

1980-81-82

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

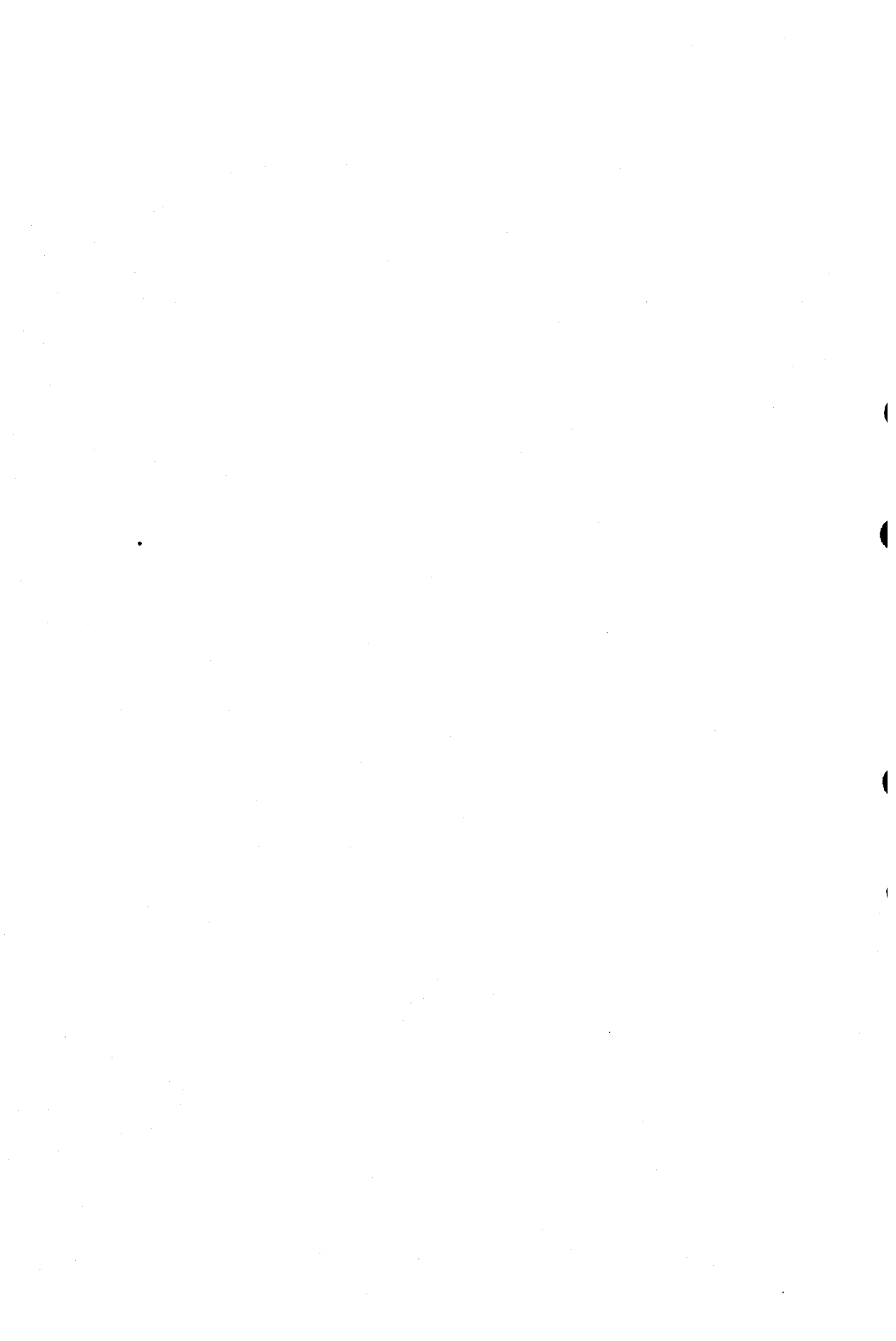
HOUSE OF REPRESENTATIVES

DEFENCE FORCE (MISCELLANEOUS PROVISIONS)
BILL 1982

EXPLANATORY MEMORANDUM

(Circulated by the Authority of the Minister for Defence,
the Hon D.J. Killen, MP)

K20045.LP



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CONTENTS

Outline

Notes On Clauses

DEFENCE FORCE (MISCELLANEOUS PROVISIONS) BILL 1982

TABLE OF PROVISIONS

PART 1 - PRELIMINARY

Clause

1. Short title
2. Commencement

PART II - CONSEQUENTIAL AMENDMENTS

Division 1 - Amendments of the Administrative
Decisions (Judicial Review) Act 1977

3. Principal Act
4. Interpretation
5. Schedule 1

Division 2 - Amendments of the Air Force Act 1923

6. Principal Act
7. Interpretation
8. Application of Defence Act
9. Application of Air Force Act
10. Regulations

Division 3 - Amendments of the Courts-Martial
Appeals Act 1955

11. Principal Act
12. Title
13. Short title

14. Interpretation
15. Defence Force Discipline Appeal Tribunal
16. Constitution of Tribunal
17. Qualification of members
18. Insertion of new sections:
 - 8A. Appointment of Judge as a member of Tribunal not to affect tenure, etc.
 - 8B. Arrangement for appointment of the holder of a judicial office of a State or the Northern Territory.
19. Oath or affirmation of allegiance
20. Insertion of new section:
 - 15A. Reserved decision
21. Single member may determine certain matters
22. The Registrar
23. Repeal of Divisions 1 and 2 of Part III and substitution of new Divisions:
 - Division 1 - Bringing of Appeals
 20. Appeals to Tribunal
 21. Time for lodging appeals, etc
 22. Frivolous and vexatious appeals
 - Division 2 - Determination of Appeals
 23. Quashing of conviction, etc
 24. New trial
 25. Custody of person pending new trial
 26. Substitution of conviction for alternative offence
24. Supplementary powers
25. Repeal of sections 35 and 36 and substitution of new sections:
 35. Warrants
 36. Tribunal may obtain reports to assist in determination of appeals
26. Costs

27. Repeal of section 38 and substitution of new section:
 38. Restitution orders and reparation orders
28. Repeal of sections 41 and 42 and substitution of new sections:
 41. Person deemed to have been acquitted
 42. Defence of appeals
29. Punishment of members of Defence Force for offences against this Part
30. Repeal of Part V and substitution of new Part -
 51. Reference of questions of law to Federal Court of Australia
 52. Appeal to Federal Court of Australia from decisions of the Tribunal
 53. Custody orders and sending of documents to the Federal Court of Australia
 54. Record of proceedings of Tribunal to be kept
31. Effect of this Act on Royal prerogative of mercy
32. Regulations
33. Schedule
34. Amendments relating to penalties
35. Transitional
36. Appeal rights of persons convicted before commencement of this Act and of certain other persons
 - Division 4 - Amendment of the Crimes Act 1914
37. Principal Act
38. Aiders and Abettors
 - Division 5 - Amendments of the Defence Act 1903
39. Principal Act
40. Interpretation
41. Application of Act
42. State Acts to cease to apply

- 43. Administration of Defence Force
- 44. Promotion for distinguished service
- 45. Delegation of power to make appointments and promotions
- 46. Preference to be given to persons who have served in the ranks
- 47. Appointments do not create civil contract
- 48. Adjustment of ranks after war service
- 49. Promotion of returned officers
- 50. Application of certain regulations
- 51. Repeal of Division 4 of Part III
- 52. Repeal of section 73 and substitution of new section:
 - 73. Aiding or abetting commission of service offence within the meaning of the Defence Force Discipline Act 1982
- 53. Repeal of section 73B and substitution of new section:
 - 73B. Forging or uttering warrants or orders
- 54. Penalty
- 55. Repeal of sections 74 and 75
- 56. Offences relating to desertion
- 57. Absence for more than 7 days deemed to be desertion
- 58. Repeal of Part VIII and substitution of new Part:
 - PART VIII - OFFENCES IN RELATION TO SERVICE TRIBUNALS
 - 86. Failure of witness to appear
 - 87. Refusal to be sworn or to answer questions
 - 88. False or misleading evidence
 - 89. Contempt of service tribunals, etc
 - 90. Failure to comply with order under section 140 of the Defence Force Discipline Act 1982

