

1980 - 81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

STATUTE LAW REVISION BILL 1981

EXPLANATORY MEMORANDUM

(Circulated by the Attorney-General,
Senator the Hon. Peter Durack, Q.C.)

STATUTE LAW REVISION BILL 1981

GENERAL OUTLINE

The Bill has three purposes. First, it is designed to correct some printing and drafting errors that have been found to exist in a number of Acts. Secondly, it provides for the repeal of a number of Acts and provisions of Acts the operation of which is exhausted or which are no longer required. Thirdly, it makes a number of technical or minor amendments that, while having some substance, are regarded as being of a non-controversial nature.

- 1 -

PART I - PRELIMINARY

Clause 1 - Short title

Formal.

Clause 2 - Commencement

This clause makes special provision for the commencement of Parts III, VI, VII, IX, X, XIII, XV, clauses 58 and 59, Parts XVII and XXII, Divisions 2 and 3 of Part XXXII and clause 116. These provisions are dealt with in the notes on the relevant clauses.

Unless otherwise indicated, the provisions of the Bill come into operation in accordance with sub-clause 2(1) on the day on which the Act receives the Royal Assent.

PART II - AMENDMENT OF THE
ADMINISTRATIVE APPEALS TRIBUNAL ACT 1975

Clause 3 - Principal Act

Formal.

Clause 4 - Schedule to Administrative Appeals Tribunal Act

Sub-clause 4(1) repeals the provisions of the Schedule to the Administrative Appeals Tribunal Act 1975 that confer jurisdiction on the Tribunal in matters arising under the Australian Capital Territory Taxation (Administration) Act 1969, the Australian Film Commission Act 1975, the Commerce (Trade Descriptions) Act 1905, the Distillation Act 1901, the Excise Act 1901, the Migration Act 1958, the Social Services Act 1947 and the Spirits Act 1906. Parts IV, V, VIII, XI and XII, clause 60 and Parts XIX and XX of the Bill re-enact the provisions concerned in those Acts. Sub-clause 4(2) provides that the repeal of the provisions of the Schedule to the Administrative Appeals Tribunal Act 1975 does not affect any application made before the commencement of the Bill in accordance with such a provision or anything connected with such an application.

Sub-clause 4(1) also repeals the provisions of the Schedule to the Administrative Appeals Tribunal Act that confer jurisdiction on the Tribunal in matters arising under the Cellulose Acetate Flake Bounty Act 1956 and the Metal Working Machine Tools Bounty Act 1972. Both of these Acts have expired and are repealed by clause 118.

PART III - AMENDMENTS OF THE AIR FORCE ACT 1923

Clause 5 - Principal Act

Formal.

Clause 6 - Australian Air Force

This clause renames the Citizen Air Force the Australian Air Force Reserve by substituting the latter title in section 4A of the Principal Act. Continuity of membership etc. is provided by sub-clause 13(1) of the Bill.

Clauses 7 and 8 - Permanent Air Force and Air Force Emergency Force

These clauses amend sections 4B and 4C of the Principal Act to substitute the title Australian Air Force Reserve.

Clause 9 - Australian Air Force Reserve

This clause repeals section 4D of the Principal Act, which deals with the composition of the Citizen Air Force, and substitutes a new section dealing with the composition of the Australian Air Force Reserve.

Sub-section (2) provides continuity of service between the Active Citizen Air Force and the Air Force Active Reserve and sub-section (3) does the same for the Reserve Citizen Air Force and the Air Force General Reserve.

Sub-section (4) describes the composition of the Air Force Active Reserve, sub-section (5) describes the composition of the Air Force General Reserve and sub-section (6) describes the composition of the Air Force Specialist Reserve.

Clauses 10 and 11 - Service of the Permanent Air Force and the Air Force Emergency Force

These clauses make drafting amendments to sections 4G and 4H of the Principal Act.

Clause 12 - Service of the Australian Air Force Reserve

This clause amends section 4J of the Principal Act to substitute the title Australian Air Force Reserve and to clarify the operation of the Principal Act and the regulations in relation to the rendering of service (other than continuous full time service) by members of the Australian Air Force Reserve.

Sub-section (1) incorporates the first part of existing sub-section 4J(1) (which provides that members of the Citizen Air Force are not ordinarily bound to render continuous full time service) and makes the necessary title change.

PART III (Contd.)

Sub-section (2) is new and provides for training periods (currently called "training year") in respect of the Air Force Active Reserve or the Air Force Specialist Reserve or different training periods in respect of different parts, or different classes of members, of those Reserves. The training periods may be fixed by the regulations or the regulations may empower a particular authority to fix the training periods.

Sub-section (2A) incorporates the second part of existing sub-section 4J(1) (which provides for the obligatory rendering of service (other than continuous full time service) by members of the Active Citizen Air Force) and makes the necessary title change. It relates the obligatory service required to be rendered to a training period and allows for members to be exempted by the regulations.

Sub-section (2B) ensures that there will be adequate scope to make the regulations required:

- a. Para (a) incorporates existing sub-section 4J(2) (which authorizes the regulations to specify different periods of obligatory service for different classes of members) and makes the necessary title change.
- b. Para (b) authorizes the regulations to make provision for the exempting of members individually, or by specified classes, from their obligation to render obligatory service during a training period.

The exempting provisions are intended for circumstances such as where, in a particular year, a member may be unable to meet his training obligations (because, for example, he is required to go overseas in the course of his private employment) or where a group of members render a period of continuous full time service (such as call out in aid of the civil power) and it is regarded as unnecessary to require them also to render the usual period of obligatory service or a part of that service.

Para (b) of clause 12 amends sub-section 4J(3) of the Principal Act to substitute the title Australian Air Force Reserve.

Sub-section (4) is new and provides that a member of the Australian Air Force Reserve may voluntarily render a period of air force service (other than continuous full time service). It is intended for the circumstance where the Air Force has a requirement for a reservist to render a brief period of service at a particular time for a particular purpose (a typical example is a Reserve legal officer officiating as a judge advocate, prosecutor or defending officer at a court martial).

PART III (Contd.)

