

# **Defence Amendment Bill**

Government Bill

## **Explanatory note**

### **General policy statement**

The Defence Amendment Bill amends the Defence Act 1990 to implement government policy as set out in the Defence White Paper 2010.

In particular, the Bill will effect changes in the following areas:

#### *Capability management*

- changing the way in which the Secretary of Defence and the Chief of Defence Force will work together regarding the procurement, replacement, repair, and disposal of defence assets:

#### *Information sharing*

- providing for sharing and mutual access to information held by the New Zealand Defence Force (**NZDF**) and the Ministry of Defence:

*Appointment, removal, and performance management of Chief of Defence Force*

- providing new roles for the State Services Commissioner in assisting the Minister of Defence with the appointment and performance management of the Chief of Defence Force:

*Senior NZDF appointments and accountabilities*

- establishing the Vice Chief of Defence Force as the statutory deputy of the Chief of Defence Force:
- changing the manner in which the Vice Chief of Defence Force and Chiefs of the Navy, Army, and Air Force are appointed:
- clarifying the manner in which the Chief of Defence Force exercises command of the Armed Forces:

*Civilianisation*

- facilitating the ability of the Chief of Defence Force to redesignate a military position as a civilian position and to fill it with a former member of the armed forces:

*Reserves and Territorial Forces*

- renaming the “territorial forces” the “reserve forces” and establishing a distinction between active reserves (part-time military personnel) and inactive reserves (military personnel who have left the regular forces or territorial forces but have a residual obligation to serve if called upon):

*Defence Advisory Board*

- enabling the Minister of Defence to establish a board to advise the Minister on defence matters referred to it by the Minister:

*Other issues*

- to establish or clarify provisions relating to:
  - reducing officers in rank:
  - deeming members of the regular force to be discharged after a prescribed period of inactive service:
  - providing that honorary officers are not members of the Defence Force for any purpose:

- defining liability for service of members of the active and inactive reserve forces.

### Clause by clause analysis

*Clause 1* is the Title clause.

*Clause 2* provides that the Bill comes into force on 1 July 2012.

*Clause 3* provides that the Bill amends the Defence Act 1990.

## Part 1

### Amendments to Defence Act 1990

*Clause 4* amends the Long Title to refer to the Vice Chief of Defence Force (which will become a statutory appointment under the Bill).

*Clause 5* amends section 2 (which relates to interpretation of the Act) by inserting and amending definitions.

*Clause 6* amends section 8 (which relates to the Chief of Defence Force) to refer to the Chief of Defence Force commanding the Armed Forces directly (rather than through the Service Chiefs), to make provision for a term of appointment of up to 5 years, and to make provision for reappointment and removal for just cause or excuse.

*Clause 7* amends section 11 (which relates to the constitution of the Defence Force) to amend the references to various component parts of the Armed Forces.

*Clause 8* replaces section 12 (which relates to joint forces) by removing the special provisions relating to the appointment of Service Chiefs as joint force commanders. It is now provided that the Chief of Defence Force may appoint any officer to command a joint force.

*Clause 9* replaces section 13 (which relates to the members of the regular forces). The new section refers to the Regular Force of the Army rather than the Regular Forces of the Army and makes a number of other minor consequential changes.

*Clause 10* replaces sections 15 and 16. These provisions relate to the territorial forces and the reserve force but have now been amended to refer to the active reserve and the inactive reserve. Various other changes in the component parts of those reserves are reflected in the new sections.

*Clause 11* amends section 19 (which relates to the circumstances in which members of one Service are deemed to be attached to another Service) to refer to airwomen as well as airmen.

*Clause 12* makes various consequential changes to section 22 (which relates to transfer for employment with other forces).

*Clause 13* makes minor consequential amendments to section 23 (which relates to the attachment of members of the New Zealand Armed Forces to other armed forces) to remove references relating to the territorial forces.

*Clause 14* amends the heading to Part 3 to refer to the Vice Chief of Defence Force.

*Clause 15* amends section 24 (which relates to the functions of the Secretary of Defence). The amendment replaces a function relating to the procurement, replacement, and repair of ships, vehicles, aircraft, and equipment with a function relating to *new Part 3A* (which relates to military capability management).

*Clause 16* amends section 25 (which relates to the function of the Chief of Defence Force). The amendment allows the Minister to seek the advice of the State Services Commissioner regarding terms and conditions of appointment for the Chief of Defence Force.

