

Defence Amendment Bill

Government Bill

As reported from the Foreign Affairs,
Defence and Trade Committee

Commentary

Recommendation

The Foreign Affairs, Defence and Trade Committee has examined the Defence Amendment Bill and recommends by majority that it be passed with the amendments shown.

Introduction

The Defence Amendment Bill seeks to amend several aspects of the Defence Act 1990. The bill would generally embed and enable organisational reform in the New Zealand Defence Force (NZDF) and the Ministry of Defence. These reform goals were set out in the Defence White Paper, and the bill aims to establish them in legislation. This reform is expected to improve the efficiency of both organisations, and help them work together effectively.

The bill would have specific effects in a number of areas: capability management; information sharing; the appointment, removal and performance of the Chief of Defence Force (CDF); senior NZDF appointments and accountabilities; Civil Staff; civilianisation; reserves and territorial forces; and the defence advisory board. It also seeks to clarify a number of the Act's minor provisions.

This commentary covers the amendments we recommend to the House, and the key issues we discussed. We also recommend some minor technical amendments to clarify the intent of the bill and to correct drafting omissions, which are not discussed in this commentary.

Appointment and reappointments

We recommend amendments to separate the processes of appointment and reappointment set out in clauses 17 and 18 so that the State Services Commissioner and the Government do not have to undertake a full appointment process when making a reappointment of the Chief or Vice Chief of the Defence Force. This would also be consistent with section 35 of the State Sector Act 1988, which empowers the Commissioner to make a recommendation for reappointment of a Public Service chief executive without first notifying the impending vacancy, examining other applicants, or establishing a selection panel.

Information sharing

Concern was raised that clause 22 of the bill does not set out which categories of personal information could be shared or the uses to which information could be put. We recommend an amendment to specifically address the treatment of personal information and compliance with privacy legislation.

Transfer of functions from Armed Forces to Civil Staff

We recommend an amendment to clause 37 to make it clear that a former Service person who has been transferred to the Civil Staff would not be subject to the 90-day trial provisions of the Employment Relations Act 2002.

We also recommend amending the clause to cover a person who has been discharged from the Armed Forces because of a transfer of functions to the Civil Staff, whether or not they held a position of which the particular functions were transferred. This is because a person affected by the transfer of functions would not necessarily have been the incumbent in the transferred function, but would still have the required skills for the position.

Chiefs of Service Committee

Section 29 of the Defence Act establishes a Chiefs of Service Committee. We recommend that clause 20 of the bill be amended to repeal section 29 to disestablish the committee. This committee does not meet regularly at present and its activities are largely redundant, as the role, duties, and powers that it undertook in the past are now largely exercised by other non-statutory committees convened by the CDF or his designate. Therefore repealing section 29 would make the Act consistent with the amendment to section 8(3), which vests command of the Armed Forces singularly in the CDF.

The authority of the Chief of Defence Force

Clause 6 seeks to substitute a new subsection (3) in section 8 of the Act, which states that “the Chief of Defence Force shall command the Armed Forces”. It would replace the previous requirement that the CDF command “through the Single Service Chiefs”.

Concern was raised at the proposed removal of the requirement for the CDF to command the services through the chiefs of service, and we debated it at length.

It was suggested that this amendment could have the effect of concentrating too much power in one individual, especially combined with the proposed amendment in clause 19 of the bill (substituting a new section 28 of the Act), which would take away the single service chiefs’ right of referral to the Minister of Defence in the event that any one of them disagreed with the CDF; it was argued that this might result in an a potential absence of contesting advice to the Minister.

It was also argued that the current command structure constitutes a worthwhile safeguard (although it is not likely to be needed in practice) and is consistent with the hierarchical character of the armed forces. Some of us consider that the combined effect of these changes might be to erode the status of Chiefs of Service and to remove constitutional checks and balances on the CDF.

The intent of the proposed new clause is to ensure unity of command, and to underpin the CDF’s ability to develop and maintain a “one-force—three services” NZDF. It reflects the fact that in military operations single services no longer have primacy. The CDF is expected to have considerable experience in the joint operations typical of modern military deployments. The present situation, where

the CDF commands the NZDF through the chiefs of service, entails of its nature a plurality of authority. This implies a potential for lack of clarity as to where the command and hierarchical accountability lie, and for uncertainty as to the status of conflicting directions. In this regard we do not recommend any amendment to this provision.

