



## **Defence Act 1903**

### **Act No. 20 of 1903 as amended**

This compilation was prepared on 14 January 2011  
taking into account amendments up to Act No. 95 of 2010

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# An Act to provide for the Naval and Military Defence and Protection of the Commonwealth and of the several States

## Part I—Introductory

### 1 Short title [see Note 1]

This Act may be cited as the *Defence Act 1903*.

### 3 Commencement of Act [see Note 1]

This Act shall commence on a day to be fixed by Proclamation.

### 4 Interpretation [see Note 2]

- (1) In this Act, unless the contrary intention appears:

*AAT* means the Administrative Appeals Tribunal.

*AAT Act* means the *Administrative Appeals Tribunal Act 1975*.

*Aircraft*—Includes aeroplanes, seaplanes, balloons, kite balloons, airships and other machines for flying.

*Aircraft Material*—Includes any engines, fittings, guns, gear, instruments, ammunition, bombs or apparatus for use in connexion with aircraft, and any components or accessories of aircraft, and petrol and any other substance used for providing motive power for aircraft, and lubricating oil.

*Airman*—Means a member of the Air Force other than an officer.

*Australia* and *Commonwealth* includes the Territories.

*Conscientious Objection Tribunal* means a Conscientious Objection Tribunal established under section 61CF.

*exemption from service because of conscientious beliefs* means exemption from service under paragraph 61A(1)(h) or (i) or exemption from combatant duties under subsection 61A(1A).

**Federal Court** means the Federal Court of Australia.

**Inspector-General ADF** means the Inspector-General of the Australian Defence Force referred to in section 110B.

**Member**—Includes any officer, sailor, soldier and airman.

**Non-commissioned Officer**—Means a soldier (other than a warrant officer) holding non-commissioned rank.

**Officer** means:

- (a) in relation to the Australian Navy—a person appointed as an officer of the Australian Navy, including a person who holds the rank in the Australian Navy of Acting SubLieutenant or of Midshipman; or
- (b) in relation to the Australian Army or the Australian Air Force—a person appointed as an officer of the Australian Army or the Australian Air Force.

**Permanent Forces** means the Permanent Navy, the Regular Army and the Permanent Air Force.

**Reserves** means the Naval Reserve, the Army Reserve and the Air Force Reserve.

**Sailor**—Means a member of the Navy other than an officer.

**Service Decoration**—Means any order, medal, badge, clasp, bar or other insignia that was or may be conferred for valour, distinguished conduct or service, long service, good conduct, devotion to duty, efficiency, participation in a campaign or other warlike operation or for any other reason on a member of the Defence Force or of any armed force of any part of the Queen's dominions or of any Power allied or associated with Australia in any war or warlike operations in which Australia is or has been engaged, and includes the ribbon of any such order, medal, badge, clasp or other decoration and any colourable imitation, representation or miniature of any such order, medal, badge, clasp or other decoration.

**Service tribunal** has the same meaning as in the *Defence Force Discipline Act 1982*.

**Soldier**—Means a member of the Army other than an officer.



**The Secretary** means the Secretary to the Department.

**Time of Defence Emergency**—Means the period between the publication of a proclamation declaring that a state of defence emergency exists in relation to Australia and the publication of a proclamation that that state of defence emergency no longer exists.

**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.

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

- (2) Unless the contrary intention appears, in this Act or in any other law:
- (a) a reference to the Naval Forces or the Navy shall be read as a reference to the Australian Navy;
  - (b) a reference to the Military Forces or the Army shall be read as a reference to the Australian Army;
  - (c) a reference to the Air Force shall be read as a reference to the Australian Air Force;
  - (d) a reference to the Chief of the Defence Force shall be read as a reference to the Chief of the Defence Force appointed under section 9;
  - (e) a reference to the Chief of Navy shall be read as a reference to the Chief of Navy appointed under section 9;
  - (f) a reference to the Chief of Army shall be read as a reference to the Chief of Army appointed under section 9;
  - (g) a reference to the Chief of Air Force shall be read as a reference to the Chief of Air Force appointed under section 9; and
  - (h) a reference to a service chief shall be read as a reference to the Chief of Navy, the Chief of Army or the Chief of Air Force, as the case requires.

Section 5

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- (3) For the purposes of Part IV, a person is taken to have a conscientious belief in relation to a matter if the person's belief in respect of that matter:
- (a) involves a fundamental conviction of what is morally right and morally wrong, whether or not based on religious considerations; and
  - (b) is so compelling in character for that person that he or she is duty bound to espouse it; and
  - (c) is likely to be of a long standing nature.

**5 Application of Act**

This Act applies to, and in relation to, the Navy, Army and Air Force, and to all members of the Navy, Army and Air Force whether appointed or enlisted, or deemed to be enlisted, under this Act or under any other Act and whether serving within or beyond the territorial limits of Australia.

**5A Extension of Act to Territories**

This Act extends to the external Territories as if each of those Territories were part of Australia.

**6 Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**7 Act does not appropriate money**

Nothing in this Act shall be taken as an appropriation of any public moneys.

## **Part II—Administration**

### **8 Powers of Minister in relation to Defence Force**

The Minister shall have the general control and administration of the Defence Force, and the powers vested in the Chief of the Defence Force, the Chief of Navy, the Chief of Army and the Chief of Air Force by virtue of section 9, and the powers vested jointly in the Secretary and the Chief of the Defence Force by virtue of section 9A, shall be exercised subject to and in accordance with any directions of the Minister.

### **9 Command of Defence Force and arms of Defence Force**

- (1) The Governor-General may appoint an officer of an arm of the Defence Force to be Chief of the Defence Force and:
  - (a) may appoint an officer of the Navy to be Chief of Navy;
  - (b) may appoint an officer of the Army to be Chief of Army; and
  - (c) may appoint an officer of the Air Force to be Chief of Air Force.
- (2) Subject to section 8, the Chief of the Defence Force shall command the Defence Force, and the service chief of an arm of the Defence Force shall, under the Chief of the Defence Force, command the arm of the Defence Force of which he is service chief.
- (3) It is a function of the Chief of the Defence Force to advise the Minister, in such manner as the Minister directs, on matters relating to the command by the Chief of the Defence Force of the Defence Force, and it is a function of the service chief of an arm of the Defence Force to advise the Minister, in such manner as the Minister directs, on matters relating to the command by the service chief of the arm of the Defence Force of which he is the service chief.
- (5) Subsection (2) has effect subject to section 68 of the Constitution.

**9A Administration of Defence Force**

- (1) Subject to section 8, the Secretary and the Chief of the Defence Force shall jointly have the administration of the Defence Force except with respect to:
  - (a) matters falling within the command of the Defence Force by the Chief of the Defence Force or the command of an arm of the Defence Force by the service chief of that arm of the Defence Force; or
  - (b) any other matter specified by the Minister.
- (2) Instructions issued by or with the authority of the Secretary and the Chief of the Defence Force in pursuance of the powers vested in them jointly by virtue of subsection (1) shall be known as Defence Instructions (General).
- (3) The powers vested in the Secretary and the Chief of the Defence Force by virtue of subsection (1) extend to authorizing a service chief of an arm of the Defence Force to administer, in accordance with that authority, matters relating to that arm of the Defence Force, and instructions or orders issued or made by or with the authority of a service chief in relation to the administration of an arm of the Defence Force shall be known as:
  - (a) in the case of the Navy—Defence Instructions (Navy);
  - (b) in the case of the Army—Defence Instructions (Army); and
  - (c) in the case of the Air Force—Defence Instructions (Air Force).
- (4) Where Defence Instructions (Navy), Defence Instructions (Army) or Defence Instructions (Air Force) are inconsistent with Defence Instructions (General), the Defence Instructions (General) prevail and the Defence Instructions (Navy), the Defence Instructions (Army) or the Defence Instructions (Air Force), as the case may be, shall, to the extent of the inconsistency, be of no effect.
- (5) Evidence of Defence Instructions (General), Defence Instructions (Navy), Defence Instructions (Army) or Defence Instructions (Air Force) may be given in any proceedings in or before a Court, a service tribunal, the Defence Force Discipline Appeal Tribunal, or any other tribunal, by the production of a document purporting to be a copy thereof.

- (6) Defence Instructions (General), Defence Instructions (Navy), Defence Instructions (Army) or Defence Instructions (Air Force) may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing, whether as in force at a particular time, or as amended and in force from time to time.

#### **9AA Vice Chief of the Defence Force**

- (1) The Governor-General may appoint an officer of an arm of the Defence Force to be Vice Chief of the Defence Force.
- (2) Subject to section 8, the Vice Chief of the Defence Force shall, under the Chief of the Defence Force, be responsible for such part of the administration of the Defence Force in respect of which the Chief of the Defence Force has responsibility, whether alone or jointly with the Secretary, as the Chief of the Defence Force specifies in writing, and shall have such other functions as the Chief of the Defence Force determines in writing.

#### **9B Remuneration and allowances**

- (1) An officer who is the Chief of the Defence Force, the Vice Chief of the Defence Force or a service chief shall be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) An officer who is the Chief of the Defence Force, the Vice Chief of the Defence Force or a service chief shall be paid such allowances as are fixed by determination under Part IIIA.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### **9BA Tenure of office**

- (1) Subject to subsection (2) and the regulations, a person appointed under subsection 9(1) or 9AA(1) holds office for the period specified in the document of appointment, but is eligible for re-appointment.
- (2) If a person appointed under subsection 9(1) or 9AA(1) ceases to be an officer of an arm of the Defence Force, the person ceases to hold office under subsection 9(1) or 9AA(1).

**9C Acting appointments**

- (1) The Minister may appoint an officer who is eligible for appointment to the office of Chief of the Defence Force, Vice Chief of the Defence Force or an office of service chief of an arm of the Defence Force to act in that office:
  - (a) during a vacancy in that office; or
  - (b) during any period, or during all periods, when the holder of that office is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office;but an officer appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) Anything done by or in relation to an officer purporting to act under an appointment under subsection (1) is not invalid merely because:
  - (a) the occasion for the appointment had not arisen;
  - (b) there was a defect or irregularity in connection with the appointment;
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion for the person to act had not arisen or had ceased.

**28 Council of Defence**

- (1) The Governor-General may constitute a Council of Defence, which shall have such powers and functions as are prescribed.

## **Part III—The Defence Force**

### **Division 1—Constitution of the Defence Force**

#### **30 Defence Force**

The Defence Force consists of 3 arms, namely, the Australian Navy, the Australian Army and the Australian Air Force.

#### **31 Australian Army**

The Australian Army consists of 2 parts:

- (a) the Regular Army; and
- (b) the Army Reserve.

#### **32 Regular Army**

The Regular Army consists of:

- (a) officers appointed to, and soldiers enlisted in, the Regular Army; and
- (b) officers and soldiers transferred to the Regular Army from:
  - (i) the Army Reserve; or
  - (ii) the Australian Navy; or
  - (iii) the Australian Air Force.

#### **32A Army Reserve**

The Army Reserve consists of:

- (a) officers appointed to, and soldiers enlisted in, the Army Reserve; and
- (b) officers and soldiers transferred to the Army Reserve from:
  - (i) the Regular Army; or
  - (ii) the Australian Navy; or
  - (iii) the Australian Air Force.

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**32B Attachment etc. of members of an arm of the Defence Force to another arm**

A member of an arm of the Defence Force may, under such conditions (if any) as are prescribed, be attached or loaned to, or seconded for service with, another arm of the Defence Force.



## **Division 2—The raising of the Army**

### **34 Voluntary entry**

Except as provided by Part IV of this Act or by any other Act, the Army shall be kept up by the appointment to the Army, or the enlistment in the Army, of persons who volunteer and are accepted for service in the Army.

## **Division 3—The service of the Army**

### **45 Service of the Regular Army**

Members of the Regular Army are bound to render continuous full time military service.

### **50 Service of the Army Reserve**

- (1) A member of the Army Reserve is not bound to render continuous full time service otherwise than:
  - (a) as provided in this section; or
  - (b) as a result of a call out order under section 50D, 51A, 51AA, 51AB, 51B, 51C or 51CA.
- (2) The regulations must set, or provide for the setting of, training periods for the Army Reserve.

Note: Different training periods may be set for different parts of the Army Reserve or for different classes of members of the Army Reserve: see subsection 33(3A) of the *Acts Interpretation Act 1901*.

- (2A) A member of the Army Reserve is bound to render, in each training period, military service (other than continuous full time military service) for such periods as are set by or under the regulations. However, a member may be exempted by or under the regulations from the obligation to render all, or a specified part, of that service.

Note: Different service may be required of different parts of the Army Reserve, or of different classes of members of the Army Reserve, or in different periods: see subsection 33(3A) of the *Acts Interpretation Act 1901*.

- (3) A member of the Army Reserve may, at any time, voluntarily undertake to render continuous full time military service for a period specified by him and, if that undertaking is accepted, he is bound to render that form of service for that specified period or for such period or periods within that specified period as the Chief of Army directs.
- (4) A member of the Army Reserve may at any time voluntarily undertake to render military service, other than continuous full time military service, for a period or periods specified by him, and,

if that undertaking is accepted, the member is bound to render military service in accordance with that undertaking or for such period or periods within that specified period, or within those specified periods, as the case may be, as the Chief of Army directs.

**50C Territorial limits of service of Army**

Members of the Army may be required to serve either within or beyond the territorial limits of Australia.

## **Division 4—The calling out of the Forces**

### **50D Calling out the Reserves**

*Governor-General may call out the Reserves*

- (1) The Governor-General may, by publishing a written order in the *Gazette*, call out for continuous full time service:
  - (a) the Reserves; or
  - (b) one or more of the following:
    - (i) a specified part or parts of the Reserves;
    - (ii) a specified class or classes of members in the Reserves;
    - (iii) a specified member or members of the Reserves.

*Circumstances required for call out*

- (2) However, the Governor-General may only make an order in circumstances (whether within or outside Australia) involving any one or more of the following:
  - (a) war or warlike operations;
  - (b) defence emergency;
  - (c) defence preparation;
  - (d) peacekeeping or peace enforcement;
  - (e) assistance to Commonwealth, State, Territory or foreign government authorities and agencies in matters involving Australia's national security or affecting Australian defence interests;
  - (f) support to community activities of national or international significance;
  - (g) civil aid, humanitarian assistance, medical or civil emergency or disaster relief.

*Advice to Governor-General*

- (3) In making or revoking an order, the Governor-General is to act with the advice of:
  - (a) the Executive Council; or
  - (b) if, after the Minister has consulted the Prime Minister, the Minister is satisfied that, for reasons of urgency, the

Governor-General should act with the advice of the Minister alone—the Minister.

*When order takes effect*

- (4) An order takes effect on:
- (a) the day specified in the order; or
  - (b) if no day is specified—the day on which the order is published in the *Gazette*.

*When revocation of order takes effect*

- (5) A revocation of an order takes effect on:
- (a) the day specified in the revocation; or
  - (b) if no day is specified—the day on which the revocation is published in the *Gazette*.

*Effect of revocation of order*

- (6) To avoid doubt, if an order is revoked the call out under that order ends.

*Further orders*

- (7) The fact that an order has been published under this section in relation to particular circumstances does not prevent further orders being published under this section in relation to the same circumstances.

**50E Period of service during call out**

*Direction by Chief of the Defence Force or a service chief*

- (1) A member of the Reserves who is covered by a call out order under section 50D is bound to render the period of continuous full time naval, military or air force service (as appropriate) that the Chief of the Defence Force or a service chief directs in relation to the member.

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*Directions may be specific or general*

- (2) Such a direction may apply to the member specifically, by reference to a part or class of the Reserves that includes the member, or by reference to the Reserves as a whole.

*Length of period of service*

- (3) The period of service specified in a direction under subsection (1):
- (a) must start on the day on which the relevant call out order takes effect; and
  - (b) may be indefinite or limited.

However, a direction has no effect to the extent that it specifies a period of service after the day on which the call out under the order ends.

*Direction must be in writing*

- (4) A direction under this section must be in writing.

*Further directions*

- (5) The fact that a direction has been given in relation to an order under section 50D does not prevent further directions being given in relation to the same order.

*Continuous full time service otherwise than under this section*

- (6) Nothing in this section prevents a member of the Reserves from being bound to render continuous full time naval, military or air force service otherwise than under this section.

## **Part IIIAAA—Utilisation of Defence Force to protect Commonwealth interests and States and self-governing Territories**

### **Division 1—Calling out and directing utilisation of Defence Force**

#### **51 Interpretation**

##### *Definitions*

(1) In this Part:

***Australian offshore area*** means:

- (a) Australian waters; or
- (b) the exclusive economic zone of Australia (including its external Territories); or
- (c) the sea over the continental shelf of Australia (including its external Territories); or
- (d) an area prescribed by the regulations;

and includes the airspace over an area covered by paragraph (a), (b), (c) or (d).

***Australian waters*** means:

- (a) the territorial sea of Australia; and
- (b) the waters of the sea on the landward side of the territorial sea of Australia; and
- (c) the territorial sea of each external Territory; and
- (d) the waters of the sea on the landward side of the territorial sea of each external Territory;

but does not include the internal waters of a State or self-governing Territory.

***authorising Ministers*** means the Prime Minister, the Minister and the Attorney-General.

***continental shelf*** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

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***criminal act*** means an act or omission that would, if done or omitted to be done in the Jervis Bay Territory, contravene the substantive criminal law of the Jervis Bay Territory.

***dangerous thing*** means a gun, knife, bomb, chemical weapon or any other thing that is reasonably likely to be used to cause serious damage to property or death or serious injury to persons.

***designated area*** means an area in relation to which a declaration is in force under section 51Q.

***designated critical infrastructure*** means infrastructure, or a part of infrastructure, that is declared under section 51CB.

***domestic violence*** has the same meaning as in section 119 of the Constitution.

***exclusive economic zone*** has the same meaning as in the *Seas and Submerged Lands Act 1973*.

***general security area*** means an area in relation to which a declaration is in force under section 51K.

***infrastructure*** includes physical facilities, supply chains, information technologies and communication networks or systems.

***internal waters***, in relation to a State or self-governing Territory, means the waters of the sea within the limits of the State or Territory and includes the airspace over those waters.

***means of transport*** means a vehicle, vessel, aircraft that is not airborne, train or other means of transporting persons or goods.

***member in charge***, in relation to a search authorisation, has the meaning given by paragraph 51L(2)(c).

***offshore designated area*** means an area in relation to which a declaration is in force under section 51SL.

***offshore general security area*** means an area in relation to which a declaration is in force under section 51SF.

***offshore member in charge***, in relation to an offshore search authorisation, has the meaning given by paragraph 51SG(2)(c).



**offshore search authorisation** means an authorisation under section 51SG.

**offshore search members**, in relation to a search authorisation, has the meaning given by paragraph 51SG(2)(d).

**premises** includes a place that is private property.

**Presiding Officer** means the President of the Senate or the Speaker of the House of Representatives.

**search** of a person means:

- (a) a search of a person or of things in the possession of a person that may include:
  - (i) requiring the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
  - (ii) an examination of those items; or
- (b) a search of a person conducted by quickly running the hands over the person's outer garments and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person;

but does not include:

- (c) requiring the person to remove all of his or her garments; or
- (d) an examination of the person's body cavities.

**search authorisation** means an authorisation under section 51L.

**search members**, in relation to a search authorisation, has the meaning given by paragraph 51L(2)(d).

**self-governing Territory** means the Australian Capital Territory, the Northern Territory or Norfolk Island.

**substantive criminal law** means law (including unwritten law):

- (a) creating offences or imposing criminal liability for offences; or
- (b) dealing with capacity to incur criminal liability; or
- (c) providing a defence or providing for the reduction of the degree of criminal liability; or
- (d) providing for the confiscation of property used in, or derived from, the commission of an offence; or

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- (e) dealing with other subjects declared by regulation to be within the ambit of the substantive criminal law of the Jervis Bay Territory; or
- (f) providing for the interpretation of laws of the kinds mentioned above.

*territorial sea* has the same meaning as in the *Seas and Submerged Lands Act 1973*.

*threat concerned* means:

- (a) for the purposes of the application of section 51IB or subsection 51T(2A)—the threat of damage or disruption in relation to which the authorising Ministers make a declaration under section 51CB; or
- (b) for the purposes of the application of one or more of the provisions of Division 3A—the threat to Commonwealth interests in relation to which an order under section 51AA is made that causes Division 3A to apply.

*Police force etc. of certain Territories*

- (2) If the Australian Federal Police provides police services in relation to a Territory:
  - (a) the expression *police force* of the Territory means the Australian Federal Police, so far as it provides police services in relation to the Territory; and
  - (b) the expression *member of the police force* of the Territory means a member or special member of the Australian Federal Police providing police services in relation to the Territory.

**51A Order about utilising Defence Force to protect Commonwealth interests against domestic violence**

*Conditions for making of order*

- (1) Subsection (2) applies if the authorising Ministers are satisfied that:
  - (a) domestic violence is occurring or is likely to occur in Australia; and
  - (aa) the domestic violence would, or would be likely to, affect Commonwealth interests; and

- (b) if the domestic violence is occurring or is likely to occur in a State or self-governing Territory—the State or Territory is not, or is unlikely to be, able to protect Commonwealth interests against the domestic violence; and
- (c) the Defence Force should be called out and the Chief of the Defence Force should be directed to utilise the Defence Force to protect the Commonwealth interests against the domestic violence; and
- (d) one or more of Divisions 2, 2A, 3 and 3B, and Division 4, should apply in relation to the order.

*Power of Governor-General to make order*

- (2) If this subsection applies, the Governor-General may, by written order, call out the Defence Force and direct the Chief of the Defence Force to utilise the Defence Force to protect the Commonwealth interests against the domestic violence.

Provided always that the Emergency Forces or the Reserve Forces shall not be called out or utilized in connexion with an industrial dispute.

*Involvement of State or Territory*

- (3) If paragraph (1)(b) applies:
  - (a) the Governor-General may make the order whether or not the Government of the State or the self-governing Territory requests the making of the order; and
  - (b) if the Government of the State or the self-governing Territory does not request the making of the order, an authorising Minister must, subject to subsection (3A), consult that Government about the making of the order before the Governor-General makes it.

*Exception to paragraph (3)(b)*

- (3A) However, paragraph (3)(b) does not apply if the authorising Ministers are satisfied that, for reasons of urgency, it is impracticable to comply with the requirements of that paragraph.

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*Content of the order*

- (4) The order:
- (a) must state that it is made under this section; and
  - (b) must specify the State or Territory in which the domestic violence is occurring or likely to occur, the Commonwealth interests and the domestic violence; and
  - (c) must state that one or more of Divisions 2, 2A, 3 and 3B, and Division 4, apply in relation to the order; and
  - (d) must state that the order comes into force when it is made and that, unless it is revoked earlier, it ceases to be in force after a specified period (which must not be more than 20 days).

*When order is in force*

- (5) The order is in force as stated in accordance with paragraph (4)(d).

*Revocation of order*

- (6) If the authorising Ministers cease to be satisfied as mentioned in subsection (1), the Governor-General must revoke the order.

*Advice to Governor-General*

- (7) In making or revoking the order, the Governor-General is to act with the advice of:
- (a) except where paragraph (b) applies—the Executive Council; or
  - (b) if an authorising Minister is satisfied that, for reasons of urgency, the Governor-General should, for the purposes of this subsection, act with the advice of the authorising Minister—the authorising Minister.

*Effect of revocation of order etc.*

- (8) To avoid doubt, if the order is revoked or ceases to be in force, the call out of the Defence Force under the order ends and the Chief of the Defence Force must cease utilising the Defence Force as mentioned in subsection (2).

*Notice to State or self-governing Territory*

- (8A) As soon as is reasonably practicable after the order is made or revoked, an authorising Minister must arrange for the Government of the State or the self-governing Territory specified in the order to be notified of the making or revocation of the order. However, if this is not done, the validity of the making or revocation of the order is not affected.

*Further orders*

- (9) The fact that the order has been made does not prevent further orders being made in relation to the same matter.

**51AA Order about utilising Defence Force in the offshore area etc. to protect Commonwealth interests**

*Conditions for making of order utilising the Defence Force in the offshore area*

- (1) Subsection (2) applies if the authorising Ministers are satisfied that:
- (a) there is a threat in the Australian offshore area to Commonwealth interests (whether in that area or elsewhere); and
  - (b) the Defence Force should be called out and the Chief of the Defence Force should be directed to utilise the Defence Force in the Australian offshore area to protect the Commonwealth interests against the threat; and
  - (c) either Division 2A or 3A, or both, and Division 4 should apply in relation to the order.

*Power of Governor-General to make order utilising the Defence Force in the Australian offshore area*

- (2) If this subsection applies, the Governor-General may, by written order, call out the Defence Force and direct the Chief of the Defence Force to utilise the Defence Force in the Australian offshore area to protect the Commonwealth interests against the threat concerned.
- (3) However, the Reserves must not be called out or utilised in connection with an industrial dispute.

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*Conditions for also utilising the Defence Force in the internal waters*

- (4) Subsection (5) applies if the authorising Ministers are satisfied that:
- (a) in relation to the threat mentioned in paragraph (1)(a), domestic violence is occurring or is likely to occur in the internal waters of a State or self-governing Territory; and
  - (b) the State or Territory is not, or is unlikely to be, able to protect the Commonwealth interests against the domestic violence; and
  - (c) the Chief of the Defence Force should be directed to utilise the Defence Force in the internal waters of the State or Territory to protect the Commonwealth interests against the domestic violence.

*Power of Governor-General to direct utilising the Defence Force in the internal waters*

- (5) If this subsection applies, the Governor-General may, in the order under subsection (2), also direct the Chief of the Defence Force to utilise the Defence Force in the internal waters of the State or Territory to protect the Commonwealth interests against the domestic violence.

*Involvement of State or Territory*

- (6) If subsection (5) applies:
- (a) the Governor-General may make the direction referred to in subsection (5) whether or not the Government of the State or the self-governing Territory requests the making of the direction; and
  - (b) if the Government of the State or the self-governing Territory does not request the making of the direction referred to in subsection (5), an authorising Minister must, subject to subsection (7), consult that Government about the making of the direction.

*Exception to paragraph (6)(b)*

- (7) However, paragraph (6)(b) does not apply if the authorising Ministers are satisfied that, for reasons of urgency, it is impracticable to comply with the requirements of that paragraph.

*Content of the order*

- (8) The order:
- (a) must state that it is made under this section; and
  - (b) must specify:
    - (i) the threat to which the order relates; and
    - (ii) the Commonwealth interests; and
    - (iii) if the order includes a direction mentioned in subsection (5)—the State or Territory to which the direction relates and the domestic violence; and
  - (c) must state that Division 2A or 3A, or both, and Division 4 apply in relation to the order; and
  - (d) must state that the order comes into force when it is made and that, unless it is revoked earlier, it ceases to be in force after a specified period (which must not be more than 20 days).

*When order is in force*

- (9) The order is in force as stated in accordance with paragraph (8)(d).

*Revocation of order*

- (10) If the authorising Ministers cease to be satisfied as mentioned in subsection (1), the Governor-General must revoke the order.

*Advice to Governor-General*

- (11) In making or revoking the order, the Governor-General is to act with the advice of:
- (a) except where paragraph (b) applies—the Executive Council; or
  - (b) if an authorising Minister is satisfied that, for reasons of urgency, the Governor-General should, for the purposes of this subsection, act with the advice of the authorising Minister—the authorising Minister.

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*Effect of revocation of order etc.*

- (12) To avoid doubt, if the order is revoked or ceases to be in force, the call out of the Defence Force under the order ends and the Chief of the Defence Force must cease utilising the Defence Force as mentioned in subsection (2) or (5).

*Notice to State or self-governing Territory*

- (13) If the order includes a direction mentioned in subsection (5), then as soon as is reasonably practicable after the order is made or revoked, an authorising Minister must arrange for the Government of the State or the self-governing Territory specified in the order to be notified of the making or revocation of the order. However, if this is not done, the validity of the making or revocation of the order is not affected.

*Further orders*

- (14) The fact that the order has been made does not prevent further orders being made in relation to the same matter.

**51AB Order about utilising Defence Force to protect Commonwealth interests against violence if specified circumstances arise**

*Conditions for making of order*

- (1) Subsection (2) applies if the authorising Ministers are satisfied that:
- (a) if specified circumstances were to arise:
    - (i) domestic violence would occur or would be likely to occur in Australia that would, or would be likely to, affect Commonwealth interests; or
    - (ii) there would be, or it is likely there would be, a threat in the Australian offshore area to Commonwealth interests (whether in that area or elsewhere);and, for reasons of urgency, it would be impracticable for the Governor-General to make an order under section 51A or 51AA (as the case requires); and
  - (b) if subparagraph (a)(i) applies—the domestic violence would occur or would be likely to occur in a State or self-governing



Territory that would not be, or is unlikely to be, able to protect the Commonwealth interests against the domestic violence; and

- (c) the Chief of the Defence Force should be directed to utilise the Defence Force to protect the Commonwealth interests against the violence, or the threat in the Australian offshore area, if the specified circumstances arise; and
- (d) Divisions 3B and 4 should apply in relation to the order.

*Power of Governor-General to make order*

- (2) If this subsection applies, the Governor-General may, by written order, direct the Chief of the Defence Force to utilise the Defence Force to protect the Commonwealth interests against the domestic violence, or the threat in the Australian offshore area, if the specified circumstances arise.

*Involvement of State or Territory*

- (3) If paragraph (1)(b) applies:
  - (a) the Governor-General may make the order whether or not the Government of the State or the self-governing Territory requests the making of the order; and
  - (b) if the Government of the State or the self-governing Territory does not request the making of the order, an authorising Minister must consult that Government about the making of the order before the Governor-General makes it.

*Content of the order*

- (4) The order:
  - (a) must state that it is made under this section; and
  - (b) must specify:
    - (i) the circumstances to which the order relates; and
    - (ii) if paragraph (1)(b) applies—the State or Territory in which the domestic violence would occur or would be likely to occur; and
    - (iii) the Commonwealth interests; and
    - (iv) the domestic violence, or the threat in the Australian offshore area, as the case requires; and

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- (c) must state that Divisions 3B and 4 apply in relation to the order; and
- (d) must state that the order comes into force when it is made and that, unless it is revoked earlier, it ceases to be in force at the end of the period specified in the order.

*When order is in force*

- (5) The order is in force as stated in accordance with paragraph (4)(d).

*Revocation of order*

- (6) If the authorising Ministers cease to be satisfied as mentioned in subsection (1), the Governor-General must revoke the order.

*Advice to Governor-General*

- (7) In making or revoking the order the Governor-General is to act with the advice of the Executive Council.

*Effect of revocation of order etc.*

- (8) To avoid doubt, if the order is revoked or ceases to be in force, the Chief of the Defence Force must cease utilising the Defence Force as mentioned in subsection (2).

*Notice to State or self-governing Territory*

- (9) If the order specifies a State or Territory under subparagraph (4)(b)(ii), as soon as is reasonably practicable after the order is made or revoked, an authorising Minister must arrange for the Government of the State or Territory to be notified of the making or revocation of the order. However, if this is not done, the validity of the making or revocation of the order is not affected.

*Further orders*

- (10) The fact that the order has been made does not prevent further orders being made in relation to the same matter.

**51B Order about utilising Defence Force to protect State against domestic violence**

*Conditions for making of order*

- (1) Subsection (2) applies if a State Government applies to the Commonwealth Government to protect the State against domestic violence that is occurring or is likely to occur in the State and the authorising Ministers are satisfied that:
  - (a) the State is not, or is unlikely to be, able to protect itself against the domestic violence; and
  - (b) the Defence Force should be called out and the Chief of the Defence Force should be directed to utilise the Defence Force to protect the State against the domestic violence; and
  - (c) one or more of Divisions 2, 2A, 3 and 3B, and Division 4, should apply in relation to the order.

*Power of Governor-General to make order*

- (2) If this subsection applies, the Governor-General may, by written order, call out the Defence Force and direct the Chief of the Defence Force to utilise the Defence Force to protect the State against the domestic violence.  
Provided always that the Emergency Forces or the Reserve Forces shall not be called out or utilized in connexion with an industrial dispute.

*Content of the order*

- (3) The order:
  - (a) must state that it is made under this section; and
  - (b) must specify the State and the domestic violence; and
  - (c) must state that one or more of Divisions 2, 2A, 3 and 3B, and Division 4, apply in relation to the order; and
  - (d) must state that the order comes into force when it is made and that, unless it is revoked earlier, it ceases to be in force after a specified period (which must not be more than 20 days).

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*When order is in force*

- (4) The order is in force as stated in accordance with paragraph (3)(d).

*Revocation of order*

- (5) If:
- (a) the State Government withdraws its application to the Commonwealth Government; or
  - (b) the authorising Ministers cease to be satisfied as mentioned in subsection (1);
- the Governor-General must revoke the order.

*Advice to Governor-General*

- (6) In making or revoking the order, the Governor-General is to act with the advice of:
- (a) except where paragraph (b) applies—the Executive Council; or
  - (b) if an authorising Minister is satisfied that, for reasons of urgency, the Governor-General should, for the purposes of this subsection, act with the advice of the authorising Minister—the authorising Minister.

*Effect of revocation of order etc.*

- (7) To avoid doubt, if the order is revoked or ceases to be in force, the call out of the Defence Force under the order ends and the Chief of the Defence Force must cease utilising the Defence Force as mentioned in subsection (2).

*Further orders*

- (8) The fact that the order has been made does not prevent further orders being made in relation to the same matter.

**51C Order about utilising Defence Force to protect self-governing Territory against domestic violence**

*Conditions for making of order*

- (1) Subsection (2) applies if the Government of a self-governing Territory applies to the Commonwealth Government to protect the
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Territory against domestic violence that is occurring or is likely to occur in the Territory and the authorising Ministers are satisfied that:

- (a) the Territory is not, or is unlikely to be, able to protect itself against the domestic violence; and
- (b) the Defence Force should be called out and the Chief of the Defence Force should be directed to utilise the Defence Force to protect the Territory against the domestic violence; and
- (c) one or more of Divisions 2, 2A, 3 and 3B, and Division 4, should apply in relation to the order.

*Power of Governor-General to make order*

- (2) If this subsection applies, the Governor-General may, by written order, call out the Defence Force and direct the Chief of the Defence Force to utilise the Defence Force to protect the Territory against the domestic violence.

Provided always that the Emergency Forces or the Reserve Forces shall not be called out or utilized in connexion with an industrial dispute.

*Content of the order*

- (3) The order:
  - (a) must state that it is made under this section; and
  - (b) must specify the Territory and the domestic violence; and
  - (c) must state that one or more of Divisions 2, 2A, 3 and 3B, and Division 4, apply in relation to the order; and
  - (d) must state that the order comes into force when it is made and that, unless it is revoked earlier, it ceases to be in force after a specified period (which must not be more than 20 days).

*When order is in force*

- (4) The order is in force as stated in accordance with paragraph (3)(d).

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*Revocation of order*

- (5) If:
- (a) the Government of the Territory withdraws its application to the Commonwealth Government; or
  - (b) the authorising Ministers cease to be satisfied as mentioned in subsection (1);
- the Governor-General must revoke the order.

*Advice to Governor-General*

- (6) In making or revoking the order, the Governor-General is to act with the advice of:
- (a) except where paragraph (b) applies—the Executive Council; or
  - (b) if an authorising Minister is satisfied that, for reasons of urgency, the Governor-General should, for the purposes of this subsection, act with the advice of the authorising Minister—the authorising Minister.

*Effect of revocation of order etc.*

- (7) To avoid doubt, if the order is revoked or ceases to be in force, the call out of the Defence Force under the order ends and the Chief of the Defence Force must cease utilising the Defence Force as mentioned in subsection (2).

*Further orders*

- (8) The fact that the order has been made does not prevent further orders being made in relation to the same matter.

**51CA Expedited call out**

*Expedited call out by the Prime Minister*

- (1) The Prime Minister may make an order of a kind that the Governor-General is empowered to make under section 51A, 51AA, 51AB, 51B or 51C if the Prime Minister is satisfied that:
- (a) because a sudden and extraordinary emergency exists, it is not practicable for an order to be made under that section; and

- (b) the circumstances referred to in subsection 51A(1), 51AA(1), 51AB(1), 51B(1) or 51C(1) (as the case requires) exist.

*Expedited call out by the other 2 authorising Ministers*

- (2) The other 2 authorising Ministers may jointly make an order of a kind that the Governor-General is empowered to make under section 51A, 51AA, 51AB, 51B or 51C if those authorising Ministers are satisfied that:
- (a) because a sudden and extraordinary emergency exists, it is not practicable for an order to be made under that section; and
  - (b) the Prime Minister is unable to be contacted for the purposes of considering whether to make, and making, an order under subsection (1) of this section; and
  - (c) the circumstances referred to in subsection 51A(1), 51AA(1), 51AB(1), 51B(1) or 51C(1) (as the case requires) exist.

*Expedited call out by an authorising Minister and another Minister*

- (2A) An authorising Minister, together with the Deputy Prime Minister, the Minister for Foreign Affairs or the Treasurer, may make an order of a kind that the Governor-General is empowered to make under section 51A, 51AA, 51AB, 51B or 51C if the Ministers are satisfied that:
- (a) because a sudden and extraordinary emergency exists, it is not practicable for an order to be made under that section; and
  - (b) the Prime Minister is unable to be contacted for the purposes of considering whether to make, and making, an order under subsection (1) of this section; and
  - (c) the remaining authorising Minister is unable to be contacted for the purposes of considering whether to make, and making, an order under subsection (2) of this section; and
  - (d) the circumstances referred to in subsection 51A(1), 51AA(1), 51AB(1), 51B(1) or 51C(1) (as the case requires) exist.

*Orders applying in internal waters*

- (3) If the order is an order of a kind that Governor-General is empowered to make under section 51AA, the order must not direct

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the Chief of the Defence Force to utilise the Defence Force in the internal waters of the State or self-governing Territory unless:

- (a) if the order is made under subsection (1) of this section—the Prime Minister is satisfied that the circumstances referred to in subsection 51AA(4) exist in relation to that State or Territory; or
- (b) if the order is made under subsection (2) or (2A) of this section—the other 2 Ministers are satisfied that the circumstances referred to in subsection 51AA(4) exist in relation to that State or Territory.

*Order not in writing*

- (4) An order under this section need not be in writing. If it is not in writing, the Prime Minister or the other 2 Ministers (as the case requires), and the Chief of the Defence Force, must each:
  - (a) make a written record of the order; and
  - (b) sign the record; and
  - (c) cause the signing of the record to be witnessed; and
  - (d) in the case of the Prime Minister or another Minister—as soon as practicable:
    - (i) cause the record to be given to the Chief of the Defence Force; and
    - (ii) cause a copy of the record to be given to the Governor-General; and
  - (e) in the case of the Chief of the Defence Force—as soon as practicable:
    - (i) cause the record to be given to the Prime Minister; or
    - (ii) cause the record to be given to one of the other 2 Ministers, and cause a copy of the record to be given to the other Minister;as the case requires.

However, a failure to comply with paragraph (d) or (e) does not affect the validity of the order.

*The effect of the order*

- (5) Subject to subsections (7) and (8) of this section, an order made under this section has effect, for all purposes (other than this section), as if it were an order made by the Governor-General



under section 51A, 51AA, 51AB, 51B or 51C (as the case requires). In particular:

- (a) subsection 51A(4), 51AA(8), 51AB(4), 51B(3) or 51C(3) (as the case requires) applies to the order; and
  - (b) the Governor-General may revoke the order in the same way, and in the same circumstances, as he or she may revoke an order under section 51A, 51AA, 51AB, 51B or 51C (as the case requires).
- (6) For the purposes of paragraph (5)(b), the reference in subsection 51A(6), 51AA(10) or 51AB(6) or paragraph 51B(5)(b) or 51C(5)(b) (as the case requires) to the authorising Ministers ceasing to be satisfied is taken to be a reference to them not being satisfied.

*Content of the order*

- (7) An order made under this section:
- (a) must state that it is made under this section, and that it has effect as if it were an order made by the Governor-General under section 51A, 51AA, 51AB, 51B or 51C (as the case requires); and
  - (b) despite paragraph 51A(4)(d), 51AA(8)(d), 51AB(4)(d), 51B(3)(d) or 51C(3)(d) (as the case requires), must state that, unless it is revoked earlier, it ceases to be in force after a specified period (which must not be more than 5 days).

