

## DEFENCE AMENDMENT BILL

### EXPLANATORY NOTE

THE Bill makes a number of changes to the Defence Act 1971.

The principal changes are those effected by *clauses 2 and 3* of the Bill relating to liability for service of servicemen of the regular forces. In general, under the present provisions servicemen are engaged for fixed periods and are liable to serve until the expiry of those periods. If his service is to continue after the expiry of such a period, a serviceman must be re-engaged.

Under the Bill a serviceman need not be engaged for a fixed period, and provision is made for him to leave the service at any time (subject to certain special exceptions) on giving notice.

*Clause 1* relates to the Short Title and commencement. *Clauses 2 and 3* are to come into force on 1 September 1976, and the rest of the Bill on the date on which it receives the Governor-General's assent.

*Clause 2* substitutes a new section for section 42 of the principal Act relating to liability for service of servicemen of the regular forces.

*Subsection (1)* provides that, subject to section 39 (relating to the enlistment of minors) and section 40 (relating to the liability of minors of the regular forces for service overseas), and to such conditions as may be prescribed, a serviceman is liable for service until he is discharged, dismissed, or otherwise removed from the regular forces.

*Subsection (2)* largely re-enacts section 42 (5) of the principal Act.

*Subsection (2) (a)* requires a serviceman, on completion of his period of service, to be discharged, released from service, or transferred to one of the Reserve Forces, as the case may require.

*Subsection (2) (b)* empowers the Governor-General, in time of war or during any similar emergency, to order servicemen who would otherwise be entitled to be discharged or released from service to continue to serve during the continuance of the war or emergency for such period as the Defence Council may determine.

*Clause 3* substitutes a new section for *section 54* of the principal Act relating to the discharge of servicemen of the regular forces before completion of service.

*Subsection (1)* provides that, subject to the succeeding provisions of the section, a serviceman may terminate his service by giving notice to his commanding officer or unit commander.

*Subsection (2)* provides that if the serviceman gives the prescribed notice he shall be deemed to have completed his period of service on the expiry of the notice. He will then be entitled to an Armed Forces Terminal Benefit of an amount prescribed by the Secretary of Defence in accordance with the State Services Remuneration and Conditions of Employment Act 1969.

*Subsection (3)* provides that if a serviceman gives less than the prescribed notice he shall be deemed to have completed his period of service on the expiry of a period of 3 months, or on such earlier date as the Defence Council or a Chief of Staff authorised for the purpose by the Council may determine, and he will then be entitled to a lesser Armed Forces Terminal Benefit.

*Subsection (4)* provides that if a serviceman who is subject to a prescribed return of service obligation gives notice under this section he will not be entitled to an Armed Forces Terminal Benefit unless—

- (a) He will have completed his service obligation by the expiry of the period of notice; or
- (b) The Secretary of Defence otherwise determines.

*Subsection (5)* provides that if the Defence Council has declared that a class of servicemen is in a state of "critical manning" the Council, or a Chief of Staff authorised by the Council, may suspend, for a period not exceeding 2 years, the right of a serviceman of that class to leave the regular forces under this section.

*Subsection (6)* provides that if a serviceman who gives notice under this section is serving overseas, or is under less than 3 months' notice to serve overseas, his period of service shall not be deemed to have been completed until he has finished his overseas service.

*Subsection (7)* is procedural. It requires notices given under the section to be in writing, and provides that the period of notice commences to run from the date on which the notice is given to the commanding officer or unit commander.

*Clause 4* amends section 81 (2) of the principal Act which authorises the making of regulations to provide for the security of defence areas. At present, regulations can be made to authorise the officer in charge to confer certain security functions on any serviceman. The amendment allows the delegation of those functions to any serviceman or civilian employee of the Ministry of Defence.