*Clause 17* inserts *new sections 25A and 25B* relating to the appointment and performance review of the Chief of Defence Force.

*Clause 18* inserts 4 new sections as follows:

- *new section 27A* clarifies that the Chief of Defence Force may prescribe the rank, authority, and seniority of officers and non-commissioned officers:
- *new section 27B* provides for the appointment of the Vice Chief of Defence Force:
- *new section 27C* provides for the Vice Chief of Defence Force to be the acting Chief of Defence Force in the event of the Chief of Defence Force's incapacity:
- *new section 27D* prescribes the appointment process for the Vice Chief of Defence Force.

*Clause 19* replaces section 28 (which relates to the Chiefs of Service). Currently, the Governor-General in Council appoints, and determines the ranks of, the Chiefs of Service. Under the new section, the Chief of Defence Force appoints, and determines the ranks of, the Chiefs of Service. In addition, instead of a Chief of Service advising the

Minister on a matter relating to that Service, the Chief of Service must advise the Chief of Defence Force.

*Clause 20* amends section 29 (which relates to the Chiefs of Service Committee) to reflect the membership of the Vice Chief of Defence Force on that committee.

*Clause 21* amends section 30 to provide for the delegation of functions, duties, and powers by the Vice Chief of Defence Force.

*Clause 22* inserts *new section 31A*. This section provides for the sharing of information and documents between the Ministry of Defence and the New Zealand Defence Force.

*Clause 23* inserts *new Part 3A*. This Part provides for the management of military capability. The Part clarifies the respective responsibilities of the Secretary of Defence and the Chief of Defence Force in relation to the capability life cycle (the cycle connected with the procurement, repair, use in service, and disposal of military capability). In summary,—

- the Secretary of Defence, in consultation with the Chief of Defence Force, is responsible to the Minister for developing strategic policy for the procurement of military capability, defining the capability that is required and selecting the defence assets to be procured, procuring defence assets, delivering defence assets to the Defence Force, and repairing defence assets:
- the Chief of Defence Force is, in consultation with the Secretary of Defence, responsible to the Minister for the introduction into service of defence assets, the use in service of those defence assets, and the disposal of those defence assets:
- the Minister may, however, change who is to be responsible to him or her in relation to a particular defence asset or defence assets of a particular class.

*Clause 24* amends section 32 (which relates to the appointment, promotion, and discharge of officers by the Governor-General). The section is amended to provide the ability to reduce officers in rank.

*Clause 25* repeals section 39 (which relates to liability for service in the territorial forces) and *clause 26* amends section 40 (which relates to liability for service in the reserve forces). The changes are as a consequence of the recognition of the active reserve and the inactive reserve (rather than the territorial forces and the reserve forces).

*Clauses 27, 28, 29, 31, and 33* make minor consequential amendments to sections 41, 42, 43, 50, and 50B to remove cross-references and other references relating to the territorial forces.

*Clause 30* replaces section 45(4). This relates to the Remuneration Authority determining the remuneration of the Chief of Defence Force and certain other persons. The provision will now include the Vice Chief of Defence Force but will no longer include the Service Chiefs.

*Clause 32* consequentially amends section 50A (which relates to a power to declare a situation of national interest in relation to a special service) to remove a reference to the territorial forces.

*Clauses 34 and 35* amend section 58 (which relates to unit and other non-public funds). The amendment clarifies that contracts entered into using money that forms part of a fund established under that section are entered into by Her Majesty the Queen for the purposes of that section only. Accordingly, it is clarified that such contracts are distinct from those entered into by the Crown using public funds.

*Clause 36* amends section 61A to refer to airwomen as well as airmen.

*Clause 37* inserts *new sections 68A and 68B*. The *new section 68A* provides that persons transferred from the Civil Staff to a government department are not entitled to any additional payments or benefits if they are offered equivalent employment. The *new section 68B* allows the Chief of Defence Force to transfer functions from the Armed Forces to the Civil Staff. The section also allows the appointment of discharged persons to functions in the Civil Staff without complying with sections 62 and 63. Section 62 relates to making appointments on merit while section 63 contains an obligation to notify vacancies.

*Clause 38* makes minor consequential amendments to section 91A to remove references relating to the territorial forces.