Sub-section (5) is new and provides for the circumstance where certain classes of members of the Active Reserve or the Specialist Reserve are encouraged to volunteer for additional service for such purposes as attaining greater efficiency or the performance of particular duties (administrative, instructional, maintenance, etc). A member who is authorized to render such additional service is not bound to render it; a limit is placed on the amount of such service that may be rendered in a training period, and different limits may be placed on different classes of members.

Sub-section (6) is new and provides that, where the Air Force may have a requirement to specify under sub-section (5) that the additional voluntary service permitted under sub-section (5) with respect to a particular class of members is service of a particular kind (e.g., for training or the performance of administrative duties), the member is restricted to performing service of that kind.

Sub-section (7) incorporates existing sub-section (4) and preserves the overriding operation of sections 50A and 51 of the Defence Act 1903 (which deal with call out of the Reserves in time of war or defence emergency, or in aid of the civil power, respectively).

Clause 13 - Transitional and savings.

This clause contains transitional and savings provisions.

Sub-clause (1) provides continuity of service, etc, between the Citizen Air Force and the Australian Air Force Reserve.

Sub-clause (2) continues the existing legislation in force (notwithstanding the amendments made by the Bill) in relation to air force service required to be rendered in pursuance of sub-section 4J(1) of the Principal Act in the training period current at the time of the coming into force of the provisions re-titling the Citizen Air Force.

Sub-clause (3) continues the existing regulations in force to the extent that they are not inconsistent with the amended Act and provides that they may be amended or repealed in the usual way.

Sub-clause (4) defines "proclaimed date" for the purposes of the clause.

PART IV - AMENDMENT OF THE AUSTRALIAN CAPITAL TERRITORY TAXATION (ADMINISTRATION) ACT 1969

Clause 14 - Principal Act

Formal.

Clause 15 - Review of revocation of authority

This clause re-enacts the provisions of sub-clause 4(1) of the Schedule to the Administrative Appeals Tribunal Act 1975 in the Australian Capital Territory Taxation (Administration) Act 1969. That sub-clause relates to a review of a decision under section 20 of the Australian Capital Territory Taxation (Administration) Act 1969, which empowers the Commissioner of Taxation to revoke a banker's authority to issue cheque forms that are pre-stamped with the duty payable under the Act if the banker is convicted of an offence against the Act.

Sub-clause 4(2) of the Schedule provided that a person was not entitled to appeal under section 21 of the Australian Capital Territory Taxation (Administration) Act 1969 against the revocation of an authority in respect of which an application could be made to the Tribunal by virtue of sub-clause 4(1). Clause 15 of the Bill repeals section 21 of the Australian Capital Territory Taxation (Administration) Act 1969. The requirement made by sub-clause 4(3) of the Schedule that the Tribunal be constituted by a presidential member sitting alone when reviewing a revocation of an authority is regarded as unnecessary and has been omitted.

Sub-clause 15(2) provides that applications for review of a revocation of authority effected either before or after the date of commencement of clause 15 may be made under the re-enacted provision.

PART V - AMENDMENT OF THE AUSTRALIAN FILM COMMISSION ACT 1975

Clause 16 - Principal Act

Formal.

Clause 17 - Requirement with respect to the exhibition of Australian short films

This clause re-enacts without change the provisions of Part V of the Schedule to the Administrative Appeals Tribunal Act 1975 in the Australian Film Commission Act 1975. That Part relates to a review of a requirement with respect to the exhibition of Australian short films under section 10 of the Australian Film Commission Act 1975.

Part V (Contd.)

Sub-clause 17(2) provides that applications for review of a requirement under section 10 of the Australian Film Commission Act 1975 made either before or after the date of the commencement of clause 17 may be made under the re-enacted provision.

PART VI - AMENDMENT OF THE AUSTRALIAN NATIONAL UNIVERSITY ACT 1946

Clause 18 - Principal Act

Formal.

Clause 19 - Constitution of Council

This clause corrects a drafting error made by the Australian National University Amendment Act 1979. Paragraph 7(b) of that Act, which came into operation on 31 August 1980, purported to omit from paragraph 11(1)(f) of the Australian National University Act 1946 "Deans of the Faculties in the School" and substitute "deans of faculties within The Faculties". Since paragraph 11(1)(f) refers to "Deans of Faculties in the School", the amendment is inoperative. This clause contains the correct reference. Clause 2 makes the amendment made by clause 19 retrospective to 31 August 1980.

PART VII - AMENDMENT OF THE CANBERRA WATER SUPPLY (GOOGONG DAM) ACT 1974

Clause 20 - Principal Act

Formal.

Clause 21 - Exemption of certain persons

This clause corrects a drafting error made by the Australian Federal Police (Consequential Amendments) Act 1980. Section 3 of that Act purported to amend paragraph 23(d) of the Canberra Water Supply (Googong Dam) Act 1914 by inserting "or special member" after "member". The amendment, which came into operation on 28 May 1980, mistakenly referred to 1914 as the year of the Canberra Water Supply (Googong Dam) Act. The correct year is 1974. Clause 21 contains the correct reference to the short title of the Act. Clause 2 makes the amendment made by clause 15 retrospective to 28 May 1980.

PART VIII - AMENDMENT OF THE COMMERCE (TRADE DESCRIPTIONS) ACT 1905

Clause 22 - Principal Act

Formal.

Clause 23 - Review of decisions

This clause re-enacts without change the provisions of Part X of the Schedule to the Administrative Appeals Tribunal Act 1975 in the Commerce (Trade Descriptions) Act 1905. That Part relates to -

- (a) the review of a decision of the Comptroller-General under sub-section 7(3) of the Commerce (Trade Descriptions) Act 1905 relating to the delivery or export of goods otherwise forfeitable;
- (b) the review of a decision of the Comptroller-General under section 10 of the Commerce (Trade Descriptions) Act 1905 relating to the forfeiture of goods with false trade description;
- (c) the review of a decision of the Secretary to the Department of Primary Industry under sub-section 11(3) of the Commerce (Trade Descriptions) Act 1905 relating to the delivery or export of goods otherwise forfeitable; and
- (d) the review of a decision of the Secretary to the Department of Primary Industry under section 13 of the Commerce (Trade Descriptions) Act 1905 relating to the forfeiture of goods with false trade description.

