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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DEFENCE FORCE DISCIPLINE BILL 1982

SUPPLEMENTARY  
EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for  
Defence, the Rt Hon Ian Sinclair MP)



DEFENCE FORCE DISCIPLINE BILL 1982

This Supplementary Explanatory Memorandum is to be read in conjunction with and amends the Explanatory Memorandum for the Defence Force Discipline Bill 1982 issued on 29 April 1982.

2. The Bill was amended in the House of Representatives. The majority of the amendments were made to correct technical defects in the Bill as originally drafted.

Sub-clause 3(15)

3. Add a new paragraph 81C to the Explanatory Memorandum.

"81C. Sub-clause (15) is intended to forestall technical legal arguments that a "service offence", as defined elsewhere in clause 3 is not an offence for the purpose of other laws of the Commonwealth merely because it is of a disciplinary nature and is not criminal in the ordinary sense. In the absence of sub-clause (15) such an argument might be raised by a party relying on the decision in *R v White; ex parte Byrnes* (1963) 109 CLR 665".

Revised sub-clause 14(2)

4. See paragraphs 130 to 140 of the Explanatory Memorandum. The expression "clearly unlawful" used in sub-clause (2) as first drafted was intended to mean "manifestly unlawful". Doubts were raised whether it had that effect and the sub-clause was redrafted to overcome these doubts. The word "clearly" has been omitted from the sub-clause.

/Substituted clause

Substituted clause 72

5. Omit paragraphs 635 and 636 of the Explanatory Memorandum and insert the following new paragraphs.

"635. It is intended that a person sentenced to imprisonment by a court martial or Defence Force magistrate should be subject to the same regime, under the Commonwealth Prisoners Act 1967, as any person imprisoned upon conviction by a civil court for an offence against any other law of the Commonwealth. Sub-clause (1) gives effect to that intention.

636. Sub-clause (1) requires service tribunals to make orders fixing non-parole periods as if they were courts of the Australian Capital Territory; the Parole Ordinance 1976 (ACT) is to be applied. Sub-clause (2) allows those orders to be deemed to be orders for the purposes of the Commonwealth Prisoners Act."

Substituted sub-clause 133(1)

6. Omit paragraph 980 of the Explanatory Memorandum and insert the following new paragraph.

"980. Sub-clause (1) provides that questions are to be determined by the members of the court martial, "subject to clause 134" which has the effect that rulings of the judge advocate prevail. The President presides but in some circumstances must act on advice - see eg, paragraph 1010. Sub-clause (2) provides that decisions of a court martial are by a majority vote".

/Substituted sub-

Substituted sub-clause 134(1)

7. Omit paragraph 985 of the Explanatory Memorandum and insert the following new paragraph.

"985. Sub-clause (1) empowers the judge advocate to give any ruling, and exercise any discretion, that would, in the Australian Capital Territory, be given or exercised by a judge in a jury trial. These powers are not limited to matters of evidence. The sub-clause does not allow a judge advocate to preside at a trial unless he is sitting alone for some purpose, as to which see sub-clause (2)".

Substituted sub-clause 134(3)

8. Omit paragraph 987 of the Explanatory Memorandum and insert the following new paragraphs.

"987. Sub-clause (3) provides that the members of a court martial and not the judge advocate determine the punishment to be imposed but that the judge advocate is to rule on legal aspects of the sentencing process.

987A. Sub-clause (4) provides that rulings under sub-clauses (1) and (3) and decisions made under sub-clauses 141(5) or (6) (which deal with certain applications or objections that the accused may make) are binding on the court martial."

Amendment of paragraph 138(4)(b)

9. Add to the end of paragraph 1004 of the Explanatory Memorandum the following sentence -

/"This can

"This can be done by the President of a court martial or another person at his direction".

Amendments of sub-clauses 154(2) and 154(4)

10. As a consequence of these amendments, omit the words "or mixed law and fact" from line 4 of paragraph 1098 of the Explanatory Memorandum. At the stage when a legal officer gives an opinion in this connection matters will not be of a nature that can be characterised as "mixed law and fact". They will be "matters of law".

Amendment of sub-clause 155(4)

11. Omit the words "or mixed law and fact" in the penultimate line of paragraph 1102 of the Explanatory Memorandum (see paragraph 10 above).

Substituted sub-clauses 162(6) and (7)

12. These amendments were consequential on the replacement of clause 72 (see paragraph 5 above). Paragraph 1129 of the Explanatory Memorandum refers. The new sub-clauses have a similar effect to those they replace.

Omission of previous clause 174 (Application of State or Territory laws to certain persons)

13. Omit paragraphs 1176 to 1178 from the Explanatory Memorandum.

14. An effect of substituted clause 72 is to remove any need for clause 174.

15. References in the Explanatory Memorandum to clauses 175 to 198 are to be read as references to clauses 174 to 197, respectively.