*When order is in force*

- (8) The order:
- (a) comes into force when it is made, or (if it is not in writing) when:
    - (i) the Prime Minister, or the other 2 Ministers; and
    - (ii) the Chief of the Defence Force;have complied with paragraph (4)(c); and
  - (b) ceases to be in force as stated in accordance with paragraph (7)(b).

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*Authorisations and declarations during an expedited call out*

- (9) If:
- (a) one or more authorising Ministers have the power to give an authorisation or make a declaration under a provision of Division 2, 3, 3A or 3B; and
  - (b) that Division applies because of an order made under this section;
- the authorisation or declaration need not be in writing, despite any requirement of the provision to the contrary.
- (10) If the authorisation or declaration is not in writing, the authorising Minister or authorising Ministers, and the Chief of the Defence Force, must each:
- (a) make a written record of the authorisation or declaration; and
  - (b) sign the record; and
  - (c) cause the signing of the record to be witnessed; and
  - (d) in the case of an authorising Minister—as soon as practicable cause the record to be given to the Chief of the Defence Force; and
  - (e) in the case of the Chief of the Defence Force—as soon as practicable:
    - (i) cause the record to be given to the authorising Minister; or
    - (ii) cause the record to be given to one of the authorising Ministers, and cause a copy of the record to be given to the other authorising Minister;
- as the case requires.

However, a failure to comply with paragraph (d) or (e) does not affect the validity of the authorisation or declaration.

- (11) If the authorisation or declaration is not in writing, it comes into force when the authorising Minister or authorising Ministers, and the Chief of the Defence Force, have complied with paragraph (10)(c).

*References to certain circumstances*

- (12) To avoid doubt, a reference in this section to the circumstances referred to in subsection 51A(1), 51AA(1), 51AB(1), 51B(1) or 51C(1):

- (a) does not include a reference to the authorising Ministers being satisfied as to particular matters; and
- (b) in relation to section 51B, includes a reference to a State Government having made an application of a kind referred to in subsection 51B(1); and
- (c) in relation to section 51C, includes a reference to a State Government having made an application of a kind referred to in subsection 51C(1).

*Involvement of State or Territory under subsection 51A(3) not required*

- (13) To avoid doubt, paragraph 51A(3)(b) does not apply to an order under this section that would have effect as if it were an order made by the Governor-General under section 51A.

### **51CB Declaration of designated critical infrastructure**

- (1) The authorising Ministers may, in writing, declare that particular infrastructure, or a part of particular infrastructure, in Australia or in the Australian offshore area is designated critical infrastructure.
- (2) However, the authorising Ministers may do so only if they believe on reasonable grounds that:
  - (a) there is a threat of damage or disruption to the operation of the infrastructure or the part of the infrastructure; and
  - (b) the damage or disruption would directly or indirectly endanger the life of, or cause serious injury to, other persons.
- (3) If the authorising Ministers no longer believe those matters, they must revoke the declaration.
- (4) To avoid doubt, the authorising Ministers may make a declaration under this section whether or not an order is in force under this Division.
- (5) If the infrastructure, or the part of the infrastructure, is in a State or a self-governing Territory:
  - (a) the authorising Ministers may make the declaration referred to in subsection (1) whether or not the Government of the State or the self-governing Territory requests the making of the declaration; and

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- (b) if the Government of the State or the self-governing Territory does not request the making of the declaration referred to in subsection (1), an authorising Minister must, subject to subsection (6), consult that Government about the making of the declaration.
- (6) However, paragraph (5)(b) does not apply if the authorising Ministers are satisfied that, for reasons of urgency, it is impracticable to comply with the requirements of that paragraph.

**51D Chief of Defence Force to utilise Defence Force as directed**

*Order under section 51A*

- (1) If the Governor-General makes an order under section 51A, the Chief of the Defence Force must, subject to sections 51E, 51F and 51G, utilise the Defence Force, in such manner as is reasonable and necessary, for the purpose of protecting the Commonwealth interests specified in the order, in the State or Territory specified in the order, against the domestic violence specified in the order.

*Order under section 51AA*

- (1A) If the Governor-General makes an order under section 51AA, the Chief of the Defence Force must, subject to sections 51E, 51F and 51G, utilise the Defence Force, in such manner as is reasonable and necessary:
  - (a) in the Australian offshore area, for the purpose of protecting the Commonwealth interests specified in the order against the threat concerned; and
  - (b) if the order includes a direction mentioned in subsection 51AA(5)—in the internal waters of the State or Territory to which the direction relates, for the purpose of protecting the Commonwealth interests specified in the order against the domestic violence specified in the order.

*Order under section 51AB*

- (1B) If:
  - (a) the Governor-General makes an order under section 51AB; and
  - (b) the circumstances specified in the order arise;

the Chief of the Defence Force must, subject to sections 51E, 51F and 51G, utilise the Defence Force, in such manner as is reasonable and necessary:

- (c) for the purpose of protecting the State or Territory specified in the order against the domestic violence specified in the order; or
- (d) for the purpose of protecting the Commonwealth interests specified in the order against the threat specified in the order; as the case requires.

*Order under section 51B or 51C*

- (2) If the Governor-General makes an order under section 51B or 51C, the Chief of the Defence Force must, subject to sections 51E, 51F and 51G, utilise the Defence Force, in such manner as is reasonable and necessary, for the purpose of protecting the State or Territory specified in the order against the domestic violence specified in the order.

### **51E Ministerial directions**

Subject to section 51G, in utilising the Defence Force in accordance with section 51D, the Chief of the Defence Force must comply with any direction that the Minister gives from time to time as to the way in which the Defence Force is to be utilised.

### **51F Assistance to, and cooperation with, State etc.**

- (1) Subject to subsections (2) and (3) and to sections 51E and 51G, in utilising the Defence Force in accordance with section 51D, the Chief of the Defence Force must, as far as is reasonably practicable, ensure that:
  - (a) the Defence Force is utilised to assist the State or Territory specified in the order and cooperates with the police force of the State or Territory; and
  - (b) the Defence Force is not utilised for any particular task unless a member of the police force of the State or the Territory specified in the order requests, in writing, that the Defence Force be so utilised.
- (2) Subsection (1) does not require or permit the Chief of the Defence Force to transfer to any extent command of the Defence Force to

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the State or the Territory, or to a police force or member of the police force of the State or the Territory.

- (3) This section does not apply in relation to an order under section 51AA to the extent that the Defence Force is being utilised in the Australian offshore area.

Note: This section will still apply in relation to an order under section 51AA to the extent that the Defence Force is being utilised in the internal waters of a State or self-governing Territory.

**51G Restriction on certain utilisation of Defence Force**

In utilising the Defence Force in accordance with section 51D, the Chief of the Defence Force must not stop or restrict any protest, dissent, assembly or industrial action, except where there is a reasonable likelihood of the death of, or serious injury to, persons or serious damage to property.

## **Division 2—Powers to recapture locations or things, prevent or end acts of violence and protect persons from acts of violence**

### **51H Application of this Division and Division 4**

If an order states in accordance with paragraph 51A(4)(c), 51B(3)(c) or 51C(3)(c) that this Division and Division 4 apply in relation to the order, the following provisions of this Division, and the provisions of Division 4, apply.

### **51I Special powers of members of the Defence Force**

#### *Special powers*

- (1) Subject to this section, a member of the Defence Force who is being utilised in accordance with section 51D may, under the command of the Chief of the Defence Force do any one or more of the following:
  - (a) take any one or more of the following actions:
    - (i) recapture a location or thing;
    - (ii) prevent, or put an end to, acts of violence;
    - (iii) protect persons from acts of violence;
  - (b) in connection with taking any such action, do any one or more of the following:
    - (i) free any hostage from a location or thing;
    - (ii) if the member finds a person whom the member believes on reasonable grounds to have committed an offence against a law of the Commonwealth, a State or Territory—detain the person for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time;
    - (iii) control the movement of persons or of means of transport;
    - (iv) evacuate persons to a place of safety;

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- (v) search persons or locations or things for dangerous things or other things related to the domestic violence that is occurring or is likely to occur;
- (vi) seize any dangerous thing, or other thing related to the domestic violence that is occurring or is likely to occur, found in such a search; and
- (c) do anything incidental to anything in paragraph (a) or (b).

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this subsection.

*Ministerial authorisation*

- (2) However, the member must not:
  - (a) take any action mentioned in paragraph (1)(a); or
  - (b) do any of the things mentioned in paragraph (1)(b) or (c) in connection with taking that action;unless an authorising Minister has in writing authorised taking that action.

*Exception*

- (3) Subsection (2) does not apply if the member believes on reasonable grounds that there is insufficient time to obtain the authorisation because a sudden and extraordinary emergency exists.

*Definitions*

- (4) In this section:

**location** includes any premises or place.

**thing** includes any means of transport, but does not include an aircraft that is airborne.



## **Division 2A—Powers to protect designated critical infrastructure**

### **51IA Application of this Division and Division 4**

- (1) If an order states in accordance with paragraph 51A(4)(c), 51AA(8)(c), 51B(3)(c) or 51C(3)(c) that this Division and Division 4 apply in relation to the order, the following provisions of this Division, and the provisions of Division 4, apply.
- (2) In relation to an order under section 51AA, this Division and Division 4 (in its operation in relation to this Division) apply only in:
  - (a) the Australian offshore area; and
  - (b) if the order includes a direction mentioned in subsection 51AA(5)—the internal waters of the State or self-governing Territory specified in the order.

### **51IB Powers to protect designated critical infrastructure**

A member of the Defence Force who is being utilised in accordance with section 51D may, under the command of the Chief of the Defence Force, do any one or more of the following for the purpose of protecting designated critical infrastructure:

- (a) take one or both of the following actions:
  - (i) prevent, or put an end to, damage or disruption to the operation of the designated critical infrastructure;
  - (ii) prevent, or put an end to, acts of violence;
- (b) in connection with taking any such action, do any one or more of the following:
  - (i) if the member finds a person whom the member believes on reasonable grounds to have committed an offence against a law of the Commonwealth, a State or Territory—detain the person for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time;
  - (ii) protect persons from acts of violence;
  - (iii) control the movement of persons or of means of transport;

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- (iv) evacuate persons to a place of safety;
  - (v) search persons or things for dangerous things or other things related to the threat concerned;
  - (vi) seize any dangerous thing or other thing related to the threat concerned found in such a search;
  - (c) do anything incidental to anything in paragraph (a) or (b).
- Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this section.

## **Division 3—General security area powers**

### **Subdivision A—Application of this Division and Division 4**

#### **51J Application of this Division and Division 4**

If an order states in accordance with paragraph 51A(4)(c), 51B(3)(c) or 51C(3)(c) that this Division and Division 4 apply in relation to the order, the following provisions of this Division, and the provisions of Division 4, apply.

### **Subdivision B—Powers that may be exercised anywhere in a general security area**

#### **51K Declaration of general security area**

- (1) The authorising Ministers may, in writing, declare that a specified area, being a part of the State or Territory specified in the order, is a general security area for the purposes of the application of this Division and Division 4 in relation to members of the Defence Force who are being utilised in accordance with section 51D.

*Statement to be published*

- (2) If they do so, they must arrange for a statement that:
  - (a) summarises the content of the order, but without including any reference to any statement in accordance with paragraph 51A(4)(c), 51B(3)(c) or 51C(3)(c) that Division 2 applies in relation to the order; and
  - (b) states that the declaration has been made; and
  - (c) describes the general security area and its boundaries;to be:
  - (d) broadcast by a television or radio station so as to be capable of being received within the general security area; and
  - (e) published in the *Gazette*; and
  - (f) forwarded, within 24 hours after the declaration is made, to the Presiding Officer of each House of the Parliament for tabling in that House.

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- (2AA) However, subsection (2) does not apply if:
- (a) the order mentioned in section 51J also states, in accordance with paragraph 51A(4)(c), 51B(3)(c) or 51C(3)(c), that Division 2 applies in relation to the order; and
  - (b) the authorising Ministers declare, in writing, that they are satisfied that the application of subsection (2) would prejudice the exercise of powers under Division 2 by members of the Defence Force who are being utilised in accordance with section 51D.

*Houses to sit within 6 days*

- (2A) Each House of the Parliament must sit within 6 days after its Presiding Officer receives the statement that is forwarded in accordance with paragraph (2)(f).

*Effect of failure to publish*

- (3) A failure to comply with subsection (2) does not make the declaration ineffective to any extent.

**51L Authorisation to search premises in the general security area for dangerous things**

- (1) If, while the Defence Force is being utilised in accordance with section 51D:
- (a) the Chief of the Defence Force; or
  - (b) an officer of the Defence Force authorised by the Chief of the Defence Force for the purposes of this section;
- believes on reasonable grounds that:
- (c) there is a dangerous thing on any premises in the general security area; and
  - (d) it is necessary as a matter of urgency to make the dangerous thing safe or prevent it from being used;
- he or she may give an authorisation under this section.

*What the authorisation must say*

- (2) The authorisation must:
- (a) authorise entry to, and search of, the premises; and
  - (b) describe the premises; and

- (c) state the name, rank and service number of a member of the Defence Force (the *member in charge*) who is to be in charge of the search; and
- (d) authorise the member in charge, and any other member of the Defence Force assisting the member, (the *search members*) to carry out the search; and
- (e) authorise each search member to seize any thing found on the premises in the course of the search that he or she believes on reasonable grounds to be a dangerous thing; and
- (f) state that, if any search member believes on reasonable grounds that a person who is at or near the premises while the search is being carried out has any dangerous thing in his or her possession, the member is authorised to:
  - (i) search the person; and
  - (ii) seize any dangerous thing found in the search; and
- (g) state the time during which the authorisation remains in force, which must not be more than 24 hours.

Note: Subdivision B of Division 4 sets out what is to happen if a dangerous thing is seized under this subsection.

*Effect of the authorisation*

- (3) The authorisation has effect according to its terms.

*Further authorisations possible*

- (4) Paragraph (2)(g) does not prevent the issue of further authorisations in relation to the same premises.

**51M Copy of search authorisation to be given to occupier etc.**

*Right of occupier to be given copy of search authorisation etc.*

- (1) If the occupier of the premises specified in the search authorisation, or another person who apparently represents the occupier, is present at the premises when the search is being carried out, the member in charge must:
  - (a) identify himself or herself to that person; and
  - (b) give that person a copy of the search authorisation.

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*Right of person searched to be shown copy of search authorisation*

- (2) The member in charge must, before any person (other than a person who has been given a copy of the search authorisation under subsection (1)) is searched in accordance with the search authorisation, show the person a copy of the search authorisation.

**51N Occupier etc. entitled to be present during search**

- (1) If the occupier of the premises specified in the search authorisation, or another person who apparently represents the occupier, is present at the premises when the search is being carried out, the person is entitled to observe the search being carried out.

*Search not to be impeded*

- (2) The entitlement to observe the search being carried out ceases if the person impedes the search.

*Multiple searches*

- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

**51O Search of means of transport in the general security area for dangerous things**

- (1) If a member of the Defence Force who is being utilised in accordance with section 51D believes on reasonable grounds that a dangerous thing is in or on a means of transport in the general security area, the member may:
  - (a) erect barriers or other structures for the purpose of stopping the means of transport; and
  - (b) whether or not the member does so:
    - (i) stop and detain the means of transport; and
    - (ii) search the means of transport, and any thing found in or on the means of transport, for the dangerous thing; and
    - (iii) seize any dangerous thing that the member finds in the search.

Note: Subdivision B of Division 4 sets out what is to happen if a dangerous thing is seized under this subsection.

- (2) If the member stops the means of transport, the member must not detain it for longer than is reasonable and necessary to search it and any thing found in or on it.

### **51P Search of persons in the general security area for dangerous things**

If a member of the Defence Force who is being utilised in accordance with section 51D believes on reasonable grounds that a person in the general security area has a dangerous thing in the person's possession, the member may:

- (a) search the person for such a thing; and
- (b) seize any such thing found in the search.

Note: Subdivision B of Division 4 sets out what is to happen if a dangerous thing is seized under this section.

### **Subdivision C—Powers that may be exercised only in relation to a designated area in the general security area**

#### **51Q Declaration of designated area**

- (1) The authorising Ministers may, in writing, declare that a specified area, being the whole or a part of a general security area, is a designated area for the purposes of the application of this Division and Division 4 in relation to members of the Defence Force who are being utilised in accordance with section 51D.

*Where no longer a general security area*

- (2) To avoid doubt, if the whole or part of the area later ceases to be within a general security area, the whole or the part ceases to be a designated area.

*Declaration to be published*

- (3) If the authorising Ministers make a declaration under subsection (1), they must take reasonable steps to make the public aware of the declaration of the designated area and of its boundaries.
- (4) However, subsection (3) does not apply if the authorising Ministers declare, in writing, that they are satisfied that the application of

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subsection (3) would prejudice the exercise of powers under Division 2 by members of the Defence Force who are being utilised in accordance with section 51D.

**51R Control of movement in relation to a designated area in the general security area**

*Powers in relation to persons in charge of means of transport*

- (1) A member of the Defence Force who is being utilised in accordance with section 51D may do any one or more of the following in relation to a person who is in charge of a means of transport:
  - (a) if the means of transport is in a part of the general security area that is outside a designated area—direct the person not to bring the means of transport into the designated area;
  - (b) direct the person to take the means of transport out of a designated area;
  - (c) direct the person to take the means of transport from a place in a designated area to another place in the designated area;
  - (d) direct the person not to take the means of transport from a place in a designated area to any other place, or to a specified place, in the designated area;
  - (e) compel the person to comply with a direction under any of the above paragraphs.

*Erection of barriers etc.*

- (2) A member of the Defence Force may erect barriers or other structures at the boundary of, or in, a designated area for the purpose of stopping persons from bringing means of transport into the designated area or to a place in the designated area.

*Powers in relation to means of transport*

- (3) If there is no person in charge of a means of transport that is in a designated area, a member of the Defence Force may do such things as are reasonable and necessary for either of the following purposes:
  - (a) to take the means of transport to a place in the general security area that is outside the designated area;



- (b) to take the means of transport to another place in the designated area.

*Powers in relation to persons generally*

- (4) A member of the Defence Force may do any one or more of the following in relation to a person (whether or not in charge of a means of transport):
  - (a) if the person is in the general security area but outside a designated area—direct the person not to enter the designated area;
  - (b) direct the person to leave a designated area;
  - (c) direct the person to move from a place in a designated area to another place in the designated area;
  - (d) compel the person to comply with a direction under any of the above paragraphs.

*Powers to carry out consent searches*

- (5) The power of a member under paragraph (1)(a) or (4)(a) to direct a person:
  - (a) not to bring a means of transport into a designated area; or
  - (b) not to enter a designated area;includes:
  - (c) the power to direct a person not to do either of those things unless the person agrees to a member searching:
    - (i) in either case—the person; and
    - (ii) in a paragraph (a) case—the means of transport and any thing in or on the means of transport;for dangerous things; and
  - (d) if the person agrees, the power to conduct such a search and to seize any dangerous thing that the member finds in the search.

Note: Subdivision B of Division 4 sets out what is to happen if a dangerous thing is seized under this subsection.

*Powers to enter premises etc. to give directions*

- (6) A member of the Defence Force may enter premises or a means of transport for the purpose of giving a direction under any provision of this section.

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**51S Members to wear uniforms and identification when exercising powers**

- (1) While any member of the Defence Force is exercising powers under this Division, or under Division 4 in its operation in relation to this Division, he or she must at all times:
- (a) wear his or her uniform; and
  - (b) for the purposes of identification, have:
    - (i) his or her surname; or
    - (ii) his or her numbers or a combination of numbers and letters of the alphabet;on or attached to the front of his or her uniform.

Penalty: 30 penalty units.

*Situation where no offence committed*

- (2) A member who contravenes paragraph (1)(b) is not guilty of an offence if the contravention occurs because of an act of another person (not being a member) done without the consent of the member.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

*Members to be given means to comply with obligations*

- (4) The Chief of the Defence Force must take such steps as are reasonable and necessary to ensure that members do not contravene subsection (1).

## **Division 3A—Powers in the Australian offshore area etc.**

### **Subdivision A—Preliminary**

#### **51SA Application of this Division and Division 4**

If an order states in accordance with paragraph 51AA(8)(c) that this Division and Division 4 apply in relation to the order, the following provisions of this Division, and the provisions of Division 4, apply.

#### **51SB Geographic application**

This Division and Division 4 (in its operation in relation to this Division) apply only in:

- (a) the Australian offshore area; and
- (b) if the order under section 51AA includes a direction mentioned in subsection 51AA(5)—the internal waters of the State or self-governing Territory specified in the order.

#### **51SC International obligations**

The authorising Ministers or an authorising Minister must, in giving an authorisation or making a declaration under this Division, have regard to Australia's international obligations.

#### **51SD Definitions**

In this Division:

*facility* includes a fixed or floating structure or installation of any kind.

*vessel* means:

- (a) a ship, boat, raft, pontoon or submersible craft; or
- (b) any other thing capable of carrying persons or goods through or on water;

and includes a hovercraft (or other non-displacement craft) and a floating structure or installation.

**Subdivision B—Special powers of members of the Defence Force**

**51SE Special powers of members of the Defence Force**

*Special powers*

- (1) Subject to this section, a member of the Defence Force who is being utilised in accordance with section 51D may, under the command of the Chief of the Defence Force, do any one or more of the following:
- (a) take any one or more of the following actions:
    - (i) take measures (including the use of force) against a vessel or an aircraft, up to and including destroying the vessel or aircraft;
    - (ii) give an order relating to the taking of such measures;
    - (iii) capture a vessel or aircraft;
    - (iv) board a facility, vessel or aircraft;
    - (v) recapture a facility, vessel or aircraft;
    - (vi) prevent, or put an end to, acts of violence;
    - (vii) protect persons from acts of violence;
  - (b) in connection with taking any such action, do any one or more of the following:
    - (i) free any hostage from a facility, vessel or aircraft;
    - (ii) if the member finds a person whom the member believes on reasonable grounds to have committed an offence against a law of the Commonwealth, a State or Territory—detain the person for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time;
    - (iii) control the movement of persons, vessels or aircraft;
    - (iv) evacuate persons to a place of safety;
    - (v) search persons, facilities, vessels or aircraft for dangerous things or other things related to the threat concerned;
    - (vi) seize any dangerous thing or other thing related to the threat concerned found in such a search;
  - (c) do anything incidental to anything in paragraph (a) or (b).

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this subsection.

- (2) Subparagraph (1)(a)(i) does not apply to the taking of measures unless:
- (a) the member of the Defence Force takes the measures under, or under the authority of, an order of a superior; and
  - (b) the member was under a legal obligation to obey the order; and
  - (c) the order was not manifestly unlawful; and
  - (d) the member has no reason to believe that circumstances have changed in a material way since the order was given; and
  - (e) the member has no reason to believe that the order was based on a mistake as to a material fact; and
  - (f) taking the measures was reasonable and necessary to give effect to the order.
- (3) Subparagraph (1)(a)(ii) does not apply to giving an order unless:
- (a) the member of the Defence Force gives the order under, or under the authority of, an order (*a superior order*) of a superior; and
  - (b) the member was under a legal obligation to obey the superior order; and
  - (c) the superior order was not manifestly unlawful; and
  - (d) the member has no reason to believe that circumstances have changed in a material way since the superior order was given; and
  - (e) the member has no reason to believe that the superior order was based on a mistake as to a material fact; and
  - (f) giving the order was reasonable and necessary to give effect to the superior order.

*Ministerial authorisation*

- (4) However, the member must not:
- (a) take any action mentioned in paragraph (1)(a); or
  - (b) do any of the things mentioned in paragraph (1)(b) or (c) in connection with taking that action;
- unless an authorising Minister has in writing authorised taking that action.

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*Exception*

- (5) Subsection (4) does not apply if the member believes on reasonable grounds that there is insufficient time to obtain the authorisation because a sudden and extraordinary emergency exists.

**Subdivision C—Powers that may be exercised anywhere in an offshore area**

**51SF Declaration of offshore general security area**

- (1) The authorising Ministers may, in writing, declare that a specified area is an offshore general security area for the purposes of the application of this Division and Division 4 in relation to members of the Defence Force who are being utilised in accordance with section 51D.
- (2) The area:
- (a) may be specified by reference to an area surrounding one or more vessels or aircraft, or surrounding a class of vessels or aircraft, being an area the boundaries of which change as the location of the vessels or aircraft changes; and
  - (b) may include areas within the internal waters of a State or Territory if the order under section 51AA includes the internal waters of the State or Territory.

*Statement to be made available*

- (3) If the authorising Ministers make a declaration under subsection (1), they must arrange for a statement that:
- (a) summarises the content of the order under section 51AA; and
  - (b) states that the declaration has been made; and
  - (c) describes the offshore general security area and its boundaries;
- to be:
- (d) notified to persons in the offshore general security area to the extent that this is practicable; and
  - (e) published in the *Gazette*; and
  - (f) forwarded, within 24 hours after the declaration is made, to the Presiding Officer of each House of the Parliament for tabling in that House.

- (4) However, subsection (3) does not apply if the authorising Ministers declare, in writing, that they are satisfied that the application of subsection (3) would prejudice the exercise of powers under Subdivision B by members of the Defence Force who are being utilised in accordance with section 51D.

*Houses to sit within 6 days*

- (5) Each House of the Parliament must sit within 6 days after its Presiding Officer receives the statement that is forwarded in accordance with paragraph (3)(f).

*Effect of failure to publish*

- (6) A failure to comply with subsection (3) does not make the declaration ineffective to any extent.

**51SG Authorisation to search facilities in the offshore general security area for dangerous and other things**

- (1) If, while the Defence Force is being utilised in accordance with section 51D:
- (a) the Chief of the Defence Force; or
  - (b) an officer of the Defence Force, or an officer of the Defence Force included in a class of officers, authorised by the Chief of the Defence Force for the purposes of this section;
- believes on reasonable grounds that:
- (c) there is a dangerous thing on a facility in the offshore general security area and it is necessary as a matter of urgency to make the dangerous thing safe or prevent it from being used; or
  - (d) there is another thing on a facility in the offshore general security area that is related to the threat concerned and it is necessary as a matter of urgency to seize the thing;
- he or she may give an authorisation under this section.

*What the authorisation must say*

- (2) The authorisation must:
- (a) authorise entry to, and search of, the facility; and
  - (b) describe the facility; and

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- (c) state the name, rank and service number of a member of the Defence Force (the *offshore member in charge*) who is to be in charge of the search; and
- (d) authorise the member in charge, and any other member of the Defence Force assisting the member, (the *offshore search members*) to carry out the search; and
- (e) authorise each offshore search member to seize any thing found on the facility in the course of the search that he or she believes on reasonable grounds to be a dangerous thing or a thing that is related to the threat concerned; and
- (f) state that, if any offshore search member believes on reasonable grounds that a person who is on or near the facility while the search is being carried out has a dangerous thing or a thing that is related to the threat concerned in his or her possession, the member is authorised to:
  - (i) search the person; and
  - (ii) seize any dangerous thing or other thing related to the threat concerned found in the search; and
- (g) state the time during which the authorisation remains in force, which must not be more than 24 hours.

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this subsection.

*Effect of the authorisation*

- (3) The authorisation has effect according to its terms.

*Further authorisations possible*

- (4) Paragraph (2)(g) does not prevent the issue of further authorisations in relation to the same facility.

**51SH Copy of offshore search authorisation to be given to occupier etc.**

*Right of occupier to be given copy of offshore search authorisation etc.*

- (1) If the occupier of the facility specified in the offshore search authorisation, or another person who apparently represents the



occupier, is present on the facility when the search is being carried out, the offshore member in charge must:

- (a) identify himself or herself to that person; and
- (b) give that person a copy of the offshore search authorisation.

*Right of person searched to be shown copy of offshore search authorisation*

- (2) The offshore member in charge must, before any person (other than a person who has been given a copy of the offshore search authorisation under subsection (1)) is searched in accordance with the offshore search authorisation, show the person a copy of the offshore search authorisation.

### **51SI Occupier etc. entitled to be present during search**

- (1) If the occupier of the facility specified in the offshore search authorisation, or another person who apparently represents the occupier, is present on the facility when the search is being carried out, the person is entitled to observe the search being carried out.

*Search not to be impeded*

- (2) The entitlement to observe the search being carried out ceases if the person impedes the search.

*Multiple searches*

- (3) This section does not prevent 2 or more areas of the facility being searched at the same time.

### **51SJ Search of vessel or aircraft in the offshore general security area for dangerous or other things**

- (1) If a member of the Defence Force who is being utilised in accordance with section 51D believes on reasonable grounds that a dangerous thing, or another thing that is related to the threat concerned, is in or on a vessel or aircraft in the offshore general security area, the member may:
  - (a) erect barriers or other structures for the purpose of stopping the vessel or aircraft; and

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- (b) whether or not the member does so:
  - (i) stop and detain the vessel or aircraft; and
  - (ii) search the vessel or aircraft, and any thing found in or on the vessel or aircraft, for the dangerous thing or other thing that is related to the threat concerned; and
  - (iii) seize any dangerous thing or other thing that is related to the threat concerned that the member finds in the search.

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this subsection.

- (2) If the member stops the vessel or aircraft, the member must not detain it for longer than is reasonable and necessary to search it and any thing found in or on it.
- (3) The master of the vessel, or the captain of the aircraft, is entitled to observe the search being carried out.
- (4) The entitlement to observe the search being carried out ceases if the master or captain impedes the search.
- (5) This section does not prevent 2 or more areas of the vessel or aircraft being searched at the same time.

**51SK Search of persons in the offshore general security area for dangerous and other things**

If a member of the Defence Force who is being utilised in accordance with section 51D believes on reasonable grounds that a person in the offshore general security area has a dangerous thing, or a thing that is related to the threat concerned, in the person's possession, the member may:

- (a) search the person for such a thing; and
- (b) seize any such thing found in the search.

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this section.

**Subdivision D—Powers that may be exercised only in relation to an offshore designated area in the offshore general security area**

**51SL Declaration of offshore designated area**

- (1) The authorising Ministers may, in writing, declare that a specified area, being the whole or a part of an offshore general security area, is an offshore designated area for the purposes of the application of this Division and Division 4 in relation to members of the Defence Force who are being utilised in accordance with section 51D.
- (2) The area:
  - (a) may be specified by reference to an area surrounding one or more vessels or aircraft, or surrounding a class of vessels or aircraft, being an area the boundaries of which change as the location of the vessels or aircraft changes; and
  - (b) may include areas within the internal waters of a State or Territory if the order under section 51AA includes the internal waters of the State or Territory.

*Where no longer an offshore general security area*

- (3) To avoid doubt, if the whole or part of the area later ceases to be within an offshore general security area, the whole or the part ceases to be an offshore designated area.

*Declaration to be notified*

- (4) If the authorising Ministers make a declaration under subsection (1), they must arrange for a statement that:
  - (a) states that the declaration has been made; and
  - (b) describes the offshore designated area and its boundaries;to be notified to persons in the offshore designated area to the extent that this is practicable.
- (5) However, subsection (4) does not apply if the authorising Ministers declare, in writing, that they are satisfied that the application of subsection (4) would prejudice the exercise of powers under Subdivision B by members of the Defence Force who are being utilised in accordance with section 51D.

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**51SM Control of movement in relation to an offshore designated area in the offshore general security area**

*Powers in relation to persons in charge of vessels or aircraft*

- (1) A member of the Defence Force who is being utilised in accordance with section 51D may do any one or more of the following in relation to a person who is in charge of a vessel or aircraft:
  - (a) if the vessel or aircraft is in a part of the offshore general security area that is outside an offshore designated area—direct the person not to bring the vessel or aircraft into the offshore designated area;
  - (b) direct the person to take the vessel or aircraft out of an offshore designated area;
  - (c) direct the person to take the vessel or aircraft from a place in an offshore designated area to another place in the offshore designated area;
  - (d) direct the person not to take the vessel or aircraft from a place in an offshore designated area to any other place, or to a specified place, in the offshore designated area;
  - (e) compel the person to comply with a direction under any of the above paragraphs.

*Erection of barriers etc.*

- (2) A member of the Defence Force may erect barriers or other structures at the boundary of, or in, an offshore designated area for the purpose of stopping persons from bringing a vessel or aircraft into the offshore designated area or to a place in the offshore designated area.

*No person in charge of vessel*

- (3) If there is no person in charge of a vessel or aircraft that is in an offshore designated area, a member of the Defence Force may do such things as are reasonable and necessary for either of the following purposes:
  - (a) to take the vessel or aircraft to a place in the offshore general security area that is outside the offshore designated area;

- (b) to take the vessel or aircraft to another place in the offshore designated area.

*Powers in relation to persons generally*

- (4) A member of the Defence Force may do any one or more of the following in relation to a person (whether or not in charge of a vessel or aircraft):
  - (a) if the person is in the offshore general security area but outside an offshore designated area—direct the person not to enter the offshore designated area;
  - (b) direct the person to leave an offshore designated area;
  - (c) direct the person to move from a place in an offshore designated area to another place in the offshore designated area;
  - (d) compel the person to comply with a direction under any of the above paragraphs.

*Powers to carry out consent searches*

- (5) The power of a member under paragraph (1)(a) or (4)(a) to direct a person:
  - (a) not to bring a vessel or aircraft into an offshore designated area; or
  - (b) not to enter an offshore designated area;includes:
  - (c) the power to direct a person not to do either of those things unless the person agrees to a member searching:
    - (i) in either case—the person; and
    - (ii) in a paragraph (a) case—the vessel or aircraft and any thing on the vessel or aircraft;for dangerous things or other things related to the threat concerned; and
  - (d) if the person agrees, the power to conduct such a search and to seize any such thing that the member finds in the search.

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this subsection.

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*Powers to board vessel or aircraft to give directions*

- (6) A member of the Defence Force may board any vessel or aircraft for the purpose of giving a direction under any provision of this section.

**51SN Members to wear uniforms and identification when exercising powers**

- (1) While any member of the Defence Force is exercising powers under this Division, or under Division 4 in its operation in relation to this Division, he or she must at all times:
- (a) wear his or her uniform; and
  - (b) for the purposes of identification, have:
    - (i) his or her surname; or
    - (ii) his or her numbers or a combination of numbers and letters of the alphabet;on or attached to the front of his or her uniform.

Penalty: 30 penalty units.

*Situation where no offence committed*

- (2) A member who contravenes paragraph (1)(b) is not guilty of an offence if the contravention occurs because of an act of another person (not being a member) done without the consent of the member.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

*Members to be given means to comply with obligations*

- (3) The Chief of the Defence Force must take such steps as are reasonable and necessary to ensure that members do not contravene subsection (1).

*Geographical application*

- (4) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1).

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## **Subdivision E—Other powers**

### **51SO Power to require person to answer questions or produce documents**

- (1) A member of the Defence Force who is being utilised in accordance with section 51D may, in connection with the exercise of any power under this Division, require a person to answer a question put by the member or to produce a particular document to the member.
- (2) However, the member may do so only if the member believes on reasonable grounds that it is necessary for the purpose of preserving the life or safety of other persons or to protect Commonwealth interests against the threat concerned.
- (3) A person commits an offence if:
  - (a) the person is required to answer a question or produce a document under this section; and
  - (b) the person fails to comply with the requirement.

Penalty: 30 penalty units.

#### *Self-incrimination*

- (4) A person is not excused from answering a question or producing a document under this section on the ground that the answer to the question, or the production of the document, may tend to incriminate the person or make the person liable to a penalty.
- (5) However:
  - (a) the answer given or document produced; or
  - (b) answering the question or producing the document; or
  - (c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document;is not admissible in evidence against the person in criminal proceedings other than:
  - (d) proceedings for an offence against subsection (3); or
  - (e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (about false or misleading information or documents) that relates to this section.

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**51SP Power to require person to operate facility, vessel or aircraft or machinery or equipment**

- (1) A member of the Defence Force who is being utilised in accordance with section 51D may, in connection with the exercise of any power under this Division, require a person to operate a facility, vessel or aircraft, or machinery or equipment on a facility, vessel or aircraft, in a particular manner.
- (2) However, the member may do so only if the member believes on reasonable grounds that it is necessary for the purpose of preserving the life or safety of other persons or to protect Commonwealth interests against the threat concerned.
- (3) A person commits an offence if:
  - (a) the person is required to operate a facility, vessel or aircraft, or machinery or equipment on a facility, vessel or aircraft, in a particular manner under this section; and
  - (b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

**51SQ Geographical jurisdiction for offences**

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against section 51SO or 51SP.



## **Division 3B—Powers relating to aircraft**

### **51SR Application of this Division and Division 4**

If an order states in accordance with paragraph 51A(4)(c), 51AB(4)(c), 51B(3)(c) or 51C(3)(c) that this Division and Division 4 apply in relation to the order, the following provisions of this Division, and the provisions of Division 4, apply.

### **51SS Geographical application**

This Division and Division 4 (in its operation in relation to this Division) extend to the Australian offshore area.

### **51ST Special powers of members of the Defence Force**

#### *Taking measures against aircraft*

- (1) A member of the Defence Force who is being utilised in accordance with section 51D may, under the command of the Chief of the Defence Force:
  - (a) take measures (including the use of force) against an aircraft, up to and including destroying the aircraft; or
  - (b) give an order relating to the taking of such measures; whether or not the aircraft is airborne.
- (2) Paragraph (1)(a) does not apply to the taking of measures unless:
  - (a) the member of the Defence Force takes the measures under, or under the authority of, an order of a superior; and
  - (b) the member was under a legal obligation to obey the order; and
  - (c) the order was not manifestly unlawful; and
  - (d) the member has no reason to believe that circumstances have changed in a material way since the order was given; and
  - (e) the member has no reason to believe that the order was based on a mistake as to a material fact; and
  - (f) taking the measures was reasonable and necessary to give effect to the order.
- (3) Paragraph (1)(b) does not apply to giving an order unless:

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- (a) the member of the Defence Force gives the order under, or under the authority of, an order (a *superior order*) of a superior; and
- (b) the member was under a legal obligation to obey the superior order; and
- (c) the superior order was not manifestly unlawful; and
- (d) the member has no reason to believe that circumstances have changed in a material way since the superior order was given; and
- (e) the member has no reason to believe that the superior order was based on a mistake as to a material fact; and
- (f) giving the order was reasonable and necessary to give effect to the superior order.

*Ministerial authorisation*

- (4) However, the member must not take measures against an aircraft, or give an order of a kind mentioned in paragraph (1)(b) in connection with an aircraft, unless an authorising Minister has in writing authorised the taking of measures against the aircraft.

*Exception*

- (5) Subsection (4) does not apply if:
  - (a) the member believes on reasonable grounds that there is insufficient time to obtain the authorisation because a sudden and extraordinary emergency exists; or
  - (b) the measures are taken in specified circumstances that an authorising Minister has authorised under subsection (6).
- (6) An authorising Minister may in writing authorise the taking of measures against an aircraft in specified circumstances if this Division applies because an order states in accordance with paragraph 51AB(4)(c) that this Division and Division 4 apply in relation to the order.

*Authorising Minister must be satisfied of reasonableness and necessity*

- (7) An authorising Minister must not authorise the taking of measures against an aircraft unless the Minister is satisfied that:

- (a) in the case of an authorisation under subsection (4)—taking action against the aircraft is reasonable and necessary; or
- (b) in the case of an authorisation under subsection (6)—taking action against the aircraft would be reasonable and necessary if the specified circumstances in question were to arise.

*International obligations*

- (8) An authorising Minister must, in giving an authorisation under this section, have regard to Australia's international obligations.

## **Division 4—Provisions common to Divisions 2 to 3B**

### **Subdivision A—Use of reasonable and necessary force**

#### **51T Use of reasonable and necessary force**

(1) A member of the Defence Force may, in exercising any power under Division 2, 2A, 3, 3A or 3B or this Division, use such force against persons and things as is reasonable and necessary in the circumstances.

(1A) However, subsection (1) does not apply to the powers under Subdivision E of Division 3A.

(1B) To avoid doubt, any use of force by a member of the Defence Force under this Part must be in accordance with this section.