- 59. Repeal of sections 101 to 110A (inclusive)
- 60. Repeal of sections 112 to 116 (inclusive)
- 61. Repeal of sections 117 and 117A
- 62. Employer not to prevent employee from serving
- 63. Proof of order
- 64. Police to aid in arrest of deserters
- 65. Repeal of sections 123BB and 123BC
- 66. Regulations
- 67. Admission of students, etc
- 68. Repeal of Schedule 1
 - Division 6 - Amendments of the Defence
(Re-establishment) Act 1965
- 69. Principal Act
- 70. Interpretation
 - Division 7 - Amendments of the Defence
(Visiting Forces) Act 1963
- 71. Principal Act
- 72. Application to visiting forces of law relating
to Defence Force
 - Division 8 - Amendments of the Geneva
Conventions Act 1957
- 73. Principal Act
- 74. Interpretation
- 75. Punishment of grave breaches of Conventions
- 76. Offences in Australia not triable by court-
martial
- 77. Appeals by protected prisoners of war and
internees
 - Division 9 - Amendments of the Naval Defence
Act 1910

- 78. Principal Act
- 79. Interpretation
- 80. Application of Defence Act
- 81. Promotion for distinguished service
- 82. Delegation of power to make appointments and promotions
- 83. Application of Naval Discipline Act and Queen's Regulations
- 84. Repeal of sections 44 and 44A
- 85. Regulations

PART III - TRANSITIONAL PROVISIONS

- 86. Interpretation
 - 87. Part to be incorporated with Defence Force Discipline Act 1982
 - 88. Pending proceedings before service tribunals on the trial of a charge
 - 89. Proceedings (other than trial proceedings) before commanding officer under previous service law
 - 90. Review under previous service law
 - 91. Punishments or orders under previous service law
 - 92. Warrants issued before proclaimed date for old system offences to continue in force
 - 93. Person in custody under previous service law immediately before proclaimed date
 - 94. Dissolution of court martial under previous service law
 - 95. Operation of Administrative Decisions (Judicial Review) Act
 - 96. Operation of Acts Interpretation Act
 - 97. Regulations
- Schedule Amendments of the Courts-Martial Appeals Act 1955 relating to penalties

DEFENCE FORCE (MISCELLANEOUS PROVISIONS)
BILL 1982

Outline

This Bill deals with 3 principal matters:

- a. it repeals existing Defence Force disciplinary legislation and makes other amendments to various Acts consequent on the enactment of the Defence Force Discipline Bill 1982;
- b. it makes other amendments to the Courts-Martial Appeals Act 1955:
 - i. to restrict membership of the Courts-Martial Appeal Tribunal to the holders of judicial office;
 - ii. to improve certain procedures relating to the Tribunal;
 - iii. to confer on the Tribunal certain powers commonly exercised by courts of criminal appeal;
 - iv. to allow a limited right of appeal to the Tribunal upon verdicts involving unsoundness of mind of the accused; and
 - v. to provide a wider access to the Federal Court of Australia including a right of appeal on questions of law; and
- c. it provides transitional provisions for the disposal of offences committed under existing Defence Force disciplinary legislation.

The opportunity has been taken to repeal certain obsolete or unnecessary provisions of existing legislation concerning the administration of the Defence Force.

NOTES ON CLAUSES

PART I - PRELIMINARY

Clause 1 - Short title

This clause sets out the short title of the proposed Act.

Clause 2 - Commencement

This clause provides for the Bill to come into force at the same time as the major part of the Defence Force Discipline Bill 1982.

PART II - CONSEQUENTIAL AMENDMENTS

Division 1 - Amendments of the Administrative Decisions (Judicial Review)

Act 1977

Clause 3 - Principal Act

This clause provides for the citation of the Administrative Decisions (Judicial Review) Act 1977 as the Principal Act in this Division of the Bill.

Clause 4 - Interpretation

This clause amends section 3 of the Principal Act to omit certain definitions consequent on the amendment proposed to Schedule 1 of the Principal Act, see clause 5.

Clause 5 - Schedule 1

This clause amends Schedule 1 of the Principal Act to substitute a reference to relevant decisions under the Defence Force Discipline Act 1982 for the present descriptions of various kinds of decisions taken under the existing disciplinary legislation relating to the Defence Force.

Division 2 - Amendments of the Air Force Act 1923

Clause 6 - Principal Act

This clause provides for the citation of the Air Force Act 1923 as the Principal Act in this Division of the Bill.

Clause 7 - Interpretation

This clause amends section 2 of the Principal Act to omit the definition of "the Air Force Act" consequent on the proposed repeal of section 5 of the Principal Act.

Clause 8 - Application of Defence Act

Section 3 of the Principal Act and section 5 of the Defence Act 1903 are intended to resolve possible conflicts between the two Acts. In recent years sources of possible conflict have been removed by various amendments of the Defence Act, except in the field of disciplinary matters. With the removal of disciplinary matters from the two Acts by the Bill, section 3 is no longer required and is repealed accordingly. See also the notes on clause 41 of the Bill regarding section 5 of the Defence Act.

Clause 9 - Application of Air Force Act

This clause repeals section 5 of the Principal Act. The effect of this repeal is to terminate the application, to members of the Australian Air Force, of the (UK) Air Force Act which forms part of the existing disciplinary law of the Air Force.

Clause 10 - Regulations

This clause amends section 9 of the Principal Act (which is the general authority for the Governor-General to make regulations under the Act) by omitting the reference to discipline in relation to members of the Air Force, because provision is to be made by the Defence Force Discipline Bill.

Division 3 - Amendments of the Courts-Martial Appeals Act 1955

Clause 11 - Principal Act

This clause provides for the citation of the Courts-Martial Appeals Act 1955 as the Principal Act in this Division of the Bill.

Clause 12 - Title

This clause changes the long title of the Principal Act to reflect the fact that appeals will, in future, lie from decisions of Defence Force magistrates as well as from decisions of courts-martial.

Clause 13 - Short title

This clause makes a consequential amendment to the short title of the Principal Act which will henceforth be the "Defence Force Discipline Appeals Act 1955".

Clause 14 - Interpretation

This clause amends section 4 of the Principal Act which is an interpretative provision. The amendment in paragraph (g) is consequent on the renaming of the Courts-Martial Appeals Tribunal by clause 15. The remaining amendments are consequent on the enacting of the Defence Force Discipline Bill.

Clause 15 - Defence Force Discipline Appeal Tribunal

This clause renames the Courts-Martial Appeal Tribunal the "Defence Force Discipline Appeal Tribunal".

Clause 16 - Constitution of Tribunal

This clause amends section 7 of the Principal Act to limit appointments to the Appeal Tribunal to persons who are less than 70 years of age and to provide that appointments may not be made to extend beyond that age. This is in line with section 72 of the Constitution as it applies to Justices of federal courts.

Clause 17 - Qualification of members

Section 8 of the Principal Act, in addition to permitting the appointment of judges as President or members of the Appeal Tribunal, permits the appointment of former judges or Queen's Counsel as President and former judges, Queen's Counsel or barristers, solicitors or persons

with other suitable legal experience as members. The appointment of persons who are not of judicial status is considered inappropriate as the decisions under review will in some cases have been endorsed by the Judge Advocate General, who is required, under the Defence Force Discipline Bill to have, or have had, judicial status.