*Clause 39* inserts *new section 91B*, which provides for the Minister to appoint a Defence Advisory Board, and a *new section 91C*, which concerns honorary ranks.

*Clause 40* amends section 101 to empower the Governor-General to make regulations regulating the procedure of the Defence Advisory Board.

## **Part 2**

### **Consequential amendments**

*Clause 41* and the *Schedule* provide for consequential amendments to other Acts.

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*Hon Dr Wayne Mapp*

## **Defence Amendment Bill**

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## Defence Amendment 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.
- 3 Principal Act amended** 5  
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 5

“**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”. 10

- (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 15

“(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 20

“(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”. 25

- (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”. 30

- (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”. 35

- (6) The definition of **rank** in section 2(1) is amended by omitting “acting, or honorary” and substituting “or acting”.

- (7) Paragraph (b) of the definition of **rating** in section 2(1) is amended by inserting “or airwoman” after “airman”.
- (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” 5
- (9) Paragraph (b) of the definition of **soldier** in section 2(1) is amended by inserting “or airwoman” after “airman”.
- (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:  
 “(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 15  
 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.”
- 6 Chief of Defence Force**  
 Section 8 is amended by repealing subsection (3) and substituting the following subsections: 20
- “(3) The Chief of Defence Force shall command the Armed Forces.
- “(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. 25
- “(5) The Governor-General in Council may at any time remove the Chief of Defence Force from office for just cause or 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 Chief of Defence Force.” 30
- 7 Constitution of Defence Force**
- (1) Section 11(3) is amended by repealing paragraphs (c) and (d) and substituting the following paragraph:  
 “(c) the Inactive Naval Reserve.” 35

- (2) Section 11(4) is amended by repealing paragraphs (b) and (c) and substituting the following paragraphs:  
 “(b) the New Zealand Army Reserve:  
 “(c) the Inactive Army Reserve.”
- (3) Section 11(5) is amended by repealing paragraphs (b) and (c) 5  
 and substituting the following paragraphs:  
 “(b) the Royal New Zealand Air Force Reserve:  
 “(c) the Inactive Air Force Reserve.”
- 8 New section 12 substituted**  
 Section 12 is repealed and the following section substituted: 10
- “12 Joint forces**
- “(1) The Chief of Defence Force may—  
 “(a) establish a joint force comprising members of 2 or more Services; and  
 “(b) appoint an officer of one of those Services to command 15  
 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 of the Armed Forces serving in the joint force, subject to the following modifications: 20  
 “(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 belongs or is attached may be done by, to, or before—  
 “(i) the Chief of Defence Force; or 25  
 “(ii) if a superior commander has been appointed by the Chief of Defence Force to command the joint force, that officer:  
 “(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.” 30

- 9 New section 13 substituted**  
 Section 13 is repealed and the following section substituted:

**“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. 5

“(2) The maximum numbers of officers, ratings, soldiers, airmen, and airwomen in the regular forces are the numbers that the Minister authorises. 10

“(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 15**

“(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. 20

“(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. 25

**“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. 30

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

- 11 Circumstances in which members of one Service are deemed attached to another Service**
- (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”. 5
- 12 Transfer for employment with other forces**
- (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** 10
- (1) Section 23(2)(b) is amended by omitting “territorial or”.
- (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
- 15 Secretary of Defence**
- 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):” 20
- 16 Chief of Defence Force**
- Section 25 is amended by inserting the following subsection after subsection (2): 25
- “(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).”
- 17 New sections 25A and 25B inserted**
- The following sections are inserted after section 25: 30



**“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 wishes to take into account in making an appointment to 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.
- “(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. 10
- “(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. 15
- “(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—
- “(a) appoint the person recommended; and
  - “(b) publicly announce that the appointment has been made.
- “(7) If the Commissioner’s recommendation is declined,— 25
- “(a) the Governor-General in Council may appoint another person to the position; and
  - “(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. 30

“Compare: 1988 No 20 s 35

**“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. 35

- “(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. 5
- “Compare: 1988 No 20 s 43”.

**18 New sections 27A to 27D inserted**

The following sections are inserted after section 27:

**“27A Defence Force Orders may prescribe rank, authority, and seniority of officers and non-commissioned officers 10**

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

“(a) the rank and authority of officers and non-commissioned officers; and 15

“(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**

“(1) The Governor-General in Council may appoint an officer of the Armed Forces to be the Vice Chief of Defence Force. 20

“(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. 25

“(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. 30

**“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 35

of Defence Force is deemed to be appointed acting Chief of Defence Force.