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*Hon. Mr McCready*

## DEFENCE AMENDMENT

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### ANALYSIS

Title	3. Discharge from regular forces at own request
1. Short Title and commencement	4. Security of defence areas
2. Liability for service in regular forces	

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### A BILL INTITULED

#### An Act to amend the Defence Act 1971

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. **Short Title and commencement**—(1) This Act may be cited as the Defence Amendment Act 1976, and shall be read together with and deemed part of the Defence Act 1971\* (hereinafter referred to as the principal Act).
- 10 (2) Sections 2 and 3 of this Act shall come into force on the 1st day of September 1976.
- (3) Except as provided in subsection (2) of this section, this Act shall come into force on the date on which it receives the Governor-General's assent.
- 15 **2. Liability for service in regular forces**—The principal Act is hereby amended by repealing section 42, and substituting the following section:

\*1971, Vol. 3, No. 52  
Amendments: 1973, No. 57; 1974, No. 24

“42. (1) Subject to sections 39 and 40 of this Act, and to such conditions as may be prescribed, every serviceman of the regular forces shall be liable at all times for service, either within New Zealand or elsewhere, until he is discharged, dismissed, or otherwise removed from the regular forces in accordance with Defence Council Orders. 5

“(2) Notwithstanding subsection (1) of this section,—

“(a) When the period of service of a serviceman of the regular forces has been completed he shall be discharged, or be otherwise released from service with the regular forces, or be transferred to the Naval Reserves, the Army Reserve, or the Air Force Reserve, as the case may require: 10

“(b) In time of war or other like emergency, the Governor-General may, by Proclamation, make an order that servicemen of the regular forces who would, but for the war or emergency, be entitled to be discharged or released from service shall be liable to continue to serve; and on the making of any such Proclamation those servicemen shall be liable to continue to serve during the continuance of the state of war or emergency for such period as the Defence Council may determine.” 15 20

**3. Discharge from regular forces at own request**—The principal Act is hereby amended by repealing section 54, and substituting the following section: 25

“54. (1) Subject to the succeeding provisions of this section, a serviceman of the regular forces may terminate his service in the regular forces at any time by giving notice to his commanding officer or unit commander. 30

“(2) If a serviceman gives the prescribed notice his period of service shall be deemed to have been completed on the expiry of the period of the notice, and, upon his discharge, he shall be entitled to receive an Armed Forces Terminal Benefit of an amount prescribed by the Secretary of Defence in accordance with the State Services Remuneration and Conditions of Employment Act 1969. 35

“(3) If a serviceman gives less than the prescribed notice his period of service shall be deemed to have been completed on the expiry of the period of 3 months commencing with the day on which the notice is given, or on such earlier date as the Defence Council or a Chief of Staff authorised for the purpose by the Council may determine in a particular case, 40

and, upon his discharge, he shall be entitled to receive an Armed Forces Terminal Benefit of an amount (being less than the amount prescribed for the purposes of subsection (2) of this section) prescribed by the Secretary of Defence in accordance with the State Services Remuneration and Conditions of Employment Act 1969.

“(4) Notwithstanding subsection (2) or subsection (3) of this section, if a serviceman who is subject to a prescribed return of service obligation in respect of specially designated training gives notice under this section, and, at the time when, in accordance with subsection (2) or, as the case may require, subsection (3) of this section, his service is deemed to have been completed, he has not completed the period of that service obligation he shall not be entitled, upon his discharge, to receive an Armed Forces Terminal Benefit unless the Secretary of Defence in exceptional circumstances otherwise determines.

“(5) Notwithstanding subsection (1) of this section, or the terms of any bond or return of service obligation, where, for the purposes of this section, the Defence Council has declared that a specified class of servicemen is in a state of critical manning, the Council, or a Chief of Staff authorised for the purpose by the Council, may suspend, for such period not exceeding 2 years as the Council may determine, the right of servicemen of that class to leave the regular forces under this section.

“(6) Notwithstanding subsection (2) or subsection (3) of this section, if a serviceman who is serving overseas, or who is under less than 3 months' notice to serve overseas, gives notice under this section his period of service shall not be deemed to have been completed until he has completed his overseas duty, unless the Defence Council otherwise determines on compassionate grounds.

“(7) A notice given by a serviceman to his commanding officer for the purposes of this section shall be in writing, and the period of the notice shall commence to run on the day on which it is given to the commanding officer or unit commander.”

**4. Security of defence areas—**(1) Section 81 (2) of the principal Act is hereby amended by inserting in paragraph (a), after the word “serviceman”, the words “or civilian employee of the Ministry of Defence”.

(2) Section 81 (2) of the principal Act is hereby further amended by omitting from paragraphs (b), (c), and (d) the words "or serviceman" wherever they occur, and substituting in each case the words ", serviceman, or civilian employee".

(3) Section 81 (2) of the principal Act is hereby further amended by inserting in paragraph (f), after the word "serviceman", the words "or civilian employee of the Ministry of Defence".