Appendix

Committee process

The Defence Amendment Bill was referred to the committee on 6 March 2012. The closing date for submissions was 13 April 2012. We received and considered six submissions from interested groups and individuals. We heard one submission in Wellington.

We received advice from the Ministry of Defence and the New Zealand Defence Force.

Committee membership

John Hayes (Chairperson)

Hon Phil Goff

Dr Kennedy Graham

Hon Tau Henare

Dr Paul Hutchison

Su'a William Sio

Lindsay Tisch

Defence Amendment Bill

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Dr Jonathan Coleman

Defence Amendment Bill

Government Bill

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The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Defence Amendment Act **2011**.
- 2 Commencement**
This Act comes into force on 1 July 2012. 5
- 3 Principal Act amended**
This Act amends the Defence Act 1990.

- Part 1**
- Amendments to Defence Act 1990**
- 4 Long Title amended** 10
The Long Title is amended by repealing paragraph (e) and substituting the following paragraph:

“(e) **to define the relationship of the Chief of Defence Force to the Vice Chief of Defence Force and to the Chiefs of Service; and**”.

5 Interpretation

(1) Section 2(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“**active reserve** means the Royal New Zealand Naval Reserve, the New Zealand Army Reserve, and the Royal New Zealand Air Force Reserve

“**inactive reserve** means the Inactive Naval Reserve, the Inactive Army Reserve, and the Inactive Air Force Reserve

“**leading aircraftwoman** includes an aircraftwoman, a general service hand, or an air force cadet”.

(2) Section 2(1) is amended by repealing the definition of **airman** and substituting the following definition:

“**airman or airwoman**—

“(a) means any man or woman (as the case may be) duly attested for service in the Air Force, or declared by or under this or any other enactment to belong to the Air Force; and

“(b) includes—

“(i) a non-commissioned officer of the Air Force; and

“(ii) a rating of the Navy and a soldier of the Army attached to the Air Force; but

“(c) does not include an officer”.

(3) Section 2(1) is amended by repealing the definition of **component** and substituting the following definition:

“**component**, in relation to the Navy, the Army, or the Air Force, means the regular force or a reserve force of that Service”.

(4) Paragraph (a) of the definition of **member of the Defence Force** in section 2(1) is amended by omitting “or an airman” and substituting “an airman, or an airwoman”.

(5) Paragraph (c) of the definition of **non-commissioned officer** in section 2(1) is amended by omitting “an airman above the rank of leading aircraftman” and substituting “an airman or

airwoman above the rank of leading aircraftman or leading aircraftwoman”.

- (6) The definition of **rank** in section 2(1) is amended by omitting “acting, or honorary” and substituting “or acting”. 5
- (7) Paragraph (b) of the definition of **rating** in section 2(1) is amended by inserting “or airwoman” after “airman”. 5
- (8) Section 2(1) is amended by repealing the definition of **reserve forces** and substituting the following definition:
 “**reserve forces** means the active reserve and the inactive reserve collectively”. 10
- (9) Paragraph (b) of the definition of **soldier** in section 2(1) is amended by inserting “or airwoman” after “airman”. 10
- (10) Section 2(1) is amended by repealing the definition of **territorial forces**. 10
- (11) Section 2 is amended by repealing subsection (3) and substituting the following subsection: 15
 “(3) For the purposes of this Act, unless the context otherwise requires, a member of the Armed Forces is released from the component of the Service in which he or she is serving when the member, or the component, or the part of the component in which the member is serving, is transferred to another component of that Service.” 20

6 Chief of Defence Force

Section 8 is amended by repealing subsection (3) and substituting the following subsections: 25

- “(3) The Chief of Defence Force shall command the Armed Forces. 25
- “(4) The Chief of Defence Force may be appointed for a term of no more than 5 years but ~~is eligible for reappointment from time to time by the Governor-General in Council on the recommendation of the Minister and the State Services Commissioner.~~ may be reappointed for further terms in accordance with **section 25AB.** 30
- “(5) The Governor-General in Council may at any time remove the Chief of Defence Force from office for just cause or excuse. 30

“(6) To avoid doubt, section 2(2) of this Act and section 2(3) of the Armed Forces Discipline Act 1971 apply in respect of references to the Chief of Defence Force.”

7 Constitution of Defence Force

(1) Section 11(3) is amended by repealing paragraphs (c) and (d) 5
and substituting the following paragraph:

“(c) the Inactive Naval Reserve:”.

(2) Section 11(4) is amended by repealing paragraphs (b) and (c)
and substituting the following paragraphs:

“(b) the New Zealand Army Reserve: 10

“(c) the Inactive Army Reserve:”.