Sub-clause 23(2) provides that applications for review of decisions made either before or after the date of the commencement of clause 23 may be made under the re-enacted provision.

PART IX - AMENDMENT OF THE COURTS-MARTIAL APPEALS ACT 1955

Clause 24 - Principal Act

Formal.

Clause 25 - Arrest of witness for failing to appear

This clause corrects a drafting error made by the Australian Federal Police (Consequential Amendments) Act 1979.

PART IX (Contd.)

Section 3 of that Act, which came into operation on 19 October 1979, purported to amend sub-section 32(3) of the Courts-Martial Appeals Act 1955 by omitting "Commonwealth Police Force or a member" and substituting "member of the Australian Federal Police or". Since the sub-section referred to "Commonwealth Police Officer", the amendment was inoperative. The Australian Federal Police (Consequential Amendments) Act 1980 purported to amend sub-section 32(3) of the Courts-Martial Appeals Act 1955 by omitting "member of the Australian Federal Police or" and substituting "member or a special member of the Australian Federal Police or a member". That amendment was also inoperative. Clause 25 contains the correct reference. Clause 2 makes the amendment made by clause 25 retrospective to 19 October 1979.

PART X - AMENDMENTS OF THE DEFENCE ACT 1903

Clause 26 - Principal Act

Formal.

Clause 27 - Interpretation

This clause amends section 4 of the Principal Act by omitting the definitions of "Active Forces" (because this expression is no longer used in the Principal Act) "The Citizen Forces" and "The Reserve Forces" and substituting new definitions of "The Emergency Forces", "The Permanent Forces" and "The Reserve Forces".

Clause 28 - Term of appointment

This clause substitutes the new title of Australian Army Reserve in section 10A of the Principal Act and makes drafting amendments.

Clause 29 - Repeal of sections 24 and 25

This clause repeals sections 24 and 25 of the Principal Act.

Section 24 empowers the Governor-General to place officers on an Unattached List and sub-section 32A(2) provides that the Unattached List is a part of the Active Citizen Military Forces.

Section 25 empowers the Governor-General to form a Reserve of Officers and to place the names of officers in the Reserve on a Reserve of Officers List. The Reserve of Officers has always been treated as a part of the Reserve Citizen Military Forces.

PART X (Contd.)

These sections do not accord with present requirements and the terms in which section 25 is framed present legal difficulties in ascertaining its precise operation. As the internal organisation of the Active Australian Army Reserve and the Inactive Australian Army Reserve is a matter that may be provided for by the regulations or determined by the Chief of the General Staff under section 33 of the Principal Act, as requisite, provision is made for sections 24 and 25 to be repealed.

Continuity of service with regard to the Unattached List and the Reserve of Officers is provided by the new section 32A(2) of the Act and sub-clause 51(2) of the Bill, respectively.

Clause 30 - Retired lists

Section 26 of the Principal Act empowers the Governor-General to place officers of the Army on the Retired List. The section should refer to the names of officers and should also permit the names of former officers to be placed on the Retired List and clause 30 amends section 26 accordingly.

Clause 31 - Division of Australian Army

This clause renames the Citizen Military Forces the Australian Army Reserve by substituting the latter title in section 31 of the Principal Act. Continuity of membership, etc., is provided by sub-clause 51(1) of the Bill.

Clause 32 - Permanent Military Forces

This clause amends section 32 of the Principal Act to substitute the title Australian Army Reserve and to omit all reference to the Regular Army Reserve.

Clause 33 - Australian Army Reserve

This clause repeals section 32A of the Principal Act, which deals with the composition of the Citizen Military Forces, and substitutes a new section dealing with the composition of the Australian Army Reserve.

Sub-section (1) provides that the Australian Army Reserve consists of an Active Reserve and an Inactive Reserve.

Sub-section (2) provides continuity of service between the Active Citizen Military Forces and the Active Australian Army Reserve and sub-section (3) does the same for the Reserve Citizen Military Forces and the Inactive Australian Army Reserve.

Sub-section (4) describes the composition of the Active Reserve and sub-section (5) describes the composition of the Inactive Reserve.

PART X (Contd.)

Clause 34 - Discharge upon expiration of period of engagement

This clause omits from section 39 of the Principal Act a reference to the Regular Army Reserve and makes drafting amendments.

Clause 35 - Discharge of members of Australian Army Reserve

This clause amends section 40 of the Principal Act to substitute the title Australian Army Reserve.

Clause 36 - Discharge of members of Regular Army Emergency Reserve

This clause omits from section 41 of the Principal Act references to the Regular Army Reserve and makes drafting amendments.

Clause 37 - Enlistment in Reserve Force

This clause repeals section 42 of the Principal Act.

Section 42 originally (in 1903) provided authority for the "enrolment" in the "Reserve Forces" of persons who were discharged from the "Active Forces". It is now unnecessary because a person who wishes to enlist in the equivalent body (the Inactive Australian Army Reserve) may do so under section 36 of the Principal Act.

Clause 38 - Service of the Permanent Military Forces

This clause omits from section 45 of the Principal Act references to the Regular Army Reserve and makes drafting amendments.

Clause 39 - Calling out of the Regular Army Emergency Reserve for continuous service

This clause makes drafting amendments to section 46 of the Principal Act.

Clause 40 - Calling out of the Regular Army Reserve for continuous service

This clause repeals section 47 of the Principal Act, which relates only to the Regular Army Reserve.

Clause 41 - Direction by prescribed authority

This clause omits from section 48 of the Principal Act references to the repealed section 47 and to the Regular Army Reserve.

Part X (Contd.)

Clause 42 - Application of certain regulations to the Regular Army Emergency Reserve

This clause omits from section 49 of the Principal Act the reference to the Regular Army Reserve.

Clause 43 - Service of the Australian Army Reserve

This clause amends section 50 of the Principal Act to substitute the title Australian Army Reserve and to clarify the operation of the Principal Act and the regulations in relation to the rendering of service (other than continuous full time service) by members of the Australian Army Reserve.

Sub-section (1) incorporates the first part of existing sub-section 50(1) (which provides that members of the Citizen Military Forces are not ordinarily bound to render continuous full time service) and makes the necessary title change.