Sub-clause (1) amends section 8 to restrict appointment as President or member of the Appeal Tribunal to persons of judicial status and to provide that they cease to be members of the Appeal Tribunal if they cease to hold judicial office.

Sub-clause (2) provides that the new conditions do not apply to existing members of the Tribunal.

Clause 18 - New sections 8A and 8B

This clause inserts new sections 8A and 8B into the Principal Act.

New section 8A - Appointment of Judge as member of Tribunal not to affect tenure, etc

This section is a standard provision preserving the tenure of office and other rights of a Judge as such, notwithstanding his appointment as a member of the Appeal Tribunal.

New section 8B - Arrangement for appointment of the holder of a judicial office of a State or the Northern Territory

This section is a standard provision and empowers the Governor-General to enter into an arrangement with the Governor of a State or the Administrator of the Northern Territory, when it is desired to appoint a Judge of the State or Territory as a member of the Appeal Tribunal.

Clause 19 - Oath or affirmation of allegiance

Section 9 of the Principal Act requires a person appointed to the Appeal Tribunal to take an oath or affirmation of allegiance before taking up his duties.

This clause amends section 9 to specify the authorities before whom the oath or affirmation is to be taken.

Clause 20 - Reserved decision

A reserved decision of a court can usually be delivered by one judge, sitting alone. The Appeal Tribunal lacks this facility; in fact, sub-section 15(1) of the Principal Act requires the powers of the Appeal Tribunal to be exercised by not less than 3 members, unless otherwise provided in the Act.

This clause inserts a new section 15A into the Principal Act, which authorizes a reserved decision to be delivered by one member, sitting alone. The new clause is similar to section 49 of the Federal Court of Australia Act 1976.

Clause 21 - Single member may determine certain matters

This clause makes amendments consequential on other proposed amendments to the Principal Act.

Section 17 of the Principal Act empowers a single member of the Appeal Tribunal to exercise certain powers of the Tribunal, such as granting of leave to appeal and granting of legal aid.

The first amendment made by this clause is consequent on the introduction of Defence Force magistrates and on the provision of a right to appeal against a finding that the accused person did the act charged but was of unsound mind at the time when the act was done (see new section 20 inserted by clause 23). The amendment extends the power of a single member of the Appeal Tribunal in relation to the granting of leave to appeal in

two ways: to the granting of such leave in relation to prescribed acquittals (acquittal on the ground of unsound mind) and in relation to decisions of Defence Force magistrates.

The second amendment is consequent on the provision of a right to appeal in certain cases without obtaining the leave of the Appeal Tribunal (see new section 20 inserted by clause 23). The amendment empowers a single member of the Appeal Tribunal to extend the period within which an appeal may be lodged.

Clause 22 - The Registrar

Section 19 of the Principal Act provides for a Registrar and Deputy Registrars of the Appeal Tribunal and requires that they be appointed by the Governor-General. It is considered to be more appropriate that such officers be appointed by the Attorney-General, as is the case with corresponding officers of the Federal Court (see Federal Court of Australia Act 1976, section 35).

Sub-clause (1) replaces section 19 with a new section that makes provision accordingly.

Sub-clauses (2) and (3) are transitional provisions continuing existing appointments and existing regulations.

Clause 23 - Divisions 1 and 2 of Part III of the Principal Act

This clause replaces Divisions 1 and 2 of Part III of the Principal Act (which relate to the bringing, and determination, of appeals) with new divisions.

Division 1 - Bringing of appeals

New section 20 - Appeals to Tribunal

Appeals against convictions in criminal courts generally lie as of right on questions of law and by leave in other cases. Section 20 of the Principal Act provides for appeal only by leave of the Tribunal.

The Principal Act also currently provides no means of appealing from the finding of a court martial that the accused person did the act charged but was of unsound mind at the time when the act was done. Where such a finding is made by a United Kingdom court martial, appeal to the United Kingdom Courts-Martial Appeal Court may be made, with the leave of the court. Certain rights of appeal also exist in State law where such a finding is made by a State court.

New section 20 brings the law relating to the right to appeal from the verdict of a court martial or Defence Force magistrate generally into conformity with the ordinary criminal law by providing for appeal to the Appeal Tribunal as of right on questions of law and by leave of the Tribunal in other cases, and by providing an appeal where the person was found to be of unsound mind at the time of the alleged offence (except where the evidence of unsoundness of mind was adduced by the defence).

A source of delay in appeals being dealt with by the Appeal Tribunal is the requirement in sub-section 20(2) of the Principal Act that a convicted person may not apply to the Appeal Tribunal until he has lodged a petition with his chief of staff seeking the quashing of his conviction and either the petition has been refused or the prescribed period after lodging the petition has lapsed. The prescribed period is 40 days or 60 days after the promulgation of the decision of the court martial, according to whether the trial took place within or outside Australia.

This requirement is intended to operate as a filter of appeals to the Appeal Tribunal. Its efficacy in this respect is greatly outweighed by the delays that it causes in the making of appeals to the Appeal Tribunal.

The provision, under clause 152 of the Defence Force Discipline Bill, of an automatic review of every conviction by a reviewing authority acting on legal advice by a qualified lawyer removes any requirement for a

further filter of appeals and the existing sub-sections 20(2), (3) and (4) are accordingly not retained in the new section.

Provision for automatic reviews by reviewing authorities also makes it necessary to establish new time limits for appeals to the Defence Force Discipline Appeal Tribunal.

The Bill and the Defence Force Discipline Bill provide the following time limits:

- a. The right to appeal to the Appeal Tribunal is to arise on completion of automatic review or 30 days after conviction, whichever sooner occurs (new section 21).
- b. The right to appeal to the Appeal Tribunal is to last for 30 days, but this period may be extended by the Tribunal (new section 21).
- c. If the convicted person lodges an appeal then no reviewing action by a reviewing authority may subsequently be taken whether on petition or otherwise, except as in paragraph d. (DFD Bill, clause 156(1)).
- d. If the convicted person's appeal to the Appeal Tribunal fails then the power of the reviewing authority to review, and the right to petition the reviewing authority, revives but only in respect of punishments, reparation orders, etc (except in a case where the Tribunal has substituted a conviction of another offence and hence has either varied the punishment or must be assumed to have reviewed it) (DFD Bill, clauses 153(2), 156(2)).

- e. If the convicted person petitions a reviewing authority but, before the petition has been dealt with, appeals to the Appeal Tribunal, the petition lapses and any later petition must be made afresh (DFD Bill, clause 153(2)).

New section 21 - Time for lodging appeals

This section replaces section 21 of the Principal Act with a provision designed to dovetail with clause 152 of the Defence Force Discipline Bill.

Sub-section (1) re-enacts the existing sub-section (1) (which sets out what an application for leave to appeal is to specify and the time limits for lodging an application) expanded to relate to appeals as well as to applications.

Sub-section (2) defines "appropriate period" for the purposes of sub-section (1) by reference to a period of 30 days commencing 30 days after the conviction or commencing on completion of an automatic review under clause 152 of the Defence Force Discipline Bill, whichever is earlier.

New section 22 - Frivolous and vexatious appeals

This section re-enacts section 22 of the Principal Act with consequential drafting changes only.

Division 2 - Determination of appeals

New sections 23 to 26 replace sections 23 to 29 of the Principal Act in order to achieve conformity as to the powers that may be exercised on review under the Defence Force Discipline Bill 1982 and on appeal under the Principal Act.

New section 23 - Quashing of conviction, etc

New section 23 replaces sections 23 and 28 of the Principal Act and parallels clauses 158 and 164 of the Defence Force Discipline Bill.

The section sets out the various courses of action open to the Appeal Tribunal where the Tribunal concludes, on review, that a conviction or prescribed acquittal should be quashed. A prescribed acquittal means an acquittal on the ground of unsoundness of mind, see section 4 of the Principal Act as amended by clause 14.