#### *Further restrictions on use of force*

(2) Despite subsection (1), in exercising powers under Division 2, 3 or 3A (other than subparagraph 51SE(1)(a)(i) or (ii)) or this Division, a member of the Defence Force must not, in using force against a person:

(a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the member believes on reasonable grounds that doing that thing is necessary to protect the life of, or to prevent serious injury to, another person (including the member); or

(b) subject the person to greater indignity than is reasonable and necessary in the circumstances.

(2A) Despite subsection (1), in exercising powers under Division 2A, a member of the Defence Force must not, in using force against a person:

(a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the member believes on reasonable grounds that doing that thing is necessary to:

(i) protect the life of, or to prevent serious injury to, another person (including the member); or

- (ii) protect, against the threat concerned, the designated critical infrastructure in respect of which the powers are being exercised; or
  - (b) subject the person to greater indignity than is reasonable and necessary in the circumstances.
- (2B) Despite subsection (1), in exercising powers under subparagraph 51SE(1)(a)(i) or (ii) or Division 3B, a member of the Defence Force must not, in using force against a person or thing, do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the member believes on reasonable grounds that:
- (a) doing that thing is necessary to protect the life of, or to prevent serious injury to, another person (including the member); or
  - (b) doing that thing is necessary to protect designated critical infrastructure against a threat of damage or disruption to its operation; or
  - (c) doing that thing is necessary and reasonable to give effect to the order under which, or under the authority of which, the member is acting.
- (3) In addition, if a person is attempting to escape being detained by fleeing, a member of the Defence Force must not do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the person has, if practicable, been called on to surrender and the member believes on reasonable grounds that the person cannot be apprehended in any other manner.

### **51U Persons to be informed of offence if detained**

- (1) A member of the Defence Force who, in accordance with subparagraph 51I(1)(b)(ii), 51IB(b)(i) or 51SE(1)(b)(ii) or paragraph 51V(e), detains a person must inform the person, at the time the person is detained, of the offence mentioned in that provision.
- (2) It is sufficient if the person is informed of the substance of the offence, and it is not necessary that this be done in language of a precise or technical nature.

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- (3) Subsection (1) does not apply to the detention of a person if:
- (a) the person should, in the circumstances, know the substance of the offence; or
  - (b) the person's actions make it impracticable for the member to inform the person of the offence.

**Subdivision B—Action to be taken if things are seized**

**51V Action to be taken if things are seized**

If a member of the Defence Force seizes a thing under Division 2, 2A, 3 or 3A, the member:

- (a) may take such action as is reasonable and necessary to make the thing safe or prevent it being used; and
- (b) if the member seized the thing from a person—must, if it is practicable to do so, give the person a receipt for the thing; and
- (c) if the member believes on reasonable grounds that the thing has been used or otherwise involved in the commission of an offence against a law of the Commonwealth, a State or a Territory—must give the thing to a member of a police force at the earliest practicable time; and
- (d) if paragraph (c) does not apply—must:
  - (i) if the member seized the thing from a person and it is practicable to do so—return the thing to the person; or
  - (ii) if not, give it to a member of a police force; and
- (e) if:
  - (i) the member seized the thing from a person; and
  - (ii) the member believes on reasonable grounds that the person used the thing in the commission of an offence against a law of the Commonwealth, a State or a Territory;

may detain the person for the purpose of placing him or her in the custody of a member of a police force at the earliest practicable time.

**Subdivision C—Members not entitled to exercise powers if obligations not complied with**

**51W Members not entitled to exercise powers if obligations not complied with**

If, before, during or after exercising a power under Division 2, 2A, 3, 3A or 3B or this Division, a member of the Defence Force fails to comply with any obligation imposed under any of those Divisions that relates to the exercise of the power, the member is not, or is taken not to have been, entitled to exercise the power.

## **Division 4A—Applicable criminal law**

### **51WA Applicable criminal law**

- (1) The substantive criminal law of the Jervis Bay Territory, as in force from time to time, applies in relation to a criminal act of a member of the Defence Force that is done, or purported to be done, under this Part.
- (2) The substantive criminal law of the States and the other Territories, as in force from time to time, does not apply in relation to a criminal act of a member of the Defence Force that is done, or purported to be done, under this Part.
- (3) To avoid doubt, Chapter 2 of the *Criminal Code* does not apply to an act done, or purported to be done, under this Part that is a criminal act (except to the extent that it constitutes an offence against the law of the Commonwealth).
- (4) To avoid doubt, the functions of the Director of Public Prosecutions under section 6 of the *Director of Public Prosecutions Act 1983* in relation to the law of the Jervis Bay Territory as applied by subsection (1) are exclusive of the corresponding functions of any officer of a State or Territory, in relation to the law of the Jervis Bay Territory as so applied, under a law corresponding to that Act.

Note: It is not intended that this section or Act restrict or limit the power of State or Territory police to investigate any criminal acts done, or purported to be done, by Defence Force members when operating under Part IIIAAA of this Act.

### **51WB Defence of superior orders in certain circumstances**

- (1) Subject to subsection (2), the fact that a criminal act was done, or purported to be done, by a member of the Defence Force under this Part under an order of a superior does not relieve the member of criminal responsibility.
- (2) It is a defence to a criminal act done, or purported to be done, by a member of the Defence Force under this Part that:
  - (a) the criminal act was done by the member under an order of a superior; and



- (b) the member was under a legal obligation to obey the order;  
and
  - (c) the order was not manifestly unlawful; and
  - (d) the member had no reason to believe that circumstances had changed in a material respect since the order was given; and
  - (e) the member had no reason to believe that the order was based on a mistake as to a material fact; and
  - (f) the action taken was reasonable and necessary to give effect to the order.
- (3) Subsection (2) does not limit the defences that may be available to the person.

## **Division 5—Miscellaneous**

### **51X Publication of order and report**

#### *Single order*

- (1) If:
- (a) an order under Division 1 ceases to be in force; and
  - (b) the order is not one of 2 or more orders to which subsection (2) applies;
- the Minister must arrange for presentation to the Parliament in accordance with subsection (3) of:
- (c) a copy of:
    - (i) the order; and
    - (ii) any declarations of general security areas or designated areas, or of offshore general security areas or offshore designated areas, under the order; and
  - (d) a report on any utilisation of the Defence Force that occurred under the order.

#### *Successive orders*

- (2) If 2 or more orders under Division 1 about the same or related circumstances come into force in succession, without any intervening period when no such order is in force, the Minister must arrange for presentation to the Parliament in accordance with subsection (3) of:
- (a) a copy of:
    - (i) all of the orders; and
    - (ii) any declarations of general security areas or designated areas, or of offshore general security areas or offshore designated areas, under the orders; and
  - (b) a report on any utilisation of the Defence Force that occurred under the orders.

#### *Reporting to Parliament*

- (3) For the purposes of subsection (1) or (2), presentation to the Parliament of the copy and report is in accordance with this

subsection if the copy and report are forwarded to the Presiding Officer of each House:

- (a) if that House sits before the end of 7 days after the order mentioned in subsection (1) or the last of the orders mentioned in subsection (2) ceases to be in force—for tabling in that House before the end of that 7 days; or
- (b) if not—before the end of that 7 days for distribution to all Senators or Members of the House of Representatives, as the case may be.

*Effect of revocation*

- (5) To avoid doubt, a reference to an order ceasing to be in force includes a reference to an order ceasing to be in force because it is revoked.

## **51XA Review of operation of Part**

*Independent review where first orders made*

- (1) If:
  - (a) before the end of 3 years after the commencement of this Part:
    - (i) an order under Division 1 ceases to be in force, where the order is not one of 2 or more orders to which subparagraph (ii) applies; or
    - (ii) 2 or more orders under Division 1 cease to be in force, where the orders were about the same or related circumstances and came into force in succession, without any intervening period when no such order was in force; and
  - (b) no order under Division 1 had previously been made;the Minister must, subject to subsection (2), before the end of 6 months after the order mentioned in subparagraph (a)(i), or the last of the orders mentioned in subparagraph (a)(ii), ceases to be in force, arrange for the carrying out of an independent review (see subsection (6)) of the operation of this Part in relation to the order or orders.

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*Independent review not required if Parliamentary committee report*

- (2) Subsection (1) does not apply if a committee of one or both of the Houses of the Parliament has already presented a report to that House or both of the Houses, as the case may be, about the operation of this Part in relation to the order or orders.

*Independent review where no orders made*

- (3) If no order under Division 1 ceases to be in force before the end of 3 years after the commencement of this Part, the Minister must, subject to subsection (4), as soon as practicable after those 3 years, arrange for the carrying out of an independent review of the operation of this Part during those 3 years.

*Independent review not required if Parliamentary committee report*

- (4) Subsection (3) does not apply if a committee of one or both of the Houses of the Parliament has already presented a report to that House or those Houses, as the case may be, about the operation of this Part during those 3 years.

*Tabling of report of independent review*

- (5) The Minister must arrange for a copy of the report of any independent review under subsection (1) or (3) to be tabled in each House of the Parliament within 5 sitting days of that House after the Minister is given the report.

*Meaning of “independent review”*

- (6) In this section:

***independent review*** means a review, and report to the Minister, by 2 or more persons who:

- (a) in the Minister’s opinion, possess appropriate qualifications to carry out the review; and  
(b) include at least one person who:  
(i) is not employed by the Commonwealth or a Commonwealth authority; and

- (ii) has not, since the commencement of this Part, provided services to the Commonwealth or a Commonwealth authority under or in connection with a contract.

**51XB Instruments that are not legislative instruments**

An order, authorisation or declaration made under this Part is not a legislative instrument.

**51Y Part additional to other Defence Force utilisation and powers**

This Part does not affect any utilisation of the Defence Force that would be permitted or required, or any powers that the Defence Force would have, if this Part were disregarded.

## Part IIIAA—Superannuation benefit

### 52 Determination of benefit

- (1) The Minister may, by legislative instrument, make determinations for the purpose of providing a superannuation benefit in respect of:
  - (a) service on and after 1 January 1988 by members of the Permanent Forces; and
  - (b) continuous full time naval, military or air force service on and after that day by members of the Reserves.
- (2) A determination:
  - (a) shall not be inconsistent with this Act, the *Naval Defence Act 1910* or the *Air Force Act 1923*; and
  - (b) shall not be expressed to take effect from a day before 1 January 1988.
- (3) In making determinations, the Minister shall have regard to:
  - (a) principle 3 of the wage fixing principles adopted by the Conciliation and Arbitration Commission in its national wage case decision of 23 September 1983, as modified by its national wage case decision of 26 June 1986;
  - (b) the provisions of the *Superannuation (Productivity Benefit) Act 1988*; and
  - (c) matters relating to the terms and conditions of service of members of the Defence Force and the arrangements for the administration of the Defence Force.
- (3A) The Minister may not make a determination that would have the effect that the Commonwealth, as employer, would have an individual superannuation guarantee shortfall for a member referred to in subsection (1) for any quarter under the *Superannuation Guarantee (Administration) Act 1992*.
- (4) Determinations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.
- (4A) Paragraph 14(1)(a) of the *Legislative Instruments Act 2003* applies as if the reference to disallowable legislative instruments included

a reference to instruments made under section 58B or 58H of the *Defence Act 1903*.

- (5) Determinations may make provision for, and in relation to, reducing a superannuation benefit under the determinations in a case where a person becomes entitled to benefits under the *Military Superannuation and Benefits Act 1991* in circumstances mentioned in subparagraph 5A(1)(b)(i) of that Act.

Note: Section 5A of the *Military Superannuation and Benefits Act 1991* provides for superannuation benefits for a non-member spouse in respect of splitting agreements and splitting orders under the *Family Law Act 1975*.

- (6) Reductions referred to in subsection (5) are to be disregarded in applying subsection (3A).

### **53 Trustee of scheme providing superannuation benefit**

For the purposes of the definition of *trustee* in section 43 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*, the Authority established under section 8 of the *Defence Force Retirement and Death Benefits Act 1973* is taken to be the person who manages the scheme constituted by the Defence Force (Superannuation) (Productivity Benefit) Determination made under section 52 of the *Defence Act 1903*.

Note: The definitions of *public sector superannuation scheme*, *superannuation fund* and *trustee* in section 43 of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* are relevant to this section.

## Part IIIA—Remuneration, allowances and other benefits

### Division 1—Determinations by the Minister

#### 58A Interpretation

In this Division, unless the contrary intention appears:

*cadet* means an officer, instructor or cadet in the Australian Army Cadets, the Australian Navy Cadets or the Australian Air Force Cadets, and includes a person who has ceased to be such an officer, instructor or cadet, whether by reason of death or otherwise.

*determination* means a determination made under section 58B.

*member* includes a person who has ceased to be a member, whether by reason of death or otherwise.

*member of the family* includes:

- (a) in relation to a member—a member of the household of the member and a dependant of the member; or
- (b) in relation to a cadet—a member of the household of the cadet and a dependant of the cadet.

*remuneration* means remuneration by way of salary, pay, allowances or otherwise.

#### 58B Minister may make determinations

- (1) The Minister may, by instrument in writing, make determinations, not inconsistent with this Act, the *Naval Defence Act 1910* or the *Air Force Act 1923*, providing for and in relation to:
  - (a) the remuneration of members or cadets; and
  - (b) the payment of allowances or other pecuniary benefits (except allowances or benefits by way of remuneration) to or for members or cadets, including the payment of additional compensation to members of the Reserves to whom compensation is payable under the *Safety, Rehabilitation and Compensation Act 1988*; and



- (c) the payment of allowances or other pecuniary benefits to or in respect of members of the families of members or cadets; and
  - (d) leave of absence and long service leave of members; and
  - (e) the provision of other benefits to or in respect of members or cadets, or to or in respect of members of the families of members or cadets; and
  - (f) the payment of allowances and expenses to or in respect of, and the provision of travelling facilities for, applicants for appointment or engagement as members in respect of attendance at an enlistment centre of the Defence Force or attendance for interview or examination; and
  - (g) deductions from the remuneration of a member or cadet or from allowances or other pecuniary benefits referred to in paragraphs (b) and (c); and
  - (ga) payments, by way of compensation, incentives or other benefits, to:
    - (i) members of the Reserves; or
    - (ii) their dependants; or
    - (iii) their employers, business or professional partners or other associates; or
    - (iv) other persons;in relation to the availability of the members for defence service, or for losses incurred or inconvenience suffered because of the members' absence on defence service (including losses incurred or inconvenience suffered because of the operation of the *Defence Reserve Service (Protection) Act 2001*); and
  - (h) the meanings to be attributed to words and expressions used in existing determinations and future determinations made under this section, and the circumstances in which those meanings are to apply.
- (1AA) Expressions used in paragraph (1)(ga) that are defined in the *Defence Reserve Service (Protection) Act 2001* have the same meaning as in that Act.
- (1A) Paragraph 46AA(1)(a) of the *Acts Interpretation Act 1901* applies, in relation to a determination, as if the reference in that paragraph to disallowable legislative instruments also included a reference to:

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- (a) determinations made under section 58B or 58H of the *Defence Act 1903*; and
- (b) determinations made under section 24 of the *Public Service Act 1999*.

Note: Section 46AA of the *Acts Interpretation Act 1901* deals with prescribing matters by reference to other instruments.

- (1B) A determination under this section may provide that, where an amount has been paid (whether before or after the commencement of this subsection) to a member or cadet or to a member of the family of a member or cadet under the regulations or under a determination made under this section or under Division 2, the member or cadet or the member of the family of the member or cadet is required to pay to the Commonwealth an amount, not exceeding the first-mentioned amount, upon the occurrence of an event specified in the determination, and may provide for the manner of recovery of such an amount.
- (2) Subsection (1) does not authorize the making of a determination providing for or in relation to the payment to or in respect of a member, or to or in respect of a member of the family of a member, of a benefit in the nature of a pension.
- (3) A determination shall not be made providing for or in relation to the forfeiture or assignment of the whole or part of:
  - (a) the remuneration of a member or cadet; or
  - (b) allowances or other pecuniary benefits referred to in paragraph (1)(b) or (c).
- (4) A determination is a disallowable instrument for the purposes of section 46B of the *Acts Interpretation Act 1901*. However:
  - (a) subsections (5) to (5C) of this section apply to a determination instead of subsections 46B(5) to (8) of that Act; and
  - (b) paragraph 46B(2)(d) and subsection 46B(3) of that Act have effect in relation to a determination as if references to subsection (5) of section 46B were instead references to subsection (5) of this section.
- (5) A determination must be notified in the *Gazette* and, if the determination is not so notified by being published in full in the *Gazette*, a notice in the *Gazette* of the determination's having been

made, and of the website on which it is available, is sufficient compliance with that requirement.

- (5A) If a notice of the making of a determination is published in accordance with subsection (5), the determination must, at the time of publication of the notice or as soon as practicable thereafter, be made available on the website specified in the notice.
- (5B) If, on the day of publication of a notice referred to in subsection (5), the determination to which the notice relates is not available on the website specified in the notice, the Minister must cause to be laid before each House of the Parliament, within 15 sitting days of that House after that day, a statement that the determination was not so available and the reason why it was not so available.
- (5C) Failure to comply with a requirement of subsection (5A) or (5B) in relation to a determination does not constitute a failure to comply with subsection (5).
- (6) The determinations made in each secular year (including determinations amending or revoking other determinations) shall be numbered in regular arithmetic series, beginning with the number 1, as nearly as possible in the order in which they are made.
- (7) A determination may, without prejudice to any other manner of citation, be cited by reference to its number and the secular year in which it was made.
- (9) In this section, a reference to this Act does not include a reference to the regulations.

### **58E Delegation**

The regulations may make provision for and in relation to the delegation by the Minister of his power to make determinations with respect to such of the matters with respect to which determinations may be made as are specified in the regulations.

## Division 2—The Defence Force Remuneration Tribunal

### 58F Interpretation

In this Division, unless the contrary intention appears:

**Commission** means the Australian Industrial Relations Commission established by section 8 of the *Workplace Relations Act 1996*.

**Defence Force Advocate** means the Defence Force Advocate appointed under section 58S.

**Fair Work Australia** means the body established by section 575 of the *Fair Work Act 2009*.

**FWA** means Fair Work Australia.

**member of the Tribunal** means a member of the Tribunal appointed under section 58G, and includes the President.

**President** means the President of the Tribunal appointed under section 58G.

**relevant allowances**, in relation to a member, means allowances by way of remuneration payable to the member and, without limiting the generality of the foregoing, includes any allowance payable to the member:

- (a) in respect of the service of the member on a ship or aircraft;
- (b) as general compensation for the disadvantages of rendering naval, military or air force service;
- (c) in respect of particular skills or qualifications possessed by the member; or
- (d) as compensation for the hazardous nature of the duties that the member is required to perform or for the conditions under which the member is required to perform his or her duties.

**Remuneration Tribunal** means the Remuneration Tribunal established by subsection 4(1) of the *Remuneration Tribunal Act 1973*.

*salary* includes pay.

*single member* means a member of the Tribunal specified in a direction made under subsection 58KA(1).

*Tribunal* means the Defence Force Remuneration Tribunal established by section 58G.

### **58G Establishment of Defence Force Remuneration Tribunal**

- (1) There is established by this section a Defence Force Remuneration Tribunal.
  - (2) The Tribunal shall consist of:
    - (a) a President;
    - (b) a person who is experienced in industrial relations matters; and
    - (c) a person who was, but is no longer, a member of the Permanent Forces (although the person may be a member of the Reserves).
- Note: The Permanent Forces are made up of the Permanent Navy, the Regular Army and the Permanent Air Force which are established respectively by the *Naval Defence Act 1910*, this Act and the *Air Force Act 1923*. Those Acts also establish the Naval Reserve, the Army Reserve and the Air Force Reserve, which together make up the Reserves.
- (3) The members of the Tribunal shall be appointed by the Governor-General on a part-time basis.
  - (4) The person appointed as President shall be a Deputy President of FWA.
  - (5) A person must not be appointed as a member of the Tribunal if he or she has, at any time during the year preceding the appointment, been a member of the Permanent Forces.
  - (6) The performance of the duties and functions and the exercise of the powers of the Tribunal are not affected by reason only of there being one vacancy in the membership of the Tribunal.

**58H Functions and powers of Tribunal**

- (1) The functions of the Tribunal are to inquire into and determine, in accordance with this section, the matters referred to in subsection (2).
- (2) The Tribunal shall, as provided for by this section:
  - (a) inquire into and determine the salaries and relevant allowances to be paid to members; and
  - (b) inquire into and make determinations in respect of prescribed matters that have been referred to the Tribunal.
- (3) The Minister or, subject to subsection (4), the Secretary or the Chief of the Defence Force may, by notice in writing given to the President, refer a prescribed matter to the Tribunal.
- (4) The Secretary or the Chief of the Defence Force shall not, without the approval in writing of the Minister, refer a prescribed matter to the Tribunal pursuant to subsection (3) if:
  - (a) at any time during the preceding 12 months, the Minister has made a determination under section 58B that relates, in whole or in part, to that matter; or
  - (b) the Secretary or the Chief of the Defence Force is aware that, at any time during the preceding 12 months, submissions have been made to the Minister requesting the Minister to make a determination that relates, in whole or in part, to that matter and the Minister has not made such a determination.
- (5) The Tribunal shall, within 2 years of the commencement of this section or within such shorter period as the Minister, by notice in writing given to the President, determines, inquire into and make a determination in respect of the salaries and relevant allowances to be paid to members.
- (6) Where a determination of the Tribunal in respect of the salaries and relevant allowances to be paid to members is in force, the Tribunal shall inquire into and make a further determination in respect of those salaries and allowances:
  - (a) within 2 years of the first-mentioned determination taking effect; or
  - (b) if the Minister, by notice in writing given to the President, requests the Tribunal to make a further determination in respect of those salaries and allowances within a shorter

period of the first-mentioned determination taking effect—  
within that shorter period.

- (7) A determination of the Tribunal shall be in writing and shall take effect, or shall be deemed to have taken effect, on such day as the Tribunal specifies for the purpose in the determination.
  - (8) The Tribunal shall not specify as the day on which a determination of the Tribunal takes effect a day earlier than the day on which the determination is made in any case where, if the determination so took effect:
    - (a) the rights of a person (other than the Commonwealth) which existed immediately before the last-mentioned day would be affected in a manner prejudicial to that person; or
    - (b) liabilities would be imposed on a person (other than the Commonwealth) in respect of anything done or omitted to be done before that last-mentioned day;and where, in a determination of the Tribunal, any provision is made in contravention of this subsection, that provision shall be of no effect.
  - (9) The President shall give a copy of each determination made by the Tribunal to the Minister, to the Secretary and to the Chief of the Defence Force.
  - (10) Where the Tribunal has made a determination (not being a determination made pursuant to subsection (12)), the Minister, the Secretary or the Chief of the Defence Force may, by notice in writing given to the President within 28 days of the determination being made, request the Tribunal to reconsider the determination.
  - (11) A notice of request under subsection (10) shall set out the grounds on which the reconsideration is being sought.
  - (12) As soon as practicable after a request is made under subsection (10) for reconsideration of a determination, the Tribunal shall reconsider the determination and shall make a further determination affirming, varying or replacing the first-mentioned determination.
  - (13) The Minister shall cause a copy of each determination of the Tribunal to be laid before each House of the Parliament within 15 sitting days of that House after the determination is received by the Minister.
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- (14) Any regulation made under this Act, the *Air Force Act 1923* or the *Naval Defence Act 1910*, and any determination made under section 58B of this Act, has no effect to the extent that it is inconsistent with any determination of the Tribunal.
- (15) In this section, **prescribed matter** means a matter in relation to which the Minister may make determinations under section 58B, not being a matter referred to in paragraph (2)(a).

**58HA Hearings in relation to discriminatory determinations**

- (1) If a determination is referred to the Tribunal under section 46PY of the *Australian Human Rights Commission Act 1986*, the Tribunal must hold a hearing to review the determination.
- (2) Unless the hearing takes place before a single member of the Tribunal, subsections 58K(1) to (6) apply to the hearing as if it were a meeting of the Tribunal.
- (3) The Tribunal must decide whether or not the hearing is to be held in public.
- (4) If the Tribunal decides that the hearing is not to be held in public, then, subject to subsection (5) and subsections 58K(9) and 58KB(5), the Tribunal may decide the people who may be present.
- (5) The Sex Discrimination Commissioner is entitled to notice of, and to be present at, the hearing and may make submissions to the Tribunal.
- (6) In this section:

**determination** includes a variation to a determination.

**Tribunal** includes a single member conducting the Tribunal's business under a direction under subsection 58KA(1).

**58HB Review of discriminatory determinations**

- (1) If:
  - (a) a determination has been referred to the Tribunal under section 46PY of the *Australian Human Rights Commission Act 1986*; and



- (b) the Tribunal considers that the determination is a discriminatory determination;  
the Tribunal must take the necessary action to remove the discrimination, by setting aside the determination, setting aside terms of the determination or varying the determination.
- (2) In this section:
- determination** has the same meaning as in section 58HA.
- discriminatory determination** means a determination that:
- (a) has been referred to the Tribunal under section 46PY of the *Australian Human Rights Commission Act 1986*; and
  - (b) requires a person to do an act that would be unlawful under Part II of the *Sex Discrimination Act 1984* except for the fact that the act would be done in direct compliance with the determination.
- Tribunal** has the same meaning as in section 58HA.
- (3) For the purposes of the definition of **discriminatory determination** in subsection (2), the fact that an act is done in direct compliance with the determination does not of itself mean that the act is reasonable.

### **58J Reports by Tribunal**

- (1) The Minister may, by notice in writing given to the President, request the Tribunal to inquire into and report to the Minister on a matter specified in the notice, being a matter in relation to which the Tribunal may make a determination pursuant to section 58H.
- (2) When a request is made under subsection (1), the Tribunal shall inquire into the matter concerned and give to the Minister a report in writing on that matter.

### **58K Procedure of Tribunal**

- (1) The President shall convene such meetings of the Tribunal as he or she considers necessary for the efficient performance of its functions.
- (2) Meetings of the Tribunal shall be held at such places as the President determines.

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- (3) The President shall preside at all meetings of the Tribunal at which he or she is present.
- (4) If the President is not present at a meeting of the Tribunal, another member of the Tribunal nominated by the President shall preside at the meeting.
- (5) The Tribunal shall keep records of its meetings.
- (6) At a meeting of the Tribunal:
  - (a) 2 members of the Tribunal constitute a quorum;
  - (b) all questions shall be decided by a majority of votes of the members of the Tribunal present and voting; and
  - (c) the member of the Tribunal presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.
- (7) The Tribunal shall, in making a determination, have regard to:
  - (a) any decision of, or principles established by, FWA that is or are relevant to the making of the determination; or
  - (b) if FWA has not yet made any such decision or established any such principles, any decision of, or principles established by, the Commission that is or are relevant to the making of the determination.
- (8) In the performance of the functions of the Tribunal:
  - (a) the Tribunal may regulate the conduct of its proceedings as it thinks fit and is not bound to act in a formal manner; and
  - (b) the Tribunal may inform itself on any matter in such manner as it thinks fit and is not bound by the rules of evidence.
- (9) The Defence Force Advocate and a person representing the Commonwealth are entitled to be present, and to make submissions to the Tribunal, during any proceedings before the Tribunal.
- (10) Where the Tribunal thinks that a person or body should be heard in relation to a matter that is being, or is to be, considered by the Tribunal, the Tribunal may permit the person or body to be present, and to make submissions to the Tribunal, during proceedings before the Tribunal in relation to that matter.

**58KA Single member may conduct Tribunal's business**

- (1) Subject to subsection (2), the President may:
  - (a) if a person referred to in subsection 58K(9) requests the President to do so and the President considers it appropriate; or
  - (b) in any case, on the Chairman's initiative; direct, in writing, that a member of the Tribunal specified in the direction is to conduct the Tribunal's business in relation to any matter that is specified in the direction, being a matter that is being, or is to be, dealt with by the Tribunal.
- (2) The President must not, in a direction made under subsection (1), direct that a single member is to deal with a request made under subsection 58KC(1).
- (3) The President may, at any time, in writing, terminate a direction made under subsection (1).
- (4) Where a single member is conducting the Tribunal's business in relation to a matter:
  - (a) the single member may exercise any powers or perform any functions of the Tribunal in relation to that matter; and
  - (b) any act of the single member in relation to that matter is taken to be an act of the Tribunal.
- (5) In this section, a reference to a matter that is being, or is to be, dealt with by the Tribunal includes a reference to any part of such a matter.

**58KB Procedure where single member is conducting Tribunal's business**

- (1) Where a single member is conducting the Tribunal's business:
  - (a) section 58K does not apply to the single member's conduct of such business; and
  - (b) the following provisions apply.
- (2) The single member may conduct such proceedings relating to the matter to which the direction relates as he or she considers necessary.

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- (3) In the conduct of the Tribunal's business:
  - (a) the single member is not bound to act in a formal manner; and
  - (b) the single member may inform himself or herself on any matter in such manner as he or she thinks fit and is not bound by the rules of evidence.
- (4) The single member must, in making a determination, have regard to:
  - (a) any decision of, or principles established by, FWA that is or are relevant to the making of the determination; or
  - (b) if FWA has not yet made any such decision or established any such principles, any decision of, or principles established by, the Commission that is or are relevant to the making of the determination.
- (5) The Defence Force Advocate and a person representing the Commonwealth are entitled to be present, and to make submissions to the single member, during any proceedings conducted by the single member.
- (6) Where the single member thinks that a person or body should be heard in relation to a matter that is being, or is to be, considered by him or her, the single member may permit the person or body to be present, and to make submissions to the single member, during proceedings conducted by the single member in relation to that matter.

**58KC Review of action etc. of single member**

- (1) Where:
  - (a) a single member is conducting the Tribunal's business in relation to a matter; and
  - (b) in dealing with the matter, the single member exercises a power or performs a function of the Tribunal;the Minister, the Secretary or the Chief of the Defence Force may, by notice in writing given to the President within 28 days after the single member has completed his or her conduct of that business, request the Tribunal to reconsider the exercise of the power or performance of the function.

- (2) The notice must specify the exercise of the power or the performance of the function requested to be reconsidered and the grounds for seeking the reconsideration.
- (3) As soon as practicable after the request is made, the Tribunal must:
  - (a) reconsider the exercise of the power or performance of the function specified in the request; and
  - (b) make a determination affirming, varying or replacing anything done by the single member in exercising that power or performing that function.

### **58KD Determinations giving effect to agreement between the parties**

The Tribunal may, in making a determination, give effect to any agreement reached between the Minister, acting on behalf of the Commonwealth, and the Chief of the Defence Force, acting on behalf of the members of the Australian Defence Force, in relation to a matter to which the determination relates.

### **58L Terms and tenure of office**

- (1) Subject to this Division, a member of the Tribunal holds office for such period, not exceeding 5 years, as is specified in his or her instrument of appointment, but is eligible for re-appointment.
- (2) A person must not continue to hold office as a member of the Tribunal if:
  - (a) he or she becomes a member of the Permanent Forces (although he or she may become a member of the Reserves);  
or
  - (b) he or she becomes the Defence Force Advocate; or
  - (c) in the case of the President, he or she ceases to be a Deputy President of FWA.

Note: The Permanent Forces are made up of the Permanent Navy, the Regular Army and the Permanent Air Force which are established respectively by the *Naval Defence Act 1910*, this Act and the *Air Force Act 1923*. Those Acts also establish the Naval Reserve, the Army Reserve and the Air Force Reserve, which together make up the Reserves.

### **58M Resignation**

A member of the Tribunal may resign his or her office by writing signed by him or her and delivered to the Governor-General.

### **58N Termination of appointment**

The Governor-General may terminate the appointment of a member of the Tribunal by reason of misbehaviour or physical or mental incapacity.

### **58P Acting appointments**

- (1) The Minister may appoint a person to act as a member (including the President) of the Tribunal:
  - (a) during a vacancy in the office of that member; or
  - (b) during any period, or during all periods, when that member is absent from duty or from Australia or is, for any other reason (including the reason that, in the case of a member not being the President, he or she is acting as President), unable to perform the duties of his or her office;but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) While a person is acting as President or as a member of the Tribunal other than the President, the person has and may exercise all the powers, and shall perform all the functions, of the President or that member, as the case may be.
- (3) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (4) The Minister may:
  - (a) determine the terms and conditions of appointment, including fees and allowances, of a person acting as a member of the Tribunal; and
  - (b) terminate such an appointment at any time.
- (5) Where a person is acting as a member of the Tribunal in accordance with paragraph (1)(b) and that office becomes vacant while that person is so acting, then, subject to subsection (3), that person may continue so to act until the Minister otherwise directs,

the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

- (6) The appointment of a person to act as a member of the Tribunal ceases to have effect if the person resigns his or her appointment by writing signed by him or her and delivered to the Minister.
- (7) The validity of anything done by a person purporting to act under this section shall not be called in question on the ground that the occasion for his or her appointment had not arisen, that there was a defect or irregularity in or in connection with his or her appointment, that the appointment had ceased to have effect or that the occasion for the person to act had not arisen or had ceased.
- (8) A reference in section 58H, 58J, 58K, 58KA, 58KC or 58U to the President or to a member of the Tribunal shall be read as including a reference to a person acting as the President or as a member of the Tribunal, as the case may be.

#### **58Q Fees and allowances**

- (1) A member of the Tribunal shall be paid such fees and allowances as the Remuneration Tribunal determines.
- (2) The appointment of the holder of a prescribed office as a member of the Tribunal, or service by the holder of a prescribed office as such a member, does not affect his or her tenure of that prescribed office or his or her rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that prescribed office and, for all purposes, his or her service as a member of the Tribunal shall be taken to be service as the holder of the prescribed office.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) In this section, **prescribed office** means an office, appointment or other employment which is referred to in subsection 7(11) of the *Remuneration Tribunals Act 1973* as an office, appointment or other employment on a full-time basis or a judicial office referred to in subsection 7(12) of that Act.

## Division 3—The Defence Force Advocate

### 58R Interpretation

In this Division, unless the contrary intention appears:

*Advocate* means the Defence Force Advocate appointed under section 58S.

*Remuneration Tribunal* means the Remuneration Tribunal established by subsection 4(1) of the *Remuneration Tribunal Act 1973*.

*Tribunal* means the Defence Force Remuneration Tribunal established by section 58G.

### 58S Defence Force Advocate

- (1) There shall be a Defence Force Advocate, who shall be appointed by the Minister on a part-time basis.
- (2) The person appointed as the Advocate shall be a person who:
  - (a) is experienced in industrial relations matters; and
  - (b) has a knowledge of the nature of service in the Defence Force.
- (3) In making an appointment under subsection (1), the Minister shall have regard to any recommendations made by the Chief of the Defence Force.

### 58T Functions of Advocate

The functions of the Advocate are:

- (a) to advise the Chief of the Defence Force in relation to matters that have been, or may be, referred to the Tribunal by the Chief of the Defence Force pursuant to subsection 58H(3);
- (b) to prepare submissions to be made to the Tribunal on behalf of the Defence Force concerning any matter that is being considered by the Tribunal; and



- (c) to represent the Defence Force in proceedings before the Tribunal.

#### **58U Tenure and terms of office**

- (1) Subject to this Division, the Advocate holds office for 3 years, but is eligible for re-appointment.
- (2) A person shall not continue to hold the office of Advocate if he becomes a member of the Tribunal.

#### **58V Resignation**

The Advocate may resign his office by writing signed by him and delivered to the Minister.

#### **58W Termination of appointment**

The Minister may terminate the appointment of the Advocate by reason of misbehaviour or physical or mental incapacity.

#### **58X Acting Defence Force Advocate**

- (1) The Minister may appoint a person to act as the Advocate:
  - (a) during a vacancy in the office of the Advocate; or
  - (b) during any period, or during all periods, when the Advocate is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his office;but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.
- (2) While a person is acting as the Advocate, he has and may exercise all the powers, and shall perform all the functions, of the Advocate.
- (3) An appointment of a person under subsection (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.
- (4) The Minister may:
  - (a) determine the terms and conditions of appointment, including remuneration and allowances, of a person acting as the Advocate; and
  - (b) terminate such an appointment at any time.

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- (5) Where a person is acting as the Advocate in accordance with paragraph (1)(b) and the office becomes vacant while that person is so acting, then, subject to subsection (3), that person may continue so to act until the Minister otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.
- (6) The appointment of a person to act as the Advocate ceases to have effect if he resigns his appointment by writing signed by him and delivered to the Minister.
- (7) The validity of anything done by a person purporting to act under this section shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

**58Y Fees and allowances**

- (1) The Defence Force Advocate shall be paid such fees and allowances as the Remuneration Tribunal determines.
- (2) This section has effect subject to the *Remuneration Tribunal Act 1973*.

## **Part IV—Liability to serve in the Defence Force in time of war**

### **Division 1—Liability to serve**

#### **59 Persons liable to serve in Defence Force in time of war**

All persons (except those who are exempt from service under this Part or to whom this Part does not apply) who:

- (a) have resided in Australia for not less than 6 months; and
- (c) have attained the age of 18 years but have not attained the age of 60 years;

are liable, when called upon under section 60, to serve in the Defence Force.

#### **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.

#### **61 Registration and allotment for service**

- (1) The regulations may make provision for and in relation to:

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- (a) the registration of persons who are or may become liable to serve in the Defence Force in time of war;
- (b) the deferment of the service of persons, or persons included in classes of persons, who have been called upon under section 60 to serve in the Defence Force;
- (c) medical and other examinations of persons who have been so called upon;
- (f) the choice, by ballot or otherwise, from persons who have been called upon to serve in the Defence Force of those persons who are required so to serve; and
- (g) the allotment of persons required so to serve for service in a part of the Navy, the Army or the Air Force.

**61A Persons exempt from service**

- (1) The following persons are exempt from service in the Defence Force in time of war so long as the employment, condition, status, belief, or other reason stated in regulations made for the purposes of paragraph (j), on which the exemption is based continues:
  - (a) persons subject to a prescribed mental or physical disability;
  - (b) members and officers of the Parliament of the Commonwealth or of a State;
  - (c) judges of federal or State courts and police, stipendiary or special magistrates of a Territory or of a State;
  - (d) ministers of religion;
  - (e) members of a religious order who devote the whole of their time to the duties of the order;
  - (f) persons who are students at a college maintained solely for training persons to become members of a religious order;
  - (g) persons who are students at a theological college as defined by the regulations or are theological students as prescribed;
  - (h) persons whose conscientious beliefs do not allow them to participate in war or warlike operations;
  - (i) persons whose conscientious beliefs do not allow them to participate in a particular war or particular warlike operations; and
  - (j) persons who, for a reason stated in the Regulations, are declared by the Regulations to be exempt from service in the Defence Force in time of war.

- (1A) Persons whose conscientious beliefs do not allow them to engage in duties of a combatant nature (either generally or during a particular war or particular warlike operations) are not exempt from liability to serve in the Defence Force in time of war but are exempt from such duties while members of the Defence Force as long as those beliefs continue.
- (2) A person who, in pursuance of section 60, has been called upon to serve in the Defence Force and is, by virtue of this section, exempt from service shall, notwithstanding the exemption, do any act that such a person is required, by or under the regulations, to do.

Penalty: \$40.

### **61B Entry into Defence Force for service**

- (1) A person who, in accordance with the regulations, is allotted for service in a part of the Navy, the Army or the Air Force shall, as from the time at which he presents himself for service in that part, be deemed to have been enlisted in that part and to have been engaged to serve in that part for the duration of the time of war.
- (2) A person who, in pursuance of section 60, has been called upon to serve in the Defence Force and fails, when required by or under the regulations, to present himself for examination or service or to do any other act required to be done by persons so called upon remains liable to do that act, notwithstanding that the time originally appointed for the doing of that act has expired or that he has been convicted for failing to do that act.

### **61C Part not to apply to certain persons**

Nothing in this Part applies to:

- (a) a person whose presence in Australia is occasioned solely by his or her employment in the service of a government outside Australia; or
- (b) a prescribed official of any international organisation; or
- (c) a member of the Defence Force.

