

DEFENCE AMENDMENT BILL

EXPLANATORY NOTE

THIS Bill makes a number of amendments to the Defence Act 1971. In the main, the amendments are of a minor nature, having been found desirable in the course of the preparation of the new Manual of Armed Forces Law.

Clause 1 relates to the Short Title and commencement.

Clause 2: Subclauses (1), (3), and (6) are consequential upon the decision to replace the School Cadet Corps with the New Zealand Cadet Corps.

Subclause (2) redefines the term "leading aircraftman", by omitting references to obsolete ranks and an unnecessary reference to the equivalent women's ranks.

Subclauses (4) and (5) should be read together. They give effect to the decision to introduce "officer cadet" as the lowest officer rank in the Army and the Air Force, equivalent to the rank of midshipman in the Navy. The present definition, with its emphasis on the holding of Her Majesty's commission, has to be restructured because officer cadets do not hold a commission. This necessitates an express mention of chaplains, who hold commissions and are officers but do not hold rank.

Clause 3 amends section 15 of the principal Act. Subsection (1) of that section provides that a serviceman may be transferred for employment with the armed forces of a Commonwealth country, or of any other allied country, or of the United Nations. This amendment extends this provision to allow employment with the armed forces of any other organisation or association of States in which New Zealand is participating.

Clause 4 clarifies the powers of the Secretary of Defence. The proposed subsections (4) and (5) give the Secretary all the powers that may be reasonably necessary for the performance of the functions and powers of the office, including the power to enter into contracts, agreements, and arrangements, and the power to grant leases, licences, or easements of or over land under the control of the Ministry of Defence.

Clause 5 makes it clear that the Deputy Secretary of Defence has all the functions, duties, and powers of the Secretary during any vacancy in the office of Secretary, or while the Secretary is unable to act.

Clause 6 clarifies and simplifies the definition of "active service", without changing its meaning.

Clause 7 expressly authorises the making of Defence Council Orders in respect of return of service obligations required to be fulfilled by servicemen who have had certain training or exchange service. The point is of some importance in the context of the provisions allowing servicemen to leave the Armed Forces by giving notice. The period of notice does not run until any return of service obligation owed by the serviceman has been fulfilled.

Clause 8 is of a technical drafting nature only. Where a serviceman is in detention and gives notice, the notice does not run until the detention has ceased. The amendment covers the case where that serviceman, having given notice, commits some other offence and is again sentenced to detention. The notice will be deferred until that further period of detention has been served.

Clause 9 is consequential upon the decision to replace the School Cadet Corps with the New Zealand Cadet Corps.

Clause 10: Subclause (1) is of a technical drafting nature only. It is designed to bring the law relating to search in defence areas more into line with the civilian law relating to search.

Subclause (2) makes it clear that regulations made under section 81 of the principal Act relating to defence areas may authorise any officer, serviceman, or civilian employee to remove authorised persons found in such an area.

Hon. F. D. O'Flynn

DEFENCE AMENDMENT

ANALYSIS

Title	6. Active service
1. Short Title and commencement	7. Defence Council Orders fixing certain terms and conditions of service
2. Interpretation	8. Notice while subject to disciplinary proceedings
3. Transfer for employment with other forces	9. Cadet forces
4. Secretary of Defence	10. Security of defence areas
5. Deputy Secretary of Defence	

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 1985, and shall be read together with and deemed part of the Defence Act 1971* (hereinafter referred to as the principal Act).
- 10 (2) This Act shall come into force on the 1st day of January 1986.

*1971, No. 52

Amendments: 1974, No. 24; 1976, No. 14; 1980, No. 40; 1982, No. 66

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by repealing the definition of the term “cadet forces”, and substituting the following definition:

“ ‘Cadet forces’ means the Sea Cadet Corps, the New Zealand Cadet Corps, and the Air Training Corps collectively; and includes any part of those forces:” 5

(2) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term “leading aircraftman”, and substituting the following definition:

“ ‘Leading aircraftman’ includes an aircraftman, a general service hand, and an air force cadet:” 10

(3) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the term “Navy”, the following definition:

“ ‘New Zealand Cadet’ means any person, other than a cadet officer, who is a member of the New Zealand Cadet Corps; and includes an under-officer or any other non-commissioned officer of the New Zealand Cadet Corps; but does not include a serviceman:” 15

(4) Section 2 (1) of the principal Act is hereby further amended by omitting from paragraph (b) of the definition of the term “non-commissioned officer”, and also from paragraph (c) of that definition, the words “commissioned officer”, and substituting in each case the words “officer cadet”. 20