The Appeal Tribunal is required to allow the appeal:

- a. sub-clause (1): where the conviction or prescribed acquittal was wrong in law or there was a material irregularity resulting, in either case, in a substantial miscarriage of justice or where the conviction, etc, is against the weight of evidence or otherwise unsafe or unsatisfactory;
- b. sub-clause (2): where there is new evidence that was not previously available and it appears to be admissible and credible, and the conviction or prescribed acquittal can in consequence not be supported;
- c. sub-clause (3): where the Appeal Tribunal considers (having regard to the evidence) that the convicted person was at the time of the offence suffering from such unsoundness of mind as not to be responsible in law for the offence (in which case an acquittal on the ground of unsoundness of mind is to be substituted);
- d. sub-section (4): where the Appeal Tribunal considers that the person was unfit to stand trial because he was suffering from unsoundness of mind at the time.

Sub-section (5) provides that the Appeal Tribunal is not to quash a conviction on the ground that the person was at the time of the offence suffering from such unsoundness of mind as not to be responsible in law for

the offence, or on the ground of unfitness to stand trial, if there are other grounds for quashing the conviction.

Sub-section (6) applies section 195 of the Defence Force Discipline Bill (which sets out the powers that may be exercised by the Governor-General for the disposal of an accused who has been found to be of unsound mind) to an accused where the Appeal Tribunal directs under sub-section (3) or (4) that he be kept in strict custody until the pleasure of the Governor-General is known.

New section 24 - New trial

This section is new and empowers the Appeal Tribunal, where it quashes a conviction or prescribed acquittal on appeal, to order a new trial. Such a power is possessed by State courts of criminal appeal and several cases have demonstrated the need for such a power in relation to appeals under the Principal Act.

A new trial would be convened under sub-clause 103(2) of the Defence Force Discipline Bill. Sub-clause 103(3) of that Bill confers on a convening authority a discretion not to proceed with a new trial if he considers that there is insufficient cogent evidence.

New section 25 - Custody of person pending new trial

This section is new and provides authority for the custody of a person where a new trial is ordered. An appropriate order regarding custody may be made by the Appeal Tribunal.

New section 26 - Substitution of conviction for alternative offence

This section replaces sections 24, 25 and 26 of the Principal Act and parallels clause 161 of the Defence Force Discipline Bill. The section deals with the substitution, on appeal, of a conviction of one offence for the conviction of another offence.

Sub-section (1) empowers the Appeal Tribunal, where it quashes a conviction on appeal, to substitute a conviction of another offence if the service tribunal could, on the evidence, have found the accused guilty of the other offence:

- a. under clause 142 of the Defence Force Discipline Bill (which provides that a person charged with certain specified offences may be convicted of certain other specified offences); or
- b. because it was an offence with which he was charged in the alternative and in respect of which no finding was recorded.

Sub-section (2) empowers the Appeal Tribunal, on substituting a conviction under sub-section (1), to take whatever action under Part IV of the Defence Force Discipline Bill (which sets out the various punishments that may be imposed and orders that may be made, on conviction by a service tribunal) may be appropriate but not so as to increase the severity of the punishment or the amount of the order.

Sub-section (3) deals with the commencement of a punishment of imprisonment or detention where this is substituted by the Appeal Tribunal under sub-section (2). The punishment is to run from the time from which it would have run under the Defence Force Discipline Bill if it had been imposed by the service tribunal which convicted the person, unless the Appeal Tribunal directs some other date of commencement.

Clause 24 - Supplementary powers

This clause amends section 31 of the Principal Act to include a reference to a Defence Force magistrate.

Clause 25 - New sections 35 and 36

This clause replaces sections 35 and 36 of the Principal Act with two new sections.

New section 35 - Warrants

This section re-enacts the existing section suitably redrafted to dovetail with section 170 of the Defence Force Discipline Bill.

New section 36 - Tribunal may obtain reports to assist in determination of appeals

Section 36 of the Principal Act empowers the Appeal Tribunal to take steps to obtain from the judge advocate, or a member, of the court martial a report giving his opinion on the case or a point arising therein or containing a statement as to relevant facts.

New section 36 re-enacts the existing section omitting the reference to a member of a court martial (because it is now thought inappropriate) and inserting a reference to a Defence Force magistrate.

Clause 26 - Costs

This clause makes a minor drafting amendment to section 37 of the Principal Act.

Clause 27 - Restitution of stolen property

Section 38 of the Principal Act suspends any order that may have been made under naval law, military law or air force law for the restoration to its rightful owner of stolen property, empowers the Appeal Tribunal to amend or vary such an order and authorizes the making of regulations regarding the safe custody of property to which an order relates.

The automatic suspension of such an order and the power of a service tribunal to give orders for the safe custody of property are properly matters for the Defence Force Discipline Bill, see clause 173 of that Bill, and these aspects are omitted from the Principal Act by clause 27.

The existing section also empowers the Appeal Tribunal to annul or vary a restitution order (sub-section 38(4)). Clause 27 re-enacts the existing sub-section (4) as new section 38, expanded to relate also to reparation orders.

Clause 28 - New sections 41 and 42

This clause repeals sections 41 and 42 of the Principal Act and substitutes new sections.

New section 41 - Person deemed to have been acquitted

Section 41 of the Principal Act provides that a person whose conviction has been quashed by the Appeal Tribunal is not liable to be tried again for the same offence. The section requires amendment to reflect the fact that the Principal Act as amended by clause 23 will empower the Appeal Tribunal to order a new trial.

The new section 41 provides that, for the purposes of the Defence Force Discipline Bill, where the Appeal Tribunal quashes a conviction or a prescribed acquittal and does not order a new trial, the person is deemed to have been acquitted. The effect of this section, read in conjunction with clauses 144 and 191 of the Defence Force Discipline Bill, is to prevent the person being liable to be tried again for the same offence, either by a service tribunal or by a civil court.

New section 42 - Defence of appeals

The new section 42, when compared with the existing section 42, reflects the fact that, under the Defence Force Discipline Bill, there are no naval courts martial, military courts martial or air force courts martial, as such - only courts martial.

Clause 29 - Punishment of members of Defence Force for offences against this Part

Sections 43 to 47 of the Principal Act create offences of failing to attend the Appeal Tribunal in response to a summons, disturbing the proceedings of the Appeal Tribunal, etc.

Section 49 of the Principal Act purports to confer jurisdiction on Defence Force tribunals to try such offences (by deeming these offences to be offences against the Defence Act 1903). Such jurisdiction is henceforth to be conferred by sub-clause 61(1) and clauses 106-108, 115 and 129 of the Defence Force Discipline Bill.

Clause 28 repeals section 49 accordingly.

Clause 30 - Repeal of Part V and substitution of new Part

This clause replaces the existing Part V (which provides for reference of questions of law to the Federal Court, at the request of the appellant or a chief of staff) with a new and expanded Part V which:

- a. removes the present requirement for the Attorney-General to consider and certify any reference by the Appeal Tribunal of a question of law (that is, that the question of law involved is of exceptional public importance) to the Federal Court;
- b. provides the Appeal Tribunal with a new right, of its own motion to refer a question of law to the Federal Court for decision;
and
- c. provides the appellant and a chief of staff with a new right to appeal to the Federal Court on a question of law.

New Section 51 - Reference of questions of law to Federal Court of Australia

Sub-section (1) restates and extends the existing law regarding the Appeal Tribunal referring a question of law to the Federal Court at the request of the appellant or the chief of staff and provides also that the Appeal Tribunal may, of its own motion, do so.

The present requirement to obtain a certificate from the Attorney-General that the question involves a matter of public importance (section 52 of the Principal Act) is abolished.