## **Division 2—Determination of conscientious belief**

### **61CA Application for determination of conscientious belief**

- (1) A person who claims to be exempt from service because of conscientious beliefs must, within 7 days after he or she is called on for service under section 60 apply to the Secretary, in writing, to have his or her claim determined by a Conscientious Objection Tribunal.
- (2) At any time after a Tribunal has made a determination that a person is or is not exempt from service because of conscientious beliefs either the applicant for that determination or the Commonwealth may apply to the Secretary, in writing, to have a Tribunal set aside the previous determination and, where appropriate, make a new determination in substitution for it on the grounds of a change in circumstances.

### **61CB Secretary must refer application**

If the Secretary receives an application under subsection 61CA(1) or (2), the Secretary must refer the application to a Conscientious Objection Tribunal for determination.

### **61CC Function of Conscientious Objection Tribunals**

- (1) The function of a Conscientious Objection Tribunal is to determine, following an application that is referred to it by the Secretary, whether the person to whom the application related is exempt from service because of conscientious beliefs.
- (2) Subject to this Part, a determination under subsection (1) is final and binding for all purposes.

### **61CD Parties to the hearing of an application**

In this Part, the parties to the hearing of an application by a Conscientious Objection Tribunal are the applicant and the Commonwealth.

**61CE Notice of determination to be given to parties**

- (1) If a Conscientious Objection Tribunal makes a determination it must notify the parties of the result of the determination as soon as possible.
- (2) A Tribunal must give the parties a statement in writing of the reasons for its determination within 28 days of making that determination.

### **Division 3—Establishment and membership of Conscientious Objection Tribunals**

#### **61CF Establishment of Conscientious Objection Tribunals**

- (1) The Minister may, by notice in the *Gazette*, establish such Conscientious Objection Tribunals as he or she thinks necessary for the purposes of this Part.
- (2) Each Tribunal is to comprise:
  - (a) a presiding member; and
  - (b) 2 other members.
- (3) Members are to be appointed in writing by the Minister and may be appointed as either full-time or part-time members.
- (4) A person is not to be appointed as a presiding member of a Tribunal unless he or she is a legal practitioner of not less than 7 years standing.
- (5) A person is not to be appointed as another member of a Tribunal unless the Minister is satisfied that he or she is capable, by reason of training or experience, of ascertaining facts other than by adversarial procedures.

#### **61CG Period of appointment of members**

Members are to hold office for such period, not exceeding 5 years, as is specified in the instrument of appointment.

#### **61CH Remuneration and allowances of members**

- (1) Members are to be paid:
  - (a) such remuneration as is determined by the Remuneration Tribunal; and
  - (b) such allowances as are prescribed.
- (2) If no determination of the remuneration of members by the Remuneration Tribunal is in operation, members are to be paid such remuneration as is prescribed.



- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**61CJ Other terms and conditions**

A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Part as are determined by the Minister in writing.

**61CK Leave of absence**

The Minister may grant leave of absence to a member on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

**61CL Resignation**

A member may resign in writing signed by him or her and sent to the Minister.

**61CM Removal from office**

The Minister may remove a member from office for proved misbehaviour or physical or mental incapacity.

**61CN Member of a Tribunal unavailable to complete proceeding**

- (1) If the hearing of an application has been commenced or completed by a Conscientious Objection Tribunal but, before the proceeding has been determined, one of the members constituting the Tribunal for the purposes of the application has:
- (a) ceased to be a member; or
  - (b) ceased to be available for the purposes of the application;
- the following provisions have effect:
- (c) if the member concerned is a member other than a member appointed as a presiding member—the hearing and determination, or the determination, of the application may be completed by the Tribunal constituted by the remaining 2 members;
  - (d) in any other case—the proceeding must be reheard by another Tribunal.

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- (2) If an application that was being dealt with by one Tribunal is reheard by another Tribunal, that other Tribunal may, for the purposes of that application, have regard to any record of the proceedings before the first-mentioned Tribunal.
- (3) The reference in subsection (2) to a record of proceedings includes a reference to a record of any evidence taken in the proceeding.

**61CO Acting appointments**

- (1) The Minister may appoint a person to act as a full-time member of a Conscientious Objection Tribunal during any period, or during all periods, when the member is absent from duty or from Australia or is, for any reason, unable to perform the duties of the member's office.
- (2) The Minister may appoint a person to act as a part-time member of a Tribunal during any period, or during all periods, when the member is, for any reason, unable to perform the duties of the member's office.
- (3) Where a person has been appointed under subsection (1) or (2), the Minister may direct that the person is to continue to act in the appointment after the normal terminating event occurs.
- (4) A direction under subsection (3) must specify the period during which the person may continue to act in the appointment.
- (5) The period specified under subsection (4) may be specified by reference to the happening of a particular event or the existence of particular circumstances.
- (6) A direction under subsection (3):
  - (a) is to be given only if there is a pending determination or other special circumstances justifying the giving of the direction; and
  - (b) may only be given before the normal terminating event occurs.
- (7) A person continuing to act under a direction under subsection (3) must not continue to act for more than 12 months after the normal terminating event occurs.

- (8) If a Tribunal includes a person acting or purporting to act under an appointment under this section, any decision of, or any direction given or any other act done by, the Tribunal is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.
- (9) Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.
- (10) For the purposes of this section, the normal terminating event for an appointment under subsection (1) or (2) is:
- (a) if the appointment is made under subsection (1)—the member ceasing to be absent or ceasing to be unable to perform the duties of the member's office; or
  - (b) if the appointment is made under subsection (2)—the member ceasing to be unable to perform the duties of the member's office.

## **Division 4—Procedures of Conscientious Objection Tribunals**

### **61CP Tribunals' way of operating**

A Conscientious Objection Tribunal, in carrying out its functions under this Part:

- (a) must provide procedures which are informal, quick, fair, just and economical; and
- (b) must act according to substantial justice and the merits of the case; and
- (c) is not bound by technicalities, legal forms or rules of evidence.

### **61CQ Powers of Tribunals**

For the purposes of making a determination, a Conscientious Objection Tribunal may:

- (a) take evidence on oath or affirmation; and
- (b) summon a person to appear before it to give evidence; and
- (c) summon a person to produce to it such documents as are referred to in the summons; and
- (d) require a person appearing before it to give evidence either to take an oath or to make an affirmation that the evidence that the person will give will be true.

### **61CR Procedure of Tribunals**

- (1) The presiding member of a Conscientious Objection Tribunal may convene such hearings of the Tribunal as he or she thinks necessary for the performance of its functions.
- (2) The presiding member is to preside at all hearings of the Tribunal.
- (3) A Tribunal must keep records of its hearings.

### **61CS Majority decision**

A question before a Conscientious Objection Tribunal on an application for a determination is to be decided according to the opinion of a majority of the members of the Tribunal.

### **61CT Procedure where opinion of members equally divided**

If:

- (a) an application is referred to a Conscientious Objection Tribunal for a determination; and
- (b) section 61CS does not apply to a question before the Tribunal on the application;

the question is to be decided according to the opinion of the member presiding.

### **61CU Hearings**

- (1) Subject to this section, a Conscientious Objection Tribunal is to take oral evidence in public.
- (2) If a Tribunal is satisfied that it is necessary, in the interests of determining a matter which is before it, the Tribunal may direct that oral evidence is to be taken in private.
- (3) If a Tribunal makes a direction under subsection (2), it may give directions as to the persons who may be present when the oral evidence is given.
- (4) If a Tribunal is satisfied that it would be difficult for a person to give oral evidence, the Tribunal may accept a written statement from that person.
- (5) An applicant may be assisted in presenting his or her case by another person, whether or not that person is a lawyer.

### **61CV Onus of proof**

- (1) In proceedings before a Conscientious Objection Tribunal the onus of proving exemption from service because of conscientious belief rests with an applicant.
- (2) Such onus is to be discharged on the balance of probabilities.

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**61CW Protection of members and persons giving evidence etc.**

- (1) A member of a Conscientious Objection Tribunal has, in the performance of his or her duties as a member, the same protection and immunity as a Judge of the Federal Court.
- (2) Subject to this Part, an applicant, a person summoned to attend, or appearing, before a Conscientious Objection Tribunal to give evidence, a person representing the Commonwealth or a person who assists an applicant at a hearing, has the same protection and is, in addition to the penalties provided by this Part, subject to the same liabilities, as a witness in proceedings in the Federal Court.

**61CX Fees for persons giving evidence**

- (1) A person, other than the applicant, summoned to appear before a Conscientious Objection Tribunal to give evidence is entitled to be paid, in respect of his or her attendance, fees, and allowances for expenses, ascertained in accordance with a determination under subsection (2).
- (2) The Minister may, by legislative instrument, determine the amounts of fees and allowances to be paid under subsection (1).
- (4) The fees and allowances referred to in subsection (1) are to be paid by the Commonwealth.

**61CY Failure of witness to attend**

- (1) A person is guilty of an offence if:
  - (a) the person is served under paragraph 61CQ(b) with a summons to appear before a Conscientious Objection Tribunal to give evidence and is tendered reasonable expenses; and
  - (b) the person:
    - (i) fails to attend as required by the summons; or
    - (ii) fails to appear and report from day to day and has not been excused, or released from further attendance, by a member.

Penalty: Imprisonment for 6 months.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the summons is under paragraph 61CQ(b).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### **61CZ Refusal to be sworn or to answer questions etc.**

- (1) A person is guilty of an offence if the person:
- (a) is required to produce a document by a summons under paragraph 61CQ(c) served on the person; and
  - (b) refuses or fails to do so.

Penalty: Imprisonment for 6 months.

- (2) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the summons is under paragraph 61CQ(c).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) A person is guilty of an offence if the person:
- (a) is appearing before a Conscientious Objection Tribunal to give evidence; and
  - (b) is required under paragraph 61CQ(d) either to take an oath or to make an affirmation; and
  - (c) refuses or fails to comply with the requirement.

Penalty: Imprisonment for 6 months.

- (4) In paragraph (3)(b), strict liability applies to the physical element of circumstance, that the requirement is under paragraph 61CQ(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) A person is guilty of an offence if the person:
- (a) is appearing before a Conscientious Objection Tribunal to give evidence; and
  - (b) is required to answer a question by the presiding member; and
  - (c) refuses or fails to answer the question.

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Penalty: Imprisonment for 6 months.

- (6) Subsections (1), (3) and (5) do not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (6). See subsection 13.3(3) of the *Criminal Code*.

- (7) A person is guilty of an offence if the person:
- (a) is appearing before a Conscientious Objection Tribunal to give evidence; and
  - (b) gives evidence that is false or misleading in a material particular; and
  - (c) knows that the evidence is false or misleading in the material particular.

Penalty: Imprisonment for 6 months.

**61CZA Contempt of Tribunal**

A person must not:

- (a) obstruct or hinder a Conscientious Objection Tribunal, or a member of such a tribunal, in the performance of the functions of the Tribunal; or
- (b) disrupt the taking of evidence by a Conscientious Objection Tribunal.

Penalty: Imprisonment for 12 months.



## **Division 5—Reviews and appeals**

### **61CZB Review of determinations of Conscientious Objection Tribunals**

A party to a determination by a Conscientious Objection Tribunal may apply to the AAT for review of that determination.

### **61CZC AAT Act to apply subject to modification**

- (1) The AAT Act applies in relation to the review of a determination of a Conscientious Objection Tribunal subject to the modifications set out in this section.
- (2) Section 30 of the AAT Act applies in relation to such a review as if it read as follows:

#### **30 Parties to proceedings before Tribunal**

“The parties to a proceeding before the AAT for a review of a determination of a Conscientious Objection Tribunal are:

- (a) the person in relation to whom the determination was made; and
  - (b) the Commonwealth.”
- (3) Sections 30A, 31, 44 and 44A of the AAT Act do not apply in relation to such a review.
  - (4) Subsection 46(1) of the AAT Act applies in relation to such a review as if the words preceding paragraph (a) of that subsection read as follows:

“(1) When a question of law is referred to the Federal Court of Australia in accordance with section 45:”.

### **61CZD Appeals from AAT**

- (1) A party to a proceeding before the AAT may appeal to the Federal Court, on a question of law only, from any decision of the AAT in that proceeding.
- (2) An appeal by a person under subsection (1) must be instituted:

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- (a) within 28 days after the day on which the document setting out the terms of the decision of the AAT is given to the person or within such further time (whether before or after the end of that period) as the Federal Court allows; and
  - (b) in such manner as is prescribed by rules of court made under the *Federal Court of Australia Act 1976*.
- (3) The Federal Court has jurisdiction to hear and determine appeals instituted in the Court in accordance with subsection (2) and that jurisdiction must be exercised by the Court constituted as a Full Court.
- (4) The Federal Court:
- (a) must hear and determine the appeal; and
  - (b) may affirm, vary or set aside the order of the AAT; and
  - (c) may give such judgment, or make such order, as in all the circumstances it thinks fit, or refuse to make an order; and
  - (d) may remit the case for rehearing and determination, either with or without the hearing of further evidence, by the AAT.

**61CZE Operation etc. of decision subject to appeal**

- (1) Subject to this section, the institution of an appeal to the Federal Court from a decision of the AAT does not:
- (a) affect the operation of the decision; or
  - (b) prevent the taking of action to implement the decision; or
  - (c) prevent the taking of action in reliance on the making of the decision.
- (2) If an appeal is instituted in the Federal Court from a decision of the AAT, the Federal Court or a Judge of the Federal Court may make such orders of the kind referred to in subsection (3) as that Court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and determination of the appeal.
- (3) The orders that may be made under subsection (2) are orders staying, or otherwise affecting the operation or implementation of, either or both of the following:
- (a) the decision of the AAT or a part of that decision;
  - (b) the decision to which the proceeding before the AAT related or a part of that decision.

- (4) The Federal Court or a Judge of that Court may, by order, vary or revoke an order in force under subsection (2) (including an order that has previously been varied under this subsection).
- (5) An order in force under subsection (2):
  - (a) is subject to such conditions as are specified in the order; and
  - (b) has effect until:
    - (i) where a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision; or
    - (ii) where no period is so specified—the giving of a decision on the appeal.

## Part V—Cadets

### 62 Australian Army Cadets

- (1) The body known immediately before the commencement of this subsection as the Australian Cadet Corps is continued in existence with the new name, Australian Army Cadets.
- (2) The Australian Army Cadets consists of:
  - (a) persons appointed in accordance with the regulations to be officers in that body;
  - (aa) persons appointed in accordance with the regulations to be instructors in that body; and
  - (b) subject to subsections (5) and (6), persons who volunteer, and are accepted, in accordance with the regulations as cadets in that body.
- (3) A person appointed to be an officer or instructor in the Australian Army Cadets does not become a member of the Army by virtue of that appointment.
- (4) A cadet in the Australian Army Cadets is not a member of the Army.
- (5) A person is not entitled to volunteer, or to be accepted, as a cadet unless he:
  - (a) has attained such age as is prescribed; and
  - (b) has not attained the age of 20 years.
- (6) A person ceases to be a cadet when he attains the age of 21 years or such lower age as is prescribed.
- (7) The regulations may make provision for and in relation to the organization, maintenance, regulation, control and discipline of the Australian Army Cadets, and, in particular, for and in relation to:
  - (a) the periods and conditions of service of members, other than conditions of service with respect to which determinations under section 58B may be made; and
  - (b) the promotion of members.

- (8) In subsection (7), *member* means an officer, instructor or cadet in the Australian Army Cadets.
- (9) Subject to the regulations, to any determinations in force under section 58B and to the directions of the Minister, the Chief of Army shall administer the Australian Army Cadets.

## **Part VI—Special powers in relation to defence**

### **63 General powers for defence purposes** [*see* Note 3]

- (1) The Governor-General may:
- (f) Subject to the provisions of this Act do all matters and things deemed by him to be necessary or desirable for the efficient defence and protection of the Commonwealth or of any State.

### **64 Control of railways in time of war**

The Governor-General may in time of war authorize any officer to assume control of any railway for transport for naval, military or air-force purposes.

### **65 Railways to carry troops etc. when required**

The principal railway official in any State or the owner, controller, or manager of any railway or tramway in any State shall when required by the Governor-General, and as prescribed, convey and carry members of the Defence Force, together with their horses, guns, ammunition, forage, baggage, aircraft, aircraft material and stores from any place to any place on the railway or tramway, and shall provide all engines, carriages, trucks and rolling-stock necessary for the purpose.

### **66 Conveyance by railway and tramway**

Members of the Defence Force when on duty in uniform or carrying a rifle shall, subject to the Regulations, be conveyed over the railways and tramways of the Commonwealth or of any State for the purpose of attending musters, parades, and rifle practices, and returning therefrom, on production of a pass signed by a commanding officer or an officer authorised in writing by a commanding officer to sign such passes.

### **67 Registration and impressment of vehicles etc.**

The owner of any vehicle, horse, mule, bullock, aircraft, aircraft material, boat or vessel, or of any goods, required for naval,

military or air-force purposes, shall, when required to do so by an officer authorized in that behalf by the regulations, furnish it for those purposes, and shall be recompensed therefor in the manner prescribed, and the owners of any vehicles, horses, mules, bullocks, aircraft, aircraft material, boats or vessels may be required by the regulations to register them periodically.

### **68 Billeting and quartering**

Members of the Defence Force may in time of war as prescribed be billeted, quartered or cantoned, but nothing in this Act shall authorize the quartering or billeting of any member of the Defence Force in any house solely occupied by women or by women and children.

### **70 Tolls**

No toll or due, whether demandable by virtue of any Act or State Act or otherwise, at any wharf, landing place, aerodrome, bridge gate, or bar on a public road shall be demanded or taken in respect of:

- (a) Any member of the Defence Force on march or duty or any prisoner under his charge;
- (b) Any horse ridden or used by any member of the Defence Force on march or duty or by any prisoner under his charge;
- (c) Any vehicle employed only in conveying members of the Defence Force on march or duty or any prisoner under their charge or conveying naval, military or air-force arms, stores, baggage, aircraft or aircraft material; or
- (d) Any animal drawing any such vehicle.

## Part VII—Offences

### 73A Unlawfully giving or obtaining information as to defences

- (1) A person who is a member of the Defence Force or a person appointed or engaged under the *Public Service Act 1999* is guilty of an offence if:
  - (a) the person communicates to any other person any plan, document, or information relating to any fort, battery, field work, fortification, or defence work, or to any defences of the Commonwealth, or to any factory, or air force aerodrome or establishment or any other naval, military or air force information; and
  - (b) the communication is not in the course of the first-mentioned person's official duty.
- (2) A person is guilty of an offence if:
  - (a) the person obtains any plan, document, or information relating to any fort, battery, field work, fortification, or defence work, or air force aerodrome or establishment, or to any of the defences of the Commonwealth or any other naval, military or air force information; and
  - (b) that conduct is unlawful.

### 73F Penalty

- (1) An offence under section 73A may be prosecuted either summarily or upon indictment, but an offender shall not be liable to be punished more than once in respect of the same offence.
- (2) The punishment for an offence under section 73A shall be:
  - (a) if the offence is prosecuted summarily—a fine not exceeding \$200 or imprisonment for 6 months or both; or, in the case of a body corporate, a fine not exceeding \$2,000; or
  - (b) if the offence is prosecuted upon indictment—a fine of any amount or imprisonment for any term, or both.



**79 Unlawfully disposing of arms etc.**

- (1) Any person who:
- (a) unlawfully disposes of or removes or
  - (b) fails to deliver up when lawfully required so to do or
  - (c) has in his possession;

any arms accoutrements or other naval, military or air-force articles belonging to the Commonwealth or to any corps, unit or station, shall be liable to a penalty not exceeding \$40, and may be ordered by the Court by which he is tried to be imprisoned for a period not exceeding 3 months unless in the meantime he delivers up the article or pays its value.

- (1AA) An offence under subsection (1) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (1AB) Paragraph (1)(c) does not apply if the person proves that he or she had lawful cause for possessing the thing in question.

Note: The defendant bears a legal burden in relation to the matter in subsection (1AB). See section 13.4 of the *Criminal Code*.

- (1A) In any prosecution under this section for failure to deliver up when lawfully required so to do any arms, accoutrements or other naval, military or air-force articles belonging to the Commonwealth or to any corps, unit or station:

- (a) if it is proved to the satisfaction of the Court that any such article was in the possession of the defendant at any time prior to the time at which he was required to deliver up the article, he shall be deemed, in the absence of proof by him of the lawful disposal of the article, to have continued in possession of the article up to the time when he was required to deliver up the article; and
- (b) inability to deliver up the article shall not be a defence unless the defendant proves to the satisfaction of the Court that such inability did not arise from any negligence or wrongful act or omission on his part.

Note: The defendant bears a legal burden in relation to the matter in paragraph (1A)(b). See section 13.4 of the *Criminal Code*.

- (2) When an order has been made under this section the Court may by warrant in writing authorize any member or special member of the Australian Federal Police or member of the Police Force of a State

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or Territory to take possession of the article and to deliver it to an officer or as the Court thinks fit to direct.

- (3) Any member or special member of the Australian Federal Police or member of the Police Force of a State or Territory having any warrant under this section may in the day time enter any building, premises, or place where the article is or is supposed to be, and may break open any part of the building, premises, or place, or any chest, receptacle, or thing therein, and may seize or take possession of the article and deliver it in accordance with the warrant.

**80A Falsely representing to be returned soldier, sailor or airman**

- (1) A person is guilty of an offence if:
- (a) the person represents himself or herself to be a returned soldier, sailor or airman; and
  - (b) the representation is false.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (2) For the purposes of this section:
- (a) ***returned soldier*** means a person who has served abroad during any war as a member of any Military Force raised in Australia or in any other part of the British Empire, or as a member of the Military Forces of any Ally of Great Britain;
  - (b) ***returned sailor*** means a person who has served abroad during any war as a member of any Naval Force raised in Australia or in any other part of the British Empire, or as a member of the Naval Forces of any Ally of Great Britain; and
  - (c) ***returned airman*** means a person who has served abroad during any war as a member of any Air Force, air service or flying corps raised in Australia or in any other part of the British Empire or as a member of the air forces of any Ally of Great Britain.

**80B Improper use of service decorations**

- (1) A person is guilty of an offence if:
- (a) the person wears a service decoration; and
  - (b) the person is not the person on whom the decoration was conferred.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (2) Where the person upon whom a service decoration was conferred has died, it is not an offence against subsection (1) for a member of the family of that person to wear the service decoration if the member of the family does not represent himself as being the person upon whom the decoration was conferred.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) It is not an offence against subsection (1) for a person to wear a service decoration in the course of a dramatic or other visual representation (including such a representation to be televised) or in the making of a cinematograph film.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

- (4) A person shall not falsely represent himself as being the person upon whom a service decoration has been conferred.

Penalty: 30 penalty units or imprisonment for 6 months, or both.

- (5) A person shall not deface or destroy, by melting or otherwise, a service decoration.

Penalty: 60 penalty units or imprisonment for 12 months, or both.

## **82 Sketching etc. of fortifications prohibited**

- (1) If:

- (a) a person makes a sketch, drawing, photograph, picture or painting of any defence installation in Australia or of any part of one; and  
(b) the person has no lawful authority to do so;

then:

- (c) the person is guilty of an offence; and  
(d) all sketches, drawings, photographs, pictures, and paintings, and all tools and all materials or apparatus for sketching, drawing, photographing or painting found in his or her possession are forfeited and may be destroyed, sold, or otherwise disposed of, as the Governor-General directs.

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(1A) The maximum penalty for an offence under subsection (1) is a fine of \$200, imprisonment for 6 months, or both.

(2) If:

- (a) a person enters or approaches any defence installation with sketching, drawing, photographing, or painting materials or apparatus in his or her possession; and
- (b) the person has no lawful authority for that conduct; and
- (c) the person intends to contravene subsection (1);

then:

- (d) the person is guilty of an offence; and
- (e) all tools and all materials or apparatus for sketching, drawing, photographing or painting found in his or her possession are forfeited and may be destroyed, sold, or otherwise disposed of, as the Governor-General directs.

(2A) The maximum penalty for an offence under subsection (2) is a fine of \$100.

(3) A person is guilty of an offence if the person trespasses on:

- (a) a defence installation, or on any land reserved for or forming part of one (whether or not any erection, fort, fortification, or work of any kind is on the land); or
- (b) a building or land reserved or set apart for or used in connection with the administration, accommodation, or training of any part of the Defence Force; or
- (c) an aircraft.

Penalty: \$40.

(4) Any member of the Defence Force, member or special member of the Australian Federal Police or member of the Police Force of a State, may, without warrant, arrest any person who he has reasonable ground to believe has committed an offence against this section, and take him before a Court of summary jurisdiction to be dealt with according to law.

(5) In this section:

***defence installation*** means any fort, battery, fieldwork, fortification, aircraft, air force establishment or aircraft material or any naval, military or air force work of defence.

**83 Unauthorised use, possession or supply of emblems or flags**

- (1) A person who is not a member of the Defence Force is guilty of an offence if:
- (a) the person uses or wears a defence emblem or an emblem so nearly resembling a defence emblem as to be capable of being mistaken for such an emblem; and
  - (b) the person does not have the written authority of the Minister, or of a person authorised in writing by the Minister, to do so.

Penalty: \$200.

- (2) A person is guilty of an offence if:
- (a) the person makes, supplies or offers to supply a defence emblem or an emblem so nearly resembling a defence emblem as to be capable of being mistaken for such an emblem; and
  - (b) the person does not have the written authority of the Minister, or of a person authorised in writing by the Minister, to do so.

Penalty: \$500.

- (3) A person is guilty of an offence if:
- (a) the person flies or displays a defence flag; and
  - (b) the person is not a member of the Defence Force acting in the course of his or her duties; and
  - (c) the person does not have the written authority of the Minister, or of a person authorised in writing by the Minister, to do so.

Penalty: \$200.

- (3A) An authority under subsection (1), (2) or (3) shall be subject to such limitations (if any) as are specified in the authority.
- (4) A person on whose behalf or at whose place of business an article is supplied or offered in contravention of this section, whether contrary to the instructions of that person or not, shall be guilty of an offence, and shall, on conviction, be liable to a fine not exceeding \$200.

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- (4A) An offence under subsection (4) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (5) It is not an offence against this section for a person to use or wear a defence emblem or fly a defence flag in the course of a dramatic or other visual representation (including such a representation to be televised) or in the making of a cinematograph film.

Note: The defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

- (6) Where an offence against this section has been committed, the court may, if it thinks fit, order the forfeiture of any emblem or flag in respect of which that offence was committed.

- (7) In this section:

*defence emblem* means an emblem of the Defence Force or an arm of the Defence Force.

*defence flag* means a flag of the Defence Force or an arm of the Defence Force.

*emblem* includes a badge, a regimental or other similar distinctive mark, an armband or an accoutrement.

*flag* includes an ensign or a standard.

#### 84 Penalty for bringing contempt on uniform

- (1) Any person who wears any uniform of the Defence Force, or any dress having the appearance or bearing any of the regimental or other distinctive marks of any such uniform, in such a manner or under such circumstances as to be likely to bring contempt upon that uniform, shall be liable to a penalty not exceeding \$200.
- (2) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

## **Part VIII—Offences in relation to service tribunals**

### **86 Failure of witness to appear**

- (1) A person is guilty of an offence if:
- (a) the person has been served with a summons under the *Defence Force Discipline Act 1982* to appear as a witness before a service tribunal; and
  - (b) the person:
    - (i) fails to appear as required by the summons; or
    - (ii) fails to appear and report himself or herself from day to day and has not been excused or released by the tribunal from further attendance.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (2) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (3). See subsection 13.3(3) of the *Criminal Code*.

### **88 False or misleading evidence**

A person who is appearing as a witness before a service tribunal is guilty of an offence if:

- (a) the person gives evidence; and
- (b) the evidence is false or misleading; and
- (c) the person knows that the evidence is false or misleading.

Penalty: \$1,000 or imprisonment for 6 months, or both.

### **89 Contempt of service tribunals etc.**

- (1) A person shall not:
- (a) insult a member of a court martial, a judge advocate, a Defence Force magistrate or a summary authority in or in

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relation to the exercise of his or her powers or functions as such a member, judge advocate, magistrate or authority, as the case may be;

- (b) interrupt the proceedings of a service tribunal;
- (c) create a disturbance or take part in creating or continuing a disturbance in or near a place where a service tribunal is sitting; or
- (d) do any other act or thing that would, if a service tribunal were a court of record, constitute a contempt of that court.

Penalty: \$1,000 or imprisonment for 6 months.

- (1A) An offence under this section is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) In this section, *court martial*, *judge advocate*, *Defence Force magistrate* and *summary authority* have the same respective meanings as they have in the *Defence Force Discipline Act 1982*.

**90 Failure to comply with order under section 140 of the *Defence Force Discipline Act 1982***

- (1) A person is guilty of an offence if:
- (a) an order under section 140 of the *Defence Force Discipline Act 1982* applies to the person; and
  - (b) the person contravenes or fails to comply with the order.

Penalty: \$1,000 or imprisonment for 6 months, or both.

- (2) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the order is under section 140 of the *Defence Force Discipline Act 1982*.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.



## **Part VIII A—Testing for prohibited substances**

### **Division 1—Preliminary**

#### **91 Application of Part**

This Part applies to the following persons:

- (a) defence members;
- (b) defence civilians.

#### **92 Object of Part**

The object of this Part is to make provision for the testing of persons to whom this Part applies to determine whether they have used any prohibited substance.

#### **93 Definitions**

In this Part, unless the contrary intention appears:

**accredited authority** means a laboratory or other body, or a person, specified in the Defence Instructions to be an accredited authority for the purposes of this Part.

**authorised person** means a person determined under section 93A to be an authorised person for the purposes of the provision of this Part in which the expression occurs.

**defence civilian** has the same meaning as in the *Defence Force Discipline Act 1982*.

**Defence Instructions** means Defence Instructions (General), Defence Instructions (Navy), Defence Instructions (Army) or Defence Instructions (Air Force) issued under section 9A.

**defence member** has the same meaning as in the *Defence Force Discipline Act 1982*.

**narcotic substance** has the same meaning as in the *Customs Act 1901*.

**positive test result**, in relation to a prohibited substance test in respect of a person, means a finding by an accredited authority that the test in respect of the person reveals:

- (a) the presence of a prohibited substance in a sample provided by the person, or otherwise reveals the use by the person of a prohibited substance; and
- (b) if a permitted level for that substance is specified in the Defence Instructions—that the permitted level has been exceeded.

**prohibited substance** means:

- (a) a narcotic substance; or
- (b) any substance that is a prohibited substance because of a determination under subsection 93B(1).

**prohibited substance test** means:

- (a) urinalysis; or
- (b) another test that:
  - (i) is for the purpose of determining whether a person has used a prohibited substance, whether by means of testing a sample provided by the person or by other means; and
  - (ii) is a prohibited substance test because of a determination under subsection 93B(2).

**relevant authority** means:

- (a) in relation to a defence member who holds a rank not below the rank of Major-General (or an equivalent rank)—the Governor-General; or
- (b) in relation to a defence member who holds a rank below the rank of Major-General (or an equivalent rank)—the relevant service chief; or
- (c) in relation to a defence civilian—the relevant service chief.

**sample** means:

- (a) any human biological fluid; or
- (b) any human biological tissue (whether alive or otherwise); or
- (c) any human breath.

**93A Authorised person**

The Chief of the Defence Force or a service chief may, by written instrument, determine that a person is an authorised person for the purposes of a provision of this Part.

**93B Determinations about prohibited substances and prohibited substance tests**

- (1) The Chief of the Defence Force may, by legislative instrument, determine that a substance, or a substance included in a class of substances, is a prohibited substance for the purposes of this Part.
- (2) The Chief of the Defence Force may, by legislative instrument, determine that a test, or a test included in a class of tests, is a prohibited substance test for the purposes of this Part.

## **Division 2—Testing for prohibited substances**

### **94 Requirement to undergo a prohibited substance test**

An authorised person may require a person to whom this Part applies:

- (a) to undergo a prohibited substance test; and
- (b) if the prohibited substance test involves testing a sample—to provide a sample for the purposes of the test.

### **95 Conduct of testing**

- (1) The conduct of a prohibited substance test under section 94 must be supervised by an authorised person.
- (2) A prohibited substance test:
  - (a) must be conducted in circumstances affording reasonable privacy to the person being tested; and
  - (b) must not be conducted in the presence of a person whose presence is not necessary for the purposes of conducting or supervising the test; and
  - (c) must not involve:
    - (i) the removal of more clothing; or
    - (ii) more visual inspection;than is necessary for the purposes of conducting the test.

### **96 Notice to person required to provide a sample**

If a person is required to provide a sample for the purposes of a prohibited substance test under section 94, the authorised person supervising the test must, before the sample is provided, give to the person a written notice explaining such matters relating to dealing with the sample as are specified in the Defence Instructions.

## **Division 3—Return of a positive test result**

### **98 Application**

- (1) This Division applies if a prohibited substance test in respect of a person returns a positive test result.
- (2) A positive test result is to be disregarded if an authorised person is satisfied that the presence of any prohibited substance revealed by the testing was wholly attributable to something done in accordance with the directions or recommendations of a legally qualified medical practitioner.

### **100 Notice to be given of a positive test result**

- (1) If a prohibited substance test in respect of a person returns a positive test result, the relevant authority in relation to the person must:
    - (a) give the person written notice of the positive test result; and
    - (b) invite the person to give to the relevant authority a written statement of reasons as to:
      - (i) if the person is an officer—why the officer’s appointment should not be terminated; or
      - (ii) if the person is a defence member other than an officer—why the defence member should not be discharged; or
      - (iii) if the person is a defence civilian—why the arrangement under which the person is a defence civilian should not be terminated.
- Note: Subsection 98(2) provides that a positive test result is to be disregarded in specified circumstances, so in such circumstances a notice under this section would not be given.
- (2) A notice under subsection (1) must specify a period ending not less than 28 days after the day on which the notice is given as the period within which a statement of reasons must be given to the relevant authority.

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**101 Termination or discharge**

- (1) If a defence member to whom a notice is given under section 100 is an officer who holds a rank not below the rank of Major-General (or equivalent rank) and:
  - (a) the officer does not give the relevant authority, within the period specified in the notice, a statement of reasons why the officer's appointment should not be terminated; or
  - (b) having considered such a statement given by the officer, the relevant authority is of the opinion that the officer's appointment should be terminated;the Governor-General must terminate the appointment.
- (2) If a defence member to whom a notice is given under section 100 is an officer who holds a rank below the rank of Major-General (or equivalent rank) and:
  - (a) the officer does not give the relevant authority, within the period specified in the notice, a statement of reasons why the officer's appointment should not be terminated; or
  - (b) having considered such a statement given by the officer, the relevant authority is of the opinion that the officer's appointment should be terminated;the relevant authority must terminate the appointment.
- (3) If a defence member to whom a notice is given under section 100 is not an officer and:
  - (a) the defence member does not give the relevant authority, within the period specified in the notice, a statement of reasons why the defence member should not be discharged; or
  - (b) having considered such a statement given by the defence member, the relevant authority is of the opinion that the defence member should be discharged;the relevant authority must discharge the defence member.
- (4) If a person to whom a notice is given under section 100 is a defence civilian and:
  - (a) the person does not give the relevant authority, within the period specified in the notice, a statement of reasons why the arrangement under which the person is a defence civilian should not be terminated; or

- (b) having considered such a statement given by the person, the relevant authority is of the opinion that the arrangement under which the person is a defence civilian should be terminated;  
the relevant authority must terminate that arrangement.
- (5) In considering under this section whether:
- (a) an officer's appointment should be terminated; or
  - (b) a defence member other than an officer should be discharged;  
or
  - (c) the arrangement under which a person is a defence civilian should be terminated;
- the relevant authority must take into consideration any warning previously given to the officer, defence member or defence civilian under section 104.
- (5A) If a delegate of the Governor-General or another relevant authority gives a notice to a defence member or a defence civilian under section 100, the same delegate must not:
- (a) terminate the appointment of, or discharge, the defence member; or
  - (b) terminate an arrangement under which the person is a defence civilian.
- Note 1: Action referred to in paragraphs (a) and (b) may be taken by another delegate or by the relevant authority.
- Note 2: For delegations, see section 120A.
- (6) Nothing in this section or in section 104 is to be taken to require that a notice under section 104 must have been given in respect of a previous positive test result before:
- (a) an officer's appointment is terminated; or
  - (b) a defence member is discharged; or
  - (c) the arrangement under which a person is a defence civilian is terminated;  
under this section.

## **102 Form and date of effect of termination or discharge**

- (1) The termination under subsection 101(1) or (2) of the appointment of an officer, the discharge under subsection 101(3) of a defence

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member or the termination under subsection 101(4) of an arrangement in relation to a defence civilian must be in writing.

- (2) The document effecting the termination or discharge must specify the day on which the termination or discharge is to take effect.
- (3) A copy of the document effecting the termination or discharge must be given to the defence member or defence civilian.
- (4) The day to be specified is a day:
  - (a) not earlier than the day on which the defence member or defence civilian is given a copy of the document effecting the termination or discharge; and
  - (b) not later than 3 months after the day referred to in paragraph (a).
- (5) The termination of appointment or the discharge, as the case may be, takes effect on the day specified.

**103 Reduction in rank**

- (1) This section applies if a prohibited substance test in respect of a defence member returns a positive test result and:
  - (a) if the defence member is an officer—the officer's appointment is not terminated under subsection 101(1) or (2); or
  - (b) if the defence member is not an officer—the member is not discharged under subsection 101(3).
- (2) Subject to the following provisions of this section, the relevant service chief may reduce the defence member to the next lower rank.
- (3) If the relevant service chief proposes to reduce a defence member's rank, he or she must:
  - (a) inform the defence member in writing of the proposal; and
  - (b) give the defence member a reasonable opportunity to show cause why the member's rank should not be reduced.
- (4) A reduction in rank must be in writing.
- (5) The document effecting the reduction in rank must specify the day on which the reduction in rank is to take effect.



- (6) A copy of the document effecting the reduction in rank is to be given to the officer or other defence member.

**104 Warning if a prohibited substance test returns a positive result**

- (1) If a prohibited substance test in respect of a defence member returns a positive test result, the relevant authority may give to the defence member a notice containing a warning that, if a subsequent prohibited substance test in respect of the defence member also returns a positive test result:
- (a) if the defence member is an officer—the officer’s appointment may be terminated; or
  - (b) if the defence member is not an officer—the defence member may be discharged; or
  - (c) in either case—the defence member may be reduced, or further reduced, in rank.
- (2) If a prohibited substance test in respect of a defence civilian returns a positive test result, the relevant authority may give to the defence civilian a notice containing a warning that, if a subsequent prohibited substance test in respect of the defence civilian also returns a positive test result, the arrangement under which the person is a defence civilian may be terminated.

## Division 4—Miscellaneous

### 106 Failure to provide sample

- (1) A defence member or defence civilian is guilty of an offence if:
  - (a) an authorised person has required the defence member or defence civilian under section 94 to provide a sample; and
  - (b) the defence member or defence civilian refuses or fails to provide the sample.

Maximum penalty: Imprisonment for 6 months.

- (2) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the requirement is under section 94.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 107 Unauthorised acts in relation to sample

- (1) A person is guilty of an offence if:
  - (a) a sample is provided by a defence member or defence civilian pursuant to a requirement made by an authorised person under section 94; and
  - (aa) the person interferes with, or otherwise deals with, the sample; and
  - (b) the person is not authorised under this Part or the Defence Instructions to do so.

Maximum penalty: Imprisonment for 6 months.

- (2) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the requirement is under section 94.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

### 108 Finding made as a result of testing not admissible in certain criminal proceedings

A finding made by an accredited authority by means of testing a sample provided by a defence member or defence civilian under this Part is not admissible in evidence in any proceeding against the defence member or defence civilian for:

- (a) an offence under the *Defence Force Discipline Act 1982*; or
- (b) an offence against section 6 of the *Crimes Act 1914*, or against section 11.1, 11.4 or 11.5 of the *Criminal Code*, in relation to an offence under the *Defence Force Discipline Act 1982*.

