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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Defence (Re-establishment) Amendment Bill 1999

Explanatory Memorandum

Circulated by the Hon K C Beazley MP

Defence (Re-establishment) Amendment Bill 1999

OUTLINE

This purpose of this Bill is to enhance the civilian employment protection available to members of the Reserve Forces under the Defence (Re-establishment) Act 1965.

The Bill:

- establishes an Office of Reserve Forces with a range of specified functions;
- clarifies coverage for Australian Defence Force overseas peace-enforcement, peacekeeping and humanitarian relief operations;
- increases the penalties under the Act;
- clarifies the procedures to be followed by both a member and a member's employer; and
- prohibits an employer from taking adverse action against a person who acts to enforce a protection afforded to them under the Act.

Defence (Re-establishment) Amendment Bill 1999

NOTES ON CLAUSES

Clause 1 Short title

This provides that the Act may be cited as the *Defence (Re-establishment) Amendment Act 1999*.

Clause 2 Commencement

This provides that the Act will commence on the day on which it receives the Royal Assent.

Clause 3 Schedule (s)

This provides that an Act that is specified in a Schedule is amended or repealed as set out in the applicable items in the Schedule.

SCHEDULE 1 Amendment of the Defence (Re-establishment) Act 1965

1 Subsection 6(1) (definition of *Defence Service*)

This item inserts a new paragraph (d) in the definition of *Defence service* for the purposes of this Part. It adds to the definition service overseas in peacekeeping, peace-enforcement or humanitarian relief operations declared as such by the Minister in which the Australian Defence Force is participating.

2 Section 8

This item increases the penalty under section 8 from two hundred dollars to 50 penalty points. Section 8 prohibits an employer from preventing or hindering an employee from volunteering for service in, or serving in, the Emergency Forces or the Reserve Forces.

3 Subsection 9(1)

This item adds to the designated areas of employment in which an employer shall not penalise a person on account of their service in the Emergency Forces or the Reserve Forces. It inserts the requirement that an employer shall not refuse to employ a person on account of such service. The subsection currently prohibits an employer from penalising, or prejudicing in their employment, an employee on account of their service in the Emergency or Reserve Forces.

4 Subsection 9(1)

This item increases the penalty under section 9 from two hundred dollars to 50 penalty points.

5 Section 10

This item increases the penalty under section 10 from one hundred dollars to 50 penalty points. Section 10 prohibits an employer from treating an employee's Defence service as a period of annual leave, except at the employee's request.

6 Paragraph 11(1)(b)

This item deletes the exclusion of a contract of apprenticeship from the protection of section 11. The section states that a member who has been employed for at least 30 days prior to a period of Defence service or call up shall not have their employment terminated by reason on their absence on Defence service. The item extends this protection to apprentices.

7 Subsection 11(3)

This item repeals existing subsection 11(3), which allows the termination of a contract of apprenticeship if the Minister consents.

8 Subsection 11(4)

The item amends the deadline for a member to return to work after a period of Defence service. It requires them to do so within 90 days unless they are precluded from doing so by an illness, injury or disability incurred during their Defence service. The existing subsection requires a member to apply to return to work within 30 days or within a longer period determined by the Minister having regard to the circumstances of the case.

9 After subsection 11(4)

This item inserts a new subsection 11(4A) to require a member to give their employer 14 days advance notice of their Defence service, except where precluded from doing so by military necessity, and sets upper limits on full-time Defence service of both 5 years in total or 24 consecutive months.

10 Subsection 12(1)

This item deletes the existing deadline under which a member must apply to resume employment, or to be reinstated, after a period of Defence service. The existing subsection requires them to do so within 30 days or within a longer period determined by the Minister having regard to the circumstances of the case. A new deadline is inserted by item 11 below.

11 After subsection 12(1)

This item inserts a new deadline requiring a member seeking reinstatement to resume work within 90 days of completing their Defence service, except where they are precluded from doing so by an illness, injury or disability incurred during their Defence service.

12 Subsection 12(2)

This item increases the penalty under subsection 12 from two hundred dollars to 50 penalty points. The subsection requires an employer to permit a member to resume work, or be reinstated, after a period of Defence service under conditions not less favourable than those that would have applied if the member had not been absent on Defence service.

13 After subsection 12(2)

This item inserts a new subsection 12(2A) dealing with a member who is unable, by reason of an illness, injury or disability incurred during Defence service, to return to their original occupation. The item makes an employer guilty of an offence if they do not make all reasonable efforts to employ the member in an occupation that the member is qualified to perform, or would be qualified to perform with reasonable efforts by the employer. The penalty is set as 50 penalty points.

14 Subsection 12(3)

This item clarifies a reference to subsection 12(2). It is made necessary by the insertion of new subsection 12(2A).

15 Paragraph 12(3)(b)

This item amends one of the specified defences available to an employer who is subject to proceedings under subsection 12(2). Existing paragraph 12(3)(b) provides the defence that it was not within the employer's power, or was not reasonable or practicable, to permit the member to resume work. The amended paragraph substitutes the defence that it would have caused the employer undue hardship to do so. Undue hardship is further defined in item 16 below.

16 After paragraph 12(3)(b)

This item inserts a new subparagraph 12(3)(b)(i) that provides that claims of undue hardship are to be considered having regard to the number of persons employed by the employer, the employer's overall financial resources and the probable impact on the employer's business.

17 Subsection 14(1)

This item inserts a minimum period of 3 months, after a member returns to work from Defence service, during which their employment cannot be terminated without reasonable cause. As is currently the case, the maximum period during which this protection applies shall be equal to the member's period of Defence service.

18 Subsection 14(1)

This item increases the penalty under subsection 14(1) from two hundred dollars to 50 penalty points.

19 Subsection 15(1)

This item clarifies a reference to sections and subsections whereby a court may order that an employer, who has been convicted of an offence under this Part, shall pay reasonable compensation to a member. The change is made necessary by the insertion of new subsection 12(2A) and new section 17.

20 After subsection 16(2)

This item inserts a new subsection 16(2A) dealing with proceedings against the Crown. The effect of the item is to apply to the Crown the same burden of proof as applies to other employers under this Part, and to make available to the Crown the same defences that apply to other employers who are subject to proceedings under this Part.

21 At the end of Part 3

This item inserts new sections 17 and 18.

New section 17 inserts a provision protecting a person who takes action to enforce a right afforded to them under this Part. It makes an employer guilty of an offence if they take adverse action against a person because they have taken action to enforce such a right. The existing legislation contains no such provision. The penalty is to be 50 penalty points.

New section 18 requires the Minister to establish an Office of Reserve Forces to assist reservists. The Office is empowered to conduct education programs, investigate complaints, acquire documents, take statements from witnesses, recommend the provision of legal aid and otherwise assist reservists to enforce their rights under this Part.