Sub-section (2) confers jurisdiction on the Federal Court (replacing existing section 53), and sub-section (3) prevents the Appeal Tribunal from giving a decision pending a decision by the Federal Court and requires the Appeal Tribunal to comply with the opinion given by the Federal Court when giving its decision in the appeal concerned.

New Section 52 - Appeal to Federal Court of Australia from decisions of the Tribunal

Sub-section (1) provides an appellant or a chief of staff with a right to appeal to the Federal Court on a question of law from any decision of the Tribunal.

Sub-section (2) requires an appeal to normally be made within 28 days in a manner provided for by the Federal Court Rules and sub-section (3) confers jurisdiction on the Federal Court to deal with appeals.

Sub-section (4) requires the Federal Court to hear and determine an appeal and to make appropriate orders, and sub-section (5) ensures that the orders that may be made include orders affirming or setting aside

decisions of the Appeal Tribunal and orders remitting the case to be heard and decided again by the Appeal Tribunal in accordance with directions of the Federal Court.

New Section 53 - Custody orders and sending of documents to the Federal Court of Australia

This section replaces the existing section 56 and:

- a. empowers the Appeal Tribunal to make appropriate orders for the custody of the appellant pending a decision of the Federal Court; and
- b. deals with the despatch of relevant documents from the Appeal Tribunal to the Federal Court and their return to the Tribunal.

New Section 54 - Record of proceedings of Tribunal to be kept

This section merely restates the existing section 57.

Clause 31 - Effect of this Act on Royal prerogative of mercy

Sub-clause 58(2) of the Principal Act operates to oust the jurisdiction of any other person or authority (other than the Appeal Tribunal) to quash a conviction once an application for leave to appeal has been lodged.

Provision on this point has been made in the Defence Force Discipline Bill (sub-clause 153(5) and clause 156) and sub-clause 58(2) of the Principal Act is repealed accordingly.

Clause 32 - Regulations

This clause amends section 60 of the Principal Act (which is the general authority for the Governor-General to make regulations under the Act) by omitting paragraph (e) and replacing paragraph (g).

Paragraph (e) becomes unnecessary consequent on the elimination from section 20 of the Principal Act of the requirement that a person first petition a chief of staff. Paragraph (g) requires amendment for the same reason and to reflect the provisions of the Defence Force Discipline Bill.

Clause 33 - Schedule

This clause amends the form of oath in the Schedule to the Principal Act to reflect the change in name of the Appeal Tribunal.

Clause 34 - Amendments relating to penalties

This clause and the Schedule to the Bill increase the maximum penalties for the offences in sections 43-47 of the Principal Act and the maximum penalties that may be provided by regulations made under section 60 of the Principal Act, in accordance with current values.

Clause 35 - Transitional

This clause continues the Courts-Martial Appeal Tribunal in existence under its new title of Defence Force Discipline Appeal Tribunal and deals with references in other laws to the Tribunal.

Clause 36 - Appeal rights of persons convicted before commencement of this Act and of certain other persons

This clause applies the Principal Act (as amended) in relation to the appeal rights of persons convicted before the proclaimed date or by a court-martial convened before that date but requires the amendments made by certain provisions to be disregarded (ie, the provisions changing the requirements and time limits for appealing, the powers that may be exercised by the Appeal Tribunal and the new rights of appeal, etc, to the Federal Court).

Division 4 - Amendment of the Crimes Act 1914

Clause 37 - Principal Act

This clause provides for the citation of the Crimes Act 1914 as the Principal Act in this Division of the Bill.

Clause 38 - Aiders and abettors

Section 5 of the Principal Act provides that a person "who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in, or party to, the commission of any offence against any law of the Commonwealth or of a Territory ... shall be deemed to have committed that offence and shall be punishable accordingly."

Where a person, who is a defence member or defence civilian for the purposes of the Defence Force Discipline Bill 1982, does an act described in section 5 of the Principal Act in relation to an offence in Part III of that Bill, he may be tried by a service tribunal under that Bill for that offence.

Where any other person does such an act the position is not clear. If, on the one hand, section 5 were to be construed as purporting to confer jurisdiction on service tribunals, such a construction would be contrary to the intended policy (which is not to confer such jurisdiction) and would possibly also be unconstitutional.

If, on the other hand, the section were to be construed as purporting to confer on civil courts jurisdiction to try offences against Part III of the Defence Force Discipline Bill, such a construction would be contrary to clause 19 of that Bill.

The effect of the foregoing could be that such a person would be subject to no criminal liability whatsoever.

In order to clarify this position in a manner consistent with the intended policy, clause 52 of the present Bill inserts into the Defence Act, as section 73, an offence provision modelled on section 5 of the Principal Act. This provision makes it an offence for a person (other than a defence member or a defence civilian) to aid or abet, etc, the commission of a service offence as defined in the Defence Force Discipline Bill.

Such an act of aiding or abetting, etc, would be triable by a civil court as an offence against section 73. Because section 73 specifically excludes defence members and defence civilians from being perpetrators, offences against section 73 are not triable by service tribunals.

Clause 37 makes a complementary amendment to section 5 of the Principal Act by adding sub-section (2) which excludes from the ambit of section 5 acts or omissions by persons (other than defence members or defence civilians) that constitute offences of aiding, etc, defence members or defence civilians in the commission of service offences.

Division 5 - Amendments of the Defence Act 1903

Clause 39 - Principal Act

This clause provides for the citation of the Defence Act 1903 as the Principal Act in this Division of the Bill.

Clause 40 - Interpretation

This clause makes the necessary amendments to the definitions in sub-section 4(1) of the Principal Act consequent on the repeals and other amendments effected by this Division to the Principal Act. It also amends the definition of "officer" by removing irrelevant references to war substantive, local, etc, ranks for consistency with the new definition of "officer" in the Defence Force Discipline Bill.

Clause 41 - Application of Act

Section 5 of the Principal Act provides inter alia, that the Principal Act applies to the Navy and the Air Force subject to the Naval Defence Act 1910 and the Air Force Act 1923, respectively, and sections 5 and 3, respectively, of the latter Acts make complementary provision. These provisions are intended to resolve possible conflicts between the Principal Act and the other two Acts.

With the removal of disciplinary matters from the 3 Acts by the Bill, the last remaining area of possible conflict is gone and the references in section 5 of the Principal Act to the other Acts is accordingly removed by this clause.

Clause 42 - State Acts to cease to apply

Section 6 of the Principal Act is an original provision dating from 1903. It relates to rights, penalties, etc, (including those of a disciplinary nature) accrued or incurred under the pre-Federation defence legislation of the various States. It is no longer required and is repealed accordingly.

Clause 43 - Administration of Defence Force

This clause amends section 9A of the Principal Act to bring terminology into line with the Defence Force Discipline Bill and amendments made by this Bill to the Courts-Martial Appeals Act 1955.

Clause 44 - Promotion for distinguished service

Section 10B of the Principal Act provides that the Governor-General may appoint a soldier to be an officer of the Army or promote an officer of the Army to higher rank for distinguished service in time of war or for marked ability or gallantry on active service.

In a career service, appointments and promotions need to be made on merit of which the rendering of distinguished service or the display of marked ability or gallantry are factors, but not the only factors, to be taken into account.

Specific recognition of these factors can more suitably be made by the bestowal of honours, decorations or awards, which has the advantage that the career structure of the Army is not affected.

There is a place in the system for some form of temporary or wartime only form of promotion, but section 10B makes no provision for this: it appears to be capable of application to substantive promotions only.

Section 10 of the Principal Act provides for the conditions, qualifications or requirements governing the appointment and promotion of officers to be prescribed or provided for by the regulations and section 10B is repealed accordingly.

Clause 45 - Delegations of power to make appointments and promotions

This clause amends section 10C of the Principal Act consequent on the proposed repeal of section 10B.

Clause 46 - Preference to be given to persons who have served in the ranks

Section 11 of the Principal Act provides that, in the first appointment of officers, preference shall be given, in the case of equality of qualifications, to persons who have served in the Defence Force for 3 years without a commission.