### **109 Defence Instructions**

- (1) Without limiting section 9A, the Defence Instructions may make provision, not inconsistent with this Part, in relation to the following:
  - (a) the persons or classes of persons who may be required to undergo prohibited substance tests under section 94;
  - (b) laboratories, bodies or persons that are accredited authorities for the purposes of this Part;
  - (c) the provision of samples for the purpose of prohibited substance tests under section 94;
  - (d) the conduct of, and procedures relating to, prohibited substance tests under section 94;
  - (e) the devices used in conducting prohibited substance tests under section 94, including the calibration, inspection and testing of those devices;
  - (f) levels of prohibited substances that are permitted levels for the purposes of this Part;
  - (g) the procedures for the handling and analysis of the following:
    - (i) samples taken in connection with prohibited substance tests under section 94;
    - (ii) the giving of prohibited substance test results in certificates or other documents and the evidentiary effect of such certificates or other documents;
  - (h) the confidentiality of prohibited substance test results;
  - (i) notices to be given to persons who are to undergo, or who have undergone, prohibited substance tests;
  - (j) any other matter or thing that relates to, or is for the purposes of, this Part.
- (2) The Defence Instructions may provide that strict compliance with procedures specified in the Defence Instructions is not required and substantial compliance is sufficient, other than in respect of procedures relating to the following matters:

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- (a) ensuring that a sample is not interfered with;
- (b) ensuring that a sample is securely contained and identified.

**110 Other administrative action not precluded**

Nothing in this Part precludes the taking, in relation to a defence member, of any administrative action that could, if this Part had not been enacted, be lawfully taken because he or she is a defence member.

## **Part VIII B—Inspector-General of the Australian Defence Force**

### **Division 1—Establishment and functions of the Inspector-General of the Australian Defence Force**

#### **110A Object of Part**

The object of this Part is to provide the Chief of the Defence Force with:

- (a) a mechanism for internal audit and review of the military justice system independent of the ordinary chain of command; and
- (b) an avenue by which failures and flaws in the military justice system can be exposed and examined so that the cause of any injustice (whether systemic or otherwise) may be remedied.

#### **110B Inspector-General of the Australian Defence Force**

There is to be an Inspector-General of the Australian Defence Force, to be known as the Inspector-General ADF.

#### **110C Functions of the Inspector-General ADF**

- (1) The Inspector-General ADF has the following functions:
  - (a) to inquire into or investigate matters concerning the military justice system;
  - (b) to conduct performance reviews of the military justice system, including internal audits, at the times and in the manner the Inspector-General ADF considers appropriate;
  - (c) to advise on matters concerning the military justice system, including making recommendations for improvements;
  - (d) to promote military justice values across the Defence Force;
  - (e) to do anything incidental or conducive to the performance of any of the preceding functions.

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- (2) In addition to his or her functions under subsection (1), the Inspector-General ADF also has:
  - (a) the functions conferred on the Inspector-General ADF by or under this Act or any other law of the Commonwealth; and
  - (b) such other functions as are prescribed by the regulations.
- (3) The function referred to in paragraph (1)(a) includes the following:
  - (a) carrying out preliminary assessments as to whether an inquiry or investigation should be conducted by the Inspector-General ADF;
  - (b) referring matters to other appropriate authorities to be dealt with.

Note: The regulations may make provision in relation to the procedures and powers of the Inspector-General ADF in respect of the performance of the Inspector-General ADF's functions (see paragraph 124(1)(h)).

**110D When the Inspector-General ADF can conduct inquiries or investigations**

- (1) The Inspector-General ADF may conduct an inquiry or an investigation on his or her own initiative.
- (2) The Inspector-General ADF may be directed to conduct an inquiry or an investigation by the Chief of the Defence Force.
- (3) The Inspector-General ADF may be requested to conduct an inquiry or an investigation by a service chief, but is not required to comply with the request.
- (4) The Inspector-General ADF may be requested to conduct an inquiry or an investigation by any other individual, but is not required to comply with the request.

## **Division 2—Administrative provisions about the Inspector-General of the Australian Defence Force**

### **110E Appointment**

- (1) The Inspector-General ADF is to be appointed by the Minister by written instrument.
- (2) In making an appointment under subsection (1), the Minister must have regard to any recommendations made by the Chief of the Defence Force.
- (3) The Inspector-General ADF holds office on a full-time basis.
- (4) A person holding office as the Inspector-General ADF holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

### **110F Qualifications for appointment**

A person must not be appointed as the Inspector-General ADF unless the person has knowledge of and experience in relation to military justice issues and an understanding of their relevance to the role of the Defence Force.

### **110G Tenure**

- (1) The Inspector-General ADF holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (2) The Inspector-General ADF is eligible for reappointment.

### **110H Resignation**

The Inspector-General ADF may resign his or her appointment by giving the Minister a written resignation.

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**110I Remuneration**

- (1) The Inspector-General ADF is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.
- (2) The Inspector-General ADF is to be paid the allowances that are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**110J Leave of absence**

- (1) The Inspector-General ADF has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Chief of the Defence Force may grant the Inspector-General ADF leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Chief of the Defence Force determines.

**110K Engaging in other paid work**

The Inspector-General ADF must not engage in paid employment outside the duties of his or her office without the Minister's consent.

**110L Termination of appointment**

- (1) The Minister must terminate the appointment of the Inspector-General ADF if the Inspector-General ADF:
  - (a) becomes bankrupt; or
  - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with his or her creditors; or
  - (d) assigns his or her remuneration for the benefit of his or her creditors; or
  - (e) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or



- (f) fails, without reasonable excuse, to comply with section 110M.
- (2) The Minister may terminate the appointment of the Inspector-General ADF on the ground of:
  - (a) misbehaviour; or
  - (b) physical or mental incapacity.
- (3) The Minister may terminate the appointment of the Inspector-General ADF if the Inspector-General ADF engages in paid employment outside the duties of his or her office other than with the Minister's consent.

### **110M Disclosure of interests**

The Inspector-General ADF must give written notice to the Minister of all interests (financial or otherwise) that the Inspector-General ADF has or acquires that could conflict with the proper performance of the functions of his or her office.

### **110N Acting appointments**

- (1) The Minister may appoint a person to act as the Inspector-General ADF:
  - (a) during a vacancy in the office of Inspector-General ADF (whether or not an appointment has previously been made to that office); or
  - (b) during any period, or during all periods, when the Inspector-General ADF is absent from duty or from Australia, or is, for any other reason, unable to perform the duties of the office.
- (2) Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.
- (3) The Minister must not appoint a person to act as the Inspector-General ADF unless the person has knowledge of and

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experience in relation to military justice issues and an understanding of their relevance to the role of the Defence Force.

- (4) In making an appointment under subsection (1), the Minister must have regard to any recommendations made by the Chief of the Defence Force.

**110O Staff**

- (1) The staff necessary to assist the Inspector-General ADF are to be the following:
- (a) members of the Defence Force made available for the purpose by the appropriate service chief;
  - (b) persons engaged under the *Public Service Act 1999* and made available for the purpose by the Secretary of the Department.
- (2) The Inspector-General ADF may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Inspector-General ADF.
- (3) An engagement under subsection (2) is to be made:
- (a) on behalf of the Commonwealth; and
  - (b) by written agreement.

**110P Inquiry officers, inquiry assistants and Assistants IGADF**

- (1) The Inspector-General ADF may appoint a person as:
- (a) an inquiry officer; or
  - (b) an inquiry assistant; or
  - (c) an Assistant IGADF.
- (2) The Inspector-General ADF must not appoint a person under subsection (1) unless the person is eligible to be so appointed under the regulations.
- (3) The regulations may prescribe matters relating to the roles, functions and powers of a person appointed under subsection (1).

## **Division 3—Other matters**

### **110Q Protection from civil actions**

- (1) This section applies to the following persons (*protected persons*):
  - (a) the Inspector-General ADF;
  - (b) a person acting under the authority of the Inspector-General ADF.
- (2) A protected person is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of the performance or exercise, in good faith, of the protected person's functions, powers or duties under or in relation to this Act.

### **110R Reports**

The Inspector-General ADF must prepare and give to the Chief of the Defence Force such reports on the operations of the Inspector-General ADF as the Chief of the Defence Force directs.

### **110S Delegation**

The Inspector-General ADF may, by instrument in writing, delegate his or her power under section 110P to an officer holding a rank not lower than the naval rank of captain or the rank of colonel or group captain.

## Part VIIC—Defence Honours and Awards Appeals Tribunal

### Division 1—Preliminary

#### 110T Definitions

In this Part:

*Chair* means the Chair of the Tribunal.

*defence award* has the meaning given by the regulations.

*defence honour* has the meaning given by the regulations.

*eligible service* means:

- (a) service in the Defence Force; or
- (b) service under the control, or at the direction, of the Defence Force or a member of the Defence Force.

*foreign award* means an honour or award given by a government of a foreign country, or by an international organisation.

*inquiry* means an inquiry under Division 4.

*lawyer* means a person who is enrolled as a barrister, a solicitor, a barrister and solicitor, or a legal practitioner, of a federal court or a court of a State or Territory.

*procedural rules* means the procedural rules made under section 110XH.

*reviewable decision* has the meaning given by section 110V.

*review of a reviewable decision* means a review under Division 3.

*Tribunal* means the Defence Honours and Awards Appeals Tribunal established by section 110U.

*Tribunal member* means a member of the Tribunal, including the Chair.

***Tribunal proceeding*** means:

- (a) a review of a reviewable decision; or
- (b) an inquiry.

**Division 2—Establishment and functions of Defence Honours and Awards Appeals Tribunal**

**110U Establishment of Tribunal**

- (1) The Defence Honours and Awards Appeals Tribunal is established by this section.
- (2) The Tribunal has the privileges and immunities of the Crown.

**110UA Functions of Tribunal**

The functions of the Tribunal are:

- (a) to review reviewable decisions in accordance with Division 3; and
- (b) to inquire into matters concerning honours or awards for eligible service in accordance with Division 4.

**110UB Tribunal and Tribunal members not subject to direction**

Except as provided by this Part (including the procedural rules) or another law of the Commonwealth, neither the Tribunal, nor any Tribunal member, is subject to direction from anyone in relation to the performance or exercise of the Tribunal's or member's functions or powers.

## **Division 3—Review of decisions by the Tribunal**

### **110V What decisions are reviewable?**

- (1) A *reviewable decision* is a decision (whether made before or after the commencement of this Part) in relation to which the following conditions are satisfied:
  - (a) the decision is or was a refusal to recommend a person or group of persons for any of the following in relation to eligible service:
    - (i) a defence honour;
    - (ii) a defence award;
    - (iii) a foreign award;
  - (b) the decision is or was made:
    - (i) by or on behalf of the Minister, or a former Minister (a *former Defence Minister*) whose ministerial responsibilities included defence or matters related to defence; or
    - (ii) by a person within the Department, or a former Department of State of the Commonwealth that was administered by a former Defence Minister; or
    - (iii) by a person within the Defence Force, or an arm of the Defence Force;
  - (c) the decision is or was made in response to an application.
- (2) However, a decision is not a *reviewable decision* if the decision:
  - (a) was made before 3 September 1939; or
  - (b) relates to service rendered before 3 September 1939.

### **110VA Who can apply for review?**

An application for review of a reviewable decision can only be made by the person, or one or more of the persons, who made the application referred to in paragraph 110V(1)(c).

### 110VB Review of decisions by the Tribunal

#### *Decisions relating to defence honours*

- (1) If an application is properly made to the Tribunal for review of a reviewable decision relating to a defence honour, the Tribunal:
  - (a) must review the decision; and
  - (b) may make any recommendations to the Minister that the Tribunal considers appropriate.

Note 1: The Tribunal does not have power to affirm or set aside the decision.

Note 2: Formal requirements relating to decisions etc. of the Tribunal are dealt with in section 110XE.

#### *Decisions relating to defence awards and foreign awards*

- (2) If an application is properly made to the Tribunal for review of a reviewable decision relating to a defence award or a foreign award, the Tribunal must review the decision and:
  - (a) affirm the decision; or
  - (b) set the decision aside and:
    - (i) substitute a new decision (being a decision to recommend a person or group of persons for a defence award or a foreign award); or
    - (ii) refer the matter to a person determined by the Tribunal, for reconsideration in accordance with any directions of the Tribunal.

Note: Formal requirements relating to decisions etc. of the Tribunal are dealt with in section 110XE.

- (3) The Tribunal may also make any recommendations to the Minister that the Tribunal considers appropriate and that arise out of, or relate to, the Tribunal's review under subsection (2) of a reviewable decision.
- (4) If, under subsection (2), the Tribunal sets aside a reviewable decision and substitutes a new decision then, unless the Tribunal determines otherwise, the substituted decision:
  - (a) is taken to be a decision of the person who made the reviewable decision (except for the purpose of any review of the substituted decision, whether by the Tribunal or otherwise); and



- (b) has effect, or is taken to have had effect, on and from the date determined by the Tribunal.
- (5) If, under subsection (2), the Tribunal sets aside a reviewable decision and refers the matter to a person determined by the Tribunal, for reconsideration in accordance with any directions of the Tribunal:
  - (a) the person must reconsider the matter accordingly; and
  - (b) if the person's decision on the reconsideration is a refusal of a kind described in paragraph 110V(1)(a)—the decision is taken to be a reviewable decision made by that person in response to an application made by the person or persons who made the application referred to in subsection (2) of this section.

*Tribunal is bound by eligibility criteria that governed making of reviewable decision*

- (6) In reviewing a reviewable decision, the Tribunal is bound by the eligibility criteria that governed the making of the reviewable decision.
- (7) The regulations may define or otherwise clarify the meaning of *eligibility criteria* for the purpose of subsection (6).

### **110VC Power to dismiss review applications**

- (1) Despite section 110VB, the Chair may, in writing, dismiss an application for review of a reviewable decision if the Chair considers that:
  - (a) there is another process for review, by the Commonwealth, of the decision, and it would be preferable for the decision to first be reviewed by that process; or
  - (b) the question whether the person, or group of persons, concerned should be recommended for the defence honour, defence award or foreign award concerned has already been adequately reviewed (whether by the Tribunal or otherwise);  
or
  - (c) the application is frivolous or vexatious.
- (2) The Chair's power under subsection (1) to dismiss an application for review of a reviewable decision may be exercised at any time,

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whether before or after the Tribunal has started to review the decision.

- (3) A dismissal under subsection (1) is not a legislative instrument.

## **Division 4—Inquiries by the Tribunal**

### **110W Minister may direct Tribunal to hold inquiry**

- (1) The Minister may, in writing, give the Tribunal a direction to hold an inquiry into a specified matter concerning honours or awards for eligible service.
- (2) If the Minister gives the Tribunal a direction under subsection (1), the Tribunal:
  - (a) must hold an inquiry into the specified matter; and
  - (b) must report to the Minister on the outcomes of the inquiry.

Note: Formal requirements relating to decisions etc. of the Tribunal are dealt with in section 110XE.

- (3) The report to the Minister may include any recommendations that the Tribunal considers appropriate and that arise out of, or relate to, the inquiry.
- (4) A direction under subsection (1) is not a legislative instrument.

## **Division 5—General provisions relating to operation of the Tribunal**

### **110X Role of the Chair**

- (1) The Chair is the executive officer of the Tribunal and is responsible for its overall operation and administration.
- (2) The Chair may, in writing, delegate all or any of his or her functions or powers to another Tribunal member.
- (3) In performing functions or exercising powers under a delegation, the delegate must comply with any directions of the Chair.

Note: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.

### **110XA Constitution of Tribunal for Tribunal proceedings**

#### *How the Tribunal is to be constituted*

- (1) Subject to this section, for a particular Tribunal proceeding, the Tribunal is to be constituted by one or more Tribunal members determined by the Chair.
- (2) If the Tribunal proceeding is an inquiry, the Tribunal must be constituted by 3 or more Tribunal members.
- (3) The Chair must also comply with any requirements of the procedural rules relating to the constitution of the Tribunal for Tribunal proceedings.

#### *What happens if the Tribunal is constituted by more than one Tribunal member*

- (4) If the Tribunal is constituted by more than one Tribunal member, the following provisions have effect:
  - (a) the presiding Tribunal member is:
    - (i) if the Chair is a member of the Tribunal as so constituted—the Chair; or
    - (ii) otherwise—the Tribunal member who is directed by the Chair to preside;

- (b) a decision of the majority of the Tribunal members who constitute the Tribunal prevails;
- (c) if there is no majority, the decision of the presiding Tribunal member prevails.

*Formal requirements for determinations and directions*

- (5) A determination or direction by the Chair under this section must be in writing.
- (6) A determination or direction by the Chair under this section is not a legislative instrument.

**110XB What happens if a Tribunal member stops being available**

*When this section applies*

- (1) This section applies if:
  - (a) a Tribunal member (the *unavailable member*) constitutes, or is one of the Tribunal members who constitute, the Tribunal for the purpose of a Tribunal proceeding; and
  - (b) before the proceeding is completed:
    - (i) the Tribunal member stops being a Tribunal member for any reason; or
    - (ii) the Tribunal member is not available for the purpose of the proceeding for any reason; or
    - (iii) the Tribunal member is prohibited by section 110XG from continuing to take part in the proceeding; or
    - (iv) the Tribunal member is directed by the Chair not to continue to take part in the proceeding.

*Chair to direct course of action*

- (2) The Chair must either:
  - (a) direct that the Tribunal proceeding be started afresh; or
  - (b) direct that the Tribunal proceeding be completed.

*If Chair directs that proceeding be started afresh*

- (3) If the Chair directs that the Tribunal proceeding be started afresh:

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- (a) the Chair must, in accordance with section 110XA, determine the Tribunal member or members who are to constitute the Tribunal for that purpose; and
- (b) subject to paragraph (c) of this subsection, the Tribunal, as so constituted, must start to deal with the proceeding afresh; and
- (c) the Tribunal, as so constituted, may have regard to any record of the proceeding before the Tribunal as previously constituted (including a record of any evidence given or submissions made).

*If Chair directs that proceeding be completed*

- (4) If the Chair directs that the Tribunal proceeding be completed:
  - (a) if the unavailable member constituted the Tribunal—the Chair must direct another Tribunal member or Tribunal members to constitute the Tribunal for the purpose of completing the proceeding; or
  - (b) if the unavailable member is one of the Tribunal members who constituted the Tribunal—the Chair must:
    - (i) direct the remaining Tribunal member or Tribunal members to constitute the Tribunal for the purpose of completing the Tribunal proceeding; or
    - (ii) direct a Tribunal member or Tribunal members to constitute the Tribunal for the purpose of completing the Tribunal proceeding.
- (5) If subsection (4) applies in relation to a Tribunal proceeding:
  - (a) if the Tribunal proceeding is an inquiry—the requirement in subsection 110XA(2) that the Tribunal must be constituted by 3 or more Tribunal members does not apply; and
  - (b) a direction under subparagraph (4)(b)(ii) of this section may be given to any Tribunal member (including the remaining Tribunal member or one of the remaining Tribunal members); and
  - (c) the Tribunal, as constituted in accordance with a direction under subsection (4) of this section, must complete the Tribunal proceeding; and
  - (d) for the purpose of completing the Tribunal proceeding, the Tribunal, as so constituted, may have regard to any record of the proceeding before the Tribunal as previously constituted

(including a record of any evidence given or submissions made).

*Formal requirements for directions*

- (6) A direction by the Chair under this section must be in writing.
- (7) A direction by the Chair under this section is not a legislative instrument.

**110XC Summoning persons to give evidence or produce documents**

- (1) The Tribunal may summon a person to attend before the Tribunal to give evidence or produce documents for the purpose of a Tribunal proceeding.
- (2) A person commits an offence if:
  - (a) the person has been given a summons under subsection (1); and
  - (b) the person fails to comply with the summons.

Penalty: Imprisonment for 6 months or 30 penalty units, or both.

- (3) Subsection (2) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

- (4) Without limiting subsection (3), it is a reasonable excuse for a person to refuse or fail to give evidence or produce a document if giving the evidence, or producing the document, would tend to incriminate the person.
- (5) A person summoned under subsection (1) is entitled to be paid the same fees, and allowances for expenses, as apply under section 67 of the *Administrative Appeals Tribunal Act 1975* in relation to persons summoned under that Act. The fees and allowances are payable by the Commonwealth.

**110XD Protection of confidential or sensitive evidence or submissions etc.**

- (1) The Tribunal may make an order prohibiting or restricting the publication of any of the following if the Tribunal is satisfied that it

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is desirable to do so, whether for reasons of confidentiality or sensitivity:

- (a) evidence given, documents produced or submissions made to the Tribunal in relation to a Tribunal proceeding;
- (b) the names and addresses of persons giving evidence, producing documents, or making submissions to the Tribunal in relation to a Tribunal proceeding;
- (c) the whole or any part of any decision or report made or given by the Tribunal, or the Tribunal's reasons for any such decision or report.

Note: Formal requirements relating to decisions etc. of the Tribunal are dealt with in section 110XE.

- (2) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) the person's conduct contravenes an order made under subsection (1).

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

**110XE Formal requirements relating to decisions etc. of the Tribunal**

*Decisions etc. to be in writing*

- (1) Decisions, orders, determinations, reports and recommendations of the Tribunal must be in writing.

*Review decisions*

- (2) The Tribunal's decision on the review of a reviewable decision must include a statement of the Tribunal's reasons for its decision.
- (3) Subject to any orders under section 110XD:
  - (a) the Tribunal must cause a copy of its decision on the review of a reviewable decision to be given to the person or persons who applied for the review; and
  - (b) the Tribunal may also give a copy of its decision on the review of a reviewable decision to any other person that the Tribunal considers appropriate.



*Inquiry reports*

- (4) Subject to any orders under section 110XD, the Tribunal must cause a copy of its report on an inquiry to be published on the Tribunal's website or by another means that the Tribunal considers appropriate.

**110XF Protection of Tribunal members and other persons**

- (1) A Tribunal member has, in performing his or her functions or exercising his or her powers as a Tribunal member, the same protection and immunity as a Justice of the High Court.
- (2) A person representing another person before the Tribunal has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) A person summoned to attend, or appearing, before the Tribunal to give evidence or make submissions has the same protection, and is (in addition to the penalties provided by this Part) subject to the same liabilities, as a witness in proceedings in the High Court.

**110XG Disclosure of interests by Tribunal members**

*When this section applies*

- (1) This section applies if a Tribunal member who constitutes, or is one of the Tribunal members who constitute, the Tribunal for the purpose of a Tribunal proceeding has or acquires any interest (the **potential conflict**) that conflicts or could conflict with the proper performance of the member's functions in relation to the proceeding.

Note: Failure to comply with the requirements of this section is a ground for termination: see section 110YH.

*If the Tribunal member is the Chair*

- (2) If the Tribunal member is the Chair:
  - (a) the Chair must disclose the potential conflict to the Minister, and to all persons who appear or have appeared before the Tribunal in the Tribunal proceeding; and
  - (b) the Chair must not continue to take part in the proceeding unless the Minister consents in writing.

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*If the Tribunal member is not the Chair*

- (3) If the Tribunal member is not the Chair:
- (a) the Tribunal member must disclose the potential conflict to the Chair, and to all persons who appear or have appeared before the Tribunal in the Tribunal proceeding; and
  - (b) the Tribunal member must not continue to take part in the proceeding unless the Chair consents in writing.

*Consent is not a legislative instrument*

- (4) A consent by the Minister or the Chair under subsection (2) or (3) is not a legislative instrument.

**110XH Procedural rules**

- (1) After consulting the other Tribunal members, the Chair may, by legislative instrument, make procedural rules (not inconsistent with this Part) in relation to the practice and procedure to be followed by or in relation to the Tribunal.
- (2) Without limiting subsection (1), the procedural rules may provide for the following:
- (a) the constitution of the Tribunal for Tribunal proceedings;
  - (b) how the work of the Tribunal is to be allocated between the Tribunal members;
  - (c) the nature or form of Tribunal proceedings (for example, whether proceedings are to take the form of a hearing, and whether a hearing is to be in public or private);
  - (d) the circumstances in which a person may be represented by a lawyer or other person in a Tribunal proceeding;
  - (e) how applications are to be made to the Tribunal;
  - (f) requiring lodgment with the Tribunal of material relating to the making of reviewable decisions that are the subject of applications to the Tribunal;
  - (g) how evidence is to be given, or submissions are to be made, to the Tribunal;
  - (h) how people are to be summoned to attend before the Tribunal;
  - (i) any other matters that the Chair considers necessary or convenient.

- (3) The procedural rules must be complied with in relation to Tribunal proceedings.

## **Division 6—Tribunal members**

### **110Y Constitution of Tribunal**

The Tribunal consists of the following Tribunal members:

- (a) the Chair of the Tribunal;
- (b) a minimum of 6, and maximum of 10, other Tribunal members.

### **110YA Appointment of Tribunal members**

- (1) The Tribunal members are to be appointed by the Minister, in writing, on a part-time basis.
- (2) The instrument of appointment of a Tribunal member must specify whether the member is appointed as the Chair of the Tribunal, or as one of the other Tribunal members.
- (3) In making appointments, the Minister must have regard to the desirability of:
  - (a) reflecting a diversity of expertise, experience and gender among the Tribunal members; and
  - (b) the Tribunal members being independent of those who usually make reviewable decisions.
- (4) A person is not eligible to be appointed as the Chair if:
  - (a) the person is, or has at any time been, a member of the Defence Force rendering continuous full-time service; or
  - (b) in the Minister's opinion, the person does not have an appropriate level of security clearance.
- (5) A person is not eligible to be appointed as one of the other Tribunal members if:
  - (a) the person is, or has at any time within the previous 12 months been, a member of the Defence Force rendering continuous full-time service; or
  - (b) in the Minister's opinion, the person does not have an appropriate level of security clearance.

### **110YB Period of appointment**

- (1) A Tribunal member holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.
- (2) Subject to subsections (3) and (4), a Tribunal member is eligible for reappointment as a Tribunal member.
- (3) A person must not hold office as Chair for more than 6 consecutive years.
- (4) A person must not hold office as one of the other Tribunal members for more than 6 consecutive years.

### **110YC Acting appointments**

#### *Appointment of acting Chair*

- (1) The Minister may, in writing, appoint a Tribunal member to act as the Chair:
  - (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
  - (b) during any period, or during all periods, when the Chair:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

#### *Appointment of other acting Tribunal members*

- (2) The Chair may, in writing, appoint a person to act as a Tribunal member (other than the Chair):
  - (a) during a vacancy in an office of Tribunal member (other than the Chair), whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when a Tribunal member (other than the Chair):
    - (i) is acting as the Chair; or
    - (ii) is absent from duty or from Australia; or
    - (iii) is, for any reason, unable to perform the duties of the office.

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Note: See also section 33A of the *Acts Interpretation Act 1901*, which contains extra rules about acting appointments.

- (3) In appointing a person to act as a Tribunal member, the Chair must have regard to the desirability of:
- (a) reflecting a diversity of expertise, experience and gender among the Tribunal members; and
  - (b) the Tribunal members being independent of those who usually make reviewable decisions.

*Protection from invalidity*

- (4) Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there was a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion to act had not arisen or had ceased.

*Determining whether there is a vacancy in an office of Tribunal member*

- (5) For the purpose of:
- (a) a reference in this section to a vacancy in an office of Tribunal member; or
  - (b) a reference in the *Acts Interpretation Act 1901* to a vacancy in the membership of a body;
- there are taken to be 10 offices of Tribunal members in addition to the Chair.

**110YD Other employment**

A Tribunal member must not engage in any paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the member's functions.

**110YE Remuneration**

- (1) A Tribunal member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Tribunal

member is to be paid the remuneration that is prescribed by the regulations.

- (2) A Tribunal member is to be paid the allowances that are prescribed by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **110YF Leave**

- (1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.
- (2) The Chair may grant leave of absence to any other Tribunal member on the terms and conditions that the Chair determines.

### **110YG Resignation**

- (1) A Tribunal member may resign his or her appointment by giving the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

### **110YH Termination**

- (1) The Minister may terminate the appointment of a Tribunal member for misbehaviour or physical or mental incapacity.
- (2) The Minister may terminate the appointment of a Tribunal member if:
  - (a) the Tribunal member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
  - (b) the Tribunal member fails, without reasonable excuse, to comply with section 110XG (disclosure of interests by Tribunal members); or

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- (c) the Tribunal member engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the member's functions.
- (3) If the Chair ceases to be eligible for appointment (see subsection 110YA(4)), the Minister must terminate the appointment of the Chair.
- (4) If a Tribunal member (other than the Chair) ceases to be eligible for appointment (see subsection 110YA(5)), the Minister must terminate the appointment of the Tribunal member.

**110YI Other terms and conditions**

A Tribunal member holds office on the terms and conditions (if any) in relation to matters not covered by this Part that are determined by the Minister.



## **Division 7—Miscellaneous**

### **110Z Regulations**

Without limiting the generality of section 124, the regulations may make provision for or in relation to any of the following:

- (a) any fees that are to be payable in relation to applications to the Tribunal;
- (b) prohibiting the disclosure of information obtained by the Tribunal, a member of the Tribunal or a person assisting the Tribunal;
- (c) proof of decisions or orders of the Tribunal.

## Part IX—Legal procedure

### 111 Subscription, arms etc. vested in commanding officer

- (1) For the purposes of legal proceedings, all moneys subscribed by or for or otherwise appropriated to the use of any corps or part thereof, or ship's company or part thereof, or air-force unit or station or part thereof, and all arms, ammunition, accoutrements, clothing, musical instruments, or other things, belonging to or used by any corps or part thereof, or ship's company or part thereof, or air-force unit or station or part thereof, and not being the private property of a member of the corps or ship's company or air-force unit or station, as the case may be, shall be deemed to be the property of the commanding officer of the corps or ship's company or air-force unit or station, as the case may be.
- (2) For the purposes of this section, *corps* includes unit.

### 111A Property of Rifle Club vested in Captain

For the purposes of legal proceedings, all arms, ammunition, or other military articles, belonging to or used by any Rifle Club, shall be deemed to be the property of the Captain of the Rifle Club.

## **Part IXA—Provisions relating to the forces of other countries**

### **Division 1—Interpretation**

#### **116A Interpretation**

- (1) In this Part, unless the contrary intention appears:

*forces*, in relation to a country, means the naval, military or air forces of that country.

*service authorities*, in relation to a country, means the naval, military or air force authorities of that country.

- (2) A reference in this Part to a country in relation to which a provision of this Part applies shall be read as a reference to a country declared by the regulations to be a country in relation to which that provision applies.
- (3) For the purposes of this Part, a member of a force of a country that (by whatever name called) is in the nature of a reserve or auxiliary force shall be deemed to be a member of the forces of that country so long as, but only so long as, he is called into actual service (by whatever expression described) with those forces or is called out for training with those forces.

**Division 2—Attachment of personnel and mutual powers of command**

**116B Attachment to the Defence Force of members of the forces of another country and vice versa**

- (1) The Chief of Navy, the Chief of Army or the Chief of Air Force may, by order in writing:
  - (a) attach temporarily to any part of the Defence Force under his command a specified member, or a member included in a specified class of members, of the forces of a country in relation to which this section applies who is placed at his disposal by the service authorities of that country for the purpose of being so attached; and
  - (b) subject to anything to the contrary in the conditions applicable to his service, place a specified member, or a member included in a specified class of members, of any part of the Defence Force under his command at the disposal of the service authorities of a country in relation to which this section applies in order that he may be attached temporarily by those authorities to the forces of that country.
- (2) Where a member of the forces of a country in relation to which this section applies is attached temporarily to a part of the Defence Force, he shall, for the period for which he is so attached, be regarded as a member of that part of the Defence Force, as holding the rank in that part of the Defence Force that corresponds with the rank that he holds in those forces and as having, for the purposes of command and discipline, the same status and powers, including the power to arrest and to impose punishments, as:
  - (a) a member of that rank in that part of the Defence Force; and
  - (b) if he is given an appointment in that part of the Defence Force—a member of that part of the Defence Force holding the like appointment.
- (3) The application of the law governing the Australian Navy, the Australian Army or the Australian Air Force, as the case may be, to a person to whom subsection (2) applies is subject to such exceptions, modifications and adaptations as are specified by the Minister by order in writing.

- (4) A member of the Defence Force referred to in paragraph (1)(b) does not cease to be subject to the law governing that part of the Defence Force to which he belongs by reason only of his being temporarily attached as provided by that paragraph.
- (5) This section applies to and in relation to a part of the Defence Force serving either within or beyond the territorial limits of Australia.

### **116C Forces serving together**

- (1) Whenever a part of the Defence Force and a part of the forces of a country in relation to which this subsection applies are serving together, either within or beyond the territorial limits of Australia, and either alone or together with any other force, a member of the force of that country has the same powers of command over members of that part of the Defence Force as a member of the Defence Force holding the rank in that Force that corresponds with the rank that he holds in the force of the country to which he belongs.
- (2) Whenever a part of the Defence Force and a part of the forces of another country to which this subsection applies are acting in combination, either within or beyond the territorial limits of Australia, an officer of the forces of that other country may be appointed by the Governor-General, by order in writing, to command the combined force, or any part of the combined force, and an officer so appointed:
  - (a) has, subject to such restrictions and limitations as are specified by the Chief of the Defence Force by order in writing, over members of the Defence Force serving in that combined force or part of that force, the same powers of command and discipline, including the power to impose punishments; and
  - (b) may be invested by the Governor-General, by order in writing, with the same power to convene, and confirm the findings and sentences of, courts-martial;as if he or she were an officer of the Defence Force holding that appointment and the rank in that Force corresponding with the rank that he or she holds in the force to which he or she belongs.

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- (3) Where a part of the Defence Force and a part of the forces of a country in relation to which subsection (1) applies are serving together beyond the territorial limits of Australia, the officer in command of that part of the Defence Force, or an officer authorized in writing by the Chief of the Defence Force or a service chief for the purposes of this subsection, may request the appropriate service authority of that country to direct, by general or special orders, members of the forces of that country to arrest any member of that part of the Defence Force who is alleged to have committed, or is reasonably suspected of having committed, an offence punishable under Australian service law and to deliver him into the custody of such service authority of the Defence Force as is designated by or under the orders.
- (4) A member of the Defence Force arrested and held in custody in pursuance of subsection (3) shall be deemed to have been arrested and held in custody in accordance with Australian service law.
- (5) The Governor-General may declare that specified parts of the Defence Force and specified parts of the forces of specified countries are to be taken for the purposes of this section to be serving together or acting in combination.
- (5A) The Governor-General may declare that, whenever specified parts of the Defence Force and specified parts of the forces of specified countries are in fact serving together or acting in combination, the forces are to be taken for the purposes of this section to be serving together or acting in combination.
- (5B) A declaration under subsection (5) or (5A) has effect accordingly. Except as provided in such a declaration, forces are not taken for the purposes of this section to be serving together or acting in combination.
- (5C) A declaration under subsection (5) or (5A) must be in writing.
- (6) In this section, *Australian service law* means the law (including any instrument having the force of law) governing the Defence Force or a part of the Defence Force.

### **116D Corresponding ranks**

- (1) For the purposes of this division, the Chief of the Defence Force may, by order in writing, determine the ranks in the several parts of the Defence Force that are to be regarded as corresponding with specified ranks in the forces of any other specified country.
- (2) Where, in the course of preparing an order under subsection (1) in relation to a country, the Chief of the Defence Force determines that there is no rank in a part of the Defence Force that can reasonably be regarded as corresponding with a particular rank in the forces of that country, he may specify in the order, for the purposes of this Division or any specified provision of this Division and either generally or for any other specified purposes:
  - (a) a rank in that part of the Defence Force that is to be regarded as corresponding with that particular rank; or
  - (b) the relationship that is to be regarded as existing between a member of those forces holding that particular rank and the members of that part of the Defence Force.
- (3) References in this section to ranks shall be read as including references to ratings in naval forces and, generally, as not restricted to the ranks of officers.

## Division 3—Absentees without leave

### 116E Interpretation

- (1) In this Division, *authorized officer* means an officer authorized by the Chief of the Defence Force or a service chief, by order in writing, for the purposes of this Division.
- (2) A reference in this Division to the designated authority of a country is a reference to an authority designated for the purposes of this Division by the appropriate authority or officer of that country.
- (3) A reference in this Division to the country to which a person belongs is a reference to the country from whose forces he is suspected of being, or, where he has surrendered himself, appears from his confession to be, an absentee without leave.
- (4) For the purposes of the application of this Division in relation to the forces of a country, it is immaterial whether or not any body, contingent or detachment of those forces is present in Australia.

### 116F Apprehension of absentees without leave

Where the designated authority of a country in relation to which this section applies, by writing signed by him, requests an authorized officer for assistance in the apprehension of a member of the forces of that country, not being an Australian citizen, who is an absentee without leave from those forces, the authorized officer may, in his discretion, issue a warrant in accordance with the prescribed form authorizing a member or special member of the Australian Federal Police or a member of the police force of a State or Territory or any member of the Defence Force to arrest that absentee.

### 116G Detention of illegal absentee

- (1) A person who is arrested under section 116F or who surrenders himself as being illegally absent from the forces of a country in relation to which this section applies may be detained:
  - (a) by a member or special member of the Australian Federal Police or a member of a police force of a State or Territory at



- a police station or at a place provided for the confinement of persons in lawful custody; or
- (b) by a member of the Defence Force at a place provided for the confinement of members of the Defence Force who are accused or convicted of offences;
- for such time as is reasonably necessary to enable the person to be dealt with in accordance with section 116H.
- (2) As soon as practicable after a person is taken into custody under subsection (1), the person holding him in custody shall:
- (a) cause an authorized officer to be notified that the person has been taken into custody; and
- (b) take all reasonable steps to ensure that the person in custody understands his right to make a request under subsection (3).
- (3) A person in custody under this section may, on grounds specified by him, request that he be released from that custody.
- (4) Where a person makes a request under subsection (3), the person holding him in custody shall cause the request to be referred to an authorized officer.

#### **116H Disposal of person in custody**

- (1) Where an authorized officer is notified under paragraph 116G(2)(a) that a person has been taken into custody under subsection 116G(1), he shall, after such investigation of the matter as he thinks necessary:
- (a) if he is satisfied that there is a good and sufficient reason why the person held in custody should be released—direct that the person be released from custody under this Division; or
- (b) if he is not so satisfied—refer the matter to the Minister.
- (2) For the purposes of the carrying out of an investigation referred to in subsection (1), the authorized officer shall have due regard to any request made by a person under subsection 116G(3).
- (3) Where the matter is referred to the Minister under subsection (1), the Minister shall:
- (a) direct that the person held in custody be released from custody under this Division; or

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- (b) issue a warrant for the delivery of the person held in custody under this Division into the custody of a specified service authority of the country to which the person belongs at a place in Australia:
  - (i) specified in the warrant; or
  - (ii) determined by the authorized officer.
- (4) A service authority into whose custody a person is delivered in pursuance of a warrant issued under paragraph (3)(b) may remove the person from Australia, but nothing in this subsection shall be taken to limit any other powers that the authority may have with respect to the person.
- (5) Where under this section the Minister or an authorized officer directs that a person be released from custody under this Division, that person shall be so released.

**116J Evidence for the purposes of this Division**

For the purposes of any proceedings in a court or otherwise arising in connection with any action taken in pursuance of the provisions of this Division, where the designated authority of a country in relation to which section 116F applies certifies in writing that a person named and described in that certificate was, on a specified date, an absentee without leave from the forces of that country, that certificate is *prima facie* evidence of the facts so certified.

**116K Proof of facts by certificate**

- (1) Where in a certificate given for the purposes of this Division reference is made to a person by name and that certificate includes a description of the person named by reference to his physical characteristics and a court is satisfied that a person before it is a person having that name and answering to the description in the certificate, the certificate shall be deemed to refer to that person, unless the contrary is proved.
- (2) A document purporting to be a certificate, request or notification given or made for the purposes of a provision of this Division, and to be signed by an authority or person specified in the document, shall, upon mere production in any proceedings in a court, be received in evidence and, unless the contrary is proved, be deemed

to be a certificate, request or notification given or made by that authority or person.

- (3) Where under a provision of this Division a certificate or request is given or made by the designated authority of a country, and a certificate or request purports to be signed by a person described in that document as the designated authority of that country, that person shall, in any proceedings in a court, be deemed to be the designated authority of that country for the purposes of that provision, unless the contrary is proved.

