

Conscription Data General/Sundry/20U 4.2.2003

(Extract by Ric/Kate)

Commonwealth Consolidated Acts

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DEFENCE ACT 1903, SECTION 60.

Proclamation calling upon persons to serve in time of war

- (1) In time of war the Governor-General may, by proclamation, call upon persons specified in section 59 to serve in the Defence Force in accordance with this Act for the duration of the time of war.
- (2) A Proclamation under this section must call on persons in the order in which they are included in classes established for the purposes of this subsection under subsection (3).
- (3) The regulations may establish a series of classes of persons for the purposes of subsection (2).
- (4) A Proclamation must be laid before each House of the Parliament before, but not more than 90 days before, the day on which it is expressed to come into effect.
- (5) A Proclamation does not come into effect unless, within the period of 90 days before it is expressed to come into effect, it is approved, by resolution, by each House of the Parliament.

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Commonwealth legislation in official written form can be obtained from AGPS

Military Conscription: Issues for Australia

Gary Brown, Foreign Affairs, Defence and Trade Group, 12 October 1999

<http://www.aph.gov.au/library/pubs/cib/1999-2000/2000cib07.htm>

How Can Conscription be Introduced?

Proclamation

As noted, conscription was abolished by law in 1973. But the *Defence Act 1903* as amended retained a provision that it could be reintroduced by proclamation of the Governor-General. Potentially all Australian residents between the ages of 18 and 60 could be called up in this way. However, the *Defence Legislation Amendment Act 1992* further provided that any such proclamation is of no effect until it is approved by both Houses of Parliament. Though actual legislation is not required, the effect of this provision is to make the introduction of conscription impossible without the approval of both the Senate and the House of Representatives. Thus, it would be subject to the same political requirements as would a specific Act of Parliament. In present circumstances the Government would require the support of either the Labor Opposition or the Australian Democrats to obtain the necessary Senate resolution.

Requirement for War

It should also be noted that Governor-General may only issue such a proclamation in 'time of war'. The *Defence Act* defines 'war' and 'time of war' as:

"War" -Means any invasion or apprehended invasion of, or attack or apprehended attack on, Australia by an enemy or armed force.

"Time of War" -Means any time during which a state of war actually exists, and includes the time between the issue of a proclamation of the existence of war or of danger thereof and the issue of a proclamation declaring that the war or danger thereof, declared in the prior proclamation, no longer exists.

There would, therefore, appear to be significant doubt as to whether it is legally possible to reintroduce conscription at the present time in order to support the deployment to Timor, which arguably does not satisfy the definitions specified. Further amendments to the *Defence Act* might be needed before it would even be possible to issue a proclamation. However, the remainder of this paper will assume for the purposes of argument that these objections can be met.

Conscription Mechanisms

Conscription for military service can be either universal within a specific age group or selective by some criterion and/or by gender. The selective scheme used for the Vietnam war rendered all 20-year-old males potentially liable, but actually selected only those whose birth dates were drawn in ballots held each six months.

Certain classes of individual (e.g., theological students) were automatically exempt, while others (e.g., students undertaking tertiary courses) could obtain deferments of their liability. It was also possible to gain exemption by joining the then Citizen Military Forces (CMF), now known as the Army Reserve. In practice this latter exemption had the unfortunate effect of filling up the Reserve with thousands of reluctant members primarily interested in evading fulltime military service and the possibility of being sent to Vietnam. This resulted in considerable dilution of the Army Reserve's quality.

Conscientious Objection

Exemption could also be gained by registering as a Conscientious Objector (CO). The objection, which had to be to all wars-not just a particular war-had to be proved to a magistrate before exemption would be granted.

The 1992 *Defence Legislation Amendment Act*, however, changed the conscientious objection provisions so that objection to a particular war became an acceptable ground for exemption. It also reshaped the machinery for dealing with applications for CO status. Conscientious Objection Tribunals would be established, each consisting of three members. Presiding members must be legal practitioners of at least seven years standing (they do not have to be magistrates), the other two members need not be legally qualified. The onus of proof rests with the applicant for CO status. The likely effect of the more liberal CO provisions is noted below.

End of this extract.