This section has a narrower operation than it had when enacted in 1903, when the Army was largely a part-time, militia-type force. It does not achieve any effect in the case of students at the Royal Military College, Duntroon. Graduates of the College are appointed officers on

graduation, at which time they are soldiers, having been enlisted as such on entry to the College several years earlier.

Nor could it usually achieve any effect in the case of the appointment of those classes of officers where tertiary qualifications are a requirement for appointment because these appointments are, of necessity, usually made from persons who are not members of the Defence Force.

A provision such as section 11 is of doubtful utility because the usual procedure where there are more candidates than vacancies is for the selection committee to list the candidates in an order of merit having regard to their qualifications in the broad sense (ie, an individual's educational and other qualifications, experience, personal qualities and assessed potential), and it would be rare for any candidates to be assessed as having equal merit.

The details of a candidate's previous service are taken into account in assessing his qualifications for appointment. Section 11 is repealed accordingly.

Section 10 of the Principal Act provides for the conditions, qualifications or requirements governing the appointment and promotion of officers to be prescribed or provided for by the regulations. Should the need arise at some future time for some more practicable and effective form of preference to be provided, the matter could be dealt with by making an appropriate regulation.

Clause 47 - Appointments do not create civil contract

Section 13 of the Principal Act provides that the appointment or promotion of an officer does not create a civil contract between the Crown and the officer. This section is applied to the Navy and the Air Force by sections 5 and 3, respectively, of the Naval Defence Act and of the Air Force Act.

Consequent on the proposed repeal of the latter two provisions, section 13 of the Principal Act is amended to continue its application to the Navy and the Air Force.

Clause 48 - Adjustment of ranks after war service

Section 16A of the Principal Act deals with the adjustment of ranks after war service of members of the Army holding war substantive rank.

This section is obsolete and in any case deals with a matter that may now be dealt with by regulations made in pursuance of section 10 of the Principal Act. The section is repealed accordingly.

Clause 49 - Promotion of returned officers

Section 20A of the Principal Act provides for preference in the promotion of officers of the Army to be given to an officer who has served on active service abroad.

This section is of doubtful utility for the same reason that applies in the case of section 11 of the Principal Act previously discussed. Furthermore, the fact of an officer having had active service abroad and the nature and significance of that service would necessarily be taken to account in assessing his suitability for promotion. Section 20A is repealed accordingly.

Clause 50 - Application of certain regulations

Section 49 of the Principal Act provides that regulations under the Act relating to the discipline and good government of the Army apply to members of the Regular Army Emergency Reserve as if they were members of the Regular Army Supplement.

Discipline is now a matter for the Defence Force Discipline Bill and the regulations under the Principal Act dealing with other matters relating to the Regular Army Supplement will be amended to apply to the

Regular Army Emergency reserve as necessary. Clause 49 repeals section 49 accordingly.

Clause 51 - Repeal of Division 4 of Part III

Division 4 of Part III of the Principal Act consists of 3 sections (54, 55 and 58).

The effect of repealing sections 54 and 55 of the Principal Act is to terminate the application, to members of the Australian Army when serving outside Australia or on war service, of the (UK) Army Act, which forms part of the existing disciplinary law of the Army.

Section 58 of the Principal Act imposes a responsibility on a commanding officer for the safe keeping of Commonwealth property supplied to his unit and empowers the commanding officer, where property is damaged or lost through the negligence or misconduct of a member of the Defence Force, to sue the member who caused the damage or loss. This section is unnecessary because the Commonwealth is entitled to sue at common law and, in practice, always does so. The section is also unsuitable because it would be an unnecessary complexity to sue in the name of (say) Colonel John Smith, Commanding Officer of X Regiment instead of in the name of the Commonwealth.

Division 4 is repealed accordingly.

Clause 52 - Aiding or abetting commission of service offence within the meaning of the Defence Force Discipline Act 1982

Section 73 of the Principal Act provides a group of offences that may be committed only by members of the Defence Force. The offences relate to such matters as falsifying pay rolls, improperly claiming or receiving pay and fraudulently obtaining or retaining pay and are mostly expressed in out-of-date terms appropriate to the armed forces and pay procedures therein of 60 years ago.

The intended policy is that offences that may only be committed by members of the Defence Force should, if practicable, be dealt with in the Defence Force Discipline Bill. Some of the offences in section 73 are provided for in clause 55 (Falsification of service documents) of that Bill and others are triable under that Bill as offences against clause 61 (being offences against the Crimes Act 1914).

Section 73 is repealed accordingly.

In its place, clause 52 substitutes a new section dealing with aiders and abettors. For an explanation regarding the new section 73, see the remarks on clause 38.

Clause 53 - Forging or uttering warrants or orders

Section 73B of the Principal Act provides offences similar to such of those in section 73 as could be committed by persons not in the Defence Force and offences of forging and uttering warrants or orders under the Principal Act. Again the offences relating to rolls, etc, are in out-of-date terms.

The offences relating to rolls, etc, and falsely personating persons are adequately provided for by sections 72, 74 and 75 of the Crimes Act 1914.

Clause 53 accordingly omits these offences and extends the remaining offences (forging and uttering) to relate also to warrants and orders under the Defence Force Discipline Bill.

Clause 54 - Penalty

This clause amends section 73F of the Principal Act consequent on the proposed repeal of section 73. The new section 73 proposed to be inserted by clause 52 contains its own penalties and the penalties in section 73F should not apply to the new section 73.

Clause 55 - Repeal of sections 74 and 75

Section 74 of the Principal Act creates offences of refusing required information or giving false information on enlistment or enrolment, or refusing to make an enrolment or to transmit a prescribed roll in the prescribed manner, and specifies the punishment that may be imposed by a court-martial for the offence.

Section 75 of the Principal Act creates offences of failing to attend when called on to enlist, and offences of aiding and abetting, etc, the commission of such offences.

These offences are intended to relate to persons called on in time of war under section 60 of the Principal Act to serve in the Defence Force. However, the terms in which they are framed are no longer effective. Section 61 of the Principal Act envisages regulations being made for the registration and allotment for service of persons called up under section 60. Such regulations could make provision for penalties for breaches of the regulations and sections 74 and 75 are repealed accordingly.

Clause 56 - Offences relating to desertion

Section 77 of the Principal Act provides offences of procuring, persuading, aiding, assisting, etc, deserters from the Defence Force. Adequate provision will be made by the proposed new section 73 and section 77 is repealed accordingly.

Clause 57 - Absence for more than 7 days deemed to be desertion

Section 78 of the Principal Act provides offences that may only be committed by members of the Defence Force. Clause 57 repeals section 78; appropriate offences of desertion and absence without leave are provided for in clauses 22 and 24 of the Defence Force Discipline Bill.

Clause 58 - Part VIII - Offences in relation to service tribunals

This clause repeals Part VIII (Courts-Martial) of the Principal Act and re-enacts those provisions of Part VIII for which provision is not made by the Defence Force Discipline Bill. The re-enacted provisions all provide offences against or in relation to service tribunals. These offences are required principally for application to persons who at the time of committing these offences are not defence members or defence civilians. Offences committed by such persons are not triable under the Defence Force Discipline Bill.

New section 86 - Failure of witness to appear

This section replaces the offence in paragraph 95(a) of the Principal Act. It is in similar terms to sub-clause 53(1) of the Defence Force Discipline Bill and provides offences of failing to appear when summoned as a witness before a service tribunal and failing to appear and report from day to day unless excused.

The present maximum penalty of a \$200 fine in the Principal Act is increased to \$1000 or imprisonment for 6 months.