## Division 4—Miscellaneous

### 116M Delegation

- (1) Subject to subsection (2), the Chief of the Defence Force or a service chief may, in relation to a matter or a class of matters, or to a State, Territory, or other part of Australia, another country or part of another country, by writing signed by him, delegate to an officer who holds a rank not below the rank of Captain in the Australian Navy, Colonel in the Australian Army or Group Captain in the Australian Air Force, all or any of his powers under this Part, other than this power of delegation.
- (2) The Chief of the Defence Force or a service chief shall not delegate:
  - (a) his power to authorize an officer for the purposes of subsection 116C (3); or
  - (b) his power to authorize an officer for the purposes of Division 3;except to an officer who holds a rank not below the rank of Rear-Admiral in the Australian Navy, Major-General in the Australian Army or Air Vice-Marshal in the Australian Air Force.
- (3) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Chief of the Defence Force or a service chief.
- (4) A delegation under this section does not prevent the exercise of a power by the Chief of the Defence Force or a service chief.
- (5) A delegation under this section continues in force notwithstanding a change in the occupancy of, or a vacancy in, the office of the Chief of the Defence Force or a service chief.
- (6) A document purporting to be a copy of a delegation by the Chief of the Defence Force or a service chief, or an order or written authority made or given by the Chief of the Defence Force or a service chief or by a delegate of the Chief of the Defence Force or a service chief, and purporting to bear the signature or a facsimile of the signature of the Chief of the Defence Force or a service chief or of the delegate, as the case may be, with an endorsement in

writing that the delegation, order or written authority is, or was on a specified date, in force, is, upon mere production in a court or otherwise for any purpose arising under this Part, *prima facie* evidence that the delegation, order or written authority was duly given or made in the terms set out in the document and is, or was on the date specified, in force.

## Part IXB—Public areas of defence land

### 116P Interpretation

- (1) In this Part, unless the contrary intention appears:

*by-laws* means by-laws under this Part.

*public area* means a public area declared under section 116Q.

*ranger* means:

- (a) a person appointed under section 116S; and
  - (b) a person referred to in section 116T.
- (2) A reference in this Part to a member of the Australian Federal Police or to a member of a police force includes a reference to a special member of the Australian Federal Police.

### 116Q Public areas of defence land

- (1) The Minister may, by notice published in the *Gazette*, declare an area specified in the notice to be a public area and assign a name to that area.
- (2) In subsection (1), *area* means an area of land that is owned or held under lease by the Commonwealth and used, or intended for use, for the purposes of defence.

### 116R Delegation

- (1) The Minister may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer of the Defence Force or an officer of the Department of Defence all or any of his powers under this Part or the by-laws, other than this power of delegation or his powers under section 116ZD to make by-laws.
- (2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act or the by-laws, be deemed to have been exercised by the Minister.

- (3) A delegation under this section does not prevent the exercise of a power by the Minister.
- (4) Subsections 120A(8) and (9) apply in relation to a delegation under this section as if it were a delegation under section 120A.

**116S Appointment of rangers**

The Minister may, by instrument in writing, appoint a person as a ranger.

**116T Rangers *ex officio***

By force of this section, any member of the Australian Federal Police or member of the police force of a Territory is a ranger.

**116U Identity cards**

- (1) The Minister may cause to be issued to a ranger, other than a member of a police force, an identity card in a form approved by the Minister.
- (2) A person who ceases to be a ranger shall forthwith return his identity card to the Minister.
- (3) A person who contravenes subsection (2) is guilty of an offence punishable on conviction by a fine not exceeding \$100.

**116V Powers of arrest**

- (1) A ranger may, without warrant, arrest any person, if the ranger believes on reasonable grounds:
  - (a) that the person is committing or has committed an offence against this Part or the by-laws; and
  - (b) that proceedings against the person by summons would not be effective.
- (2) Where a ranger (other than a member of a police force who is in uniform) arrests a person under subsection (1), he shall:
  - (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he is a member of a police force; or

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- (b) in any other case—produce his identity card for inspection by that person.
- (3) Where a person is arrested under subsection (1), a ranger shall forthwith bring the person, or cause him to be brought, before a Justice of the Peace or other proper authority to be dealt with in accordance with law.
- (4) Nothing in this section prevents the arrest of a person in accordance with any other law.

**116W General powers of rangers**

- (1) A ranger may search any vehicle, aircraft or vessel if he believes on reasonable grounds that there is in or on that vehicle, aircraft or vessel anything that will afford evidence as to the commission of an offence against this Part or the by-laws, and for that purpose stop or detain that vehicle, aircraft or vessel.
- (2) A ranger may:
  - (a) require any person whom he finds committing or whom he suspects on reasonable grounds of having committed an offence against this Part or the by-laws to state his full name and usual place of residence; and
  - (b) require any person in a public area whom he finds committing, or whom he suspects on reasonable grounds of having committed, an offence against this Part or the by-laws to leave the public area.
- (3) Where a ranger (other than a member of a police force who is in uniform) stops, or proposes to search or detain, a vehicle, aircraft or vessel, he shall:
  - (a) in the case of a member of a police force—produce, for inspection by the person in charge of that vehicle, aircraft or vessel, written evidence of the fact that he is a member of a police force; or
  - (b) in any other case—produce his identity card for inspection by that person;and, if he fails to do so, he is not authorized to search or detain that aircraft, vehicle or vessel.



- (4) Where a ranger (other than a member of a police force who is in uniform) makes a requirement of a person under this section, he shall:
- (a) in the case of a member of a police force—produce, for inspection by that person, written evidence of the fact that he is a member of a police force; or
  - (b) in any other case—produce his identity card for inspection by that person;
- and, if he fails to do so, that person is not obliged to comply with the requirement.
- (5) A person is guilty of an offence if:
- (a) a ranger makes a requirement of the person under this section; and
  - (b) the person fails to comply with the requirement.

Penalty: \$1,000.

- (6) An offence under subsection (5) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (7) Subsection (5) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (7). See subsection 13.3(3) of the *Criminal Code*.

### **116X Seizure and forfeiture**

- (1) Where a court convicts a person of an offence against this Part or the by-laws, the court may order the forfeiture to the Commonwealth of any vehicle, aircraft, vessel or article used or otherwise involved in the commission of the offence.
- (2) A ranger may seize any vehicle, aircraft, vessel or article that he believes on reasonable grounds to have been used or otherwise involved in the commission of an offence against this Part or the by-laws and may retain it until the expiration of a period of 60 days after the seizure, or, if proceedings for an offence against this Part or the by-laws in the commission of which it may have been used or otherwise involved are instituted within that period, until the proceedings are terminated.

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- (3) The Minister may authorize a vehicle, aircraft, vessel or article seized under subsection (2) or anything on, in or attached to such a vehicle, aircraft or vessel to be released to its owner, or to the person from whose possession it was seized, either unconditionally or on such conditions as he thinks fit, including conditions as to the giving of security for payment of its value if it is forfeited.
- (4) A vehicle, aircraft, vessel or article forfeited under this section may be sold or otherwise disposed of as the Minister thinks fit.

**116Y Assaulting etc. rangers**

- (1) A person is guilty of an offence if:
  - (a) the person assaults or threatens another person; and
  - (b) that other person is a ranger performing his or her duties under this Part or the by-laws.

Penalty: \$5,000 or imprisonment for 2 years, or both.

- (2) In paragraph (1)(b), strict liability applies to the physical element of circumstance, that the performance of the duties is under this Part or the by-laws.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**116ZA Officers and employees of governments and authorities**

The Minister may make arrangements with a Minister of a State or Territory for the performance of functions and the exercise of powers under this Part or the by-laws by officers or employees of that State or Territory or of an authority of that State or Territory, as the case may be.

**116ZB Prosecution of offences**

- (1) Notwithstanding that an offence against this Part is expressed to be an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (2) Where, in accordance with subsection (1), a court of summary jurisdiction convicts a person of an offence, the penalty that the

court may impose is a fine not exceeding \$1,000 or imprisonment for a period not exceeding 6 months, or both.

**116ZC Concurrent operation of State and Territory laws**

- (1) This Part and the by-laws, in so far as they apply in relation to public areas, are not intended to exclude or limit the concurrent operation of a law of a State or Territory.
- (2) In interpreting whether, in relation to land owned or held under lease by the Commonwealth, any provision of this Act (other than this Part) is intended to exclude or limit the concurrent operation of a law of a State or Territory, subsection (1) shall be disregarded.

**116ZD By-laws**

- (1) The Minister may, by legislative instrument, make by-laws, not inconsistent with this Act, for and in relation to the control and management of public areas.
- (2) Without limiting the generality of subsection (1), by-laws may be made:
  - (a) providing for functions and powers to be conferred, and duties to be imposed, upon rangers;
  - (b) regulating or prohibiting the pollution of soil, air or water in a manner that is, or is likely to be, harmful to people or wildlife in, or to the natural features of, public areas;
  - (c) regulating or prohibiting tourism in public areas;
  - (d) providing for the protection and preservation of public areas and property and things in public areas;
  - (e) regulating or prohibiting access to public areas by persons or classes of persons;
  - (f) providing for the removal of trespassers from public areas;
  - (g) regulating or prohibiting camping in public areas;
  - (h) providing for the safety of persons in public areas;
  - (j) regulating or prohibiting the use of fire in public areas;
  - (k) regulating the conduct of persons in public areas;
  - (m) regulating or prohibiting the carrying on of any trade or commerce in a public area;

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- (n) regulating or prohibiting the use of vehicles in public areas and providing for signs and road markings for those purposes;
- (p) providing for the removal of vehicles, aircraft or vessels from places in public areas where they have been left in contravention of the by-laws or have been abandoned and for the impounding of such vehicles, aircraft or vessels;
- (q) making provision to the effect that, where a contravention of a provision of the by-laws relating to the parking or stopping of vehicles in a public area occurs in respect of a motor vehicle, the person who is to be regarded as the owner of the motor vehicle for the purposes of the by-laws (who may, in accordance with the by-laws, be or include a person in whose name the motor vehicle is registered under the law of a State or Territory) is to be, except as provided otherwise, deemed to have committed an offence against the provision so contravened, whether or not he in fact contravened that provision;
- (r) enabling a person who is alleged to have contravened a provision of the by-laws relating to:
  - (i) littering;
  - (ii) the use of vehicles or vessels;
  - (iii) the parking or stopping of vehicles;
  - (iv) the mooring or landing of vessels; or
  - (v) the landing and use of aircraft;to pay to the Commonwealth, as an alternative to prosecution, a specified penalty, not exceeding the maximum penalty by which a contravention of that provision is otherwise punishable;
- (s) regulating or prohibiting the use of vessels, and the landing and use of aircraft, in public areas;
- (t) regulating or prohibiting the taking of animals or plants into, or out of, public areas;
- (u) providing for the impounding, removal, destruction or disposal of animals found straying in public areas;
- (v) regulating or prohibiting the taking into public areas, and the use in public areas, of weapons, traps, nets, snares, fishing apparatus and other devices;
- (w) regulating or prohibiting the laying of baits and the use of explosives and poisons in public areas;

- (x) providing for the collection of specimens and the pursuit of research in public areas for scientific purposes;
- (y) providing for the issue of licences, permits and authorities, the conditions subject to which they are issued and the charging of fees by the Minister in respect of such licences, permits and authorities;
- (z) the imposition of charges for:
  - (i) the parking or stopping of vehicles;
  - (ii) the landing of aircraft; and
  - (iii) the use of vehicles and vessels;in public areas;
- (za) providing for penalties, not exceeding a fine of \$500, for offences against the by-laws; and
- (zb) providing for any matter incidental to or connected with any of the foregoing.

## Part IXC—Salvage claims

### 117 Interpretation

- (1) In this Part, unless the contrary intention appears:

*member of the crew*, in relation to a Naval ship, means any member of the Defence Force, whether an officer or a sailor, who belonged to, and was on board, the ship at the time the salvage services were rendered and includes any other member of the Defence Force who was on board the ship at that time and who took part in the rendering of such services.

*Naval ship* means a ship belonging to the Australian Navy.

*officer* means an officer of the Australian Navy.

*salvage* includes all expenses properly incurred by a Naval ship in the performance of salvage services.

*salvage services* means any act or activity undertaken to assist a vessel or property in danger in whatever waters the act or activity takes place.

*vessel* means any ship, craft or structure capable of navigating the high seas.

- (2) Where, before a claim for salvage in respect of salvage services rendered by a Naval ship is commenced or settled, a person who was the commanding officer of that ship at the time when the ship rendered salvage services:
- (a) dies; or
  - (b) is absent from duty or from Australia or is, for any other reason, unable to act or continue to act on behalf of the members of the crew in accordance with subsection 117A(3);
- the Chief of Navy shall, by instrument in writing, appoint a member of the crew of that ship to act on that person's behalf.
- (3) Where, before a claim for salvage in respect of salvage services rendered by a Naval ship is commenced or settled, a person who

was the commanding officer of that ship at the time when the ship rendered salvage services:

- (a) ceases (otherwise than by reason of death) to be the commanding officer of that ship; or
- (b) ceases (otherwise than by reason of death) to be a member of the Australian Navy;

that person shall, for the purposes of this Part, be taken to be the commanding officer of that ship until the claim for salvage is settled.

### **117A Salvage claims by crew of Naval ships**

- (1) Without, by implication, affecting the right of the Commonwealth to claim salvage in respect of salvage services rendered by a Naval ship, the members of the crew of that ship may, subject to subsection (2), also claim salvage in respect of those services.
- (2) A claim for salvage on behalf of the members of the crew of a Naval ship:
  - (a) shall not be made without the prior written approval of the Chief of Navy; and
  - (b) shall be commenced and prosecuted only by the Australian Government Solicitor.
- (3) Where the Chief of Navy approves the making of a claim for salvage in respect of salvage services rendered by a Naval ship on behalf of the members of the crew of that ship, the commanding officer of that ship is authorised, on behalf of each member of the crew of that ship:
  - (a) to instruct the Australian Government Solicitor to act for the members of the crew in relation to the claim; and
  - (b) to accept an offer in settlement of the claim.
- (4) An acceptance of an offer by the commanding officer is binding on each member of the crew.

### **117AA Apportionment of salvage between the Commonwealth and crew members**

- (1) Where salvage is payable in respect of salvage services rendered by a Naval ship and a part of that salvage has been claimed on

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behalf of the members of the crew of that ship, the salvage so payable:

- (a) shall be applied in meeting the expenses incurred by the Commonwealth in providing such salvage services; and
  - (b) to the extent that it is not so applied shall be apportioned between the Commonwealth and the members of the crew of the ship:
    - (i) if the apportionment between the Commonwealth and the members of the crew forms part of the terms of settlement between the owners of the vessel or property saved, the Commonwealth and the members of the crew—in accordance with those terms;
    - (ii) if a court or other tribunal has determined the apportionment between the Commonwealth and the members of the crew—in accordance with that determination; or
    - (iii) in any other case—on the basis that the Commonwealth shall be entitled to receive 80% of the salvage not so applied and the members of the crew shall be entitled to receive 20% of the amount of salvage not so applied.
- (2) Where an amount of salvage would, but for this subsection, be apportioned between the Commonwealth and the members of the crew of a Naval ship in accordance with subparagraph (1)(b)(iii), but the Minister is of the opinion that the members of the crew have rendered exceptional services in the course of rendering the salvage services concerned, the Minister may, by instrument in writing, determine that the amount payable under that subparagraph to members of the crew shall be increased to an amount not exceeding 25% of the amount of salvage not applied in accordance with paragraph (1)(a) and the amount payable to the Commonwealth shall be decreased accordingly.

**117AB Apportionment of salvage amongst crew members**

Where salvage payable in respect of salvage services rendered by a Naval ship is, in accordance with section 117AA, to be apportioned between the Commonwealth and the members of the crew of that ship, the amount of salvage apportioned to the members of the crew:



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- (a) shall be applied in meeting the costs of the Commonwealth in conducting the salvage claim on behalf of the members of the crew; and
- (b) to the extent that it is not so applied, shall be apportioned amongst the members of the crew in accordance with the regulations.

## **Part X—Miscellaneous**

### **117B Members and former members may bring actions for money due in respect of service**

A person who is or has been a member of the Defence Force may recover from the Commonwealth, by action in a court of competent jurisdiction, money due to the person by the Commonwealth in respect of the person's service as a member of the Defence Force.

### **118 Penalty against raising forces without authority**

A person is guilty of an offence if:

- (a) the person induces another person to enlist or engage to serve in any naval, military or air force; and
- (b) the raising of that force has not been authorised by or under this Act or another Act.

Penalty: Imprisonment for 6 months.

### **118A Employer not to prevent employee from serving**

- (1) An employer shall not prevent any employee and a parent or guardian shall not prevent any son or ward from rendering the personal service required of him under Part IV.

Penalty: \$200.

- (2) An employer shall not in any way penalize or prejudice in his employment any employee for rendering or being liable to render the personal service required of him under Part IV, either by reducing his wages or dismissing him from his employment or in any other way.

Penalty: \$200.

- (3) The rendering of the personal service or the enlistment referred to in this section shall not terminate a contract of employment, but the contract shall be suspended during the absence of the employee for the purposes referred to in this section; but nothing in this section shall render the employer liable to pay an employee for any time

when he is absent from employment for the purposes referred to in this section.

- (4) In any proceedings for an offence against this section it shall lie upon the employer to show that any employee proved to have been dismissed or to have been prejudiced or penalized in his employment or to have suffered a reduction of wages, was so dismissed penalized or prejudiced in his employment or reduced for some reason other than that of having rendered the personal service required of him under Part IV, either within or without the limits of Australia.
- (5) The Court may direct that the whole or any part of the penalty recovered from an employer for an offence against this section shall be paid to the employee.

### **118B Enlistment of apprentices in time of war**

In time of war, a person who is employed under articles of apprenticeship may volunteer to serve as a sailor, soldier or airman, and may enlist in the Australian Navy, the Australian Army or the Australian Air Force, notwithstanding anything contained in, or any obligation arising out of, those articles of apprenticeship.

### **119 Forfeiture or suspension of salary in certain circumstances**

The regulations may make provision for and in relation to the forfeiture, in whole or in part, or the suspension of the whole, of the salary of, and of the allowances of, a member of the Defence Force.

### **120 Notice etc. need not be in writing unless required herein**

It shall not be necessary for any order or notice under this Act to be in writing, unless by this Act required to be so, provided it be communicated to the person who is to obey or be bound by it, either directly by the officer or person making or giving it, or by some other person by his order.

**120A Delegation**

- (2) The Governor-General may, by instrument in writing, delegate all or any of his or her powers under subsections 116C(5) and 116C(5A) to:
- (a) an officer of the Army who holds the rank of Major-General or a higher rank; or
  - (b) an officer of the Navy who holds the rank of Rear-Admiral or a higher rank; or
  - (c) an officer of the Air Force who holds the rank of Air Vice-Marshal or a higher rank.
- (3) The Governor-General may, by instrument in writing, delegate all or any of his or her powers under sections 100, 101 and 104 to:
- (a) an officer of the Army who holds the rank of Lieutenant-General or a higher rank; or
  - (b) an officer of the Navy who holds the rank of Vice-Admiral or a higher rank; or
  - (c) an officer of the Air Force who holds the rank of Air Marshal or a higher rank.
- (3A) The Secretary and the Chief of the Defence Force may, by instrument in writing signed by each of them, delegate all or any of the powers that they hold jointly under subsections 9A(1) and (2) to issue the instructions known as Defence Instructions (General) to:
- (a) an officer of the Army who holds the rank of Major-General or a higher rank; or
  - (b) an officer of the Navy who holds the rank of Rear-Admiral or a higher rank; or
  - (c) an officer of the Air Force who holds the rank of Air Vice-Marshal or a higher rank; or
  - (d) an SES employee who holds an SES Band 2 position, or an equivalent or higher position, in the Department.
- (3B) The Secretary and the Chief of the Defence Force may, by instrument in writing signed by each of them, delegate all or any of the powers that they hold jointly under subsections 9A(1) and (2) to issue the instructions known as Defence Instructions (General) to 2 persons to exercise jointly.

- (3C) Each person to whom a power is delegated under subsection (3B) must be a person specified in paragraph (3A)(a), (b), (c) or (d).
- (3D) To avoid doubt, the powers of delegation under subsections (3A) and (3B) extend only to the powers of the Secretary and the Chief of the Defence Force to issue Defence Instructions (General), and not to any other powers that the Secretary and the Chief of the Defence Force have under that section.
- (3E) The Chief of the Defence Force may, by instrument in writing, delegate his or her power under section 93A to:
- (a) an officer of the Army who holds the rank of Brigadier or a higher rank; or
  - (b) an officer of the Navy who holds the rank of Commodore or a higher rank; or
  - (c) an officer of the Air Force who holds the rank of Air Commodore or a higher rank.
- (4) The Chief of Army may, by instrument in writing, delegate to an officer of the Army all or any of his powers under sections 50, 50D and 123A.
- (4AA) The Chief of Army may, in writing, delegate to an officer of the Army who holds a rank not below the rank of Brigadier his or her powers under subsection 9A(3) to issue Defence Instructions (Army) and section 93A.
- (4AAA) The Chief of the Army may, in writing, delegate all or any of his or her powers under sections 100, 101, 103 and 104 to:
- (a) an officer of the Army who holds the rank of Lieutenant-Colonel or a higher rank; or
  - (b) an APS employee who holds, or performs the duties of, an Executive Level 1 position, or an equivalent or higher position, in the Department.
- (4A) The Chief of Navy may, by instrument in writing, delegate to an officer of the Navy his powers under sections 50D and 123A.
- (4AB) The Chief of Navy may, by instrument in writing, delegate to an officer of the Navy who holds a rank not below the rank of Commodore his or her powers under subsection 9A(3) to issue Defence Instructions (Navy) and section 93A.
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- (4AC) The Chief of the Navy may, in writing, delegate all or any of his or her powers under sections 100, 101, 103 and 104 to:
- (a) an officer of the Navy who holds the rank of Commander or a higher rank; or
  - (b) an APS employee who holds, or performs the duties of, an Executive Level 1 position, or an equivalent or higher position, in the Department.
- (4B) The Chief of Air Force may, by instrument in writing, delegate to an officer of the Air Force his powers under sections 50D and 123A.
- (4C) The Chief of Air Force may, by instrument in writing, delegate to an officer of the Air Force who holds a rank not below the rank of Air Commodore his or her powers under subsection 9A(3) to issue Defence Instructions (Air Force) and section 93A.
- (4D) The Chief of the Air Force may, in writing, delegate all or any of his or her powers under sections 100, 101, 103 and 104 to:
- (a) an officer of the Air Force who holds the rank of Wing Commander or a higher rank; or
  - (b) an APS employee who holds, or performs the duties of, an Executive Level 1 position, or an equivalent or higher position, in the Department.
- (5) A delegation under this section may be made either generally or otherwise as provided in the instrument of delegation.
- (6) A power delegated under this section shall, when exercised by the delegate, be deemed, for the purposes of this Act, to have been exercised by the person who made the delegation.
- (6A) The delegate is, in the exercise of a power delegated under this section, subject to the directions of the person who made the delegation.
- (7) A delegation under this section does not prevent the exercise of a power by the person who made the delegation.
- (8) A delegation under this section continues in force notwithstanding a change in the occupancy of, or a vacancy in, the office of the person who made the delegation.

- (9) A document purporting to be a copy of an instrument of delegation under this section and purporting to bear the signature, or a facsimile of the signature, of the person who made the delegation and an endorsement in writing that the delegation is, or was on a specified date, in force, is, upon mere production in a court or otherwise for any purpose arising under this Act, *prima facie* evidence that the delegation was duly made in the terms set out in the document and is, or was on the date specified, in force.

### **120B Attachment of salaries of members**

- (1) Where judgment has been given by a court against a member for the payment of a sum of money, the person in whose favour judgment was given (in this section referred to as the *judgment creditor*) may serve on a paying officer:
- (a) a copy of the judgment, certified under the hand of the Registrar or other appropriate officer of the court; and
  - (b) a statutory declaration that:
    - (i) states that the judgment has not been satisfied by the member; and
    - (ii) sets out the amount then due by the member under the judgment.
- (2) The paying officer shall, as soon as practicable after service of the copy of the judgment and the statutory declaration, by notice in writing given to the member:
- (a) inform the member of the service on the paying officer of the copy of the judgment and the statutory declaration; and
  - (b) require the member:
    - (i) to inform the paying officer, in writing, within the time specified for the purpose in the notice, whether the judgment has been satisfied; and
    - (ii) if:
      - (A) the member claims the judgment has been satisfied, to furnish evidence in support of the claim; or
      - (B) the member admits that the judgment has not been satisfied, to state the amount then due under the judgment.

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- (3) If the member:
- (a) fails, within the time specified for the purpose in the notice, to satisfy the paying officer that the judgment has been satisfied; or
  - (b) admits that the judgment has not been satisfied;
- the paying officer shall, subject to subsection (13), in relation to each pay-day of the member, cause to be deducted from the salary payable to the member on the pay-day an amount equal to the normal deduction in relation to the member in relation to the pay-day or such lesser amount as is, in the opinion of the paying officer, sufficient to satisfy the amount then due under the judgment.
- (4) There is payable to the Commonwealth, by the judgment creditor, an administration fee, at the prescribed rate, in respect of each amount deducted pursuant to subsection (3).
- (5) The paying officer shall, subject to subsection (6), cause an amount equal to each amount deducted pursuant to subsection (3) to be paid to the judgment creditor.
- (6) Where an amount is deducted pursuant to subsection (3) and the whole or part of the administration fee payable in respect of the amount has not been paid by the judgment creditor, the paying officer shall:
- (a) apply, in or towards payment of the administration fee, the amount of the deduction or so much of the amount of the deduction as is equal to the administration fee; and
  - (b) if the whole of the amount of the deduction is not applied in accordance with paragraph (a), pay an amount equal to the balance to the judgment creditor.
- (7) Upon the application under subsection (6) of an amount (in this subsection referred to as the *relevant amount*) in or towards payment of the administration fee payable in respect of an amount deducted pursuant to subsection (3) from the salary payable to the member on a pay-day:
- (a) the judgment creditor shall be deemed to have paid the relevant amount to the Commonwealth in satisfaction or partial satisfaction, as the case requires, of the administration fee;



- (b) an amount equal to the relevant amount shall be deemed to have been paid by the Commonwealth to the member on account of the salary payable to the member on the pay-day; and
  - (c) an amount equal to the relevant amount shall also be deemed to have been paid by the member to the judgment creditor in relation to the judgment.
- (8) Upon payment being made to the judgment creditor pursuant to subsection (5) or (6) of an amount (in this subsection referred to as the **relevant amount**) in relation to an amount deducted pursuant to subsection (3) from the salary payable to the member on a pay-day:
- (a) an amount equal to the relevant amount shall be deemed to have been paid by the Commonwealth to the member on account of the salary payable to the member on the pay-day; and
  - (b) an amount equal to the relevant amount shall also be deemed to have been paid by the member to the judgment creditor in relation to the judgment.
- (9) When the judgment has been satisfied, the judgment creditor shall forthwith notify the paying officer accordingly.
- Penalty: \$500 or imprisonment for 3 months.
- (10) If the amounts deemed, by virtue of paragraphs (7)(c) and (8)(b), to have been paid by the member to the judgment creditor exceed, in the aggregate, the amount due under the judgment, the excess is repayable by the judgment creditor to the member, and, in default of repayment, may be recovered, by action in a court of competent jurisdiction, as a debt due by the judgment creditor to the member.
- (11) Where, in relation to an amount deducted pursuant to subsection (3) from the salary payable to the member on a pay-day, an amount is, by virtue of paragraph (7)(c), deemed to have been paid by the member to the judgment creditor and an amount is, by virtue of paragraph (8)(b), deemed to have been paid by the member to the judgment creditor, then, for the purposes of subsection (10), the last-mentioned amount shall be deemed to have been paid after the second-mentioned amount.

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- (12) If the member ceases to be a member before the paying officer is notified that the judgment has been satisfied, the paying officer shall forthwith inform the judgment creditor, in writing, of the fact that the member has ceased to be a member and the date on which the member ceased to be a member.
- (13) If the paying officer is satisfied that the deduction of the amount that the paying officer would, but for this subsection, be required to deduct from the salary payable to the member on a pay-day would cause severe hardship to the member, the paying officer may deduct a lesser amount in relation to the pay-day.
- (14) Where copies of more than one judgment, and statutory declarations in relation to those judgments, are served under subsection (1) in relation to a member, the judgments shall be dealt with under this section in the order in which copies of the judgments are served under that subsection.
- (15) Subsections (1) to (14) (inclusive) do not apply to a member:
- (a) who is a bankrupt; or
  - (b) in relation to whom a personal insolvency agreement is in force under the *Bankruptcy Act 1966*.

- (16) In this section:

**net salary**, in relation to a member in relation to a pay-day, means the amount of salary payable by the Commonwealth to the member on the pay-day after deductions have been made:

- (a) pursuant to Part 2-5 in Schedule 1 to the *Taxation Administration Act 1953*; and
- (b) pursuant to Part III of the *Defence Force Retirement and Death Benefits Act 1973*; and
- (c) for purposes prescribed for the purpose of this paragraph.

**member** means a member of the Defence Force rendering continuous full-time service.

**normal deduction**, in relation to a member in relation to a pay-day, means an amount equal to 20% of the net salary of the member in relation to the pay-day or such greater amount as the member notifies a paying officer, in writing, should be the normal deduction for the purposes of this section in relation to the pay-day.

**pay-day**, in relation to a member, means a day on which salary is payable to the member.

**paying officer** means a person engaged under the *Public Service Act 1999* performing duties in the Department who is appointed by the Secretary, in writing, to be a paying officer for the purposes of this section.

**salary**, in relation to a member, means any money payable by the Commonwealth to the member by way of salary, and includes any money payable by the Commonwealth to the member by way of an allowance prescribed for the purposes of this definition, but does not include any money payable to the member by way of a weekly payment of compensation under the *Safety, Rehabilitation and Compensation Act 1988* or the *Military Rehabilitation and Compensation Act 2004*.

### **121 Proof of order**

The production of an appointment, or order in writing purporting to be granted or made according to the provisions of this Act shall be *prima facie* evidence of the appointment, or order, without proving the signature or seal thereto, or the authority of the person granting or making the appointment, or order.

### **122 Appointments etc. not invalid because of defect etc. in connection with appointment**

The appointment of an officer of the Australian Navy, the Australian Army or the Australian Air Force, the enlistment of a sailor, soldier or airman, and any extension of such an appointment or enlistment is not invalid because of a defect or irregularity in connection with the appointment, enlistment or extension, as the case may be.

### **122AA Taxation consequences of disposals of assets to defence companies**

- (1) This section applies where a CGT event (within the meaning of the *Income Tax Assessment Act 1997*) happens in relation to a CGT asset (within the meaning of that Act) of the Commonwealth and all of the following conditions are satisfied:

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- (aa) the event involves a company acquiring the asset;
  - (a) the company is:
    - (i) Australian Defence Industries Pty Ltd; or
    - (ii) Aerospace Technologies of Australia Pty Ltd;
  - (b) the event happens under a scheme:
    - (i) for the reorganisation of defence-related activities; and
    - (ii) associated with the establishment of the company;
  - (c) for the purposes of the *Income Tax Assessment Act 1997*, the asset was acquired by the Commonwealth before 20 September 1985;
  - (d) before 20 September 1985, the asset was used, or intended for use, for defence-related purposes;
- (2) For the purposes of Parts 3-1 and 3-3 of the *Income Tax Assessment Act 1997*, the company is taken to have acquired the asset before 20 September 1985.
- (4) In calculating the deductions (if any) allowable to the company under Subdivision 40-B of the *Income Tax Assessment Act 1997* in respect of the asset, the adjustable value of the asset to the company at the time of the acquisition of the asset is the amount that would have been its adjustable value to the Commonwealth just before that time if:
  - (a) the Commonwealth had been a taxpayer; and
  - (b) the asset had been used by the Commonwealth exclusively for the purpose of producing assessable income.
- (5) Section 170 of the *Income Tax Assessment Act 1936* does not prevent the amendment of an assessment for the purpose of giving effect to this section.

**122A Immunity of Australian Defence Industries Pty Ltd from certain State and Territory laws**

- (1) Subject to subsection (4), a law of a State or Territory, being a law to which this section applies, does not apply in relation to:
  - (a) Australian Defence Industries Pty Ltd;
  - (b) the property or transactions of Australian Defence Industries Pty Ltd; or
  - (c) any act or thing done by or on behalf of Australian Defence Industries Pty Ltd.

- (2) Subject to subsection (3), this section applies to a law:
- (a) to the extent that the law relates to:
    - (i) the use of land or premises;
    - (ii) the environmental consequences of the use of land or premises;
    - (iii) dangerous goods;
    - (iv) licensing in relation to:
      - (A) employment;
      - (B) the carrying on of a particular kind of business or undertaking; or
      - (C) the conduct of a particular kind of operation; or
    - (v) the liability to pay, or the payment of, taxes, rates or charges (including stamp duty); or
  - (b) if regulations made for the purposes of this paragraph declare that this section applies to the law.
- (3) This section does not apply to a law of a kind referred to in paragraph (2)(a) if regulations made for the purposes of this section declare that this section does not apply to the law.
- (4) Subsection (1) does not apply in relation to any property, transaction, act or thing that is wholly unconnected with defence production.
- (5) This section ceases to be in force at the end of 6 years after the day on which it commences.
- (6) In this section:
- Australian Defence Industries Pty Ltd* means the company, known as Australian Defence Industries Pty Ltd, incorporated in the Australian Capital Territory under the *Companies Act 1981* on 21 July 1988.

### **122B Exercise of rights and discharge of duties and obligations by legal officers**

- (1) A legal officer acting in that capacity is entitled to exercise his or her professional rights, and discharge his or her professional duties and obligations, in accordance with the generally accepted rights, duties and obligations applying to legal practitioners.

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- (2) In this section:

*legal officer* has the same meaning as in the *Defence Force Discipline Act 1982*.

*legal practitioner* has the same meaning as in the *Defence Force Discipline Act 1982*.

**123 Immunity from certain State and Territory laws**

- (1) A member of the Defence Force is not bound by any law of a State or Territory:
- (a) that would require the member to have permission (whether in the form of a licence or otherwise) to use or to have in his or her possession, or would require the member to register, a vehicle, vessel, animal, firearm or other thing belonging to the Commonwealth; or
  - (b) that would require the member to have permission (whether in the form of a licence or otherwise) to do anything in the course of his or her duties as a member of the Defence Force.
- (2) The Secretary, or an APS employee authorised in writing by the Secretary, may, by instrument in writing, declare:
- (a) a person:
    - (i) who is an APS employee; and
    - (ii) who is employed in the Department in, or in connection with, the manufacture of firearms; or
  - (b) a person who is employed by a body corporate concerned with the manufacture of firearms, being a body corporate declared by the regulations to be a body corporate in relation to which this subsection applies;
- to be an authorised employee for the purposes of this subsection and, where such a declaration is made in relation to a person, the person continues to be an authorised employee for the purposes of this subsection while the person continues to be so employed.
- (2A) A declaration under subsection (2) may be made by declaring the person holding a particular office or occupying a particular position to be an authorised employee for the purposes of that subsection.

- (3) A person who is an authorised employee for the purposes of subsection (2) does not contravene any law of a State or Territory that would require the person to have permission (whether in the form of a licence or otherwise) to have in his or her possession a firearm by reason only of having such a firearm in his or her possession, without such permission, in the performance of his or her duties.

### **123A Intoxicating liquor**

It is lawful for a person:

- (a) in or at an establishment, camp, unit, mess or canteen of the Defence Force;
- (b) on board a vessel of the Defence Force; or
- (c) at a gathering of members of the Defence Force (with or without guests) approved by the Chief of the Defence Force or a service chief;

notwithstanding any provision of the law of a State or Territory:

- (d) if the person is a member of the Defence Force or of a mess, or is a guest of such a member—to have in his or her possession, sell, supply, consume or buy intoxicating liquor; or
- (e) in any other case—to have in his or her possession, sell or supply intoxicating liquor;

in accordance with conditions determined by the Chief of the Defence Force or a service chief.

### **123AA Intoxicating liquor not to be supplied to cadets**

- (1) A person is guilty of an offence if:
- (a) the person sells or supplies intoxicating liquor to another person; and
  - (b) the person is a member of the Australian Army Cadets, is under such age as is prescribed, and is in uniform.

Penalty: \$40.

- (2) Subsection (1) does not apply if the liquor is sold or supplied by direction of a duly qualified medical practitioner.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

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- (3) An offence under subsection (1) is an offence of strict liability.

note: For *strict liability*, see section 6.1 of the *Criminal Code*.

**123B Religion**

No member of the Defence Force who has conscientious objection shall be compelled to answer any question as to his religion, nor shall any regulation or other order compel attendance at any religious service.

**123F Certain persons not permitted to serve in Defence Force**

A person shall not be permitted to serve in the Defence Force if:

- (a) that person has been convicted of a crime that, in the opinion of the Chief of Navy, the Chief of Army or the Chief of Air Force, as the case requires, is such as to render that person unsuitable for service in the Defence Force; or
- (b) the service of that person in the Defence Force might, in the opinion of the Chief of Navy, the Chief of Army or the Chief of Air Force, as the case requires, be prejudicial to the security of Australia.

**123G Orders in relation to rifle ranges**

- (1) The Minister may, by legislative instrument, make orders, not inconsistent with this Act, for and in relation to the control and administration of rifle ranges.
- (2) Without limiting the generality of subsection (1), orders may be made for or in relation to:
  - (a) the location and acquisition of property for use as a rifle range;
  - (b) the design, construction and use of a rifle range and any equipment or facilities for use in connection with a rifle range, including the setting of safety standards for such design, construction and use; and
  - (c) the regulation or prohibition of the carriage, possession or use of firearms on, or in connection with, a rifle range.
- (5) Subject to subsection (6), orders made under this section for the regulation or prohibition of the carriage, possession or use of



firearms on, or in connection with, a rifle range have effect notwithstanding any provision of a law of a State or Territory.

- (6) Subsection (5) is not intended to affect the operation of a law of a State or Territory to the extent that that law is capable of operating concurrently with orders referred to in that subsection.

### **123H Tactical payment scheme for activities of the Defence Force outside Australia**

- (1) The Minister may authorise the making of one or more payments to a person (even though the payments would not otherwise be authorised by law or required to meet a legal liability) if:
- (a) the person suffers loss, damage or injury outside Australia because of an incident that occurs in the course of an activity of the Defence Force outside Australia; and
  - (b) the person is not an Australian citizen; and
  - (c) the Minister considers it appropriate to authorise the payments.
- (2) A payment cannot be made to the person more than 12 months after the relevant incident.
- (3) The total amount of the payments to the person must not be more than the amount specified in regulations in force for the purposes of subparagraph 65(2)(a)(ia) of the *Financial Management and Accountability Act 1997*.
- (4) This section does not limit, and is not limited by, section 33 of the *Financial Management and Accountability Act 1997*.

Note: Payments under this section must be made from money appropriated by the Parliament.

### **123J Delegations in relation to the tactical payment scheme**

- (1) The Minister may, in writing, delegate his or her powers under section 123H to any of the following persons:
- (a) the Secretary;
  - (b) the Chief of the Defence Force;
  - (c) an officer in command of an activity of the Defence Force outside Australia;

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- (d) an APS employee who holds, or performs the duties of, an APS 6 position, or an equivalent or higher position, in the Department.
- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Minister.