Sub-section (2) is new and provides for training periods (currently called "training year") in respect of the Active Australian Army Reserve or different training periods in respect of different parts, or different classes of members, of that Reserve. The training periods may be fixed by the regulations or the regulations may empower a particular authority to fix the training periods.

Sub-section (2A) incorporates the second part of existing sub-section 50(1) (which provides for the obligatory rendering of service (other than continuous full time service) by members of the Citizen Military Forces) and makes the necessary title change. It relates the obligatory service required to be rendered to a training period and allows for members to be exempted by the regulations.

Sub-section (2B) ensures that there will be adequate scope to make the regulations required:

- a. Para (a) incorporates existing sub-section 50(2) (which authorizes the regulations to specify different periods of obligatory service for different classes of members) and makes the necessary title change.
- b. Para (b) authorizes the regulations to make provision for the exempting of members individually or by specified classes, from their obligation to render obligatory service or a part of that service during a training period.

The exempting provisions are intended for circumstances such as where, in a particular year, a member may be unable to meet his training obligations (because, for example, he is required to go overseas in the course of his private

PART X (Contd.)

employment) or where a group of members render a period of continuous full time service (such as call out in aid of the civil power) and it is regarded as unnecessary to require them also to render the usual period of obligatory service or a part of that service.

Para (b) of clause 43 amends sub-section 50(3) of the Principal Act to substitute the title Australian Army Reserve.

Sub-section (4) is new and provides that a member of the Australian Army Reserve may voluntarily render a period of military service (other than continuous full time service). It is intended for the circumstance where the Army has a requirement for a reservist to render a brief period of service at a particular time for a particular purpose (a typical example is a Reserve legal officer officiating as judge advocate, prosecutor or defending officer at a court martial).

Sub-section (5) is new and provides for the circumstances where certain classes of members of the Active Reserve are encouraged to volunteer for additional service for such purposes as attaining greater efficiency or the performance of particular duties (administrative, instructional, maintenance, etc). A member who is authorized to render such additional service is not bound to render it; a limit is placed on the amount of such service that may be rendered in a training period, and different limits may be placed on different classes of members.

Sub-section (6) is new and provides that, where the Army may have a requirement to specify under sub-section (5) that the additional voluntary service permitted under sub-section (5) with respect to a particular class of members is service of a particular kind (e.g. for training or the performance of administrative duties), the member is restricted to performing service of that kind.

Clauses 44 and 45 - Calling out of the Reserve Forces in time of war or defence emergency and service after call out

These clauses amend sections 50A and 50B of the Principal Act to substitute the title Reserve Forces.

Clause 46 - Citizen Military Forces to be returned to districts

This clause repeals section 50D of the Principal Act.

Section 50D was originally intended to ensure that units of the Citizen Military Forces called out for active service were returned to their own districts on completion of a period of active service. It now relates to periods of continuous

PART X (Contd.)

full time service but is unsatisfactory because, for the section to be invoked, a member's continuous full time service would have to terminate before he was returned to his district; but this would disentitle him to Army salary and allowances for the period of the journey to his district. Salary and allowances are related to the rendering of service.

The section is out-of-date and unnecessary.

Clauses 47 to 50 (inclusive)

These clauses amend sections 51, 78, 112 and 113 of the Principal Act to accord with the new definitions of "The Emergency Forces" and "The Reserve Forces" inserted into the Principal Act by clause 27.

Clause 51 - Transitional

This clause contains transitional and savings provisions.

Sub-clause (1) provides continuity of service, etc, between the Citizen Military Forces and the Australian Army Reserve.

Sub-clause (2) provides for the disbandment of the Reserve of Officers as it exists at present. The Reserve of Officers may be reconstituted as part of the Inactive Australian Army Reserve, as described in the explanation above regarding clause 29 of the Bill.

Sub-clauses (3), (4), (5) and (6) provide continuity of service between the Reserve of Officers and the Regular Army Reserve, on the one hand, and the Inactive Australian Army Reserve, on the other.

Sub-clause (7) continues the existing legislation in force (notwithstanding the amendments made by the Bill) in relation to military service required to be rendered in pursuance of sub-section 50(1) of the Principal Act in the training period current at the time of the coming into force of the provisions re-titling the Citizen Military Forces.

Sub-section (8) continues the existing regulations in force to the extent that they are not inconsistent with the amended Act and provides that they may be amended or repealed in the usual way.

Sub-clause (9) defines "proclaimed date" for the purposes of the clause.

PART XI - AMENDMENT OF THE DISTILLATION ACT 1901

Clause 52 - Principal Act

Formal.

Clause 53 - Review of decisions

This clause re-enacts the provisions of Part XVI of the Schedule to the Administrative Appeals Tribunal Act 1975 in the Distillation Act 1901. That Part relates to -

- (a) the review of a decision of the Collector under section 20 of the Distillation Act 1901 refusing to grant a licence to distil spirits; and
- (b) the review of a cancellation by the Minister under section 24 of the Distillation Act 1901 of a licence to distil spirits.

The clause also provides for the Tribunal to have jurisdiction to review decisions of the Collector of Customs under sections 22 and 23 of the Distillation Act 1901, which relate to the renewal of licences to distil spirits.

Sub-clause 53(2) provides that an application for review of a decision of the Collector under section 20 of the Distillation Act 1901 given either before or after the date of the commencement of clause 53, or for review of a cancellation of a licence by the Minister under section 24 of the Distillation Act 1901 effected either before or after the date of the commencement of clause 53 may be made under the re-enacted provision.

PART XII - AMENDMENT OF THE EXCISE ACT 1901

Clause 54 - Principal Act

Formal.

Clause 55 - Review of decisions

This clause re-enacts the provisions of sub-clauses 17(1), (2), (3), (5) and (6) of the Schedule to the Administrative Appeals Tribunal Act 1975 in the Excise Act 1901. Those sub-clauses relate to -

- (a) the review of a decision of a Collector under section 5A of the Excise Act 1901 in relation to the declaration of an approved place;
- (b) the review of a decision of the Collector under section 40 of the Excise Act 1901 in relation to the grant of a licence to manufacture excisable goods;

PART XII (Contd.)

