Date Introduced: 25 October 1979  
House: House of Representatives  
Presented by: The Honourable D.J. Killen, M.P., Minister for Defence

Short Digest of Bill

Purpose

To improve the administration of the Defence Force as follows:

- Authorize standing appointments of officers eligible to act as chiefs of staff.
- Empower the Minister to make determinations concerning remuneration and related matters.

Background

The command function of the Chief of the Defence Force Staff and Armed Services Chiefs of Staff cannot be delegated to other senior officers in the absence or illness of the appointees. The Governor-General does of course have power to make acting appointments in accordance with provisions of the Acts Interpretation Act 1901. However, there could be a period when one of these senior command positions in the Defence Force is not effectively filled unless standing appointments of officers are made who will be eligible to act immediately. The Bill will enable appointments of eligible officers.

Delays in giving effect to changes in remuneration, allowances and other financial conditions of service have been the subject of criticisms, annoyance and dissatisfaction within the armed services. The reason for delay is that changes cannot be made until regulations provide for them. This complaint should be overcome by the Bill which gives the Minister power to make determinations which are to be treated in the same way as regulations.

Main Provisions

Clause 4 inserts new section 9C which enables the Governor-General to appoint officers, who are eligible, to act in the offices of Chief of the Defence Force Staff, or chief of staff of the Navy, Army or Air Force. The section
covers circumstances and conditions which are to apply when an officer is required to act, including:

- During a vacancy but limited to 12 months.
- Absence or inability of office holder.
- Only in circumstances specified in the instrument of appointment.
- Subject to terms and conditions specified by the Governor-General and to his termination of an appointment at any time.

An eligible officer who acts in one of these offices may exercise all powers and perform all functions of the position. His actions cannot be questioned on grounds associated with an irregularity in his appointment or the occasion requiring him to act.

Clause 5 inserts new "Part IIIA - Remuneration, Allowances and Other Benefits". Its provisions empower the Minister to make determinations about the above matters. Determinations may cover members of the Defence Force, cadets, families of members and applicants for appointment. Pension matters are excluded (proposed s.58B(2)).

Provisions of the new Part IIIA also exclude authority for determinations which involve forfeiture or assignment of a member's remuneration or allowances, deductions, variation of allotments or a liability to pay an amount to the Commonwealth (proposed s.58B(3)). Section 124 requires that these matters be covered in regulations.

Determinations may not be retrospective where rights would be affected or liabilities imposed on persons other than the Commonwealth (proposed s.58B(5)).

Sections 48, 49 and 50 of the Acts Interpretation Act 1901 apply to determinations as if they were regulations with minor exceptions in relation to commencement, notification and prohibited retrospective operation, for which the Bill makes specific provision.

A determination revoked by the disallowed provision of a later determination, revives upon the disallowance of that later provisions (proposed s.58C(2)).

Part III - Interim Provisions of the Bill enables the Minister to make interim determinations amending or repealing relevant regulations, i.e. ones made under the Defence Act, the naval Defence Act or the Air Force Act, and
which deal with matters on which determinations may be made (Cl.12(1)). Interim determinations prevail over inconsistent regulations. These provisions are not to be taken as a derogation of the Governor-General's power to make regulations.

Clause 13 provides that interim determinations are to be treated in the same way as regulations in accordance with ss.48, 49 and 50 of the Acts Interpretation Act.

Part IV of the Bill provides for ending the period during which interim determinations may be made, and the effective repeal of Part III as at that time. After the interim period, all regulations and determinations, in force immediately before the end of that period will remain in force (Cl.17).

Clause 2(2) provides for the interim period to end on 1 January 1982, or on a later date which is fixed by proclamation before 1 January 1982.

Defence, Science & Technology Group
LEGISLATIVE RESEARCH SERVICE

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