## Part XI—Regulations

### 124 Regulations [see Note 3]

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for securing the good government of the Defence Force, or for carrying out or giving effect to this Act, and in particular prescribing matters providing for and in relation to:
  - (a) The enlistment, appointment, promotion, reduction in rank, retirement and discharge of members of the Defence Force; and
  - (aa) the transfer of members between different arms, or parts of arms, of the Defence Force; and
  - (ab) the training of members and;
  - (ac) conditions of service of members; and
  - (b) forfeiture, or assignment, of the whole or part of the remuneration of a member or cadet or of allowances or other pecuniary benefits referred to in paragraph 58B(1)(b) or (c); and
  - (c) deductions from the remuneration of a member or cadet or from allowances or other pecuniary benefits referred to in paragraph 58B(1)(b) or (c); and
  - (e) the liability of a member or cadet, or a member of the family of a member or cadet, to pay an amount to the Commonwealth and the manner of recovery of an amount so payable; and
  - (gc) The appointment, procedures and powers of courts of inquiry, boards of inquiry, Chief of the Defence Force commissions of inquiry, inquiry officers and inquiry assistants; and
  - (h) the procedures, powers and reporting obligations of the Inspector-General ADF in respect of the performance of the Inspector-General ADF's functions, including in relation to any matter connected with inquiries, investigations and performance reviews; and

- (i) medical or dental treatment of a member or cadet, or a member of the family of a member; and
- (j) The formation, incorporation and management of:
  - (i) full-bore or small-bore rifle clubs;
  - (ii) full-bore or small-bore rifle associations;
  - (iii) a national body for the control and administration of full-bore rifle shooting; and
  - (iv) a national body for the control and administration of small-bore rifle shooting; and
- (k) The empowering of clubs, associations or national bodies referred to in paragraph (j) to make, alter and repeal rules, not inconsistent with this Act, for the conduct of their affairs and for the conduct of any rifle competitions promoted by them; and
- (ka) The establishment, management, operation and control of canteens on rifle ranges or on the premises of rifle clubs, including the possession, supply, sale, purchase and consumption of intoxicating liquor at any such range or club; and
- (m) The furnishing of means of conveyance and transport in time of war; and
- (n) The regulation of the quartering or billeting of members of the Defence Force in time of war; and
- (na) The regulation, control or prohibition of the construction or use of buildings, erections or installations, the use of apparatus, machines or vehicles, and the removal in whole or in part of buildings, erections, installations, apparatus, trees or other natural obstacles, within prescribed areas, being areas in which the regulation, control, prohibition or removal is necessary for the defence of Australia; and
- (nb) The declaration as a prohibited area of a place (including a place owned by, or held in right of, the Commonwealth or a State) used or intended to be used for a purpose of defence, the prohibition of a person entering, being in or remaining in the prohibited area without permission and the removal of any such person from the area; and
- (nc) The prohibition of the use, except as prescribed, of a word, group of letters, object or device which is descriptive or indicative of:

- (i) a part of the Naval Forces, Military Forces or Air Forces of a part of the King's dominions; or
  - (ii) a service or body of persons associated with the defence of Australia; and
- (nd) The establishment, maintenance and operation of any factory or undertaking under section 63; and
- (o) The establishment, management, operation and control of canteens and the establishment, management, operation and control of messes including, but without limiting the generality of the foregoing, the subjection of:
  - (i) a specified canteen or mess;
  - (ii) a canteen or mess included in a class of specified canteens or messes; or
  - (iii) a specified organization established under the regulations that establishes, manages, operates or controls canteens, to taxation (other than income tax) under a law of the Commonwealth or of a State or Territory; and
- (oa) The management and disposal of the funds and property of units of the Defence Force; and
- (p) The regulation of any naval, military or air-force operation or practice, including any naval, military or air-force operation or practice in or adjacent to Australia of a country other than Australia; and
- (pa) The regulation or prohibition of the emission of smoke from factories or other buildings within the prescribed distance from any gun, fort, searchlight, signal station, observation post, or other work of defence during, or immediately before any naval, military or air force practice; and
- (q) The preservation of the public safety in or at any naval, military or air-force operation or practice; and
- (qa) The entry upon and survey of lands for defence purposes; and
- (qaa) The declaration and use of any area (by whomever owned or held) as a practice area for any naval, military or air force operation or practice and the regulation or prohibition of any entry upon or use of a practice area, including the prohibition of a person entering, being in or remaining in a practice area and the removal of any such person from the area; and
- (qb) The post mortem examination and disposal of the bodies of members of the Defence Force who die while on service; and

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- (qba) The provision and maintenance of, and the execution of work in connexion with, the graves of persons who have died:
    - (i) while on service as members of the Defence Force; or
    - (ii) as a result of service as members of the Defence Force; and
  - (qc) Prisoners of war; and
  - (qd) The command, control and administration of bodies of 2 or more arms of the Defence Force acting together or of a part of the Defence Force consisting of members of 2 or more arms of the Defence Force; and
  - (qe) The administration of oaths to, the taking of affidavits of, and the attestation of the execution of documents by, members of the Defence Force while on service outside Australia; and
  - (qf) The execution and revocation of powers of attorney by persons under the age of 21 years who are members of the Defence Force and the validity and effect of powers of attorney executed by such persons; and
  - (r) the payment by the Commonwealth of compensation for any loss, injury or damage suffered by reason of anything done in pursuance of this Act; and
  - (u) The disposal of unclaimed property of members of the Defence Force and of other persons held in the custody or control of the Commonwealth; and
  - (w) Providing for penalties, not exceeding a fine of \$2,000 or imprisonment for a period not exceeding 12 months, or both, for offences against the regulations; and
  - (x) Providing for penalties, not exceeding a fine of \$500, for offences against orders made under section 123G.
- (1A) The regulations may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, the provisions of a determination, as in force at a particular time or as in force from time to time, made under section 58B or 58H of this Act or under section 24 of the *Public Service Act 1999*.
- (1AA) Regulations under subsection (1) may make provision in relation to:
- (a) the appointment or reappointment of a member; or
  - (b) the enlistment or re-enlistment of a member; or

(c) the service of a member;  
on the basis that, after a specified time or on a specified event occurring, the member may or must transfer to a different arm, or part of an arm, of the Defence Force, or in relation to other similar arrangements.

Example: The regulations might allow for a soldier to enlist for a total of 8 years, with the first 4 years to be served in the Regular Army and the last 4 years in the Army Reserve, or vice versa, or any other combination of service.

- (1AB) Subsection (1AA) does not limit the scope of subsection (1).
- (1B) In paragraphs (1)(b), (c), (e) and (i), *cadet*, *member* and *member of the family* have the same respective meanings as in Part IIIA.
- (1C) In paragraph (1)(i), *medical or dental treatment* includes the provision of services or goods (including pharmaceuticals) related to medical or dental treatment.
- (2) The regulations may make provision for or in relation to the certification or proof of the death:
- (a) of a member of the Defence Force who died, or is presumed to have died, while on service; and
  - (b) of a person, not being a member of the Defence Force, who died, or is presumed to have died, while in the hands of an enemy or in other circumstances which make proof of death difficult, being circumstances arising out of:
    - (i) a war in which Australia has been or is engaged;
    - (ii) the war-like operations in Korea after 26 June 1950, or in Malaya after 28 June 1950; or
    - (iii) such other war or war-like operations as are prescribed.
- (2A) Subject to subsection (2B), the power to make regulations by virtue of paragraph (1)(gc) includes the power to make regulations requiring a person appearing as a witness before a court of inquiry, a board of inquiry, a Chief of the Defence Force commission of inquiry, an inquiry officer or an inquiry assistant to answer a question notwithstanding that the answer to the question may tend to incriminate the person.
- (2B) Subsection (2A) does not authorise the making of a regulation containing a requirement referred to in that subsection where the answer to the question may tend to incriminate the person in
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respect of an offence with which the person has been charged and in respect of which the charge has not been finally dealt with by a court or otherwise disposed of.

- (2C) A statement or disclosure made by a witness in the course of giving evidence before a court of inquiry, a board of inquiry, a Chief of the Defence Force commission of inquiry, an inquiry officer or an inquiry assistant is not admissible in evidence against that witness in:
- (a) any civil or criminal proceedings in any federal court or court of a State or Territory; or
  - (b) proceedings before a service tribunal;
- otherwise than in proceedings by way of a prosecution for giving false testimony at the hearing before the court of inquiry, the board of inquiry, the Chief of the Defence Force commission of inquiry, the inquiry officer or the inquiry assistant.
- (3) For the purposes of paragraphs (1)(qb), (qba), (qe) and (qf) and for the purposes of subsection (2):
- (a) a member of the Defence Force shall be deemed to be on service while he is a prisoner of war or interned in a place outside Australia; and
  - (b) a person, not being a member of the Defence Force, who accompanies a part of the Defence Force shall be deemed to be a member of, and on service with, that part of the Defence Force.
- (3A) Subject to subsection (3B), regulations made by virtue of paragraph 124(1)(ka) in relation to the possession, supply, sale, purchase and consumption of intoxicating liquor have effect notwithstanding any provision of a law of a State or Territory.
- (3B) Subsection (3A) is not intended to affect the operation of a law of a State or Territory to the extent that that law is capable of operating concurrently with the regulations referred to in that subsection.
- (3C) Regulations made by virtue of paragraph (1)(qa) or (qaa) shall include provision for and in relation to the payment of reasonable compensation for any loss or damage caused by anything done in pursuance of those regulations or otherwise caused by the operation of those regulations.



- (4) In this section, ***remuneration*** means remuneration by way of salary, pay, allowances or otherwise.



**Table of Acts****Notes to the *Defence Act 1903*****Note 1**

The *Defence Act 1903* as shown in this compilation comprises Act No. 20, 1903 amended as indicated in the Tables below.

The *Defence Act 1903* was amended by the *Workplace Relations Amendment (Work Choices) (Consequential Amendments) Regulations 2006 (No. 1)* (SLI 2006 No. 50). The amendment is incorporated in this compilation.

See section 16 of the *Defence (Visiting Forces) Act 1963* as to the application of that Act and of the *Defence Act 1903* to the Defence Force and to certain other Naval, Military and Air Forces.

All relevant information pertaining to application, saving or transitional provisions prior to 22 September 1999 is not included in this compilation. For subsequent information see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Act 1903</i>	20, 1903	22 Oct 1903	1 Mar 1904 (see <i>Gazette</i> 1904, p. 119)	
<i>Defence Act 1904</i>	12, 1904	9 Dec 1904	9 Dec 1904	S. 12
<i>Defence Act 1909</i>	15, 1909	13 Dec 1909	1 Jan 1911 (see <i>Gazette</i> 1910, p. 1571)	—
<i>Naval Defence Act 1910</i>	30, 1910	25 Nov 1910	25 Nov 1910	—
<i>Defence Act 1910</i>	37, 1910	1 Dec 1910	1 Dec 1910	—
<i>Defence Act 1911</i>	15, 1911	22 Dec 1911	22 Dec 1911	—
<i>Defence Act 1912</i>	5, 1912	4 Sept 1912	4 Sept 1912	—
<i>Defence Act 1914</i>	36, 1914	21 Dec 1914	21 Dec 1914 (a)	—
<i>Defence Act 1915</i>	3, 1915	30 Apr 1915	Ss. 4 and 7: 1 Aug 1914 Remainder: Royal Assent	—
<i>Defence Act 1917</i>	36, 1917	25 Sept 1917	S. 6: 1 Aug 1914 Remainder: Royal Assent	—
<i>Defence Act 1918</i>	16, 1918	19 June 1918	S. 8: 1 Aug 1914 Remainder: Royal Assent	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Act (No. 2) 1918</i>	47, 1918	25 Dec 1918	25 Dec 1918	—
<i>Defence Act 1927</i>	1, 1927	8 Apr 1927	8 Apr 1927	—
<i>Defence Act 1932</i>	50, 1932	21 Nov 1932	21 Nov 1932	—
<i>Statute Law Revision Act 1934</i>	45, 1934	6 Aug 1934	6 Aug 1934	—
<i>Defence Act 1939</i>	13, 1939	21 June 1939	6 July 1939 (see <i>Gazette</i> 1939, p. 1263)	S. 5(2)
<i>Defence Act (No. 2) 1939</i>	38, 1939	26 Sept 1939	26 Sept 1939	—
<i>Defence Act (No. 3) 1939</i>	70, 1939	15 Dec 1939	15 Dec 1939	—
<i>Air Force Act 1939</i>	74, 1939	15 Dec 1939	15 Dec 1939	S. 7
<i>Defence Act 1941</i>	4, 1941	4 Apr 1941	Ss. 3 and 4: 3 Sept 1939 Remainder: Royal Assent	—
<i>Re-establishment and Employment Act 1945</i>	11, 1945	28 June 1945	27 Aug 1945 (see <i>Gazette</i> 1945, p. 1859)	—
<i>Defence (Transitional Provisions) Act 1947</i>	78, 1947	11 Dec 1947	Ss. 1–3: Royal Assent Remainder: 1 Jan 1948	—
<i>Commonwealth Public Service Act 1948</i>	35, 1948	26 June 1948	1 Sept 1948 (see <i>Gazette</i> 1948, p. 3115)	—
<i>Defence Act 1949</i>	71, 1949	28 Oct 1949	1 Jan 1950	S. 20
<i>Statute Law Revision Act 1950</i>	80, 1950	16 Dec 1950	31 Dec 1950	Ss. 16 and 17
<i>Defence Act 1951</i>	19, 1951	19 July 1951	19 July 1951	—
<i>Defence Act (No. 2) 1951</i>	59, 1951	11 Dec 1951	S. 6: 1 Jan 1950 Remainder: Royal Assent	—
<i>Defence Act 1952</i>	98, 1952	18 Nov 1952	16 Dec 1952	Ss. 3 and 4
<i>Defence Act 1953</i>	20, 1953	9 Apr 1953	9 Apr 1953	—
<i>Defence Act 1956</i>	72, 1956	29 Oct 1956	29 Oct 1956	—
<i>Defence Act 1964</i>	92, 1964	6 Nov 1964	6 Nov 1964	Ss. 33(2), 40 and 41
<i>Defence Act 1965</i>	51, 1965	7 June 1965	Ss. 3(b), 20 and 23: 5 Nov 1965 (see <i>Gazette</i> 1965, p. 4841) S. 12: 17 Sept 1970 (see <i>Gazette</i> 1970, p. 5842) Remainder: Royal Assent	S. 25
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	93, 1966	29 Oct 1966	1 Dec 1966	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Act 1970</i>	33, 1970	23 June 1970	Ss. 1(1), 2 and 4: Royal Assent Remainder: 1 Oct 1970 (see <i>Gazette</i> 1970, p. 6551)	S. 4
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Defence Force Re-organization Act 1975</i>	96, 1975	9 Sept 1975	Ss. 3, 4(c), 6, 9, 18, 25, 29–34, 36, 37, 39, 40, 42–44, 46–52, 54, 57, 59 and 60: 28 Oct 1975 (see <i>Gazette</i> 1975, No. G42, p. 2) (b) Ss. 4(a), (b), (d), (e), 5, 7, 8, 10–17, 19–24, 27, 28, 41, 55, 58 and 61: 9 Feb 1976 (see <i>Gazette</i> 1975, No. G42, p. 2) (b) S. 26: 8 Sept 1980 (see <i>Gazette</i> 1980, No. G34, p. 2) (b) S. 35: 24 Sept 1976 (see <i>Gazette</i> 1976, No. S167) (b) S. 38: 1 July 1985 (see <i>Gazette</i> 1985, No. S195) (b) S. 45: 9 Feb 1976 (see <i>Gazette</i> 1976, No. S24) (b) S. 53: 3 July 1985 (see <i>Gazette</i> 1985, No. S255) (b) S. 56: 29 July 1977 (see <i>Gazette</i> 1977, No. S151) (b)	Ss. 14(2), (3), 16(2), 23(2), (4), (5), 24(2), 28(2), 35(2), 36(2), 41(2), 55(2) and 59(2) S. 23(3) (am. by 164, 1984, s. 120)
<b>as amended by</b>				
<i>Defence Legislation Amendment Act 1984</i>	164, 1984	25 Oct 1984	(see 164, 1984 below)	(see 164, 1984 below)
<i>Defence Amendment Act 1976</i>	4, 1977	28 Feb 1977	28 Feb 1977	S. 3(2) and (3)
<i>Defence Amendment Act (No. 2) 1977</i>	20, 1977	14 Apr 1977	14 Apr 1977	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Jurisdiction of Courts (Miscellaneous Amendments) Act 1979</i>	19, 1979	28 Mar 1979	Parts II–XVII (ss. 3–123): 15 May 1979 (see <i>Gazette</i> 1979, No. S86) Remainder: Royal Assent	S. 124
<i>Defence Amendment Act 1979</i>	132, 1979	23 Nov 1979	Ss. 6(1), 9 and Part IV (ss. 15–17): 1 Jan 1985 (see <i>Gazette</i> 1981, No. S273) Remainder: Royal Assent	Ss. 3(2), 11–13 and 15–17 S. 14 (am. by 80, 1982, s. 83)
<b>as amended by</b>				
<i>Statute Law (Miscellaneous Amendments) Act (No. 2) 1982</i>	80, 1982	22 Sept 1982	Part XXIX (ss. 82, 83): 20 Oct 1982 (c)	—
<i>Defence Legislation Amendment Act 1984</i>	164, 1984	25 Oct 1984	(see 164, 1984 below)	(see 164, 1984 below)
<i>Australian Federal Police (Consequential Amendments) Act 1979</i>	155, 1979	28 Nov 1979	19 Oct 1979 (see s. 2 and <i>Gazette</i> 1979, No. S206)	—
<i>Australian Federal Police (Consequential Amendments) Act 1980</i>	70, 1980	28 May 1980	28 May 1980	—
<i>Statute Law Revision Act 1981</i>	61, 1981	12 June 1981	Part X (ss. 26–51): 30 Sept 1983 (see <i>Gazette</i> 1983, No. S222) (d) S. 115: Royal Assent (d)	S. 51
<i>Defence Acts Amendment Act 1981</i>	178, 1981	8 Dec 1981	S. 6(2): 30 Sept 1983 (see s. 2(2) and <i>Gazette</i> 1983, No. S222) S. 8 and Part III (ss. 12–18): 15 Aug 1983 (see <i>Gazette</i> 1983, No. S169) S. 10: 3 July 1985 (see s. 2(4) and <i>Gazette</i> 1985, No. S255) Remainder: Royal Assent	Ss. 4(2) and 7(2)
<i>Statute Law (Miscellaneous Amendments) Act (No. 2) 1982</i>	80, 1982	22 Sept 1982	Part XXVIII (ss. 79–81): 20 Oct 1982 (e)	—
<i>Defence Force (Miscellaneous Provisions) Act 1982</i>	153, 1982	31 Dec 1982	3 July 1985 (see s. 2 and <i>Gazette</i> 1985, No. S255)	Ss. 86, 90 and 96

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Defence Legislation Amendment Act 1984</i>	164, 1984	25 Oct 1984	(see 164, 1984 below)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1983</i>	39, 1983	20 June 1983	S. 3: (f)	S. 7(1) and (2)
<i>Defence Legislation Amendment Act 1984</i>	164, 1984	25 Oct 1984	Ss. 1, 2, 16–19, Part XIV (ss. 115, 116) and s. 120: Royal Assent Ss. 23–70 and 72–78: 3 July 1985 (see s. 2(4) and <i>Gazette</i> 1985, No. S255) S. 71: 31 Dec 1982 (see s. 2(3)) Ss. 82, 83, 85 and 87–89: 1 July 1983 Ss. 84 and 86: 1 Oct 1972 Part XI (ss. 108, 109): 1 Jan 1985 Part XV (ss. 117–119): 1 Aug 1984 (see s. 2(8) and <i>Gazette</i> 1984, No. S292) S. 121: 1 Jan 1982 Remainder: 22 Nov 1984	Ss. 120(2), (3) and 122
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1984</i>	165, 1984	25 Oct 1984	S. 3: 22 Nov 1984 (g)	S. 6(1)
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: (h)	—
<b>as amended by</b>				
<i>Defence Legislation Amendment Act 1990</i>	75, 1990	22 Oct 1990	(see 75, 1990 below)	—
<i>Statute Law (Miscellaneous Provisions) Act (No. 2) 1985</i>	193, 1985	16 Dec 1985	S. 3: Royal Assent (i)	S. 16
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1986</i>	76, 1986	24 June 1986	S. 3: Royal Assent (j)	S. 9
<i>Sex Discrimination (Consequential Amendments) Act 1986</i>	163, 1986	18 Dec 1986	15 Jan 1987	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Legislation Amendment Act 1987</i>	65, 1987	5 June 1987	Ss. 1–3, 9, 10, 13(1), 23–25, 26(1), 27, 29, 31, 33–36, 42–45, 48, 49, 52–58, 61(1), 62, 69(1), Parts IX and X (ss. 71–78): Royal Assent Ss. 37(1) and Part VI (ss. 50, 51): 10 Nov 1977 (see s. 2(3)) Ss. 37(2) and 38–41: 3 July 1985 Ss. 46 and 47: 19 June 1973 (see s. 2(2)) Remainder: 1 July 1988 (see <i>Gazette</i> 1988, No. S173)	S. 16(2)–(5)
<i>Defence (Superannuation Interim Arrangement) Amendment Act 1988</i>	67, 1988	15 June 1988	15 June 1988	—
<i>Commonwealth Employees' Rehabilitation and Compensation Act 1988</i>	75, 1988	24 June 1988	Ss. 1 and 2: Royal Assent Ss. 4(1), 68–97, 99 and 100: 1 July 1988 (see <i>Gazette</i> 1988, No. S196) Remainder: 1 Dec 1988 (see <i>Gazette</i> 1988, No. S196)	—
<i>Industrial Relations (Consequential Provisions) Act 1988</i>	87, 1988	8 Nov 1988	Ss. 1 and 2: Royal Assent Remainder: 1 Mar 1989 (see s. 2(2) and <i>Gazette</i> 1989, No. S53)	—
<i>Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988</i>	99, 1988	2 Dec 1988	2 Dec 1988	—
<i>Defence Legislation Amendment Act 1988</i>	100, 1988	2 Dec 1988	S. 5: 1 July 1988 (see s. 2(2) and <i>Gazette</i> 1988, No. S173) S. 16: 1 July 1988 (see s. 2(3) and <i>Gazette</i> 1988, No. S173) Remainder: Royal Assent	—



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Legislation Amendment Act (No. 2) 1988</i>	104, 1988	6 Dec 1988	S. 18: 1 Sept 1989 (see <i>Gazette</i> 1989, No. S268) S. 25: 1 Oct 1972 Ss. 29 and 36: 1 July 1978 Part IX (ss. 52, 53): 18 Dec 1987 Remainder: Royal Assent	Ss. 9(2) and 16(2)
<b>as amended by</b>				
<i>Defence Legislation Amendment Act 1989</i>	41, 1989	2 June 1989	(see 41, 1989 below)	—
<i>Defence Legislation Amendment Act 1989</i>	41, 1989	2 June 1989	Ss. 4 and 5: 2 May 1989 S. 7: 6 Dec 1988 S. 8: 1 Sept 1989 (see s. 2(4) and <i>Gazette</i> 1989, No. S268) Remainder: Royal Assent	—
<i>Defence Legislation Amendment Act 1990</i>	75, 1990	22 Oct 1990	S. 3: (k)	—
<i>Industrial Relations Legislation Amendment Act (No. 2) 1990</i>	108, 1990	18 Dec 1990	Ss. 8, 13 and 21: 1 Feb 1991 (see s. 2(4) and <i>Gazette</i> 1991, No. S18) Ss. 22–24: 1 Mar 1989 S. 26: 1 Jan 1990 S. 33: 25 Mar 1991 (see <i>Gazette</i> 1991, No. S73) Remainder: Royal Assent	—
<i>Defence Legislation Amendment Act (No. 2) 1990</i>	21, 1991	5 Feb 1991	Ss. 10–13 and 16–18: 1 July 1990 Remainder: Royal Assent	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Industrial Relations Legislation Amendment Act (No. 2) 1991</i>	62, 1991	30 May 1991	Ss. 1 and 2: Royal Assent S. 3 (Schedule, Part 1 [in part] and Part 2): 2 July 1991 (see <i>Gazette</i> 1991, No. S182) S. 3 (Schedule, Part 3 [in part]): 1 Aug 1991 (see <i>Gazette</i> 1991, No. S210) S. 3 (Schedule, Part 5): 1 Sept 1991 (see <i>Gazette</i> 1991, No. S239) Remainder: 30 Nov 1991	—
<i>Defence Legislation Amendment Act 1992</i>	91, 1992	30 June 1992	Ss. 13 and 14: 1 Sept 1992 (see <i>Gazette</i> 1992, No. S211) Remainder: Royal Assent	—
<i>Superannuation Guarantee (Consequential Amendments) Act 1992</i>	92, 1992	30 June 1992	1 July 1992	—
<i>Defence Legislation Amendment Act 1993</i>	95, 1993	22 Dec 1993	22 Dec 1993	S. 5(2)
<i>Industrial Relations and other Legislation Amendment Act 1993</i>	109, 1993	22 Dec 1993	Ss. 1, 2 and 58: Royal Assent S. 32: 5 Jan 1994 S. 34: 6 Sept 1991 S. 47: 24 Dec 1992 Remainder: 19 Jan 1994	—
<i>Evidence (Transitional Provisions and Consequential Amendments) Act 1995</i>	3, 1995	23 Feb 1995	S. 14: Royal Assent (l) S. 27: 18 Apr 1995 (l)	S. 14
<i>Defence Legislation Amendment Act 1995</i>	43, 1995	15 June 1995	Schedule 1 (items 1, 2, 4–10, 11.1, 11.2): 1 Nov 1995 (see <i>Gazette</i> 1995, No. S361) (m) Schedule 1 (items 3, 11.3): Royal Assent (m)	S. 3(2), Sch. 1 (item 11)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Industrial Relations and other Legislation Amendment Act 1995</i>	168, 1995	16 Dec 1995	Ss. 1–12, Schedules 5 and 7–10: Royal Assent S. 13: 13 Jan 1996 Remainder: 15 Jan 1996 (see <i>Gazette</i> 1996, No. S16)	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 4 (items 58–62): Royal Assent (n)	—
<i>Workplace Relations and Other Legislation Amendment Act 1996</i>	60, 1996	25 Nov 1996	Schedule 19 (item 17): Royal Assent (o)	S. 2(2) and (6) (am. by 77, 1996, Sch. 3 [items 1, 2])
<b>as amended by</b>				
<i>Workplace Relations and Other Legislation Amendment Act (No. 2) 1996</i>	77, 1996	19 Dec 1996	Schedule 3 (items 1, 2): (p)	—
<i>Defence Legislation Amendment Act (No. 1) 1997</i>	1, 1997	19 Feb 1997	Schedules 1 and 3: 30 Apr 1997 (see <i>Gazette</i> 1997, No. S91) Remainder: Royal Assent	—
<i>Superannuation Legislation Amendment (Superannuation Contributions Tax) Act 1997</i>	187, 1997	7 Dec 1997	Schedule 8: Royal Assent (q)	—
<i>Tax Law Improvement Act (No. 1) 1998</i>	46, 1998	22 June 1998	Schedule 2 (items 532–538): Royal Assent (r)	—
<i>Defence Legislation Amendment Act (No. 1) 1999</i>	116, 1999	22 Sept 1999	Schedule 1 and Schedule 2 (items 1–12): 22 Mar 2000 (s) Schedule 3 (item 1): Royal Assent (s)	Sch. 2 (item 12) [see Table A]
<i>Human Rights Legislation Amendment Act (No. 1) 1999</i>	133, 1999	13 Oct 1999	Ss. 1–3 and 21: Royal Assent S. 22 and Schedule 1 (items 53 and 60): 10 Dec 1999 (see <i>Gazette</i> 1999, S598) Remainder: 13 Apr 2000	Ss. 4–22 [see Table A]

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 362–367): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (t)	—
<i>A New Tax System (Tax Administration) Act 1999</i>	179, 1999	22 Dec 1999	Schedule 11 (items 11, 12): 1 July 2000 (u)	Sch. 11 (item 12) [see Table A]
<i>Defence Legislation Amendment (Flexible Career Practices) Act 2000</i>	113, 2000	5 Sept 2000	5 Mar 2001	S. 4 [see Table A]
<i>Defence Legislation Amendment (Aid to Civilian Authorities) Act 2000</i>	119, 2000	12 Sept 2000	12 Sept 2000	—
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419) [see Table A]
<i>Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001</i>	10, 2001	22 Mar 2001	Schedule 2 (items 12–15, 19, 27–31, 67, 68, 75–77): 22 Mar 2002 Schedule 3: 19 Apr 2001 (see s. 2(4)) Schedule 4: Royal Assent Remainder: 19 Apr 2001	Sch. 1 (item 3), Sch. 2 (items 88–90, 93–95), Sch. 3 (item 7) and Sch. 4 (item 3) [see Table A]
<i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	77, 2001	30 June 2001	Schedule 2 (item 19): Royal Assent (v)	Sch. 2 (item 488(1)) (am. by 119, 2002, Sch. 3 [item 97]) [see Table A]
<b>as amended by</b>				
<i>Taxation Laws Amendment Act (No. 5) 2002</i>	119, 2002	2 Dec 2002	Schedule 3 (item 97): (w)	—
<i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i>	141, 2001	1 Oct 2001	S. 4: Royal Assent Schedule 1 (items 5–36): 15 Dec 2001	S. 4 and Sch. 1 (item 36) [see Table A] S. 2(2) (am. by 135, 2003, Sch. 2 (item 28))

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Defence Legislation Amendment Act 2003</i>	135, 2003	17 Dec 2003	Schedule 2 (item 28): (x)	—
<i>Taxation Laws Amendment (Superannuation) Act (No. 2) 2002</i>	51, 2002	29 June 2002	Schedule 1 (item 169): 1 July 2003 Schedule 1 (item 202(1)): Royal Assent	Sch. 1 (item 202(1)) [see Table A]
<i>Workplace Relations Legislation Amendment Act 2002</i>	127, 2002	11 Dec 2002	Schedule 3 (items 1–14): Royal Assent	—
<i>Defence Legislation Amendment Act 2003</i>	135, 2003	17 Dec 2003	Schedule 2 (items 12–15, 20, 25): 17 June 2004 Schedule 2 (items 16–19): 14 Jan 2004 Schedule 2 (items 21–24): Royal Assent	Sch. 2 (item 25) [see Table A]
<i>Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004</i>	52, 2004	27 Apr 2004	Schedule 3 (item 14): 1 July 2004 (see s. 2)	—
<i>Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004</i>	58, 2004	4 May 2004	Schedule 1: 18 May 2004 Remainder: Royal Assent	S. 4 [see Table A]
<i>Bankruptcy Legislation Amendment Act 2004</i>	80, 2004	23 June 2004	Schedule 1 (items 195, 212, 213, 215): 1 Dec 2004 (see <i>Gazette</i> 2004, No. GN34)	Sch. 1 (items 212, 213, 215) [see Table A]
<i>Defence Amendment Act 2005</i>	26, 2005	21 Mar 2005	21 Mar 2005	—
<i>Defence Legislation Amendment Act (No. 1) 2005</i>	121, 2005	6 Oct 2005	Schedule 5: (y) Remainder: Royal Assent	—
<i>Defence Legislation Amendment Act (No. 2) 2005</i>	142, 2005	12 Dec 2005	Schedule 2 (items 1, 2, 5–7): Royal Assent Schedule 2 (items 3, 4): 12 June 2006	Sch. 2 (items 6, 7) [see Table A]
<i>Defence Legislation Amendment (Aid to Civilian Authorities) Act 2006</i>	3, 2006	1 Mar 2006	2 Mar 2006	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 2 (item 46) and Schedule 6 (items 1, 6–11): Royal Assent	Sch. 6 (items 1, 6–11) [see Table A]
<i>Defence Legislation Amendment Act 2006</i>	159, 2006	11 Dec 2006	Schedule 1: 1 Oct 2007 Remainder: Royal Assent	Sch. 1 (item 256) [see Table A]
<i>Statute Law Revision Act 2007</i>	8, 2007	15 Mar 2007	Schedule 1 (item 4): (z)	—
<i>Defence Legislation Amendment Act 2008</i>	6, 2008	20 Mar 2008	Schedule 7 (item 37): Royal Assent Schedule 7 (item 38): (za)	—
<i>Defence Legislation (Miscellaneous Amendments) Act 2009</i>	18, 2009	26 Mar 2009	Schedule 2: 26 Sept 2009	—
<i>Defence Legislation Amendment Act (No. 1) 2009</i>	46, 2009	24 June 2009	Schedule 1: 1 July 2009	—
<i>Fair Work (State Referral and Consequential and Other Amendments) Act 2009</i>	54, 2009	25 June 2009	Schedule 8 (items 91–97, 159): (zb)	Sch. 8 (item 159) [see Table A]
<i>Disability Discrimination and Other Human Rights Legislation Amendment Act 2009</i>	70, 2009	8 July 2009	Schedule 3 (items 19–21): 5 Aug 2009	—
<i>Military Justice (Interim Measures) Act (No. 1) 2009</i>	91, 2009	22 Sept 2009	Schedule 1 (items 177–181): Royal Assent	Sch. 1 (item 181) [see Table A]
<i>Crimes Legislation Amendment (Serious and Organised Crime) Act (No. 2) 2010</i>	4, 2010	19 Feb 2010	Schedule 11 (item 7): 20 Feb 2010	—
<i>Defence Legislation Amendment Act (No. 1) 2010</i>	95, 2010	5 July 2010	Schedule 1: 5 Jan 2011 Schedule 2: Royal Assent Schedule 3: 2 Aug 2010	Sch. 1 (items 2–5), Sch. 2 (item 9) and Sch. 3 (item 5) [see Table A]

**Act Notes**

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- (a) By section 2 of the *Defence Act 1915* (No. 3, 1915), section 7 of the *Defence Act 1914* (No. 36, 1914) is deemed to have commenced on 1 August 1914.
- (b) The *Defence Act 1903* was amended by sections 3–61 only of the *Defence Force Re-organization Act 1975*, section 2 of which provides as follows:
2. This Part shall come into operation on the day on which this Act receives the Royal Assent, and the remaining provisions of this Act shall come into operation on such date as is, or such respective dates as are, fixed by Proclamation.
- (c) The *Defence Amendment Act 1979* was amended by Part XXIX (sections 82 and 83) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2(16) of which provides as follows:
- (16) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (d) The *Defence Act 1903* was amended by Part X (sections 26–51) and section 115 only of the *Statute Law Revision Act 1981*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
  - (2) Parts III, X and XV and section 116 shall come into operation on a date to be fixed by Proclamation.
- (e) The *Defence Act 1903* was amended by Part XXVIII (sections 79–81) only of the *Statute Law (Miscellaneous Amendments) Act (No. 2) 1982*, subsection 2(16) of which provides as follows:
- (16) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- (f) The *Defence Act 1903* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1983*, subsection 2(7) of which provides as follows:
- (7) The amendments of the *Defence Act 1903* made by this Act shall:
    - (a) in the case of the repeal of section 69 of that Act—come into operation, or be deemed to have come into operation, as the case requires, on the commencement of section 38 of the *Defence Force Re-organization Act 1975*;
    - (b) in the case of the amendment of section 116D of that Act—come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent or, if the day fixed under subsection 2(3) of the *Defence Acts Amendment Act 1981* is a later day, on that later day; and
    - (c) in the case of the other amendments of that Act—come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.
- In pursuance of section 38 of the *Defence Force Re-organization Act 1975*, the date of commencement was 1 July 1985 (see *Gazette* 1985, No. S195).
- In pursuance of subsection 2(3) of the *Defence Acts Amendment Act 1981*, the date of commencement was 15 August 1983 (see *Gazette* 1983, No. S169).
- In pursuance of paragraph 2(7)(c) the date of commencement was 18 July 1983.
- (g) The *Defence Act 1903* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1984*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
- (h) The *Defence Act 1903* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsections 2(1) and (15) of which provide as follows:
- (1) Subject to this section, this Act shall come into operation on the twenty-eighth day after the day on which it receives the Royal Assent.
  - (15) The amendments of section 58B of the *Defence Act 1903*, the amendment inserting proposed section 120B in that Act, and the amendment of section 124 of that Act, made by this Act shall come into operation on a day to be fixed by Proclamation or on such respective days as are fixed by Proclamation.
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## Act Notes

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In pursuance of subsection 2(15), the date fixed for the amendment inserting section 120B was 1 October 1985 (see *Gazette* 1985, No. S400) and the date for the amendments of sections 58B and 124 was 30 June 1990 (see *Gazette* 1990, No. S152).

- (i) The *Defence Act 1903* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 2) 1985*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (j) The *Defence Act 1903* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1986*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.
- (k) The *Defence Act 1903* was amended by section 3 only of the *Defence Legislation Amendment Act 1990*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Subject to subsection (3), the amendment of section 9, and the repeal of sections 32C and 33, of the *Defence Act 1903*, and the repeal of section 23 of the *Naval Defence Act 1910*, made by section 3 commence on a day to be fixed by Proclamation.

In pursuance of subsection 2(2) the amendment of section 9, and the repeal of sections 32C and 33 was 15 December 1990 (see *Gazette* 1990, No. S312).

- (l) The *Defence Act 1903* was amended by the *Evidence (Transitional Provisions and Consequential Amendments) Act 1995*, subsections 2(1) and (13) of which provide as follows:
- (1) This Part and Parts 2 and 3 commence on the day on which this Act receives the Royal Assent.
  - (13) Section 27 of this Act and the Schedule to this Act commence:
    - (a) on the day on which sections 153 and 155 of the *Evidence Act 1995* commence; or
    - (b) if those sections commence on different days—the first day on which both of those sections are in force.

Sections 153 and 155 commenced on 18 April 1995.

- (m) The *Defence Act 1903* was amended by the *Defence Legislation Amendment Act 1995*, subsections 2(1) and (2) of which provide as follows:
- (1) Except as indicated in subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.
  - (2) Schedule 1 (except items 3 and 11.3), items 29 and 30 of Schedule 2, and Schedule 5 commence on a day to be fixed by Proclamation.
- (n) The *Defence Act 1903* was amended by Schedule 4 (items 58–62) only of the *Statute Law Revision Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (o) The *Defence Act 1903* was amended by Schedule 19 (item 17) only of the *Workplace Relations and Other Legislation Amendment Act 1996*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (p) The *Workplace Relations and Other Legislation Amendment Act 1996* was amended by Schedule 3 (items 1 and 2) only of the *Workplace Relations and Other Legislation Amendment Act (No. 2) 1996*, subsection 2(4) of which provides as follows:
- (4) The items of Schedule 3 are taken to have commenced immediately after the *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent.