- (c) the review of a cancellation by the Minister under section 43 of the Excise Act 1901 of a licence to manufacture excisable goods;
- (d) the review of quota orders, and variations of quota orders, made by the Minister under section 59A or 59B of the Excise Act 1901;
- (e) a demand made by a Collector under section 60 of the Excise Act 1901 for the payment of excise where goods are not safely kept or satisfactorily accounted for; and
- (f) the review of a demand for duty made by the Collector under section 154 of the Excise Act 1901 in relation to a dispute as to the amount or rate of duty or as to the liability of goods to duty.

Sub-clause 17(4) of the Schedule provided that a person was not entitled to apply for a review under section 59D of the Excise Act 1901 of a quota order, or a variation of a quota order, if an application could be made to the Tribunal under sub-clause 17(2) in respect of the quota order or the variation. Clause 115 repeals section 59D of the Excise Act 1901.

Sub-clause 55(2) provides that an application for review of -

- (a) a decision of a Collector under section 5A of the Excise Act 1901;
- (b) a decision of the Collector under section 40 of the Excise Act 1901;
- (c) a cancellation by the Minister under section 43 of the Excise Act 1901;
- (d) quota orders and variations of quota orders made by the Minister under sections 59A and 59B of the Excise Act 1901;
- (e) a demand made by a Collector under section 60 of the Excise Act 1901; and
- (f) a demand made by the Collector under section 154 of the Excise Act 1901,

given, effected or made either before or after the date of the commencement of the clause may be made under the re-enacted provision.

PART XIII - AMENDMENTS OF THE
HISTORIC SHIPWRECKS ACT 1976

Clause 56 - Principal Act

Formal.

Clause 57 - Interpretation

This clause amends sub-section 3(5) of the Historic Shipwrecks Act 1976, which refers to the description of areas of sea contained in the Schedule to the Petroleum (Submerged Lands) Act 1967 as in force on 29 May 1980. The amendment made by this clause is consequential upon the alteration that is proposed to be made by Part II of the Petroleum (Submerged Lands - Miscellaneous Amendments) Bill 1981 to that Schedule. Clause 2 provides that the amendment made by clause 57 shall come into operation, or be deemed to have come into operation, as the case requires, on the day after the day on which Part II of the Petroleum (Submerged Lands - Miscellaneous Amendments) Bill 1981 comes into operation.

PART XIV - AMENDMENTS OF THE MIGRATION ACT 1958

Clause 58 - Principal Act

Formal.

Clause 59 - Persons entering Australia in certain circumstances deemed to be prohibited immigrants

The purpose of the amendments made to the Migration Act 1958 by clause 59 is to overcome a problem resulting from the amendments of section 16 of the Act that were made by the Migration Amendment Act 1979. Section 16 deems to be a prohibited immigrant a person who, for the purpose of securing entry into Australia, produces or produced to an officer an official document that was not issued to him or was forged or obtained by false representation. A doubt has arisen as to whether section 16 would apply to a person who produced a visa or return authority to an officer before 1 November 1979, which was the date on which the amending Act came into force, in a case where the visa or return authority was not a separate document but was stamped in the person's passport. The amendment will make it clear that the section will apply in such a case. Clause 2 will make the amendment retrospective to 1 November 1979.

Clause 60 - Review of decisions

This clause re-enacts without alteration the provisions of Part XXII of the Schedule to the Administrative Appeals Tribunal Act 1975 in the Migration Act 1958.

PART XIV (Contd.)

That Part relates to -

- (a) the review of a decision of the Minister under section 12 of the Migration Act 1958 ordering the deportation of an alien convicted of certain crimes;
- (b) the review of a decision of the Minister under section 13 of the Migration Act 1958 ordering the deportation of an immigrant in respect of certain matters occurring within 5 years after entry into Australia; and
- (c) the review of a decision of the Minister under section 48 of the Migration Act 1958 directing a person not to act as an immigration agent.

Sub-clause 60(2) provides that an application for a review of a decision of the Minister under section 12, 13 or 48 of the Migration Act 1958 given either before or after the date of commencement of the clause may be made under the re-enacted provision.

PART XV - AMENDMENTS OF THE NAVAL DEFENCE ACT 1910

Clause 61 - Principal Act

Formal.

Clause 62 - Terms of appointment

This clause substitutes the new title Australian Naval Reserve in section 9 of the Principal Act and makes drafting amendments.

Clause 63 - Retired lists

Section 17A of the Principal Act empowers the Governor-General to place the names of officers of the Navy on the Retired List. The section should also permit the names of former officers to be placed on the Retired List and clause 63 amends section 17A accordingly.

Clause 64 - Australian Navy

This clause renames the Citizen Naval Forces the Australian Naval Reserve by substituting the latter title in section 19 of the Principal Act. Continuity of membership, etc, is provided by sub-clause 72(1) of the Bill.

Clause 65 - Naval Emergency Reserve Forces

This clause amends section 21 of the Principal Act to substitute the title Australian Naval Reserve.

PART XV (Contd.)

Clause 66 - Australian Naval Reserve

This clause repeals section 22 of the Principal Act, which deals with the composition of the Citizen Naval Forces, and substitutes a new section dealing with the composition of the Australian Naval Reserve.

Clause 67 - Discharge on expiration of period of engagement

This clause makes drafting amendments to section 28 of the Principal Act.

Clause 68 - Discharge prior to expiration of period of engagement

This clause amends section 29 of the Principal Act to substitute the title Australian Naval Reserve and make drafting amendments.

Clauses 69 and 70 - Service of the Permanent Naval Forces and the Naval Emergency Reserve Forces

These clauses make drafting amendments to sections 31 and 32 of the Principal Act.

Clause 71 - Service of the Australian Naval Reserve

This clause amends section 32A of the Principal Act to substitute the title Australian Naval Reserve and to clarify the operation of the Principal Act and the regulations in relation to the rendering of service (other than continuous full time service) by members of the Australian Naval Reserve.

Sub-section (1) incorporates the first part of existing sub-section 32A(1) (which provides that members of the Naval Reserve are not ordinarily bound to render continuous full time service) and makes the necessary title change.

