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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Defence (Honour General Sir John Monash) Amendment Bill 2018

EXPLANATORY MEMORANDUM

and

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Circulated by authority of
Cathy McGowan AO

Defence (Honour General Sir John Monash) Amendment Bill 2018

OUTLINE

The intent of this bill is to posthumously promote General Sir John Monash to rank of Australian Field Marshal.

Monash and the AIF did not win the war on their own on the Western Front but they made a huge contribution to the Allied victory, punching through German lines and capturing more ground per capita than others.

In the last 100 days it was all hands on deck - especially both the AIF and the CEF Canadians sometimes alongside the AIF. The Monash holistic approach was not unique but his application of it on the Western Front made a huge difference.

This bill is carefully drafted with safeguard clauses to ensure the posthumous promotion will apply in this specific case and sets limitations on claims, precedence or entitlements that arise.

The bill is in accord with the grass roots Jerilderie Proposition of the Saluting Monash Council, it has been endorsed at meetings far and wide - from Sydney to Perth

FINANCIAL IMPACT

The bill will have no financial impact.

NOTES ON CLAUSES

Clause 1 Short title

This clause provides for the Bill, when enacted, to be cited as the

Clause 2 Commencement

The table in this clause sets out the commencement date for when the Bill's provisions commence.

The Act will commence the day after Royal Assent.

Clause 3 Schedules

This clause specifies that an Act that is specified in a Schedule is amended or repealed as set out in that Schedule. Any other item in a Schedule operates according to its terms.

Clause 4 Objects of this Act

This clause outlines purpose of this bill is to allow the posthumous promotion Sir John Monash from General to Field Marshal.

The intent of the bill is to deem General Monash to have been promoted during his lifetime to the rank of Field Marshal upon his return to the Active Duty List on 1 January 1931.

Clause 5 The promotion of General Sir John Monash

Part 1 of this clause provides for the promotion General Sir John Monash to Field Marshal in the Australian Regular Army on 1 January 1931, the date of his return to the Active Duty List.

Part 2 authorises and permits the Executive, the Parliament, the Judicature, all Commonwealth bodies and all persons throughout the Commonwealth to recognise, describe and refer to the late General Sir John Monash by the title "Field Marshal" in substitution for the title "General" on and from the date of the commencement of this bill, see Clause 2.

Clause 6 Limitations on the operation of this Act

This clause outlines the limitations of the operations of the act and provisions that apply to the posthumous promotion of General Sir John Monash.

Part 1 of this clause provides that:

- (a) no person may make any financial claim upon the Commonwealth arising out of or in any way related to the promotion of General Sir John Monash that is deemed to be effected by this Act;
- (b) the seniority in rank, precedence or entitlements of any past or present member of the Australian Defence Force, or its predecessor Forces, is not impaired, improved or otherwise changed by the promotion of General Sir John Monash that is deemed to be effected by this Act;
- (c) this Act does not require the making of any alteration of, or deletion from, or addition to, any existing record held by the Commonwealth that as at the date of commencement of this Act refers to the late Sir John Monash by the title "General";
- (d) this Act is not intended to change any practice, procedure or custom as to the promotion or address of members of the Australian Defence Force.

Part 2 of this clause provides that this Act is not intended to create any enforceable duty at law upon any person to use the title "Field Marshal" in substitution for the title "General" when referring to the late General Sir John Monash and any contravention of that subsection:

- (a) does not create an offence or a civil penalty, under the law of the Commonwealth;
and
- (b) shall not be used for any purpose in any civil action at law or in equity or in any administrative action or review.

Schedule 1 - Amendments

Defence Act 1903

Item 1 after section 7

This item amends the Defence Act 1903 by inserting the following text:

7A Defence (Honour General Sir John Monash) Amendment Act 2018

For the removal of any doubt, the commencement and operation of the *Defence (Honour General Sir John Monash) Amendment Act 2018*:

- (a) does not expressly or impliedly amend this Act or the regulations; and
- (b) may not be used in the interpretation of this Act or the regulations.

The effect of this amendment is to provide clarity that the commencement and operation of this bill does not amend the intent or operation of the Defence Act 1903 or its regulations, and should not be used in the interpretation of the Defence Act 1903 or its regulations.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

Defence (Honour General Sir John Monash) Amendment Bill 2018

This bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the bill

The intent of this bill is to posthumously promote General Sir John Monash to rank of Australian Field Marshal.

Human rights implications

This bill does not engage any of the applicable rights or freedoms.

Conclusion

This bill is compatible with human rights because bill does not engage any of the applicable rights or freedoms.

Cathy McGowan AO