
SUBMISSION

To the

FOREIGN AFFAIRS, DEFENCE AND TRADE SELECT COMMITTEE

On the

**VOLUNTEER EMPLOYMENT PROTECTION AMENDMENT BILL –
SUPPLEMENTARY ORDER PAPER****Introduction**

1. This submission is from Lieutenant Colonel (ret'd) Dr Simon Ewing-Jarvie of 46 Donovan Road, Paraparaumu. I can be contacted during the day on 04 914 1120 or 021 440 412.
2. I wish to appear before the committee to speak to my submission.

Executive Summary

3. I support the intent of this Supplementary Order Paper and its consequential effect on the Bill. However, in so doing, I wish to draw to the attention of the committee that the Bill in its current form, while achieving the stated purpose of protecting employees under certain circumstances of national service, does not achieve what should be its ultimate goal which should be to provide comprehensive support to the redevelopment of New Zealand's Armed Forces and general security situation. I note, with some concern, the amount of time that has passed since Dr Mapp first introduced this Bill and the significant degradation in capability in that time, particularly in the Territorial Force, that is a matter of public record and concern through parliamentary questions and media coverage earlier this year. As with any legislation, there are unintended consequences. In this Bill, these include the possibility of the NZDF acting in a benign or even unhelpful manner toward reservists, leaving them to pay for their own advocacy. The use of the term 'National Interest' will create two classes of reservist, depending on the mission they volunteer to undertake. It also includes an increase in compliance costs for employers for which the offsets offered are too modest. There will be an inevitable shaping of the makeup of the reserve forces toward a dominance of beneficiaries, state sector employees and a few independently wealthy individuals as these will be the only groups with the time or practical (as opposed to theoretical) protection for full time service. This Bill ignores the fundamental technological changes that have occurred in the NZDF. For instance, new vehicles and ships require long periods of course attendance not provided for in one period of 3 months whole time service or three weeks per year of part time service. The time provisions in this Bill provide protection for 'yesterday's NZDF reservists'

not the requirements of tomorrow and while it will help, it will be out of date the moment it is enacted. The question might well be asked, why do I support this Bill with so many caveats? Quite simply because to do otherwise would invoke further substantial delay that would be crippling to the reserves. While not perfect, this Bill introduces several important concepts such as compensation for employers and an employer support council. The passage of this Bill should be seen as a minor waypoint in the reserve force story, not an end to the problems that are plaguing reserves and I encourage the Government members of this committee, in particular, to seek out new ideas for introducing reforms to the NZDF and take those to their caucus.

Specific Submissions

Volunteer Employment Protection Amendment Bill

4. **Section 2(1) “protected voluntary service or training”(a)(i)** insert after 3 months “in any 3 year period”. This provides for the extended length of training required for commanders for progression and prior to deployment and also training of crews for new technology platforms such as LAV3.
5. **Section 2(1) “ training year”** replace ‘1st day of April in one year and ending with the 31st day of March’ with ‘1st day of July in one year and ending with the 30 June’. This reflects a long standing change in NZDF to align training year and financial year.
6. **Part 3 Clause 14I** add after 12 months ‘plus mandatory mobilization and demobilization periods’. This change reflects the fact that a 12 month deployment, such as to Afghanistan, requires the reservist to be in camp for up to 4 weeks prior to deployment for vaccinations and briefings and for a similar period after deployment in some cases.
7. **Part 6 Clause 14ZG** replace references to the employee appointing an agent or barrister or solicitor with words to the effect “an officer of the Defence Legal Service”. This change recognizes the low levels of pay that many reservists are in receipt of in both their civilian and military employment. It is unreasonable for them to be financially disadvantaged by legal cost in pursuit of their rights as a result of serving their country. NZDF has a moral obligation to protect the reservists’ interests and lawyers from the Defence Legal Service should act for them at no cost.
8. **Part 7** all references to compensation for employers should be extended to include the self-employed. The make-up of NZ society includes a high percentage of self employed and owner-operators. These people are also reservists and bring unique skills to the Defence Force equation. To deploy, they will need to hire replacements for themselves or else bear the opportunity cost of deployment.

Defence Act

9. Replace all references to the Territorial Forces Employer Support Council with “NZ Defence Force Employer Support Council”. This reflects the current situation and the desirability of redeveloping a strong reserve component of all three services. The title also lends itself to a broader brief in regard to regular force liaison with the community in the future.

Further Recommendations

10. The use of the term ‘in the National Interest’ is inherently problematic. What circumstances would cause the Governor General to make such a declaration? If this term were to be used to describe one overseas mission and not another, two classes of citizen would be created within the reserves i.e. those with the protection of the law and those without. Regular servicepersons do not suffer this ignominy and so a further barrier to integration would be established. Surely, any overseas operational deployment is in the national interest otherwise we would presumably not be there? I recommend that the wording be amended to reflect that all operational deployments in New Zealand or overseas are deemed to be in the national interest.
11. This Bill appears to presume that NZDF is fully supportive of reserve force operational integration. While there are some NZDF policies that address this, the application of them by some individuals over many years has been variable, leading to considerable frustration for reservists. Even an apparently benign act on the part of the NZDF can disadvantage a reservist. I do not believe that there is any ‘hidden agenda’ within NZDF to disadvantage reservists. However, the lot of all will be improved if there is clearer legislative guidance for Defence leaders regarding the country’s desire for the way reserves are managed. This Bill represents an opportunity to do that by including clauses that reflect the employers’ position in the Health and Safety in Employment Act. This position is that the employer must take every reasonable precaution. In the case of NZDF, its policies and actions should reflect taking ‘every reasonable action to facilitate the smooth transition of the reservist from civilian to military employment and back again.’