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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**MILITARY JUSTICE (INTERIM MEASURES) AMENDMENT BILL 2011**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Defence ,  
the Hon Stephen Smith MP)

## **MILITARY JUSTICE (INTERIM MEASURES) AMENDMENT BILL 2011**

### **GENERAL OUTLINE**

The *Military Justice (Interim Measures) Act (No. 1) 2009* was designed to sustain the military justice system until such time as the Parliament decided how to permanently address the issue of the trial of serious service offences following the invalidation of the legislation establishing the Australian Military Court. The *Military Justice (Interim Measures) Bill 2011* provides for the appointment and also the remuneration and other entitlements of certain statutory office holders, namely the Chief Judge Advocate and two Judge Advocates each of whom are full time members of the Australian Defence Force. Schedule 3 of that Act currently provides a fixed tenure of up to two years which is due to expire in September 2011.

This Bill amends Schedule 3 of the *Military Justice (Interim Measures) Act (No. 1) 2009* to provide for the appointment, remuneration and entitlement arrangements provided for in that Act for an additional two years, namely for a period of four years, or until the Minister for Defence declares, by legislative instrument, a specified day to be a termination day, whichever is sooner. The legislative instrument would not be subject to disallowance.

### **Financial Impact Statement**

There will be no net impact on consolidated revenue.

## NOTES ON CLAUSES

### Clause 1 – Short title

1. This clause provides the short title of the Act to be the *Military Justice (Interim Measures) Amendment Act 2011*

### Clause 2 – Commencement

2. This clause provides that the Act will commence on Royal Assent

### Schedule 1 – Amendment

#### *Military Justice (Interim Measures) Act (No. 1) 2009*

#### Item 1 – Subparagraph 2(3)(a)(i) of Schedule 3

This item amends subparagraph 2(3)(a)(i) of Schedule 3 of the *Military Justice (Interim Measures) Act (No. 1) 2009*. Subparagraph 2(3)(a)(i) is a deeming provision which provides that the person serving as the Chief Military Judge immediately prior to 26 August 2009 (the date of the decision of the High Court in the matter of *Lane v Morrison*), becomes the Chief Judge Advocate as though appointed under s 188A of the *Defence Force Discipline Act 1982*, for a period of up to two years.

This item extends that period of appointment for a further two years.

#### Item 2 – Subparagraph 2(3)(a)(ii) of Schedule 3

This item amends subparagraph 2(3)(a)(ii) of Schedule 3 of the *Military Justice (Interim Measures) Act (No. 1) 2009*. Subparagraph 2(3)(a)(ii) of Schedule 3 provides that if the office of Chief Judge Advocate ceases to exist before the end of the 2 year prescribed period then the appointment is to be for the period beginning on the day the provision commences and ending when that office ceases to exist.

3. This item extends the specified period as a consequence of the amendment in item 2, and makes provision for the period of appointment to be less than 4 years if and when the Minister for Defence declares a ‘termination day’ under item 8 before the end of that 4 year period.

#### Item 3– Subitem 3(1) of Schedule 3

4. This item repeals existing subclause 3(1) of Schedule 3 of the *Military Justice (Interim Measures) Act (No. 1) 2009*. Subclause 3(1) of Schedule 3 provides that the benefits payable to the Chief Judge Advocate (upon ceasing to hold office) apply if the office of Chief Judge Advocate ceases to exist before the end of the period of 2 years referred to in subparagraph (3)(a)(i) of item 2 of Schedule 3.

5. This item inserts a new subclause 3(1) to provide that appropriate benefits under Item 3 are payable to the Chief Judge Advocate (upon ceasing to hold office) if the Minister for Defence declares a ‘termination day’ under item 8 of this Act before

the expiration of the 4 year period. The person's appointment must continue to be in force immediately before the declared 'termination day'.

#### **Item 4– Subitem 3(3) and (4) of Schedule 3**

6. This item removes the references to 'the office of Chief Judge Advocate ceases to exist' and replaces them with 'the termination day' in subclauses 3(3) and 3(4) of Schedule 3.

7. These amendments ensure that the Chief Judge Advocate is not entitled to be paid an amount under Item 3 if, before the termination day, they are offered suitable alternative employment by the Commonwealth or if they cease to be a member of the Permanent Forces.

#### **Item 5 – Subparagraph 4(3)(a)(i) of Schedule 3**

8. This item amends subparagraph 4(3)(a)(i) of Schedule 3 of the *Military Justice (Interim Measures) Act (No. 1) 2009*. Subparagraph 4(3)(a)(i) of Schedule 3 establishes a judge advocates' panel for the purposes of the interim court martial and Defence Force magistrate system, and ensures the appointment of the members of that panel for a period of 2 years beginning on the commencement of that provision.

9. This item extends that period of appointment for a further two years.

#### **Item 6– Subparagraph 4(3)(a)(ii) of Schedule 3**

10. This item amends subparagraph 4(3)(a)(ii) of Schedule 3 of the *Military Justice (Interim Measures) Act (No. 1) 2009*. Subparagraph 4(3)(a)(ii) of Schedule 3 provides that if the judge advocates' panel ceases to exist before the end of the 2 year period specified under existing subparagraph 4(3)(a)(i), then the appointment is to be for the period beginning on the day the provision commences and ending when that judge advocates' panel ceases to exist.

11. This item extends the specified period and makes provision for the further period of appointment to be less than 2 years where the Minister for Defence declares a termination day under item 8 before the end of the 4 year period provided in subparagraph 4(3)(a)(i).

#### **Item 7 – Subitem 5(1) of Schedule 3**

12. This item repeals existing subitem 5(1) of Schedule 3 of the *Military Justice (Interim Measures) Act (No. 1) 2009*. Subitem 5(1) of Schedule 3 provides that the benefits payable, under item 5, to a member of the judge advocates' panel (upon ceasing to hold office) apply if the judge advocates' panel ceases to exist before the end of the two year period referred to in subparagraph (3)(a)(i) of item 4 of Schedule 3.

13. This item inserts a new subitem 5(1) to provide that appropriate benefits under item 5 are payable to a member of the judge advocates' panel (upon ceasing to hold office) if the Minister for Defence declares a termination day under item 8 of this Act before the expiration of the 4 year period. The person's appointment must continue to be in force immediately before the declared termination day.

### **Item 8 – Subitem 5(3) and (4) of Schedule 3**

14. This item removes the references to ‘the judge advocates’ panel ceases to exist’ and replaces them with ‘the termination day’ in subclauses 5(3) and 3(4) of Schedule 3.

15. These amendments ensure that the members of the judge advocates’ panel are not entitled to be paid an amount under Item 5 if, before the declared termination day, they are offered suitable alternative employment by the Commonwealth or if they cease to be a member of the Permanent Forces.

### **Item 9 – At the end of Schedule 3**

16. This item provides that the Minister for Defence may declare, in writing a specified day to be the termination day for the purpose of this Schedule. The termination day must be after the day the declaration is made and before the end of the 4 year period beginning on the commencement day.

17. A declaration by the Minister for Defence of a termination day is likely to be the day upon which a permanent solution to the trial of serious service offences is implemented.

18. The declaration by the Minister for Defence is a legislative instrument for the purpose of the *Legislative Instruments Act 2003* however it is not subject to disallowance under section 42 of that Act.