New section 87 - Refusal to be sworn or to answer questions

This section replaces the remaining offences in section 95 of the Principal Act. It is in similar terms to sub-clause 53(2) of the Defence Force Discipline Bill and provides offences of, when appearing as a witness before a service tribunal, refusing to be sworn as a witness, to answer lawful questions or to produce documents lawfully required.

The present maximum penalty of a \$200 fine in the Principal Act, is increased to \$1000 or imprisonment for 6 months.

New section 88 - False or misleading evidence

This section provides new offences of, when appearing as a witness before a service tribunal, giving false or misleading evidence. The same maximum penalty is provided as for the other offences in Part VIII.

New section 89 - Contempt of service tribunals, etc

This section replaces the offences in section 89 of the Principal Act. It is in similar terms to sub-clause 53(3) of the Defence Force Discipline Bill. Sub-clause (1) provides offences of insulting a service tribunal, interrupting the proceedings or creating a disturbance at or nearby the service tribunal or doing any other act that would constitute a contempt of a court of record.

The present maximum penalty of an unlimited fine or period of imprisonment or detention is reduced to \$1000 or imprisonment for 6 months.

Sub-clause (2) defines various the expressions by reference to the Defence Force Discipline Bill.

New section 90 - Failure to comply with order under section 140 of the Defence Force Discipline Act 1982

Clause 140 of the Defence Force Discipline Bill 1982 empowers a Defence Force magistrate or the President of a court martial to order the exclusion of members of the public from the proceedings or to order that no report of the whole or a particular part of the proceedings is to be published.

New section 90 provides an offence of contravening or failing to comply with such an order. The same maximum penalty is provided as for the other offences in Part VIII.

Clause 59 - Repeal of sections 101 to 110A (inclusive)

Section 101 of the Principal Act provides that all offences against the Principal Act other than indictable offences, are punishable on summary conviction. This section is unnecessary because sections 42 and 43 of the Acts Interpretation Act 1901 make provision, of general application, on this point.

Sections 102 to 108 (inclusive) of the Principal Act deal with various aspects of existing disciplinary law (such as limitations of time for trial and summary powers of commanding officers) for which provision is made by the Defence Force Discipline Bill.

Section 109 of the Principal Act makes provision for the period within which civil prosecutions for offences against the Act may be commenced. This section is unnecessary because section 21 of the Crimes Act 1914 makes provision, of general application, on this point.

Section 110A of the Principal Act requires that a Company or Flight Roll Book be kept by prescribed persons and that prescribed entries be made therein. This section is a relic of the universal military training scheme of 1909 having originally been part of section 146 (now repealed) of the Principal Act, which dealt with that scheme. There is no requirement for section 110A.

Sections 101 to 110A (inclusive) are repealed accordingly.

Clause 60 - Repeal of sections 112 to 116 (inclusive)

Sections 112 to 116 (inclusive) of the Principal Act deal with various aspects of existing disciplinary law (such as arrest and incarceration) for which provision is made by the Defence Force Discipline Bill, and are repealed accordingly.

Clause 61 - Repeal of sections 117 and 117A

Section 117 of the Principal Act provides that nothing in the Act prevents a number of the Defence Force from volunteering to serve in any Force that may be raised by the Commonwealth of Australia to augment any of the King's Regular or other Forces or to occupy or defend a place outside Australia.

This section overrode various provisions of the original Defence Act of 1903 which imposed restrictions of one kind or another on service of members of the Defence Force outside Australia. The last of these restrictions was removed by the Defence Act 1965 and section 117 is repealed accordingly.

Section 117A of the Principal Act has the effect of subjecting certain civilians accompanying the Army in an official capacity to existing Army disciplinary law in certain circumstances. Appropriate provision is made by the Defence Force Discipline Bill and section 117A is repealed accordingly.

Clause 62 - Employer not to prevent employee from serving

Section 118A of the Principal Act deals (inter alia) with the protection of the civilian employment of a person who joins a force such as the AIF. Clause 62 merely substitutes for the reference to a force raised for active service a more specific reference to a force raised under section 35 of the Principal Act.

Clause 63 - Proof of order

Section 121 of the Principal Act is an evidentiary provision relating to appointments, warrants and orders made under the Act. Clause 61 omits the reference to warrants because these will be issued under the Defence Force Discipline Bill.

Clause 64 - Police to aid in arrest of deserters

Section 122 of the Principal Act deals with the arrest of "deserters and absconders", a matter for which provision is made by the Defence Force Discipline Bill. Section 122 is repealed accordingly.

Clause 65 - Repeal of sections 123BB and 123BC

Section 123BB of the Principal Act authorizes the making of regulations which may modify or adapt, etc, provisions of the Principal Act in their application to female members of the Army. This section was inserted in 1964 principally to provide a means of modifying the existing disciplinary law of the Army in its application to female members. With the repeal of the existing disciplinary law by this Bill, section 123BB is no longer required.

Section 123BC of the Principal Act relates to sections 49, 54, 55, 123BB and 147A of that Act, so far as they authorize the making of regulations modifying the Principal Act or the (UK) Army Act. This Bill deletes from the Principal Act all reference to the (UK) Army Act and all power to modify the Principal Act by regulations and section 123BC is no longer required.

Sections 123BB and 123BC are repealed accordingly.

Clause 66 - Regulations

This clause amends section 124 of the Principal Act (which is the general authority for the Governor-General to make regulations under the Act) by omitting references to disciplinary matters in relation to members of the Defence Force, for which provision is made by the Defence Force Discipline Bill.

Clause 67 - Admission of students, etc

Section 147A of the Principal Act describes the scope of regulations that may be made with regard to students at the Royal Military College, Duntroon, and other military training institutions. Clause 67 removes:

- a. the reference to discipline in sub-section (1); and
- b. the power in sub-section (2) to modify the Principal Act by the regulations,

consequent on the repeal of the existing disciplinary law by the Bill.

Clause 68 - Repeal of Schedule 1

This clause repeals Schedule 1 to the Principal Act for the reason given in the note to clause 41.

Division 6 - Amendments of the Defence (Re-establishment) Act 1965

Clause 69 - Principal Act

This clause provides for the citation of the Defence (Re-establishment) Act 1965 as the Principal Act in this Division of the Bill.

Clause 70 - Interpretation

This clause amends section 4 of the Principal Act to substitute a new definition of "service tribunal" and to re-define dishonourable discharge in sub-section (2) consequent on the enactment of the Defence Force Discipline Bill.

Division 7 - Amendments of the Defence (Visiting Forces) Act 1963

Clause 71 - Principal Act

This clause provides for the citation of the Defence (Visiting Forces) Act 1963 as the Principal Act in this Division of the Bill.

Clause 72 - Application to visiting forces of law relating to Defence

Force

This clause amends section 16 of the Principal Act to substitute a new definition of "service tribunal" consequent on the enactment of the Defence Force Discipline Bill.

Division 8 - Amendments of the Geneva Conventions Act 1957

Clause 73 - Principal Act

This clause provides for the citation of the Geneva Conventions Act 1957 as the Principal Act in this Division of the Bill.

Clause 74 - Interpretation

This clause amends section 5 of the Principal Act to insert, in the definition of "court", references to service tribunals under the Defence Force Discipline Bill.

Clause 75 - Punishment of grave breaches of conventions

This clause removes references to the death penalty from section 7 of the Principal Act. The death penalty can no longer be imposed - see the Death Penalty Abolition Act 1973.

Clause 76 - Offences in Australia not triable by court-martial

Section 9 of the Principal Act is intended to preclude the trial in Australia by court martial of offences against section 7 of that Act.

Section 9 requires amendment to accord with the Defence Force Discipline Bill but clause 76 repeals section 9 instead because control over the jurisdiction of service tribunals in Australia with regard to the Geneva Conventions Act can be effected by regulations made in pursuance of sub-clause 7(4) or sub-paragraph 63(1)(a)(iii) of the Defence Force Discipline Bill.

