately explained in the explanatory memorandum".

The explanatory memorandum accompanying the Bill states at p.13:

"It has become apparent that certain of the matters contemplated for inclusion in the regulations properly belong in the Principal Act by regulations.

With the insertion into the Principal Act of various provisions relating to detainees and detention centres (by clauses 33, 36, 37, 38 etc.) there is no longer any requirement to modify the Principal Act by the regulations and this clause accordingly amends section 6 of the Principal Act by deleting the reference to detainees.

The clause also inserts into Section 6 of the Principal Act a limitation on the power to modify the Principal Act by regulations".

The Scrutiny of Bills Committee Report draws attention to what might be considered as a flaw in the propositions advanced in the explanatory memorandum where it states in respect of clauses 35 and 36 of the Bill:

"These clauses amend Section 68(2) of the Defence Force Discipline Act 1982. At present that section requires that the specific effects of
certain general punishments, for example reduction in rank or restriction of privileges, are to be set out in regulations. They are therefore disallowable by the Parliament.

The result of the amendment will be that the regulations will now set out general guidelines within which the chief of staff may determine the particular effects of certain punishments. While the guidelines embodies in the regulations will be disallowable the rules themselves will not be.

Proposed Section 68A(2) to be inserted by clause 36 establishes a similar process of making rules subject to regulations relating to the conditions which may apply to custodial punishments".

As the Scrutiny of Bills Committee's Report points out these clauses might be considered to be an inappropriate delegation of legislative power.

The Defence Force Discipline Act 1982 by Section 101 sought to apply in relation to the investigation of service offences the provisions of what was intended to become the Criminal Investigation Act. In fact the Criminal Investigation Bill 1981 lapsed when Parliament was dissolved in February 1983. The present Bill by clause 44 seeks to insert in the Defence Force Discipline Act 1982 a new Part VI - "Investigation of Service Offences" containing the provisions applicable to the investigation of service offences. In his Second Reading Speech the Minister advises that it remains the Government's intention to introduce a Criminal Investigation Bill as soon as possible and that the provisions in this regard in the Defence legislation will be reviewed in the light of this legislation when enacted.

Clause 75 of the Bill seeks to insert in the Defence Force Discipline Act 1982 new Sections 196A and 196B requiring the Judge Advocate General to report annually to the Minister on the operation of the Act, such report to incorporate adequate statistics of trials and proceedings under the Act and further requiring the Minister for Defence to appoint a Board to review the Act after its first 3 years of operation and to report to the Minister who is to table that report in Parliament.

The provisions of Sections 24 and 32A of the Defence Force Retirement and Death Benefits Act 1973 in relation to commutation of retirement pay and of Class C invalidity pay are amended by clauses 83 and 84 to enable an increase in the proportion of these benefits that may be
commuted. The immediate effect of changes would be to moderate the initial effect of proposed changes in the legislation in respect of the taxation of lump sum payments. However, it should be noted that this would be achieved by a reduction in subsequent annual rates of pension and accordingly the change would appear to be cosmetic rather than of any substantial benefit.

Clause 89 of the Bill abolishes the now obsolescent Defence Force Retirement Benefits Board whose functions were in the main taken over by the Defence Force Retirement and Death Benefits Authority with the passage of the Defence Force Retirement and Death Benefits Act 1973. By clause 90 the residual powers of the Board are transferred to the Authority.

By clauses 110 and 112 respectively the provisions of the Royal Australian Air Force Veterans' Residence Act 1953 and the Services Trust Fund Act 1947 are amended to apply provisions of the Audit Act 1901 to accounting and financial reporting requirements for the RAAF Veterans' Residences Trust and the Services' Trust Funds.

The title of Chief of Defence Force Staff is, in accordance with recommendations of the Defence Review Committee, changed to Chief of the Defence Force and clause 118 of the Bill amends Section 9 of the Defence Act 1903 and makes consequential changes to other references to the existing title in the Acts set out in Schedule 3 to the Bill. In addition sub-clause (3) of clause 118 provides that a reference in any other law to the Chief of Defence Force Staff is to be read as a reference to the Chief of the Defence Force.

For further information, if required, contact:

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