- “(2) If **subsection (1)** applies, the Vice Chief of Defence Force has all the functions, duties, and powers of the Chief of Defence Force. 5
- “(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. 10
- “(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 to the position. 15
- “(2) **Section 25A(2) to (7)** apply to the appointment.”

**19 New section 28 substituted**

Section 28 is repealed and the following section substituted: 20

**“28 Chiefs of Service**

- “(1) The Chief of Defence Force may, after consultation with the Minister, appoint—
- “(a) an officer of the Navy to be Chief of Navy;
- “(b) an officer of the Army to be Chief of Army; 25
- “(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
- “(b) under the Chief of Defence Force, commands the Navy; 30  
and
- “(c) is responsible for advising the Chief of Defence Force on any matter relating to the Navy; and
- “(d) is responsible to the Chief of Defence Force for the implementation of policies, plans, and programmes pre- 35

- scribed or approved in accordance with this Act in relation to the Navy.
- “(3) The Chief of Army—
- “(a) holds the rank that the Chief of Defence Force may determine; and 5
- “(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
- “(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. 10
- “(4) The Chief of Air Force—
- “(a) holds the rank that the Chief of Defence Force may determine; and 15
- “(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 20
- “(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.
- “(5) The Chief of Defence Force must give to each Chief of Service 25  
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.
- “(6) Each Chief of Service must perform the functions and exercise 30  
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): 35
- “(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”.
- (3) Section 29(6) is amended by inserting “the Vice Chief of Defence Force or” after “on any matter,”. 5

## 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.” 10 15

## 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— 20
- “(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 25
- “(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— 30
- “(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. 5
- “(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. 10
- “(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** 15  
**“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 20
- “**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** 25
- “(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 30
- “(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: 35

- “(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 procurement or repair of a particular defence asset or defence assets of a particular class. 5
- “31D Role of Chief of Defence Force in respect of capability life cycle”** 10
- “(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: 15
- “(b) use in service:
- “(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.” 20
- 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): 25
- “(ca) reduce officers in rank:”.
- (3) Section 32(1A) is amended by inserting “**(ca),**” after “(c),”.
- 25 Section 39 repealed** 30
- Section 39 is repealed.
- 26 Liability for service in reserve forces**
- (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”.

**27 Further provisions relating to Proclamations**

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

5

**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”.

10

**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”.

15

**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—

20

“(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:

25

“(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

30

“(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** 5  
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*”. 10
- 35 Unit and other non-public funds**  
Section 58 is amended by inserting the following subsection 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 money within the meaning of the Public Finance Act 1989).” 15
- 36 Appointment of members of Civil Staff**  
Section 61A(1)(a) is amended by omitting “or airmen” and substituting “airmen, or airwomen”. 20
- 37 New sections 68A and 68B inserted**  
The following sections are inserted after section 68:  
**“68A Restriction of compensation for technical redundancy of Civil Staff arising from reorganisations** 25  
“(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 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.” 30  
“(2) In this section, **government department** means a department named in Schedule 1 of the State Sector Act 1988.

**“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 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 to the Civil Staff.

“(3) Section 67 does not apply in relation to an appointment made under **subsection (2)**.”

**38 Territorial Forces Employer Support Council**

(1) The heading to section 91A is amended by omitting “**Territorial**” and substituting “**Reserve**”.

(2) Section 91A(1) is amended by omitting “Territorial” and substituting “Reserve”.

(3) Section 91A(2)(a) is amended by omitting “territorial forces” 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:

**“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 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 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. 5
- “91C Honorary ranks**
- “(1) The Governor-General may grant an honorary rank to any person.
- “(2) An honorary rank does not confer or imply membership in the Armed Forces. 10
- “(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.
- “(4) The Chief of Defence Force must cause notice of every honorary rank granted under this section to be promulgated by Defence Force Orders.” 15
- 40 Regulations**
- Section 101(1) is amended by inserting the following paragraph after paragraph (gc): 20
- “(gd) regulating the procedure of the Defence Advisory Board.”.

## Part 2 Consequential amendments

- 41 Consequential amendments** 25
- 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”.

15

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”.

20

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”.

25

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:”.

 15

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 10  
training of members of the New Zealand Territorial Forces” and sub-  
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