Sub-section (2) is new and provides for training periods (currently called "training year") in respect of the Naval Reserve or different training periods in respect of different parts, or different classes of members, of the Reserve. The training periods may be fixed by the regulations or the regulations may empower a particular authority to fix the training periods.

Sub-section (2A) incorporates the second part of existing sub-section 32A(1) (which provides for the obligatory rendering of service (other than continuous full time service) by members of the Citizen Naval Forces) and makes the necessary title change. It relates the obligatory service required to be rendered to a training period and allows for members to be exempted by the regulations.

PART XV (Contd.)

Sub-section (2B) ensures that there will be adequate scope to make the regulations required:

- a. Para (a) incorporates existing sub-section 32A(2) (which authorizes the regulations to specify different periods of obligatory service for different classes of members) and makes the necessary title change.
- b. Para (b) authorizes the regulations to make provision for the exempting of members individually, or by specified classes, from their obligation to render obligatory service during a training period.

The exempting provisions are intended for circumstances such as where, in a particular year, a member may be unable to meet his training obligations (because, for example, he is required to go overseas in the course of his private employment) or where a group of members render a period of continuous full time service (such as call out in aid of the civil power) and it is regarded as unnecessary to require them also to render the usual period of obligatory service or a part of that service.

Para (b) of clause 71 amends sub-section 32A(3) of the Principal Act to substitute the title Australian Naval Reserve.

Sub-section (4) is new to the Act and replaces an existing regulation (Naval Forces Regulation 182). It provides that a member of the Naval Reserve may voluntarily render a period of naval service (other than continuous full time service). It is intended for the circumstance where the Navy has a requirement for a reservist to render a brief period of service at a particular time for a particular purpose (a typical example is a Reserve legal officer officiating as a judge advocate, prosecutor or defending officer at a court martial)..

Sub-section (5) is new and provides for the circumstance where certain classes of members are encouraged to volunteer for additional service for such purposes as attaining greater efficiency or the performance of particular duties (administrative, instructional, maintenance, etc). A member who is authorized to render such additional service is not bound to render it; a limit is placed on the amount of such service that may be rendered in a training period, and different limits may be placed on different classes of members.

Sub-section (6) is new and provides that, where the Navy may have a requirement to specify under sub-section (5) that the additional voluntary service permitted under sub-section (5) with respect to a particular class of members is service of a particular kind (e.g. for training or the performance of administrative duties), the member is restricted to performing service of that kind.

PART XV (Contd.)

Sub-section (7) incorporates existing sub-section (4) and preserves the overriding operation of sections 50A and 51 of the Defence Act 1903 (which deal with call out of the Reserves in time of war or defence emergency, or in aid of the civil power, respectively).

Clause 72 - Transitional and savings

This clause contains transitional and savings provisions.

Sub-clause (1) provides continuity of service, etc, between the Citizen Naval Forces and the Australian Naval Reserve.

Sub-clause (2) continues the existing legislation in force (notwithstanding the amendments made by the Bill) in relation to naval service required to be rendered in pursuance of sub-section 32A(1) of the Principal Act in the training period current at the time of the coming into force of the provisions re-titling the Citizen Naval Forces.

Sub-clause (3) continues the existing regulations in force to the extent that they are not inconsistent with the amended Act and provides that they may be amended or repealed in the usual way.

Sub-clause (4) defines "proclaimed date" for the purposes of the clause.

PART XVI - AMENDMENT OF THE
PIG INDUSTRY RESEARCH ACT 1971

Clause 73 - Principal Act

Formal.

Clause 74 - Interpretation

The amendment made by this clause is consequential upon the amendment made by clause 75.

Clause 75 - Australian Pig Industry Research Committee

This clause inserts the word "Australian" in the name of the Pig Industry Research Committee, which is constituted under the Pig Industry Research Act 1971.

Clause 76 - Transitional

This clause provides for the continuation of the Pig Industry Research Committee under the name of the Australian Pig Industry Research Committee.

PART XVII - AMENDMENTS OF THE
PUBLIC SERVICE ACT 1922

Clause 77 - Principal Act

Formal.

Clause 78 - Suspension of officers included in
Second, Third or Fourth Division

This clause corrects a mistake in a cross-reference in section 63B of the Public Service Act 1922. That section came into operation on 15 March 1981. Clause 2 will make the amendment made by this clause retrospective to 15 March 1981.

Clause 79 - Temporary Employment

This clause corrects an obsolete cross-reference in sub-section 82(6B) of the Public Service Act 1922. That sub-section provided that the services of a temporary employee to whom Commonwealth Employees (Redeployment and Retirement) Act 1979 applied could not be dispensed with except on the ground that the employee had been guilty of conduct which, if he were an officer, would constitute an offence referred to in sub-section 55(1) of the Public Service Act. However, on 15 March 1981 the provisions of sub-section 55(1) were replaced by the new disciplinary provisions of Division 6 of Part III of the Act. Clause 79 therefore omits the reference to the repealed sub-section 55(1) and replaces it by a reference to specified grounds of dismissal, which are the same grounds as are set out in the new Division 6 of Part III of the Act. Clause 2 provides that clause 79 is to be deemed to have come into operation on 15 March 1981.

Clause 80 - Application for reinstatement as person to
whom Division applies

This clause corrects a mistake in a cross-reference in section 87P of the Public Service Act 1922. That section came into operation on 15 March 1981. Clause 2 will make the amendment made by this clause retrospective to 15 March 1981.

PART XVIII - AMENDMENTS OF THE
SCHOOLS COMMISSION ACT 1973

Clause 81 - Principal Act

Formal.

PART XVIII (Contd.)

Clause 82 - Title

Clause 83 - Short title

Clause 84 - Interpretation

The amendments made by these clauses are consequential upon the amendments made by clause 85.

Clause 85 - Establishment of Commission

This clause inserts "Commonwealth" in the name of the Schools Commission established by the Schools Commission Act 1973.

Clause 86 - Functions of the Commission

This clause amends section 13 of the Schools Commission Act 1973, which deals with the functions of the Schools Commission. The clause provides that the Commission is to perform the same functions in relation to the Northern Territory as it performs in relation to a State.