(3) Section 11(5) is amended by repealing paragraphs (b) and (c)
and substituting the following paragraphs:

“(b) the Royal New Zealand Air Force Reserve:

“(c) the Inactive Air Force Reserve:” 15

8 New section 12 substituted

Section 12 is repealed and the following section substituted:

“12 Joint forces

“(1) The Chief of Defence Force may—

“(a) establish a joint force comprising members of 2 or more 20
Services; and

“(b) appoint an officer of one of those Services to command
that force.

“(2) If a joint force is established under this section, this Act and
the Armed Forces Discipline Act 1971 apply to any member 25
of the Armed Forces serving in the joint force, subject to the
following modifications:

“(a) anything required or authorised by or under this Act or
the Armed Forces Discipline Act 1971 to be done by, to,
or before the Chief of the Service to which the member 30
belongs or is attached may be done by, to, or before—

“(i) the Chief of Defence Force; or

“(ii) if a superior commander has been appointed by
the Chief of Defence Force to command the joint
force, that officer: 35

“(b) any other necessary modifications as may be prescribed.

“(3) In **subsection (2)(a)(ii)**, **superior commander** has the meaning given to it in section 2(1) of the Armed Forces Discipline Act 1971.”

9 New section 13 substituted

Section 13 is repealed and the following section substituted: 5

“13 Members of regular forces

“(1) The regular forces of the Armed Forces consist of the officers, ratings, soldiers, airmen, and airwomen who are for the time being and from time to time appointed, engaged, enlisted, or transferred for continuing full-time service in the Royal New Zealand Navy, the Regular Force of the Army, or the Regular Air Force. 10

“(2) The maximum numbers of officers, ratings, soldiers, airmen, and airwomen in the regular forces are the numbers that the Minister authorises. 15

“(3) **Subsection (1)** is subject to Part 4.”

10 New sections 15 and 16 substituted

Sections 15 and 16 are repealed and the following sections substituted:

“15 Members of active reserve 20

“(1) The active reserve of the Armed Forces consists of the officers, ratings, soldiers, airmen, and airwomen who are for the time being and from time to time appointed, engaged, enlisted, or transferred for service in the Royal New Zealand Naval Reserve, the New Zealand Army Reserve, or the Royal New Zealand Air Force Reserve. 25

“(2) The maximum numbers of officers, ratings, soldiers, airmen, and airwomen in the active reserve are the numbers that the Minister authorises.

“(3) **Subsection (1)** is subject to Part 4. 30

“16 Members of inactive reserve

“(1) The inactive reserve of the Armed Forces consists of the officers, ratings, soldiers, airmen, and airwomen who are for the time being and from time to time transferred for service in the

Inactive Naval Reserve, the Inactive Army Reserve, or the Inactive Air Force Reserve.

“(2) **Subsection (1)** is subject to Part 4.”

11 Circumstances in which members of one Service are deemed attached to another Service 5

- (1) Section 19(1) and (3) are amended by omitting “or airman” and substituting in each case “, airman, or airwoman”.
- (2) Section 19(2) and (4) are amended by omitting “or airman” and substituting in each case “airman, or airwoman”.

12 Transfer for employment with other forces 10

- (1) Section 22(4)(b) is amended by omitting “territorial or”.
- (2) Section 22(4)(b)(i) is amended by omitting “section 39 or”.

13 Attachment of members of New Zealand Armed Forces to other armed forces

- (1) Section 23(2)(b) is amended by omitting “territorial or”. 15
- (2) Section 23(2)(b)(i) is amended by omitting “section 39 or”.

14 Heading to Part 3 amended

The heading to Part 3 is amended by inserting “**Vice Chief of Defence Force,**” after “**Chief of Defence Force,**”.

15 Secretary of Defence 20

Section 24(2) is amended by repealing paragraph (d) and substituting the following paragraph:

“(d) to perform the duties and exercise the powers conferred or imposed on him or her under **Part 3A** (which relates to military capability management):”. 25

16 Chief of Defence Force

Section 25 is amended by inserting the following subsection after subsection (2):

“(2A) The Minister may seek the advice of the State Services Commissioner on any of the terms and conditions of appointment referred to in subsection (2).” 30

17 New sections 25A and to 25B inserted

The following sections are inserted after section 25:

“25A Appointment of Chief of Defence Force

- “(1) If there is a vacancy or an impending vacancy in the position of Chief of Defence Force, the Minister must inform the State Services Commissioner of the matters that the ~~Governor-General~~ Minister wishes the State Services Commissioner to take into account in ~~making an appointment to~~ recommending a person for the position. 5
- “(2) The Commissioner must notify the vacancy or impending vacancy in any manner that the Commissioner thinks sufficient to enable suitably qualified persons to apply for the position. 10
- “(3) The Commissioner must invite any persons that the Commissioner thinks fit to assist in examining applicants and making a recommendation to the Minister on a person to be appointed to the position. 15
- “(4) The Commissioner must forward to the Minister the name of the person recommended for the position together with full particulars of that person’s qualifications.
- “(5) The Minister must refer the Commissioner’s recommendations to the Governor-General in Council and the Governor-General in Council must decide whether the Commissioner’s recommendation is to be accepted or declined. 20
- “(6) If the Commissioner’s recommendation is accepted, the Minister must— 25
- “(a) appoint the person recommended; and
- “(b) publicly announce that the appointment has been made.
- “(7) If the Commissioner’s recommendation is declined,—
- “(a) the Governor-General in Council may appoint another person to the position; and 30
- “(b) the Governor-General in Council is not required to comply with the preceding subsections of this section; and
- “(c) the Minister must publicly announce that the appointment has been made.

“Compare: 1988 No 20 s 35

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“25AB Reappointment of Chief of Defence Force

“(1) The State Services Commissioner may recommend that the existing Chief of Defence Force be reappointed under **section 25A(4) for a further term.**

“(2) The State Services Commissioner may make the recommendation under **subsection (1) without complying with **section 25A(2) or (3)**.** 5

“25B Review of Chief of Defence Force’s performance

“(1) The Minister may appoint the State Services Commissioner or another suitable person to review the Chief of Defence Force’s performance. 10

“(2) The review may be a general review or a review in respect of a particular matter.

“(3) In carrying out the review, the appointed person must report to the Minister on the manner and extent to which the Chief of Defence Force is fulfilling the requirements imposed under this Act or otherwise imposed. 15

“Compare: 1988 No 20 s 43”.

18 New sections 27A to ~~27D~~ 27E inserted

The following sections are inserted after section 27: 20

“27A Defence Force Orders may prescribe rank, authority, and seniority of officers and non-commissioned officers

“(1) The Chief of Defence Force may, by Defence Force Order, prescribe—

“(a) the rank and authority of officers and non-commissioned officers; and 25

“(b) the seniority of officers and non-commissioned officers in their respective ranks.

“(2) This section does not limit section 27.

“27B Vice Chief of Defence Force

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“(1) The Governor-General in Council may appoint an officer of the Armed Forces to be the Vice Chief of Defence Force.

“(1A) The Vice Chief of Defence Force may be appointed for a term of no more than 3 years but may be reappointed for further terms in accordance with section 27E. 35

- “(2) The Vice Chief of Defence Force holds the rank that the Governor-General in Council may determine.
- “(3) The Chief of Defence Force must give to the Vice Chief of Defence Force written terms of reference (not being inconsistent with any of the provisions of this Act) setting out the terms and conditions of appointment as Vice Chief of Defence Force. 5
- “(4) The Vice Chief of Defence Force must perform the functions and exercise the powers of his or her appointment as Vice Chief of Defence Force in accordance with those terms of reference. 10
- “(5) The Governor-General in Council may at any time remove the Vice Chief of Defence Force from office for just cause and excuse.
- “(6) To avoid doubt, section 2(2) of this Act and section 2(3) of the Armed Forces Discipline Act 1971 apply in respect of references to the Vice Chief of Defence Force. 15

“27C Vice Chief of Defence Force may be acting Chief of Defence Force

- “(1) In the event of the Chief of Defence Force’s incapacity ~~because of illness, absence, or any other cause~~, the Vice Chief of Defence Force is deemed to be appointed acting Chief of Defence Force. 20
- “(2) If **subsection (1)** applies, the Vice Chief of Defence Force has all the functions, duties, and powers of the Chief of Defence Force. 25
- “(3) No act done by the Vice Chief of Defence Force in the purported performance or exercise of functions, duties, or powers under **subsection (2)** may be questioned on the ground that the occasion for his or her appointment under **subsection (1)** had not arisen or had ceased. 30
- “(4) This section does not limit **section 8(6)**.