(5) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term “officer”, and substituting the following definition: 25

“ ‘Officer’ means—

“(a) In relation to the Navy, a person (whether a man or a woman) who is of or above the rank of midshipman or is a chaplain in the Navy; and includes— 30

“(i) An officer of the Army or the Air Force attached to the Navy or any part of it; and 35

“(ii) Any person duly attached or lent as an officer to or seconded for service or appointed for duty as an officer with the Navy:

“(b) In relation to the Army, a person (whether a man or a woman) who is of or above the rank of officer cadet or is a chaplain in the Army; and includes— 40

“(i) An officer of the Navy or the Air Force attached to the Army or any part of it; and 45

“(ii) Any person duly attached or lent as an officer to or seconded for service or appointed for duty as an officer with the Army;

5 “(c) In relation to the Air Force, a person (whether a man or a woman) who is of or above the rank of officer cadet or is a chaplain in the Air Force; and includes—

“(i) An officer of the Navy or the Army attached to the Air Force or any part of it; and
10 “(ii) Any person duly attached or lent as an officer to or seconded for service or appointed for duty as an officer with the Air Force:”.

(6) Section 2 (1) of the principal Act is hereby further amended by repealing the definition of the term “school cadet”.

15 (7) The Defence Amendment Act 1982 is hereby consequentially repealed.

3. Transfer for employment with other forces—

(1) Section 15 (1) of the principal Act is hereby amended by adding the words “, or of any other organisation or association
20 of States in which New Zealand is participating”.

(2) Section 15 (2) of the principal Act is hereby consequentially amended by inserting, after the words “or the United Nations”, the words “or the other organisation or association of States”.

4. Secretary of Defence—Section 25 of the principal Act is
25 hereby amended by adding the following subsections:

“(4) The Secretary shall have all such other powers as may be reasonably necessary to enable the Secretary to perform effectively the functions and duties imposed on the Secretary by this Act or any other enactment.

30 “(5) Without limiting the generality of **subsection (4)** of this section, in the performance of any such function or duty the Secretary may—

“(a) Enter into any contract, agreement, or arrangement with any other person; and

35 “(b) Grant any lease, licence, or easement to any other person of or over any land under the control of the Ministry of Defence.”

5. Deputy Secretary of Defence—Section 34 of the principal Act is hereby amended by adding the following
40 subsections:

“(3) On the occurrence from any cause of a vacancy in the office of Secretary (whether by reason of death, resignation,

or otherwise), and in the case of the absence from duty of the Secretary (from whatever cause arising), and so long as any such vacancy or absence continues, the Deputy Secretary shall have and may exercise all the powers, duties, and functions of the Secretary.

5

“(4) The fact that the Deputy Secretary exercises any power, duty, or function of the Secretary shall be conclusive evidence of the Deputy Secretary’s authority to do so.”

6. Active service—Section 45 (1) of the principal Act is hereby amended by repealing paragraph (b), and substituting the following paragraphs:

“(b) It is engaged in any operation against the enemy; or

“(c) It is in armed occupation of any foreign country.”

7. Defence Council Orders fixing certain terms and conditions of service—Section 48 of the principal Act is hereby amended by inserting, after paragraph (f), the following paragraph:

“(fa) Prescribing the nature, extent, terms, and conditions of return of service obligations to be fulfilled by servicemen in respect of any specified training or exchange service:”.

8. Notice while subject to disciplinary proceedings—Section 54E of the principal Act (as substituted by section 5 of the Defence Amendment Act 1980) is hereby amended by inserting in subsection (3), after the words “of this Act”, the words “but subject to subsection (2) (b) of this section”.

9. Cadet forces—(1) The principal Act is hereby amended by omitting the term “School Cadet Corps” wherever it occurs in subsections (1), (2), and (3) of section 57, subsection (2) of section 58, and paragraph (a) of section 59 of the principal Act, and substituting in each case the term “New Zealand Cadet Corps”.

(2) All units raised, maintained, and in being as part of the School Cadet Corps immediately before the commencement of this Act shall continue in being as if they were units of the New Zealand Cadet Corps.

10. Security of defence areas—(1) Section 81 (2) (b) of the principal Act is hereby amended by omitting the words “property” wherever it occurs, and substituting in each case the word “thing”.

40

(2) Section 81 (2) of the principal Act is hereby further amended by inserting, after paragraph (d), the following paragraph:

5 “(da) Authorising any such officer, serviceman, or civilian employee to remove any person who, without lawful excuse, refuses or fails to comply with any direction to leave the area.”.