

DEFENCE AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill amends the Defence Act 1971.

In 1976 the principal Act was amended to allow servicemen to give notice of their intention to leave the service. This was effected by substituting a new section 54. The principles enunciated in that provision are continued by this Bill, but a number of difficulties of application and interpretation have arisen. The main purpose of this Bill is to deal with these difficulties, which are explained in the note to *clause 5* of this Bill.

At the same time, the opportunity has been taken to remove from the principal Act certain inconsistencies in terminology relating to the various ways in which a serviceman may cease to serve in the Armed Forces or in any constituent force. These are dealt with in *clauses 2 to 4* of this Bill.

Clause 1 relates to the Short Title and commencement.

Clause 2 defines the circumstances in which a serviceman is released, and those in which he is discharged, for the purposes of the principal Act. The term "discharged" is intended to cover cases where he ceases to be under any duty, whether present or contingent, to render further service, whereas "released" covers cases where a serviceman goes from the regular force to a territorial or reserve force, or on to the Retired List.

Clauses 3 and 4 amend and restate certain provisions of the principal Act, consequent upon the clarification, by *clause 2* of this Bill, of the distinction between the terms "released" and "discharged".

Clause 5 restates some conditions, and alters others, attaching to the right of servicemen to leave the service by giving notice. It repeals the present section 54, and substitutes new *sections 54 to 54E*.

Section 54: Subsection (1) states the basic principle that servicemen may terminate their service by notice. It corresponds to the present section 54 (1).

Subsection (2) requires the notice to be given in writing, and provides that the period of notice commences to run from the date on which it is given. The corresponding provision in the present section is subsection (7).

Subsections (3) and (4) provide for the payment to the serviceman of an Armed Forces Terminal Benefit, the amount of which will vary according to whether he gives the prescribed notice or not. The provisions correspond to subsections (2) and (3) of the present section 54.

Section 54A relates to cases where a serviceman who is subject to a return of service obligation gives notice of his intention to leave the service.

The present provision (section 54 (4)), which applies only to a return of service obligation in respect of specially designated training, provides in such a case that the serviceman 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; or
- (b) The Secretary of Defence otherwise determines in exceptional circumstances.

In brief, the serviceman is entitled to leave the service without performing his return of service obligation, but loses his benefit if he does so.

The new provision is quite different. First, it applies to a return of service obligation in respect of any prescribed exchange service, as well as any prescribed training. Secondly, it requires the obligation to be performed in full before the serviceman leaves the service.

Section 54B is in substitution for the present section 54 (5), which provides that if the Defence Council has declared that any specified class of serviceman 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 service under that section.

Doubt has arisen on the interpretation of this provision. One view is that the period of suspension must run for all servicemen of the same class at the same time. However, what is intended is that the right of each serviceman affected to leave the service is suspended for the specified period from the date on which that serviceman gives notice. In effect, servicemen of a class that is in a state of critical manning will be required to give notice equal to the specified period.

Section 54C re-enacts the present section 54 (6), which provides that if a serviceman who gives notice under that section is serving overseas, or is under less than 3 months' notice to serve overseas, he will not be able to leave the service until he has finished his overseas service.

Section 54D empowers the Defence Council, or a Chief of Staff authorised by the Defence Council, to waive or reduce the period of service that would otherwise be required under any of the proposed *sections 54A to 54C*, either generally or in any particular case.

Section 54E is a new provision. It deals with the situation where a serviceman gives notice while he is facing disciplinary proceedings or serving any sentence arising out of such proceedings, or gives notice and subsequently faces such proceedings. In both cases, his right to leave the service is suspended until the proceedings have been completed and he has served any sentence imposed on him.

Clause 6 is of a purely consequential nature.

Hon. T. F. Gill

DEFENCE AMENDMENT

ANALYSIS

Title	<i>Discharge or Release from Regular Forces on Notice</i>
1. Short Title and commencement	54. Servicemen may give notice of intention to leave regular forces
2. Interpretation	54A. Return of service obligation
3. Effect of oath of allegiance	54B. State of critical manning
4. Liability for and duration of service in regular forces	54C. Notice while serving overseas, etc.
5. New heading and sections substituted in principal Act	54D. Discretion to relax requirements
	54E. Notice while subject to disciplinary proceedings, etc.
	6. Repeal

A BILL INTITULED

An Act to amend the Defence Act 1971 in respect of a serviceman's right to terminate his service by notice, and other matters

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

10 **1. Short Title and commencement**—(1) This Act may be cited as the Defence Amendment Act 1980, and shall be read together with and deemed part of the Defence Act 1971* (hereinafter referred to as the principal Act).

*1971, No. 52

Amendments: 1973, No. 54; 1974, No. 24; 1976, No. 14

(2) This Act shall come into force on the 28th day after the date on which it receives the Governor-General's assent.

2. Interpretation—(1) Section 2 of the principal Act is hereby amended by inserting, after the definition of the term “cadet officer”, the following definition: 5

“‘Constituent force’, in relation to the Navy or the Army or the Air Force, means the regular force or a territorial force or a reserve force of that service:”.