“27D Appointment of Vice Chief of Defence Force

- “(1) If there is a vacancy or an impending vacancy in the position of Vice Chief of Defence Force, the Minister must inform the State Services Commissioner of the matters that the ~~Governor-General~~ wishes to take into account in making an appointment 35

~~to~~ Minister wishes the State Services Commissioner to take into account in recommending a person for the position.

“(2) **Section 25A(2) to (7)** apply to the appointment.

“27E Reappointment of Vice Chief of Defence Force

“(1) The State Services Commissioner may recommend that the existing Vice Chief of Defence Force be reappointed under **section 27D** for a further term. 5

“(2) The State Services Commissioner may make a recommendation under **subsection (1)** without complying with **section 25A(2) or (3).**” 10

19 New section 28 substituted

Section 28 is repealed and the following section substituted:

“28 Chiefs of Service

“(1) The Chief of Defence Force may, after consultation with the Minister, appoint— 15

“(a) an officer of the Navy to be Chief of Navy:

“(b) an officer of the Army to be Chief of Army:

“(c) an officer of the Air Force to be Chief of Air Force.

“(2) The Chief of Navy—

“(a) holds the rank that the Chief of Defence Force may determine; and 20

“(b) under the Chief of Defence Force, commands the Navy; and

“(c) is responsible for advising the Chief of Defence Force on any matter relating to the Navy; and 25

“(d) is responsible to the Chief of Defence Force for the implementation of policies, plans, and programmes prescribed or approved in accordance with this Act in relation to the Navy.

“(3) The Chief of Army— 30

“(a) holds the rank that the Chief of Defence Force may determine; and

“(b) under the Chief of Defence Force, commands the Army; and

“(c) is responsible for advising the Chief of Defence Force on any matter relating to the Army; and 35

- “(d) is responsible to the Chief of Defence Force for the implementation of policies, plans, and programmes prescribed or approved in accordance with this Act in relation to the Army.
- “(4) The Chief of Air Force— 5
- “(a) holds the rank that the Chief of Defence Force may determine; and
- “(b) under the Chief of Defence Force, commands the Air Force; and
- “(c) is responsible for advising the Chief of Defence Force on any matter relating to the Air Force; and 10
- “(d) is responsible to the Chief of Defence Force for the implementation of policies, plans, and programmes prescribed or approved in accordance with this Act in relation to the Air Force. 15
- “(5) The Chief of Defence Force must give to each Chief of Service written terms of reference (not being inconsistent with any of the provisions of this Act) setting out the terms and conditions of appointment as Chief of Navy or Chief of Army or Chief of Air Force, as the case may be. 20
- “(6) Each Chief of Service must perform the functions and exercise the powers of his or her appointment as a Chief of Service in accordance with those terms of reference.”

20 Chiefs of Service Committee

- (1) Section 29(1) is amended by inserting the following paragraph after paragraph (a): 25
- “(ab) the Vice Chief of Defence Force.”
- (2) Section 29(3) is amended by omitting “the Chief of Defence Force shall appoint one of the permanent members to preside at the meeting” and substituting “the Vice Chief of Defence Force must preside at the meeting”. 30
- (3) Section 29(6) is amended by inserting “the Vice Chief of Defence Force or” after “on any matter.”
- Section 29 is repealed.

21 Delegation of functions, duties, and powers

Section 30 is amended by inserting the following subsection after subsection (2):

- “(2A) The Vice Chief of Defence Force may by writing under his or her hand, either generally or particularly, delegate to any member of the Defence Force any of the functions, duties, or powers of the Vice Chief of Defence Force, including functions, duties, and powers delegated to the Vice Chief of Defence Force by the Chief of Defence Force.”

22 New section 31A inserted

The following section is inserted after section 31:

“31A Sharing of information and documents between Ministry of Defence and New Zealand Defence Force

- “(1) The Secretary of Defence must, on request, provide to the Chief of Defence Force any information, or a copy of any document, that—
- “(a) the Ministry of Defence holds in relation to the exercise of the Ministry’s powers or the performance of its duties or obligations; and
 - “(b) is reasonably necessary in order to assist the Defence Force in the exercise of its powers or the performance of its duties or obligations.
- “(2) The Chief of Defence Force must, on request, provide to the Secretary of Defence any information, or a copy of any document, that—
- “(a) the Defence Force holds in relation to the exercise of the Defence Force’s powers or the performance of its duties or obligations; and
 - “(b) is reasonably necessary in order to assist the Ministry of Defence in the exercise of its powers or the performance of its duties or obligations.
- “(3) The Defence Force and the Ministry may use any information, or a copy of any document, provided to them under this section in the exercise of their powers or the performance of their duties or obligations.