Clause 87 - Commonwealth Schools Commission Advisory Boards

This clause inserts "Commonwealth" in the name of the Schools Commission Advisory Boards established under section 16 of the Schools Commission Act 1973.

Clause 88 - Transitional

This clause continues the Schools Commission and Schools Commission Advisory Boards under the names of the Commonwealth Schools Commission and the Commonwealth Schools Commission Advisory Boards respectively.

PART XIX - AMENDMENT OF THE SOCIAL SERVICES ACT 1947

Clause 89 - Principal Act

Formal.

Clause 90 - Review by Administrative Appeals Tribunal

This clause re-enacts without alteration the provisions of Part XXIVA of the Schedule to the Administrative Appeals Tribunal Act 1975 in the Social Services Act 1947.

PART XIX (Contd.)

That Part relates to the review of a decision of the Director-General of Social Services under section 14 or 15 of the Social Services Act 1947 affirming, varying or annulling a decision of an officer of the Department of Social Security.

- (a) that has been reviewed by a Social Security Appeals Tribunal; or
- (b) that the Director-General certifies is a decision involving an important principle of general application with respect to entitlement to, or assessment of, a pension, allowance, endowment or benefit under the Social Services Act 1947.

PART XX - AMENDMENT OF THE SPIRITS ACT 1906

Clause 91 - Principal Act

Formal.

Clause 92 - Licences to make and sell methylated spirits

This clause re-enacts without alteration the provisions of Part XXV of the Schedule to the Administrative Appeals Tribunal Act 1975 in the Spirits Act 1906.

That Part relates to the review of a decision of the Collector of Customs under section 20 of the Spirits Act 1906 refusing to grant a licence to make or sell methylated spirits.

Sub-clause 92(2) provides that an application for review of a decision of a Collector of Customs under section 20 of the Spirits Act 1906 given before, as well as a decision given after, the commencement of the clause may be made under the re-enacted provision.

PART XXI - AMENDMENTS OF THE TERTIARY EDUCATION COMMISSION ACT 1977

Clause 93 - Principal Act

Formal.

Clause 94 - Title

Clause 95 - Short title

Clause 96 - Interpretation

The amendments made by these clauses are consequential upon the amendment made by clause 97.

PART XXI (Contd.)

Clause 97 - Commonwealth Tertiary Education Commission

This clause inserts "Commonwealth" in the name of the Tertiary Education Commission established by the Tertiary Education Commission Act 1977.

Clause 98 - Functions of the Commission

This clause amends section 7 of the Tertiary Education Commission Act 1977, which deals with the functions of the Commission. The amendments made by the clause provide that the Commission is to perform the same functions in relation to the Northern Territory as it performs in relation to a State.

Clause 99 - Performance of Functions of Commission

The amendment made by this clause is consequential upon the amendment made by clause 98.

Clause 100 - Transitional reference

Clause 101 - Transitional delegations

The amendments made by these clauses are consequential upon the amendment made by clause 97.

Clause 102 - Transitional

This clause continues the Tertiary Education Commission under the name of the Commonwealth Tertiary Education Commission.

PART XXII - AMENDMENT OF THE TRADE MARKS ACT 1955

Clause 103 - Principal Act

Formal.

Clause 104 - Matters to be considered before acceptance

This clause corrects a drafting error made by the Trade Marks Amendment Act 1976. Section 10 of that Act purported to amend sub-section 86(3) of the Trade Marks Act 1955 by omitting "the Appeal Tribunal" and substituting "a prescribed court". The amendment came into operation on 1 February 1977. Since sub-section 86(3) of the Trade Marks Act 1955 referred to "an Appeal Tribunal", the amendment is inoperative. Clause 104 contains the correct reference. Clause 2 makes the amendment made by clause 104 retrospective to 1 February 1977.

PART XXIII - AMENDMENTS OF THE TRADE UNION TRAINING AUTHORITY ACT 1975

Division 1 - Principal Act

Clause 105 - Principal Act

Formal.

Division 2 - Amendments relating to the Australian Council

Clause 106 - Constitution of Executive Board

The amendment made by this clause is consequential upon the amendments made by clause 107.

Clause 107 - Constitution of the Australian Council

This clause provides for the abolition of the office of the person representing the defunct Australian Council of Salaried and Professional Associations on the Australian Council for Union Training established by the Trade Union Training Authority Act 1975 and increases by one the number of persons representing the Australian Council of Trade Unions on that Council. Clause 2 provides that the amendments made by clause 107 shall come into operation on a date to be fixed by Proclamation.

Clause 108 - Method of appointment of certain members

Clause 109 - Deputy members of the Australian Council

Clause 110 - Tenure of office

Clause 111 - Termination of appointment

The amendments made by these clauses are consequential upon the amendments made by clause 107.

Division 3 - Amendments relating to State Councils

Clause 112 - Constitution of State Councils

This clause abolishes the office of the person representing the defunct Australian Council of Salaried and Professional Associations on each of the State Councils for Union Training established under the Trade Union Training Authority Act 1975 and increases by one the number of persons representing the Australian Council of Trade Unions on each of those Councils. Clause 2 provides that the amendment made by clause 112 shall come into operation on a date to be fixed by Proclamation.

PART XXIII (Contd.)

Clause 113 - Deputy members of State Councils

Clause 114 - Tenure of office of members of State Councils

The amendments made by these clauses are consequential upon the amendments made by clause 112.

PART XXIV - AMENDMENTS OF OTHER ACTS

Clause 115 - Amendments of other Acts

Apart from amendments of a purely formal nature or amendments made to correct drafting or printing errors, the clause amends the following Acts in the respects set out:

(a) Acts Interpretation Act 1901

The amendment to this Act made by clause 115 provides that a court, in interpreting a provision of an Act, is to have regard to the general legislative purpose or object underlying the Act. The amendment preserves existing rules of statutory interpretation relating to the use of extraneous materials.

(b) Administrative Appeals Tribunal Act 1975

The amendment to this Act made by clause 115 is consequential upon the repeal of sub-clause 24(1) of the Schedule to the Act by section 12 of the Trade Marks Amendment Act 1976.

(c) Australian Industry Development Corporation Act 1970

The amendments to this Act made by clause 115 omit references to the National Investment Fund Act 1974, which does not exist.