(2) Section 2 of the principal Act is hereby further amended by adding the following subsections: 10

“(3) For the purposes of this Act, unless the context otherwise requires, a serviceman is released from the constituent force of the service in which he is serving when—

“(a) He, or that constituent force or the part of that constituent force in which he is serving, is transferred to another constituent force of that service; or 15

“(b) In the case of an officer only, he is placed on the Retired List of that service.

“(4) For the purposes of this Act, unless the context otherwise requires, a serviceman of any constituent force of a service is discharged from the service when, otherwise than by release, he leaves that constituent force in accordance with Defence Council Orders.” 20

3. Effect of oath of allegiance—Section 38 of the principal Act is hereby amended by omitting the words “dismissed, or otherwise removed”. 25

4. Liability for and duration of service in regular forces—The principal Act is hereby amended by repealing section 42 (as substituted by section 2 of the Defence Amendment Act 1976), and substituting the following section: 30

“42. (1) Subject to sections 39 and 40 of this Act, all servicemen of the regular forces shall be liable at all times for service, either within New Zealand or elsewhere, subject to such conditions as may be prescribed.

“(2) Notwithstanding subsection (1) of this section,— 35

“(a) When the period of service of a serviceman of the regular forces has been completed, he shall be discharged or released from the regular forces without delay, but he shall be liable to continue his service until that discharge or release is effected: 40

“(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 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.”

5. New heading and sections substituted in principal Act—The principal Act is hereby amended by repealing section 54 (as substituted by section 3 of the Defence Amendment Act 1976), and substituting the following heading and sections:

“Discharge or Release from Regular Forces on Notice

“54. Servicemen may give notice of intention to leave regular forces—(1) Subject to section 42 (2) (b) and sections 54A to 54E of this Act, a serviceman of the regular forces may terminate his service in the regular forces at any time by giving notice to the officer in command of the serviceman’s ship or unit.

“(2) A notice given by a serviceman 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 officer in command of the serviceman’s ship or unit.

“(3) If a serviceman gives not less than 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 or release from the regular forces, he shall be entitled to receive an Armed Forces Terminal Benefit of an amount determined by the Secretary of Defence in accordance with the State Services Conditions of Employment Act 1977.

“(4) If a serviceman gives less than the prescribed notice, his period of service shall be deemed to have been completed on—

“(a) The expiry of his notice; or

“(b) If the period of his notice is less than 3 months, 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, and, upon his discharge or release

from the regular forces, 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 (3) of this section) determined by the Secretary of Defence in accordance with the State Services Conditions of Employment Act 1977. 5

“54A. Return of service obligation—Notwithstanding subsection (3) or subsection (4) of section 54 of this Act, but without limiting section 54B or section 54C of this Act, if a serviceman who is subject to a prescribed return of service obligation in respect of any prescribed training or exchange service gives notice under the said section 54, his period of service shall not be deemed to have been completed until he has fulfilled his return of service obligation. 10

“54B. State of critical manning—(1) For the purposes of this section, a specified class of serviceman is in a state of critical manning if it is declared to be so by the Defence Council. 15

“(2) Notwithstanding subsection (3) or subsection (4) of section 54 of this Act, but without limiting section 54A or section 54C of this Act, if a serviceman of a class that is in a state of critical manning gives notice under the said section 54, his period of service shall not be deemed to have been completed until the expiry of a period of 2 years commencing with the day on which the notice is given. 20 25

“54C. Notice while serving overseas, etc.—Notwithstanding subsection (3) or subsection (4) of section 54 of this Act, but without limiting section 54A or section 54B of this Act, if a serviceman who is serving overseas, or who is under less than 3 months’ notice to serve overseas, gives notice under the said section 54, his period of service shall not be deemed to have been completed until he has completed his overseas duty. 30

“54D. Discretion to relax requirements—Notwithstanding sections 54A to 54C of this Act, the Defence Council, or a Chief of Staff authorised for the purpose by the Defence Council, may at any time, either generally or in any particular case, waive in whole or in part the period of service that would otherwise be required of any serviceman by virtue of any of those sections. 35 40

“54E. Notice while subject to disciplinary proceedings, etc.—(1) For the purposes of this section,—

5 “(a) A serviceman is facing disciplinary proceedings if any proceedings (including any proceedings on appeal or review or by way of confirmation) against him are continuing or pending under the Armed Forces Discipline Act 1971:

10 “(b) A serviceman is serving a sentence of imprisonment or detention if he is serving such a sentence imposed under the Armed Forces Discipline Act 1971.

“(2) Notwithstanding subsection (3) or subsection (4) of section 54 of this Act, if a serviceman who,—

15 “(a) While facing disciplinary proceedings, gives notice under that section; or

“(b) Having given notice under that section, subsequently faces disciplinary proceedings,—
his period of service shall not be deemed to have been completed until the proceedings have been completed, and
20 he has served any sentence of imprisonment or detention imposed on him as a result of those proceedings.

25 “(3) Notwithstanding subsection (3) or subsection (4) of section 54 of this Act, if a serviceman who is serving a sentence of imprisonment or detention gives notice under that section, his period of service shall not be deemed to have been completed until he has served that sentence.”

6. Repeal—Sections 2 and 3 of the Defence Amendment Act 1976 are hereby repealed.