“(4) The Defence Force and the Ministry must provide reasonable assistance to each other in order to facilitate their respective abilities to make a request under this section.

“(4A) Personal information may only be disclosed under this section in accordance with the Privacy Act 1993. 5

“(5) This section applies despite anything to the contrary in any enactment, contract, deed, or document.”

23 New Part 3A inserted

The following Part is inserted after Part 3:

“Part 3A

10

“Military capability management

“31B Interpretation in this Part

In this Part, unless the context otherwise requires,—

“**defence assets** means ships, vehicles, aircraft, equipment, and intangible property used or intended for use by the Defence Force 15

“**military capability** means the military capability of the Armed Forces involving defence assets and the members of the Defence Force who use those assets.

“31C Role of Secretary of Defence in respect of capability life cycle 20

“(1) The Secretary of Defence is, in consultation with the Chief of Defence Force, responsible to the Minister—

“(a) for formulating advice on policy in respect of military capability; and 25

“(b) for the following matters where the procurement, replacement, or repair (as the case may be) has major significance for military capability:

“(i) defining and advising on the selection of defence assets to be procured: 30

“(ii) procuring or replacing defence assets and delivering those assets to the Defence Force:

“(iii) repairing defence assets and returning those assets to the Defence Force.

“(2) Despite **subsection (1)(b)**, the Minister may determine that the Chief of Defence Force is responsible to him or her for the 35

procurement or repair of a particular defence asset or defence assets of a particular class.

“31D Role of Chief of Defence Force in respect of capability life cycle

- “(1) The Chief of Defence Force is, in consultation with the Secretary of Defence, responsible to the Minister for the following matters in relation to the defence assets referred to in **section 31C(1)(b)**:
- “(a) introduction into service:
 - “(b) use in service: 10
 - “(c) disposal.
- “(2) Despite **subsection (1)(c)**, the Minister may determine that the Secretary of Defence is responsible to him or her for the disposal of a particular defence asset or defence assets of a particular class.” 15

24 Appointment, promotion, and discharge of officers

- (1) The heading to section 32 is amended by inserting “**reduction in rank,**” after “**promotion,**”.
- (2) Section 32(1) is amended by inserting the following paragraph after paragraph (c): 20
- “(ca) reduce officers in rank:”.
- (3) Section 32(1A) is amended by inserting “**(ca)**,” after “(c),”.

25 Section 39 repealed

Section 39 is repealed.

26 Liability for service in reserve forces 25

- (1) Section 40(1) is amended by adding “(and different matters may be prescribed in relation to the active reserve, the inactive reserve, or any part of those reserve forces)”.
- (2) Section 40(2) and (3) are amended by omitting “or the territorial forces”. 30

27 Further provisions relating to Proclamations

Section 41(1) and (4) are amended by omitting “section 39(3) or”.

28 Protection of employment when Proclamation made

- (1) Section 42(a)(i) and (b)(i) are amended by omitting “the territorial forces or”.
- (2) Section 42(a)(ii) is amended by omitting “section 39(2) or”.
- (3) Section 42(b)(ii) is amended by omitting “section 39(3) or”. 5

29 Discretion to waive or postpone requirement for continuous service

- (1) Section 43(1) is amended by omitting “or section 39”.
- (2) Section 43(1) and (2) are amended by omitting “of the territorial forces or”. 10

30 Conditions of service in Armed Forces

Section 45 is amended by repealing subsection (4) and substituting the following subsection:

- “(4) The Remuneration Authority must determine the remuneration of members holding the positions of— 15
- “(a) Chief of Defence Force; and
- “(b) Vice Chief of Defence Force.”

31 Special service

Section 50 is amended by repealing subsection (1) and substituting the following subsections: 20

- “(1) The Governor-General may accept the offer of any member of the reserve forces or any other person (not being a minor) for special service, either in New Zealand or elsewhere.

“(1A) Subsection (1)—

- “(a) does not limit section 40(2); but 25
- “(b) is subject to sections 36 and 37.”

32 Power to declare situation of national interest in relation to special service

Section 50A is amended by omitting “territorial forces or”.

33 Protection of employment when situation of national interest declared 30

Section 50B(a)(i) is amended by omitting “the territorial forces or”.

34 Heading above section 58 amended

The heading above section 58 is amended by omitting “*funds, messes, etc*” and substituting “*and other non-public funds*”.