Clause 77 - Appeals by protected prisoners of war and internees

Sub-section 13(4) of the Principal Act confers jurisdiction on the Courts-Martial Appeal Tribunal to hear appeals by prisoners of war against convictions by military courts.

This sub-section is made redundant by clause 7 of the Defence Force Discipline Bill which (inter alia) renders prisoners of war subject to trial by court martial. Clause 77 omits sub-section 13(4) of the Principal Act accordingly and references in sub-sections 13(1) and (2) to the death penalty.

Division 9 - Amendments of the Naval Defence Act 1910

Clause 78 - Principal Act

This clause provides for the citation of the Naval Defence Act 1910 as the Principal Act in this Division of the Bill.

Clause 79 - Interpretation

This clause amends section 3 of the Principal Act to omit or amend certain definitions consequent on the proposed repeal of sections 10 and 34 of the Principal Act.

Clause 80 - Application of Defence Act.

Section 5 of the Principal Act and section 5 of the Defence Act 1903 are intended to resolve conflicts between the two Acts. In recent years sources of possible conflict have been removed by various amendments of the Defence Act and the Principal Act, except in the field of disciplinary matters. With the removal of disciplinary matters from the two Acts by the Bill, section 5 is no longer required and is repealed accordingly. See also the notes on clause 41 of the Bill regarding section 5 of the Defence Act.

Clause 81 - Promotion for distinguished service

Section 10 of the Principal Act provides that the Governor-General may appoint a sailor to be an officer of the Navy or promote an officer of the Navy to higher rank for distinguished service in time of war or for marked ability and gallantry on active service.

In a career service, appointments and promotions need to be made on merit of which the rendering of distinguished service or the display of marked ability or gallantry are factors, but not the only factors, to be taken into account.

Specific recognition of these factors can more suitably be rewarded by the bestowal of honours, decorations or awards, which has the advantage that the career structure of the Navy is not distorted.

There is a place in the system for some form of temporary or war-time only form of promotion, but section 10 makes no provision for this: it appears to be capable of application to substantive promotions only.

Section 8 of the Principal Act provides for the conditions, qualifications or requirements governing the appointment and promotion of officers to be prescribed or provided for by the regulations and section 10 is repealed accordingly.

Clause 82 - Delegation of power to make appointments and promotions

This clause amends section 11 of the Principal Act consequent on the proposed repeal of section 10.

Clause 83 - Application of Naval Discipline Act and Queen's Regulations

The effect of the repeal of section 34 of the Principal Act is to terminate the application, to members of the Australian Navy, of the (UK) Naval Discipline Act 1957 and the Queen's Regulations and Admiralty Instructions which form part of the existing disciplinary law of the Navy.

Clause 84 - Repeal of sections 44 and 44A

Section 44 of the Principal Act authorizes the making of regulations which may modify or adapt, etc, provisions of the Principal Act in their application to female members of the Navy. This section was inserted in 1964 principally for consistency with section 123BB inserted at the same time into the Defence Act 1903.

Section 123BB is proposed to be repealed and it is proposed to repeal section 44 also.

Section 44A of the Principal Act relates to sections 34 and 44 of that Act so far as they authorize the making of regulations modifying the Principal Act, the (UK) Naval Discipline Act 1957 or the Queen's Regulations and Admiralty Instructions. This Bill deletes from the Principal Act all power to modify the Principal Act by regulations and section 44A is no longer required.

Section 44A is repealed accordingly.

Clause 85 - Regulations

This clause amends section 45 of the Principal Act (which is the general authority for the Governor-General to make regulations under the Act) by omitting references to disciplinary matters in relation to members of the Navy, for which provision is made by the Defence Force Discipline Bill.

PART III - TRANSITIONAL PROVISIONS

On the date on which the Defence Force Discipline Bill comes into force there will be various proceedings under the existing disciplinary law that will not have been completed. The purpose of Part III is to provide for the continuation or lapse of such proceedings, as appropriate.

Clause 86 - Interpretation

This clause defines "proceeding before a service tribunal under previous service law" for the purposes of Part III of the Bill.

Clause 87 - Part to be incorporated with Defence Force Discipline Act 1982

This clause requires Part III to be incorporated and read as one with the Defence Force Discipline Bill. An effect of this is to apply the interpretative provisions of that Bill to Part III so that it is not necessary to reproduce such provisions in this Bill.

Clause 88 - Pending proceedings before service tribunals on the trial of a charge

Sub-clause (1) provides for an uncompleted trial before a summary authority under previous service law to lapse on the proclaimed date but a fresh charge of an offence under that law may be laid and tried under the new law.

Sub-clause (2), on the other hand, provides that uncompleted proceedings before a court martial are to continue as if the previous service law had continued in force.

The reason for this distinction is that summary proceedings are normally completed on the one day and in any case are simple to organize and there is little delay in having to recommence de novo. The proceedings of a court martial are more likely to be spread over more than one day; furthermore, it takes several weeks to convene a court martial and it would be inconvenient and wasteful to have to recommence such proceedings.

Clause 89 - Proceedings (other than trial proceedings) before commanding officer under previous service law

Sub-clause (1) deals with the case where a commanding officer has, before the proclaimed date, referred a charge under previous service law to a convening authority but a court martial has not been convened. The court martial is to be convened under the Defence Force Discipline Bill.

Sub-clause (2) deals with uncompleted proceedings (other than trial proceedings) before a commanding officer under previous service law and provides they may continue after the proclaimed date as if they had been instituted under the Defence Force Discipline Bill.

Clause 90 - Review under previous service law

This clause deals with:

- a. a trial completed under previous service law before the proclaimed date,
- b. a trial by court martial under previous service law that is continued after the proclaimed date under sub-clause 88(2);
and
- c. a review commenced under previous service law but not completed before the proclaimed date;

and provides for the review to continue, or to be carried out, as if previous service law had continued in force.

Clause 91 - Punishments or orders under previous service law

Sub-clause (1) provides that punishments or orders imposed or made under previous service law may be carried out under the Defence Force Discipline Bill.

Sub-clause (2), however, continues previous service law in force for the following particular purposes:

- a. in relation to the suspension of punishments or orders under previous service law; and
- b. in relation to the confirmation and promulgation of punishments or orders under previous service law.

Clause 92 - Warrants issued before proclaimed date for old system offences to continue in force

This clause keeps alive warrants for arrest issued under previous service law.

Clause 93 - Person in custody under previous service law immediately before proclaimed date

The clause deems custody under previous service law to be custody under the Defence Force Discipline Bill. Because it is not practicable to achieve a reconciliation between any action that may have already been taken with respect to 8 day delay reports under the previous service law and the action required to be taken under clause 95 of the Defence Force Discipline Bill, the clause requires the period of custody to be regarded as commencing anew on the proclaimed date.

Clause 94 - Dissolution of court martial under previous service law

This clause deals with the position where a court martial under previous service law was or is dissolved in accordance with that law and provides that any fresh court martial convened for the trial of the offence is to be convened under the Defence Force Discipline Bill.

Clause 95 - Operation of Administrative Decisions (Judicial Review) Act

This clause continues the Administrative Decisions (Judicial Review) Act 1977 in force (as in force before the amendment made by this Bill) in relation to decisions taken under previous service law as in force before the Bill and as continued in force by the Bill.

Clause 96 - Operation of Acts Interpretation Act

This clause preserves the operation of section 8 of the Acts Interpretation Act (which deals with the effect of the repeal of an Act or part thereof).

Clause 97 - Regulations

This clause contains a regulation-making power that may be exercised in relation to the transitional provisions in Part III of the Bill only.

Schedule

In conjunction with clause 34, this schedule increases the maximum penalties for the offences in sections 43-47 of the Principal Act and the maximum penalties that may be provided by regulations made under section 60 of the Principal Act.