(d) Cities Commission (Repeal) Act 1975

The amendment to this Act made by clause 115 is consequential upon changes in the Administrative Arrangements Order made in 1978.

(e) Customs Act 1901

Sub-clause 12(6) of the Schedule to the Administrative Appeals Tribunal Act 1975 provided that a person was not entitled to apply for a review under section 132E of the Customs Act 1901 of a quota order, or a variation of a quota

PART XXIV (Contd.)

order, if an application for review could be made to the Tribunal under sub-clause 12(2). Clause 12 of that Schedule was repealed by section 28 of the Customs Amendment Act (No. 3) 1980, which also substantially re-enacted clause 12 in the Customs Act 1901. Clause 132 therefore repeals section 132E of the Customs Act 1901.

The amendment to section 151A of the Customs Act 1901 made by clause 115 omits references to certain trade preferences for goods from Malawi, Southern Rhodesia and Zambia, which have ceased to have any operation.

(f) Excise Act 1901

The reasons for the repeal of section 59D of the Excise Act 1901 are set out in the notes on clause 55.

(g) Federal Court of Australia Act 1976

The amendment made to sub-section 45(1) of the Act permits an affidavit to be sworn before a District Registrar or a Deputy District Registrar of the Court and the amendment made to sub-section 49(1) of the Act enables a reserved judgment to be delivered at any subsequent sitting of the Court, whether or not the Court is sitting as a Full Court.

(h) Homes Savings Grant 1964

The amendments made by clause 115 to sub-section 4(1) and sections 7 and 8 of this Act are consequential upon changes in the Administrative Arrangements Order made in 1978. Clause 115 repeals section 8A of the Act, which deals with the exercise of powers under the Act by the Australian Housing Corporation. The Corporation no longer exists and its successor the Defence Service Homes Corporation does not exercise any powers under the Act.

(j) National Capital Development Commission Act 1957

The amendment to this Act made by clause 115 is consequential upon changes to the Administrative Arrangements Order made in 1978.

(k) National Service Act 1951

The amendment to this Act made by clause 115 is consequential upon changes to the Administrative Arrangements Order made in 1978.

PART XXIV (Contd.)

(m) Navigation Act 1912

The amendment to section 358 of this Act made by clause 115 enables Judges of the Federal Court to sit on Courts of Marine Inquiry without the need for special authorization by the Governor-General.

(n) Parliamentary Counsel Act 1970

The repeal and re-enactment of section 15 of this Act removes any doubts as to the effectiveness of the long-standing practice of making dormant acting appointments to the offices of First and Second Parliamentary Counsel.

(o) Pig Slaughter Levy Act 1971

The amendment to this Act made by clause 115 is consequential upon the amendment made by Part XVI.

(p) Social Services Act 1947

The amendments made by clause 115 to paragraphs 37(c), 66(c) and 133F(2)(b) of this Act enable claims for age, invalid and widows pension, or sheltered employment allowance, to be lodged with any Registrar. The Act presently requires such claims to be lodged with the Registrar whose office is nearest the place of residence of the claimant.

(q) Trade Union Training Authority Act 1975

The amendment to this Act made by clause 115 is consequential upon changes in the Administrative Arrangements Order made in 1978.

(r) Tradesmen's Rights Regulation Act 1946

The amendment to this Act made by clause 115 is consequential upon changes in the Administrative Arrangements Order in 1978.

Clause 116 - Amendments of Acts consequential upon the amendments made by Parts III, X and XV

This clause amends references in various Acts to the former titles of the Reserve Forces and to continuous full time service.

PART XXIV (Contd.)

Clause 117 - Amendment of Acts consequent upon the amendments made by Parts XVIII and XXI

This clause amends references in various Acts to the former names of the Schools Commission and the Tertiary Education Commission.

PART XXV - REPEAL OF ACTS

Clause 118 - Repeal of Acts

This clause repeals Acts the operation of which is exhausted or which are no longer required.

Clause 119 - Repeal of certain incorporating Acts

This clause repeals Acts the operation of which is exhausted. The Acts are specified in Schedule 5. The Income Tax and Health Insurance Levy Acts specified in Part I of Schedule 5, which imposed income tax or health insurance levy for a particular year, are expressed to incorporate the Income Tax Assessment Act 1936. The Senate Elections Acts specified in Part II of that Schedule are expressed to incorporate the Commonwealth Electoral Act 1918.

Sub-clause 119(2) protects the Income Tax Assessment Act 1936 and the Commonwealth Electoral Act 1918 from any result that might flow from the repeal of the relevant incorporating Acts.

Sub-clause 119(3) ensures that the Income Tax Assessment Act 1936 continues to apply in relation to an income tax or a health insurance levy that was imposed by a repealed Act as if the repealed Act were still in force.

Clause 120 - Saving

This clause provides that, where a repealed Act deemed any act or thing to be lawful, valid or effectual, that act or thing continues to be lawful, valid or effectual notwithstanding the repeal of the Act by Part XXV.

Clause 121 - Operation of Acts Interpretation Act

Section 8 of the Acts Interpretation Act 1901 provides for certain consequences arising out of the repeal of Acts. This clause is designed to ensure that the express provisions of Part XXV do not detract from the application of section 8.

PART XXV (Contd.)Clause 122 - Effect of Repeals.

Some of the Acts repealed by Part XXV have previously been repealed in part. This clause makes it clear that references to the repeal of those Acts by Part XXV are references only to the unrepealed portion of the Acts.

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

(Presented pursuant to leave granted and read 1^o, 9 September 1982)

(THE MINISTER FOR EDUCATION, SENATOR BAUME)

No. 370

A BILL

FOR

An Act to provide for the giving of guarantees and subsidies by the Commonwealth in respect of certain loans made to eligible students

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title

5 1. This Act may be cited as the *Student Assistance (Loans Guarantee and Subsidy) Act 1982*.

Commencement

2. This Act shall come into operation on the day on which it receives the Royal Assent.

Interpretation

10 3. (1) In this Act, unless the contrary intention appears—
 “approved bank” means—
 (a) a trading bank as defined in sub-section 5 (1) of the *Banking Act 1959*;