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1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DEFENCE LEGISLATION AMENDMENT  
BILL (No.2) 1996

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Defence,  
the Hon. Ian McLachlan AO MP)

Defence Legislation Amendment Bill (No.2) 1996

**OUTLINE**

This Bill will:

- a. enable transfers between the three arms of the Defence Force without the necessity for resignation or discharge;
- b. change the titles of the service chiefs of staff to Chief of Navy, Chief of Army and Chief of Air Force;
- c. lower from Colonel (equivalent) to Major (equivalent) the minimum rank that attracts a requirement to serve 12 months after promotion; and
- d. enable the Governor-General to delegate, to the Chief of the Defence Force or a service chief (formerly chief of staff), the power to make limited-tenure promotions.

**FINANCIAL IMPACT**

The amendments will not have any significant financial impact.

## Defence Legislation Amendment Bill (No.2) 1996

**NOTES ON CLAUSES**Clause 1 - Short title

1. Formal.

Clause 2 - Commencement

2. This clause provides for the commencement of the Act. All amendments, except the service chief title changes, will commence on a day to be fixed by proclamation, or six months after the Bill receives Royal Assent if the amendments have not been proclaimed by that date. (This will enable consequential regulation amendments to be made in association with the commencement of the Bill.) The amendments to the titles of the service chiefs (contained in Schedule 2) commence on assent.

Clause 3 - Schedule(s)

3. This clause provides for Acts to be amended as specified in the Schedules.

**Schedule 1 - Amendments relating to transfers of Defence Force members**

4. This Schedule amends the Defence Act 1903, the Naval Defence Act 1910 and the Air Force Act 1923, to enable transfers between the three arms of the Defence Force without the necessity for resignation or discharge.
5. Section 30 of the Defence Act provides that the Defence Force consists of 3 arms, the Navy, Army and Air Force. Members are (in the case of officers) appointed to serve with, or (in the case of enlisted members) enlisted to serve in, a particular arm rather than the Defence Force as a whole.
6. At present, a member can only be transferred from one arm of the Defence Force to another through the cumbersome mechanism of resigning (in the case of an officer) or being discharged (in the case of an enlisted member) from his or her current arm of the Defence Force and then being appointed to, or enlisted in, one of the other arms of the Defence Force.
7. This Schedule amends the Defence Act, by inserting new sections 27AA and 44A, and Naval Defence Act, by inserting new sections 17B and 30A, to enable the direct transfer of a member from one arm of the Defence Force to

another arm of the Defence Force without the necessity for resignation or discharge. (Corresponding amendments will be made to the Air Force Regulations which contain related provisions for the Air Force.) Consequential amendments are also made to the Defence Act, Naval Defence Act and Air Force Act.

8. The new provisions vest the power to transfer a member from one arm of the Defence Force to another with the service chief (or delegate) of the arm that is losing the member.

9. The service chief (or delegate) of the losing arm can only transfer a member if the member concerned consents and the service chief (or delegate) of the gaining arm approves the transfer.

10. A transfer must be effected by an instrument specifying the date of effect of the transfer, the period of appointment or enlistment that is to apply once the transfer is effected, the part of the gaining arm in which the member is appointed or enlisted, the rank the member is to hold, and seniority in that rank.

11. There is also provision to ensure that any return of service obligation, stemming from a member's service in the losing arm, is carried over to the gaining arm when a transfer takes effect. Further provisions ensure that service in the losing arm is counted as service in the gaining arm for purposes such as the calculation of leave entitlements. (There is no need for any special provision to cover retiring ages as a transferred member will automatically attract the compulsory retirement age applicable to his or her rank in the gaining arm.)

12. The delegation provisions in the Defence Act and Naval Defence Act are amended to enable the relevant service chiefs to delegate their powers under the new provisions to officers of the rank of Brigadier (equivalent) or above.

## **Schedule 2 - Amendments relating to service chiefs**

13. This Schedule amends the Defence Act 1903, Naval Defence Act 1910 and Air Force Act 1923, to change the titles of the chiefs of each arm of the Defence Force, and makes consequential amendments to other Commonwealth Acts.

14. The amendments change the titles of the Chief of Naval Staff, Chief of the General Staff and Chief of the Air Staff to Chief of Navy, Chief of Army

and Chief of Air Force. The new titles are intended to reflect more accurately the current command arrangements in the Defence Force.

15. Consequential amendments to reflect the new titles are also made in relation to the generic term “chief of staff”, which is currently defined in the Defence Act to mean the Chief of the Defence Force, Chief of Naval Staff, Chief of the General Staff or Chief of the Air Staff. References to chief of staff are replaced by references to the Chief of the Defence Force or a “service chief”, defined to mean the Chief of Navy, Chief of Army or Chief of Air Force.

### **Schedule 3 - Other amendments**

16. This Schedule amends the Defence Act 1903 and Naval Defence Act 1910 to:

- (a) lower, from Colonel (equivalent) to Major (equivalent), the minimum rank that attracts a requirement to serve 12 months after promotion; and
- (b) enable the Governor-General to delegate to the Chief of the Defence Force or a service chief the power to make limited-tenure promotions.

#### **Requirement to serve 12 months after promotion**

17. Section 17 of the Defence Act and section 13 of the Naval Defence Act enable the relevant service chief to reject the resignation of an Army or Navy officer who holds the substantive rank of Colonel (equivalent) and above, where the officer has not completed a period of 12 months service in the rank since being promoted to it. These provisions are designed to increase efficiency by improving personnel management and reducing posting turbulence. The same considerations apply to all promotions to the rank of Major (equivalent) or above.

18. Section 17 of the Defence Act and section 13 of the Naval Defence Act are accordingly widened to enable the relevant service chief to reject the resignation of an Army or Navy officer who holds the substantive rank of Major (equivalent) and above, where the officer has not completed a period of 12 months service in the rank since being promoted to it. (Corresponding amendments are being made to the Air Force Regulations which contain similar provision in relation to Air Force officers.)

Delegation of Governor-General's power to make limited-tenure promotions

19. The Defence Legislation Amendment Act 1995 inserted a new section 10B in the Defence Act and section 13A in the Naval Defence Act, to enable the Governor-General to make limited-tenure promotions. (Corresponding provision for the Air Force was made in the Air Force Regulations.) These provisions are intended to allow for a limited number of senior officer promotions, at Colonel (equivalent) rank or above, where an individual has skills relevant to a particular appointment rather than skills that will enable continued employability at the higher rank level. Limited-tenure promotions are for a set period, normally 3 years, and the officers concerned can, of course, decline such promotions.

20. The Governor-General has delegated his general powers to promote officers in the Defence Force but the current delegation provisions do not cover limited-tenure promotions. Section 120A of the Defence Act and section 44B of the Naval Defence Act, which provide for delegations, are accordingly amended to enable the Governor-General to delegate the power to make limited-tenure promotions. Delegations may be to the Chief of the Defence Force as well as the Chief of Navy, in the case of the Navy, or Chief of Army, in the case of the Army. (A corresponding amendment will be made to the Air Force Regulations which contain similar provisions in relation to Air Force officers.)





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