35 Unit and other non-public funds

Section 58 is amended by inserting the following subsection 5
after subsection (9):

- “(9A) A contract entered into involving the application of money forming part of a fund established under this section is entered into by Her Majesty the Queen for the purposes of this section (and, accordingly, is not a contract involving the use of public 10 money within the meaning of the Public Finance Act 1989).”

36 Appointment of members of Civil Staff

Section 61A(1)(a) is amended by omitting “or airmen” and substituting “airmen, or airwomen”.

37 New sections 68A and 68B inserted

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The following sections are inserted after section 68:

“68A Restriction of compensation for technical redundancy of Civil Staff arising from reorganisations

- “(1) If a position held by a member of the Civil Staff ceases to exist as the result of a transfer of functions from the Civil Staff to a 20 government department, the provisions of section 30E of the State Sector Act 1988 will apply as if the member of the Civil Staff had been an employee of a government department.

- “(2) In this section, **government department** means a department named in Schedule 1 of the State Sector Act 1988. 25

“68B Transfer of functions from Armed Forces to Civil Staff

- “(1) This section applies where the Chief of Defence Force transfers functions from the Armed Forces to the Civil Staff.
- “(2) The Chief of Defence Force may, without complying with sections 62 and 63, appoint a person to a position in the Civil Staff 30 who—
- “(a) has appropriate skills and experience for the position; and

- “(b) has been discharged from the regular forces within the preceding 12 months because his or her ~~functions were transferred~~ position ceased to exist as a result of a transfer of functions to the Civil Staff.
- “(3) Section 67 does not apply in relation to an appointment made under **subsection (2)**. 5
- “(4) A person who is appointed under **subsection (2)** is not an employee for the purposes of sections 67A and 67B of the Employment Relations Act 2000 (which relate to trial periods).”
- 38 Territorial Forces Employer Support Council** 10
- (1) The heading to section 91A is amended by omitting “**Territorial Forces**” and substituting “**Reserve Defence**”.
- (2) Section 91A(1) is amended by omitting “Territorial Forces” and substituting “Reserve Defence”.
- (3) Section 91A(2)(a) is amended by omitting “territorial forces” 15 and substituting “active reserve”.
- (4) Section 91A(2)(b) is amended by omitting “territorial” and substituting “reserve”.
- 39 New sections 91B and 91C inserted**
- The following sections are inserted after section 91A: 20
- “91B Defence Advisory Board**
- “(1) The Minister may appoint a board of suitable persons to be called the Defence Advisory Board (the **Board**).
- “(2) The function of the Board is to provide independent and specialist advice to the Minister on matters relating to defence that 25 the Minister from time to time refers to the Board.
- “(3) Members of the Board must be paid, in accordance with the fees framework referred to in section 10 of the Crown Entities Act 2004,—
- “(a) remuneration for services as a member at a rate and of 30 a kind determined by the Minister:
- “(b) reimbursement for actual and reasonable travelling and other expenses incurred in performing functions and duties as a member.

“(4) Subject to the provisions of this Act and of any regulations made under this Act, the Board may regulate its own procedure.

“91C Honorary ranks

“(1) The Governor-General may grant an honorary rank to any person. 5

“(2) An honorary rank does not confer or imply membership in the Armed Forces.

“(3) The Governor-General may delegate the power in **subsection (1)** to the Chief of Defence Force and section 30(4) to (9) apply, with any necessary modifications, to the delegation. 10

“(4) The Chief of Defence Force must cause notice of every honorary rank granted under this section to be promulgated by Defence Force Orders.”

40 Regulations

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Section 101(1) is amended by inserting the following paragraph after paragraph (gc):

“(gd) regulating the procedure of the Defence Advisory Board.”.

Part 2

20

Consequential amendments

41 Consequential amendments

The enactments specified in the Schedule are amended in the manner specified in that schedule.

Schedule

s 41

Consequential amendments

Armed Forces Discipline Act 1971 (1971 No 53)

Definition of **airman** in section 2(1): repeal and substitute:

“**airman** or **airwoman** has the same meaning as in section 2(1) of the Defence Act 1990”.

5

Definition of **leading aircraftman** in section 2(1): repeal and substitute:

“**leading aircraftman** or **leading aircraftwoman** includes an aircraftman, an aircraftwoman, a general service hand, or an air force cadet”.

10

Section 6(1)(a): omit “the Royal New Zealand Naval Volunteer Reserve, or the Naval Reserves” and substitute “or the Inactive Naval Reserve”.

Section 6(1)(c): omit “, the Royal New Zealand Naval Volunteer Reserve, or the Naval Reserves” and substitute “or the Inactive Naval Reserve”.

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Section 6(2)(a): omit “the Territorial Force, the Army Reserve” and substitute “the New Zealand Army Reserve, the Inactive Army Reserve”.

Section 6(2)(c): omit “the Territorial Force and the Army Reserve” and substitute “the New Zealand Army Reserve and the Inactive Army Reserve”.

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Section 6(3)(a): omit “the Territorial Air Force, or the Air Force Reserve” and substitute “the Royal New Zealand Air Force Reserve, or the Inactive Air Force Reserve”.

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Section 6(3)(b): insert “or airwomen” after “airmen”.

Section 6(3)(c): omit “airmen of the Territorial Air Force or the Air Force Reserve” and substitute “airmen and airwomen of the Royal New Zealand Air Force Reserve or the Inactive Air Force Reserve”.

Section 6(3)(d): insert “or airwomen” after “airmen”.

30

Section 10(2)(b): add “or a leading aircraftwoman”.

Section 11(2)(b): add “or a leading aircraftwoman”.

Section 16(1): omit “or airman” and substitute “airman, or airwoman”.

Armed Forces Discipline Act 1971 (1971 No 53)—continued

Section 16(3): omit “or airman” and substitute “airman, or airwoman”.

Section 19(c): omit “airman holding the rank of leading aircraftman” and substitute “airman or airwoman holding the rank of leading aircraftman or leading aircraftwoman”. 5

Section 82(2): omit “or airman” and substitute “airman, or airwoman”.

Section 88(2)(a)(i): omit “or airman” and substitute “airman, or airwoman”.

Section 88(2)(b): repeal and substitute: 10

“(b) a non-commissioned officer is empowered to arrest—

“(i) a rating, soldier, airman, or airwoman who is not his or her superior officer; or

“(ii) any rating, soldier, airman, or airwoman (though of higher rank) if the offence or suspected offence is mutiny, or the rating, soldier, airman, or airwoman is behaving in a disorderly or violent manner:”.

Section 117ZJ(1)(b) and (2): insert “or leading aircraftwoman” after “leading aircraftman”. 20

Section 168(3)(c): insert “or airwoman” after “airman”.

Item 4 in Schedule 4: omit “or a leading aircraftman, or a rating, soldier, or airman” and substitute “a leading aircraftman or leading aircraftwoman, or a rating, soldier, airman, or airwoman”.

Court Martial Act 2007 (2007 No 101) 25

Section 24(2): omit “or airman” and substitute “airman, or airwoman”.

Section 72(2): omit “or airman” and substitute “airman, or airwoman”.

Remuneration Authority Act 1977 (1977 No 110) 30

Items relating to the Chief of Navy, the Chief of Army, and the Chief of Air Force in Schedule 4: omit and substitute: “The Vice Chief of Defence Force”.

**Reserves and other Lands Disposal and Public Bodies
Empowering Act 1913 (1913 No 67)**

Heading to section 88: omit “**Territorial Forces**” and substitute “**Re-
serve Forces**”.

Section 88: omit “Territorial Force” and substitute “reserve forces 5
(within the meaning of the Defence Act 1990)”.

**Reserves and other Lands Disposal and Public Bodies
Empowering Act 1920 (1920 No 75)**

Section 50(2): omit “Defence Department as a drill-shed for the
training of members of the New Zealand Territorial Forces” and sub- 10
stitute “New Zealand Defence Force as a drill-shed for the training
of members of the reserve forces (within the meaning of the Defence
Act 1990)”.

Volunteers Employment Protection Act 1973 (1973 No 25)

Definition of **territorial forces** in section 2(1): repeal. 15

Section 14A(a)(i): omit “the territorial forces or”.

Section 14A(a)(ii): omit “section 39(2) or”.

Section 14A(b)(i): omit “the territorial forces or”.

Section 14A(b)(ii): omit “section 39(3) or”.

Section 14B(b): omit “section 39 or”. 20

Section 14C(a): omit “section 39 or”.

Section 14D(1): omit “section 39 or”.

Section 14U(1): omit “section 39 or”.

Section 14Y(1)(b) and (c): omit “the territorial forces or”.

Section 14ZO(1)(a): omit “section 39 or”. 25

Defence Amendment Bill

Legislative history

19 October 2011
6 March 2012

Introduction (Bill 348–1)
First reading and referral to Foreign Affairs,
Defence and Trade Committee