**Act Notes**

- The *Workplace Relations and Other Legislation Amendment Act 1996* received the Royal Assent on 25 November 1996.
- (q) The *Defence Act 1903* was amended by Schedule 8 only of the *Superannuation Legislation Amendment (Superannuation Contributions Tax) Act 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (r) The *Defence Act 1903* was amended by Schedule 2 (items 532–538) only of the *Tax Law Improvement Act (No. 1) 1998*, subsections 2(1) and (2) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (2) Schedule 2 (except item 3 of it) commences immediately after the commencement of Schedule 1.
- (s) The *Defence Act 1903* was amended by Schedule 1, Schedule 2 (items 1–11) and Schedule 3 (item 1) only of the *Defence Legislation Amendment Act (No. 1) 1999*, subsections 2(1) and (3) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (3) If an item in Schedule 1 or 2 does not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
- (t) The *Defence Act 1903* was amended by Schedule 1 (items 362–367) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (u) The *Defence Act 1903* was amended by Schedule 11 (item 11) only of the *A New Tax System (Tax Administration) Act 1999*, subsection 2(9)(b) of which provides as follows:
- (9) The following provisions commence on 1 July 2000:
    - (b) Schedule 11 (other than item 44).
- (v) The *Defence Act 1903* was amended by Schedule 2 (item 19) only of the *New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (w) Subsection 2(1) (item 9) of the *Taxation Laws Amendment Act (No. 5) 2002* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
9. Items 79 to 99 of Schedule 3	Immediately after the commencement of section 2 of the <i>New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001</i>	30 June 2001

**Act Notes**

(x) Subsection 2(1) (item 9) of the *Defence Legislation Amendment Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
9. Schedule 2, item 28	Immediately after the commencement of section 2 of the <i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i>	1 October 2001

(y) Subsection 2(1) (item 3) of the *Defence Legislation Amendment Act (No. 1) 2005* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 5	Immediately after the commencement of section 3 of the <i>Legislative Instruments Act 2003</i> .	1 January 2005

(z) Subsection 2(1) (item 5) of the *Statute Law Revision Act 2007* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 1, Item 4	Immediately after the commencement of item 15 of Schedule 1 to the <i>Defence Legislation Amendment (Application of the Criminal Code) Act 2001</i> .	15 December 2001

(za) Subsection 2(1) (item 9) of the *Defence Legislation Amendment Act 2008* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
9. Schedule 7, item 38	Immediately after the commencement of item 7 of Schedule 2 to the <i>Defence Legislation Amendment Act 2006</i> .	11 December 2006

(zb) Subsection 2(1) (items 24 and 30) of the *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

**Act Notes**

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<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
24. Schedule 8, items 1 to 130	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009 (see F2009L02563)
30. Schedule 8, items 140 to 161	Immediately after the commencement of Part 2-4 of the <i>Fair Work Act 2009</i> .	1 July 2009 (see F2009L02563)

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**Table of Amendments****Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Title .....	am. No. 96, 1975; No. 4, 1977
<b>Part I</b>	
S. 2 .....	am. No. 15, 1909; No. 37, 1910; No. 5, 1912; No. 74, 1939; No. 19, 1951 rs. No. 92, 1964 am. No. 51, 1965 rep. No. 216, 1973
S. 4 .....	am. No. 12, 1904; No. 30, 1910; No. 36, 1917; No. 16, 1918; Nos. 13 and 74, 1939; No. 71, 1949; No. 59, 1951; No. 72, 1956; No. 92, 1964; No. 51, 1965; No. 216, 1973; No. 96, 1975; No. 4, 1977; No. 132, 1979; No. 61, 1981; Nos. 80 and 153, 1982; No. 164, 1984; No. 65, 1987; No. 104, 1988; No. 91, 1992; No. 1, 1997; No. 10, 2001; No. 142, 2005
S. 5 .....	rs. No. 19, 1951 am. No. 92, 1964; No. 216, 1973; No. 96, 1975; No. 132, 1979; No. 153, 1982
S. 5A .....	ad. No. 13, 1939 am. No. 80, 1950; No. 59, 1951; No. 216, 1973 rs. No. 96, 1975
S. 6 .....	am. No. 96, 1975 rep. No. 153, 1982 ad. No. 141, 2001
<b>Part II</b>	
Heading to Div. 1 of Part II.....	rep. No. 37, 1910 ad. No. 43, 1995 rep. No. 10, 2001
S. 8 .....	am. No. 12, 1904; No. 30, 1910 rs. No. 13, 1939 am. No. 92, 1964 rs. No. 96, 1975 am. No. 164, 1984; No. 1, 1997
S. 8A .....	ad. No. 36, 1917 rep. No. 92, 1964
S. 9 .....	rs. No. 12, 1904 am. No. 30, 1910 rs. No. 96, 1975 am. No. 164, 1984; No. 75, 1990; No. 1, 1997
S. 9A .....	ad. No. 33, 1970 rs. No. 96, 1975 am. No. 4, 1977; No. 153, 1982; No. 164, 1984; No. 1, 1997; No. 26, 2005
S. 9AA.....	ad. No. 104, 1988
S. 9B .....	ad. No. 96, 1975 am. No. 132, 1979; No. 164, 1984; No. 104, 1988; No. 43, 1996; No. 1, 1997

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 9BA.....	ad. No. 43, 1995 am. No. 10, 2001
S. 9C.....	ad. No. 132, 1979 am. No. 164, 1984; No. 104, 1988; No. 43, 1995; No. 1, 1997
Heading to Div. 2 of Part II.....	rep. No. 37, 1910 ad. No. 43, 1995 rep. No. 10, 2001
Div. 2 of Part II .....	rep. No. 10, 2001
S. 10 .....	rs. No. 92, 1964 am. No. 96, 1975; No. 132, 1979; No. 39, 1983 rep. No. 10, 2001
S. 10A.....	ad. No. 92, 1964 rs. No. 51, 1965 am. No. 96, 1975; No. 61, 1981; No. 39, 1983; No. 65, 1987; No. 43, 1995 rep. No. 10, 2001
S. 10B.....	ad. No. 92, 1964 am. No. 96, 1975 rep. No. 153, 1982 ad. No. 43, 1995 am. No. 1, 1997; No. 116, 1999; No. 113, 2000 rep. No. 10, 2001
S. 10C.....	ad. No. 92, 1964 am. No. 96, 1975; No. 178, 1981; No. 153, 1982 (as am. by No. 164, 1984) rs. No. 39, 1983 am. No. 1, 1997; No. 113, 2000 rep. No. 10, 2001
S. 11 .....	am. No. 132, 1979 rep. No. 153, 1982
S. 11A.....	ad. No. 15, 1909 am. No. 30, 1910; No. 36, 1914; No. 59, 1951 rep. No. 92, 1964
S. 12 .....	am. No. 96, 1975; No. 4, 1977 rep. No. 65, 1985
S. 13 .....	am. No. 96, 1975; No. 4, 1977; No. 153, 1982 rep. No. 10, 2001
S. 14 .....	am. No. 30, 1910 rep. No. 92, 1964
S. 15 .....	am. No. 36, 1914; No. 36, 1917 rep. No. 92, 1964
Heading to s. 16.....	rs. No. 43, 1995 rep. No. 10, 2001
S. 16 .....	am. No. 96, 1975; No. 132, 1979; No. 76, 1986; No. 43, 1995; No. 1, 1997 rep. No. 10, 2001
S. 16A.....	ad. No. 36, 1914 rs. No. 71, 1949 am. No. 96, 1975 rep. No. 153, 1982

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 17 .....	am. No. 37, 1910; No. 71, 1949; No. 19, 1951 rs. No. 92, 1964 am. No. 51, 1965 rs. No. 96, 1975 am. No. 4, 1977; No. 39, 1983; No. 65, 1987; Nos. 100 and 104, 1988; No. 1, 1997; No. 113, 2000 rep. No. 10, 2001
S. 18 .....	rs. No. 12, 1904 am. No. 30, 1910; No. 96, 1975 rep. No. 10, 2001
Heading to Div. 3 of Part II.....	ad. No. 43, 1995 rep. No. 10, 2001
Div. 3 of Part II .....	rep. No. 10, 2001
S. 19 .....	rs. No. 12, 1904 am. No. 30, 1910 rs. No. 92, 1964 am. No. 96, 1975 rep. No. 75, 1990 ad. No. 43, 1995 am. No. 1, 1997 rep. No. 10, 2001
S. 20 .....	am. No. 30, 1910; No. 47, 1918 rep. No. 92, 1964 ad. No. 43, 1995 am. No. 116, 1999 rep. No. 10, 2001
S. 20A .....	ad. No. 47, 1918 am. No. 96, 1975 rep. No. 153, 1982
S. 21 .....	am. No. 30, 1910; No. 71, 1949 rep. No. 92, 1964 ad. No. 43, 1995 rep. No. 10, 2001
S. 21A .....	ad. No. 37, 1910 am. No. 5, 1912; No. 36, 1914; No. 71, 1949 rep. No. 92, 1964
S. 21B .....	ad. No. 37, 1910 am. No. 36, 1914 rep. No. 92, 1964
S. 22 .....	rs. No. 36, 1917 rep. No. 92, 1964 ad. No. 43, 1995 rep. No. 10, 2001
Heading to s. 23 .....	am. No. 116, 1999 rep. No. 10, 2001
S. 23 .....	am. No. 30, 1910 rep. No. 96, 1975 ad. No. 43, 1995 am. No. 116, 1999 rep. No. 10, 2001

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 24 .....	am. No. 92, 1964; No. 96, 1975 rep. No. 61, 1981 ad. No. 43, 1995 rep. No. 10, 2001
S. 25 .....	am. No. 96, 1975 rep. No. 61, 1981 ad. No. 43, 1995 am. No. 1, 1997 rep. No. 10, 2001
S. 25A .....	ad. No. 43, 1995 rep. No. 10, 2001
S. 25B .....	ad. No. 43, 1995 am. No. 1, 1997; No. 116, 1999 rep. No. 10, 2001
Heading to s. 25C.....	am. No. 116, 1999 rep. No. 10, 2001
S. 25C.....	ad. No. 43, 1995 am. No. 1, 1997; No. 116, 1999 rep. No. 10, 2001
S. 25D.....	ad. No. 43, 1995 am. No. 1, 1997 rs. No. 116, 1999 rep. No. 10, 2001
S. 25E .....	ad. No. 43, 1995 rep. No. 10, 2001
S. 26 .....	am. No. 96, 1975; No. 61, 1981; No. 39, 1983; No. 1, 1997 rep. No. 10, 2001
Heading to s. 27 .....	am. No. 43, 1995 rep. No. 10, 2001
S. 27 .....	am. No. 96, 1975; No. 132, 1979; No. 39, 1983; No. 43, 1995 rep. No. 10, 2001
Div. 3A of Part II.....	ad. No. 1, 1997 rep. No. 10, 2001
S. 27AA.....	ad. No. 1, 1997 am. No. 113, 2000 rep. No. 10, 2001
Heading to Div. 4 of Part II.....	ad. No. 43, 1995 rep. No. 10, 2001
S. 27A .....	ad. No. 43, 1995 rep. No. 10, 2001
S. 28 .....	rs. No. 12, 1904 am. No. 30, 1910; No. 96, 1975
S. 29 .....	rep. No. 37, 1910
<b>Part III</b>	
<b>Division 1</b>	
S. 30 .....	am. No. 74, 1939 rs. No. 92, 1964; No. 96, 1975



**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 31 .....	am. No. 15, 1909; Nos. 30 and 37, 1910; No. 5, 1912; No. 36, 1914; No. 3, 1915; No. 36, 1917; No. 16, 1918; Nos. 70 and 74, 1939 rs. No. 71, 1949 am. No. 80, 1950; No. 59, 1951 rs. No. 92, 1964 am. No. 96, 1975; No. 132, 1979; No. 61, 1981 rs. No. 10, 2001
S. 32 .....	rs. No. 15, 1909 rep. No. 30, 1910 ad. No. 92, 1964 am. No. 51, 1965; No. 96, 1975; No. 132, 1979; No. 61, 1981; No. 65, 1987; No. 1, 1997 rs. No. 10, 2001
S. 32A .....	ad. No. 15, 1909 am. No. 71, 1949; Nos. 19 and 59, 1951 rs. No. 51, 1965 am. No. 96, 1975; No. 132, 1979 rs. No. 61, 1981 am. No. 65, 1987; No. 1, 1997 rs. No. 10, 2001
S. 32B .....	ad. No. 96, 1975
S. 32C .....	ad. No. 39, 1983 am. No. 164, 1984 rep. No. 75, 1990
<b>Division 2</b>	
Heading to Div. 2 of Part III.....	am. No. 96, 1975 rs. No. 10, 2001
S. 33 .....	rs. No. 92, 1964 am. No. 96, 1975; No. 4, 1977 rep. No. 75, 1990
S. 34 .....	rep. No. 45, 1934 ad. No. 92, 1964 am. No. 96, 1975
S. 35 .....	am. No. 5, 1912; No. 19, 1951 rs. No. 92, 1964 rep. No. 104, 1988
S. 35A .....	ad. No. 59, 1951 am. No. 216, 1973 rep. No. 96, 1975
S. 36 .....	am. No. 15, 1909; No. 30, 1910; No. 36, 1917; No. 72, 1956; No. 92, 1964; No. 96, 1975; No. 39, 1983 rs. No. 65, 1987 rep. No. 10, 2001
S. 37 .....	am. No. 30, 1910 rs. No. 92, 1964 am. No. 96, 1975 rs. No. 65, 1987 rep. No. 10, 2001
S. 37A .....	ad. No. 113, 2000 rep. No. 10, 2001

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 38 .....	rep. No. 92, 1964 ad. No. 65, 1987 rep. No. 10, 2001
S. 39 .....	rs. No. 16, 1918 am. No. 71, 1949; Nos. 19 and 59, 1951; No. 92, 1964 rs. No. 51, 1965 am. No. 96, 1975; No. 4, 1977; No. 61, 1981 rs. No. 65, 1987 am. No. 100, 1988; No. 75, 1990; No. 1, 1997 rep. No. 10, 2001
S. 40 .....	am. No. 30, 1910; No. 16, 1918 rs. No. 71, 1949; No. 92, 1964 am. No. 132, 1979; No. 61, 1981 rs. No. 65, 1987 rep. No. 10, 2001
S. 40A .....	ad. No. 47, 1918 am. No. 11, 1945; No. 96, 1975 rep. No. 65, 1987
S. 40B .....	ad. No. 47, 1918 am. No. 45, 1934 rep. No. 11, 1945
S. 41 .....	am. No. 30, 1910; No. 16, 1918 rs. No. 71, 1949; No. 92, 1964 am. No. 51, 1965; No. 96, 1975; No. 132, 1979; No. 61, 1981 rs. No. 65, 1987 rep. No. 10, 2001
S. 42 .....	am. No. 30, 1910 rs. No. 92, 1964 am. No. 96, 1975 rep. No. 61, 1981
S. 42A .....	ad. No. 36, 1917 am. No. 51, 1965; No. 96, 1975 rep. No. 65, 1987
S. 43 .....	am. No. 78, 1947 rs. No. 71, 1949; No. 92, 1964 rep. No. 51, 1965
S. 44 .....	am. No. 30, 1910 rs. No. 36, 1917; No. 51, 1965 am. No. 96, 1975; No. 39, 1983; No. 65, 1987; No. 1, 1997 rep. No. 10, 2001
S. 44A .....	ad. No. 1, 1997 rep. No. 10, 2001
<b>Division 3</b>	
Heading to Div. 3 of Part III.....	am. No. 96, 1975
S. 45 .....	am. No. 36, 1917 rs. No. 92, 1964 am. No. 51, 1965; No. 132, 1979; No. 61, 1981; No. 164, 1984; No. 65, 1987; No. 1, 1997; No. 119, 2000 rs. No. 10, 2001

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 46 .....	am. No. 15, 1909; No. 36, 1917 rs. No. 92, 1964 am. No. 51, 1965; No. 132, 1979; No. 61, 1981; No. 164, 1984 rep. No. 65, 1987
S. 47 .....	am. No. 36, 1917 rs. No. 92, 1964 am. No. 132, 1979 rep. No. 61, 1981
S. 48 .....	rep. No. 30, 1910 ad. No. 92, 1964 am. No. 132, 1979; No. 61, 1981; No. 164, 1984 rep. No. 65, 1987
S. 48A .....	ad. No. 164, 1984 am. No. 1, 1997 rep. No. 10, 2001
S. 49 .....	rs. No. 92, 1964 am. No. 96, 1975; No. 61, 1981 rep. No. 153, 1982
Heading to s. 50 .....	am. No. 10, 2001
S. 50 .....	am. No. 36, 1917 rs. No. 92, 1964 am. No. 132, 1979; No. 61, 1981; No. 164, 1984; No. 65, 1987; No. 1, 1997; No. 119, 2000; No. 10, 2001; No. 3, 2006
S. 50A .....	ad. No. 92, 1964 am. No. 132, 1979; No. 61, 1981 rep. No. 65, 1987
S. 50B .....	ad. No. 92, 1964 am. No. 132, 1979; No. 61, 1981; No. 164, 1984 rep. No. 65, 1987
S. 50C .....	ad. No. 92, 1964 rs. No. 51, 1965 am. No. 96, 1975
<b>Division 4</b>	
Heading to Div. 4 of Part III.....	ad. No. 65, 1987
Div. 4 of Part III .....	rep. No. 153, 1982
S. 50D .....	ad. No. 92, 1964 rep. No. 61, 1981 ad. No. 65, 1987 am. No. 1, 1997 rs. No. 10, 2001
S. 50E .....	ad. No. 65, 1987 am. No. 1, 1997 rs. No. 10, 2001
S. 50F .....	ad. No. 65, 1987 am. No. 1, 1997 rep. No. 10, 2001
S. 50G .....	ad. No. 65, 1987 rep. No. 10, 2001

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Part IIIAAA</b>	
Heading to Part IIIAAA .....	rs. No. 3, 2006
Part IIIAAA .....	ad. No. 119, 2000
<b>Division 1</b>	
Heading to s. 51 .....	rep. No. 119, 2000
S. 51 .....	am. No. 36, 1914; No. 59, 1951; No. 92, 1964; No. 61, 1981; No. 119, 2000
Renumbered s. 51B .....	No. 119, 2000
S. 51 .....	ad. No. 119, 2000 am. No. 3, 2006
S. 51A .....	ad. No. 119, 2000 am. No. 3, 2006
Ss. 51AA, 51AB .....	ad. No. 3, 2006
S. 51B .....	am. No. 119, 2000; No. 3, 2006
formerly s. 51	
S. 51C .....	ad. No. 119, 2000 am. No. 3, 2006
Ss. 51CA, 51CB .....	ad. No. 3, 2006
S. 51D .....	ad. No. 119, 2000 am. No. 3, 2006
S. 51E .....	ad. No. 119, 2000
S. 51F .....	ad. No. 119, 2000 am. No. 3, 2006
S. 51G .....	ad. No. 119, 2000 am. No. 10, 2001 rs. No. 3, 2006
<b>Division 2</b>	
Heading to Div. 2 of .....	rs. No. 3, 2006
Part IIIAAA	
S. 51H .....	ad. No. 119, 2000
S. 51I .....	ad. No. 119, 2000 am. No. 3, 2006
<b>Division 2A</b>	
Div. 2A of Part IIIAAA .....	ad. No. 3, 2006
Ss. 51IA, 51IB .....	ad. No. 3, 2006
<b>Division 3</b>	
<b>Subdivision A</b>	
S. 51J .....	ad. No. 119, 2000
<b>Subdivision B</b>	
S. 51K .....	ad. No. 119, 2000 am. No. 3, 2006
Ss. 51L–51P .....	ad. No. 119, 2000
<b>Subdivision C</b>	
S. 51Q .....	ad. No. 119, 2000 am. No. 3, 2006

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 51R.....	ad. No. 119, 2000
S. 51S.....	ad. No. 119, 2000 am. No. 141, 2001; No. 3, 2006
<b>Division 3A</b>	
Div. 3A of Part IIIAAA.....	ad. No. 3, 2006
<b>Subdivision A</b>	
Ss. 51SA–51SD.....	ad. No. 3, 2006
<b>Subdivision B</b>	
S. 51SE.....	ad. No. 3, 2006
<b>Subdivision C</b>	
Ss. 51SF–51SK.....	ad. No. 3, 2006
<b>Subdivision D</b>	
Ss. 51SL–51SN.....	ad. No. 3, 2006
<b>Subdivision E</b>	
Ss. 51SO–51SQ.....	ad. No. 3, 2006
<b>Division 3B</b>	
Div. 3B of Part IIIAAA.....	ad. No. 3, 2006
Ss. 51SR–51ST.....	ad. No. 3, 2006
<b>Division 4</b>	
Heading to Div. 4 of ..... Part IIIAAA	rs. No. 3, 2006
<b>Subdivision A</b>	
Ss. 51T, 51U.....	ad. No. 119, 2000 am. No. 3, 2006
<b>Subdivision B</b>	
Heading to Subdiv. B of ..... Div. 4 of Part IIIAAA	rs. No. 3, 2006
Heading to s. 51V.....	am. No. 3, 2006
S. 51V.....	ad. No. 119, 2000 am. No. 3, 2006
<b>Subdivision C</b>	
S. 51W.....	ad. No. 119, 2000 am. No. 3, 2006
<b>Division 4A</b>	
Div. 4A of Part IIIAAA.....	ad. No. 3, 2006
Ss. 51WA, 51WB.....	ad. No. 3, 2006
<b>Division 5</b>	
S. 51X.....	ad. No. 119, 2000 am. No. 3, 2006
S. 51XA.....	ad. No. 119, 2000 am. No. 3, 2006
S. 51XB.....	ad. No. 3, 2006
S. 51Y.....	ad. No. 119, 2000

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Part IIIAA</b>	
Heading to Part IIIAA.....	am. No. 95, 1993
Part IIIAA.....	ad. No. 67, 1988
S. 52 .....	rep. No. 92, 1964 ad. No. 67, 1988 am. No. 92, 1992; No. 95, 1993; No. 10, 2001; No. 51, 2002; No. 58, 2004; No. 121, 2005
S. 53 .....	am. No. 74, 1939 rep. No. 92, 1964 ad. No. 187, 1997
S. 54 .....	rep. No. 30, 1910 ad. No. 92, 1964 am. No. 96, 1975 rep. No. 153, 1982
S. 54A.....	ad. No. 15, 1909 rs. No. 36, 1917 rep. No. 92, 1964
S. 55 .....	am. No. 3, 1915 rs. No. 36, 1917 am. No. 93, 1966; No. 96, 1975; No. 132, 1979 rep. No. 153, 1982
S. 56 .....	rep. No. 30, 1910
S. 57 .....	am. No. 30, 1910; No. 36, 1917; No. 96, 1975 rep. No. 178, 1981
S. 58 .....	am. No. 74, 1939; No. 216, 1973; No. 96, 1975; No. 4, 1977 rep. No. 153, 1982
<b>Part IIIA</b>	
Part IIIA .....	ad. No. 132, 1979
<b>Division 1</b>	
Heading to Div. 1 of Part IIIA ....	ad. No. 164, 1984
S. 58A .....	ad. No. 132, 1979 am. No. 164, 1984; No. 104, 1988; No. 135, 2003
S. 58B .....	ad. No. 132, 1979 am. No. 178, 1981; No. 164, 1984; No. 65, 1985 (as am. by No. 75, 1990); No. 75, 1988; No. 146, 1999; No. 10, 2001; No. 95, 2010
S. 58C.....	ad. No. 132, 1979 am. No. 80, 1982; No. 99, 1988 rep. No. 95, 2010
S. 58D.....	ad. No. 132, 1979 rep. No. 3, 1995
S. 58E.....	ad. No. 132, 1979
<b>Division 2</b>	
Div. 2 of Part IIIA .....	ad. No. 164, 1984
S. 58F .....	ad. No. 164, 1984 am. No. 87, 1988; No. 62, 1991; No. 109, 1993; Nos. 43 and 60, 1996; No. 127, 2002; SLI 2006 No. 50; No. 54, 2009

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 58G.....	ad. No.164, 1984 am. No. 108, 1990; No. 109, 1993; No. 127, 2002; No. 54, 2009
S. 58H.....	ad. No. 164, 1984 am. No. 109, 1993; No. 127, 2002
Ss. 58HA, 58HB.....	ad. No. 168, 1995 am. No. 133, 1999; No. 70, 2009
S. 58J.....	ad. No. 164, 1984 am. No. 109, 1993
S. 58K.....	ad. No. 164, 1984 am. No. 62, 1991; No. 109, 1993; No. 127, 2002; No. 54, 2009
S. 58KA.....	ad. No. 62, 1991 am. No. 109, 1993
S. 58KB.....	ad. No. 62, 1991 am. No. 54, 2009
S. 58KC.....	ad. No. 62, 1991 am. No. 109, 1993
S. 58KD.....	ad. No. 62, 1991
S. 58L.....	ad. No. 164, 1984 am. No. 108, 1990; No. 109, 1993; No. 127, 2002; No. 54, 2009
S. 58M.....	ad. No. 164, 1984 am. No. 127, 2002
S. 58N.....	ad. No. 164, 1984
S. 58P.....	ad. No. 164, 1984 am. No. 109, 1993; No. 127, 2002
S. 58Q.....	ad. No. 164, 1984 am. No. 43, 1996; No. 127, 2002
<b>Division 3</b>	
Div. 3 of Part IIIA.....	ad. No. 164, 1984
S. 58R.....	ad. No. 164, 1984 am. No. 43, 1996
Ss. 58S–58X.....	ad. No. 164, 1984
S. 58Y.....	ad. No. 164, 1984 am. No. 43, 1996
<b>Part IV</b>	
Heading to Part IV.....	am. No. 15, 1909
Part IV.....	rs. No. 51, 1965
<b>Division 1</b>	
Heading to Div. 1 of Part IV.....	ad. No. 91, 1992
S. 59.....	am. No. 15, 1909 rs. No. 51, 1965 am. No. 132, 1979; No. 91, 1992

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 60 .....	rs. No. 15, 1909 am. No. 47, 1918 rs. No. 51, 1965 am. No. 132, 1979; No. 91, 1992
S. 61 .....	rs. No. 37, 1910 am. No. 47, 1918; Nos. 38 and 74, 1939 rs. No. 51, 1965 am. No. 216, 1973; No. 96, 1975; No. 132, 1979; No. 91, 1992
S. 61A .....	ad. No. 37, 1910 am. No. 38, 1939 rs. No. 51, 1965 am. No. 93, 1966; No. 96, 1975; No. 4, 1977; No. 132, 1979; No. 91, 1992
S. 61B .....	ad. No. 59, 1951 rs. No. 51, 1965 am. No. 96, 1975
S. 61C .....	ad. No. 51, 1965 am. No. 96, 1975; No. 132, 1979 rs. No. 91, 1992
<b>Division 2</b>	
Div. 2 of Part IV .....	ad. No. 91, 1992
Ss. 61CA–61CE .....	ad. No. 91, 1992
<b>Division 3</b>	
Div. 3 of Part IV .....	ad. No. 91, 1992
Ss. 61CF–61CO .....	ad. No. 91, 1992
<b>Division 4</b>	
Div. 4 of Part IV .....	ad. No. 91, 1992
Ss. 61CP–61CW .....	ad. No. 91, 1992
S. 61CX .....	ad. No. 91, 1992 am. No. 121, 2005
Ss. 61CY, 61CZ .....	ad. No. 91, 1992 rs. No. 141, 2001
S. 61CZA .....	ad. No. 91, 1992
<b>Division 5</b>	
Div. 5 of Part IV .....	ad. No. 91, 1992
Ss. 61CZB, 61CZC .....	ad. No. 91, 1992
S. 61CZD .....	ad. No. 91, 1992 am. No. 95, 1993
S. 61CZE .....	ad. No. 91, 1992



**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Part V</b>	
Heading to s. 62 .....	am. No. 135, 2003
S. 62 .....	rs. No. 15, 1909 am. No. 37, 1910; No. 5, 1912; No. 3, 1915; No. 47, 1918; No. 74, 1939 rs. No. 59, 1951 am. No. 96, 1975; No. 132, 1979; No. 104, 1988; No. 1, 1997; No. 135, 2003
S. 62A .....	ad. No. 71, 1949 rep. No. 59, 1951
<b>Part VI</b>	
S. 63 .....	am. No. 15, 1909; Nos. 30 and 37, 1910; No. 36, 1917; No. 74, 1939; No. 35, 1948; No. 216, 1973; No. 96, 1975; No. 4, 1977; No. 21, 1991
S. 64 .....	am. No. 12, 1904; No. 74, 1939
S. 65 .....	am. No. 74, 1939
S. 66 .....	am. No. 96, 1975; No. 4, 1977; No. 104, 1988 (as am. by No. 41, 1989)
S. 67 .....	rs. No. 15, 1909 am. No. 5, 1912; No. 74, 1939
S. 69 .....	rs. No. 15, 1909 am. No. 3, 1915; No. 74, 1939; No. 93, 1966; No. 96, 1975; No. 132, 1979 rep. No. 39, 1983
S. 70 .....	am. No. 74, 1939; No. 80, 1950
S. 71 .....	rep. No. 96, 1975
S. 72 .....	am. No. 15, 1909; No. 93, 1966; No. 132, 1979 rep. No. 96, 1975
S. 73 .....	am. No. 30, 1910 rs. No. 36, 1917; No. 153, 1982 rep. No. 141, 2001
<b>Part VII</b>	
S. 73A .....	ad. No. 36, 1917 am. No. 74, 1939; No. 96, 1975; No. 4, 1977; No. 146, 1999 rs. No. 141, 2001
S. 73B .....	ad. No. 36, 1917 rs. No. 153, 1982 rep. No. 137, 2000
S. 73C .....	ad. No. 36, 1917 am. No. 4, 1941; No. 96, 1975 rep. No. 141, 2001
S. 73D .....	ad. No. 36, 1917 rs. No. 4, 1941 am. No. 96, 1975; No. 4, 1977 rep. No. 141, 2001
S. 73E .....	ad. No. 4, 1941 am. No. 96, 1975 rep. No. 141, 2001

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 73F .....	ad. No. 4, 1941 am. No. 93, 1966; No. 132, 1979; No. 153, 1982; No. 137, 2000; No. 141, 2001
S. 74 .....	am. No. 36, 1917; No. 93, 1966; No. 132, 1979 rep. No. 153, 1982
S. 75 .....	am. No. 15, 1909 rs. No. 47, 1918 am. No. 93, 1966; No. 132, 1979 rep. No. 153, 1982
S. 76 .....	am. No. 47, 1918 rs. No. 92, 1964 rep. No. 51, 1965
S. 77 .....	am. No. 47, 1918; No. 93, 1966; No. 132, 1979 rep. No. 153, 1982
S. 78 .....	rs. No. 36, 1917 am. No. 74, 1939 rs. No. 92, 1964 am. No. 96, 1975; No. 132, 1979; No. 61, 1981 rep. No. 153, 1982
S. 79 .....	am. No. 15, 1909; No. 36, 1914; No. 50, 1932; No. 74, 1939; No. 93, 1966; No. 216, 1973; No. 96, 1975; No. 4, 1977; Nos. 132 and 155, 1979; No. 70, 1980; No. 141, 2001
Note to s. 79(1A) .....	ad. No. 141, 2001
S. 80 .....	am. No. 93, 1966; No. 132, 1979 rep. No. 137, 2000
S. 80A .....	ad. No. 36, 1917 am. No. 74, 1939; No. 80, 1950; No. 93, 1966; No. 132, 1979; No. 141, 2001; No. 135, 2003
S. 80B .....	ad. No. 36, 1917 rs. No. 51, 1965 am. No. 93, 1966; No. 96, 1975; No. 4, 1977 rs. No. 20, 1977 am. No. 104, 1988; No. 141, 2001; No. 135, 2003; No. 8, 2007
Note to s. 80B(2) .....	ad. No. 141, 2001
Note to s. 80B(3) .....	ad. No. 141, 2001
Ss. 80C–80I .....	ad. No. 36, 1917 rep. No. 51, 1965
S. 81 .....	am. No. 74, 1939; No. 93, 1966; No. 132, 1979 rep. No. 137, 2000
S. 82 .....	am. No. 36, 1917; No. 74, 1939; No. 93, 1966; No. 216, 1973; No. 96, 1975; Nos. 132 and 155, 1979; No. 70, 1980; No. 141, 2001

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 83 .....	rs. No. 71, 1949 am. No. 92, 1964; No. 93, 1966; No. 96, 1975; No. 20, 1977; No. 132, 1979; No. 164, 1984; No. 104, 1988; No. 141, 2001
Note to s. 83(5) .....	ad. No. 141, 2001
S. 84 .....	am. No. 93, 1966; No. 132, 1979; No. 104, 1988; No. 141, 2001
S. 85 .....	am. No. 47, 1918; No. 93, 1966 rs. No. 96, 1975 rep. No. 65, 1987
<b>Part VIII</b>	
Part VIII .....	rs. No. 153, 1982
S. 86 .....	am. No. 36, 1917; No. 74, 1939; No. 96, 1975 rs. No. 153, 1982; No. 141, 2001
S. 87 .....	am. Nos. 13 and 74, 1939; No. 132, 1979; No. 178, 1981 rs. No. 153, 1982 rep. No. 39, 1983
S. 88 .....	rs. No. 36, 1917 am. No. 74, 1939 rs. No. 72, 1956 am. No. 96, 1975 rs. No. 153, 1982; No. 141, 2001
S. 89 .....	rs. No. 153, 1982 am. No. 141, 2001; No. 159, 2006; No. 91, 2009
S. 90 .....	rs. No. 36, 1917 am. No. 74, 1939; No. 96, 1975 rs. No. 153, 1982; No. 141, 2001
<b>Part VIIIA</b>	
Heading to Part VIIIA.....	rs. No. 26, 2005
Part VIIIA.....	ad. No. 116, 1999
<b>Division 1</b>	
S. 91 .....	am. No. 36, 1917; No. 93, 1966; No. 216, 1973; Nos. 19 and 132, 1979 rep. No. 153, 1982 ad. No. 116, 1999 rs. No. 26, 2005
S. 92 .....	rs. No. 36, 1917 am. No. 216, 1973; No. 132, 1979 rep. No. 153, 1982 ad. No. 116, 1999 am. No. 26, 2005
S. 93 .....	rep. No. 153, 1982 ad. No. 116, 1999 am. No. 26, 2005; No. 95, 2010
Ss. 93A, 93B .....	ad. No. 26, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 2</b>	
Heading to Div. 2 of..... Part VIIIA	rs. No. 26, 2005
S. 94 .....	rep. No. 153, 1982 ad. No. 116, 1999 rs. No. 26, 2005
S. 95 .....	am. No. 93, 1966; No. 96, 1975; No. 132, 1979 rep. No. 153, 1982 ad. No. 116, 1999 rs. No. 26, 2005
S. 96 .....	am. No. 36, 1917; No. 74, 1939; No. 96, 1975 rep. No. 153, 1982 ad. No. 116, 1999 rs. No. 26, 2005
S. 97 .....	am. No. 36, 1917; No. 74, 1939; No. 96, 1975; No. 4, 1977 rep. No. 153, 1982 ad. No. 116, 1999 rep. No. 26, 2005
<b>Division 3</b>	
S. 98 .....	am. No. 74, 1939; No. 96, 1975 rep. No. 153, 1982 ad. No. 116, 1999 am. No. 26, 2005
S. 99 .....	am. No. 12, 1904; No. 45, 1934; No. 132, 1979 rep. No. 153, 1982 ad. No. 116, 1999 rep. No. 26, 2005
S. 100.....	am. No. 96, 1975 rep. No. 153, 1982 ad. No. 116, 1999 rs. No. 26, 2005
S. 101.....	rep. No. 153, 1982 ad. No. 116, 1999 am. No. 26, 2005; No. 95, 2010
S. 102.....	am. No. 36, 1917 rep. No. 153, 1982 ad. No. 116, 1999 am. No. 26, 2005
S. 103.....	rs. No. 36, 1917 am. No. 74, 1939; No. 132, 1979 rep. No. 153, 1982 ad. No. 116, 1999 am. No. 26, 2005
S. 104.....	rep. No. 36, 1917 ad. No. 116, 1999 rs. No. 26, 2005
S. 105.....	rep. No. 153, 1982 ad. No. 116, 1999 rep. No. 26, 2005

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Division 4</b>	
S. 106.....	am. No. 74, 1939; No. 216, 1973 rep. No. 153, 1982 ad. No. 116, 1999 am. No. 141, 2001; No. 26, 2005
S. 107.....	am. No. 74, 1939; No. 96, 1975 rep. No. 153, 1982 ad. No. 116, 1999 am. No. 141, 2001; No. 26, 2005
S. 108.....	am. No. 36, 1914; No. 36, 1917; No. 74, 1939; No. 59, 1951; No. 92, 1964; No. 93, 1966; No. 132, 1979 rep. No. 153, 1982 ad. No. 116, 1999 am. No. 26, 2005; No. 4, 2010
S. 109.....	rs. No. 36, 1914 am. No. 36, 1917; No. 74, 1939; No. 96, 1975; No. 4, 1977; No. 132, 1979 rep. No. 153, 1982 ad. No. 26, 2005
S. 110.....	am. No. 12, 1904 rs. No. 5, 1912 am. No. 36, 1917; No. 74, 1939; Nos. 19 and 59, 1951; No. 216, 1973 rep. No. 96, 1975 ad. No. 26, 2005
S. 110A.....	ad. No. 47, 1918 am. No. 74, 1939 rep. No. 153, 1982
<b>Part VIIIB</b>	
Part VIIIB.....	ad. No. 142, 2005
<b>Division 1</b>	
Ss. 110A–110D.....	ad. No. 142, 2005
<b>Division 2</b>	
Ss. 110E–110P.....	ad. No. 142, 2005
<b>Division 3</b>	
Ss. 110Q–110S.....	ad. No. 142, 2005
<b>Part VIIIC</b>	
Part VIIIC.....	ad. No. 95, 2010
<b>Division 1</b>	
S. 110T.....	ad. No. 95, 2010
<b>Division 2</b>	
S. 110U.....	ad. No. 95, 2010
Ss. 110UA, 110UB.....	ad. No. 95, 2010
<b>Division 3</b>	
S. 110V.....	ad. No. 95, 2010
Ss. 110VA–110VC.....	ad. No. 95, 2010

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 4</b>	
S. 110W .....	ad. No. 95, 2010
<b>Division 5</b>	
S. 110X .....	ad. No. 95, 2010
Ss. 110XA–110XH .....	ad. No. 95, 2010
<b>Division 6</b>	
S. 110Y .....	ad. No. 95, 2010
Ss. 110YA–110YI .....	ad. No. 95, 2010
<b>Division 7</b>	
S. 110Z .....	ad. No. 95, 2010
<b>Part IX</b>	
S. 111.....	am. No. 12, 1904; No. 36, 1917; No. 74, 1939; No. 71, 1949; No. 96, 1975
S. 111A .....	ad. No. 37, 1910
S. 112.....	am. No. 30, 1910; No. 36, 1917; No. 74, 1939; Nos. 19 and 59, 1951; No. 216, 1973; No. 96, 1975; No. 61, 1981 rep. No. 153, 1982
S. 113.....	am. No. 36, 1917; No. 74, 1939; No. 92, 1964; No. 96, 1975; No. 61, 1981 rep. No. 153, 1982
S. 114.....	am. No. 5, 1912 rs. No. 36, 1917 am. No. 216, 1973; No. 96, 1975; No. 155, 1979; No. 70, 1980 rep. No. 153, 1982
Ss. 115, 116 .....	am. No. 36, 1917; No. 74, 1939; No. 216, 1973 rep. No. 153, 1982
<b>Part IXA</b>	
Part IXA .....	ad. No. 178, 1981
<b>Division 1</b>	
S. 116A .....	ad. No. 178, 1981
<b>Division 2</b>	
S. 116B .....	ad. No. 178, 1981 am. No. 1, 1997
S. 116C .....	ad. No. 178, 1981 am. No. 164, 1984; No. 95, 1993; No. 1, 1997; No. 159, 2006; No. 91, 2009
S. 116D .....	ad. No. 178, 1981 am. No. 39, 1983; No. 164, 1984
<b>Division 3</b>	
S. 116E .....	ad. No. 178, 1981 am. No. 1, 1997
Ss. 116F–116K .....	ad. No. 178, 1981

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
<b>Division 4</b>	
Heading to s. 116M .....	am. No. 1, 1997
S. 116M.....	ad. No. 178, 1981 am. No. 1, 1997
S. 116N.....	ad. No. 178, 1981 rep. No. 121, 2005
<b>Part IXB</b>	
Part IXB .....	ad. No. 178, 1981
Ss. 116P, 116Q.....	ad. No. 178, 1981
S. 116R.....	ad. No. 178, 1981 am. No. 39, 1983
Ss. 116S–116V .....	ad. No. 178, 1981
S. 116W .....	ad. No. 178, 1981 am. No. 141, 2001
S. 116X.....	ad. No. 178, 1981
S. 116Y .....	ad. No. 178, 1981 rs. No. 141, 2001
S. 116Z .....	ad. No. 178, 1981 rep. No. 137, 2000
S. 116ZA.....	ad. No. 178, 1981 am. No. 65, 1985
Ss. 116ZB, 116ZC.....	ad. No. 178, 1981
S. 116ZD.....	ad. No. 178, 1981 am. No. 99, 1988; No. 121, 2005
<b>Part IXC</b>	
Part IXC .....	ad. No. 104, 1988 (as am. by No. 41, 1989)
S. 117.....	am. No. 96, 1975; No. 4, 1977 rep. No. 153, 1982 ad. No. 104, 1988 (as am. by No. 41, 1989) am. No. 1, 1997
S. 117A .....	ad. No. 36, 1917 am. No. 71, 1949; No. 96, 1975 rep. No. 153, 1982 ad. No. 104, 1988 (as am. by No. 41, 1989) am. No. 21, 1991; No. 95, 1993; No. 1, 1997
Ss. 117AA, 117AB.....	ad. No. 104, 1988 (as am. by No. 41, 1989)
<b>Part X</b>	
S. 117B .....	ad. No. 65, 1985
S. 118.....	am. No. 74, 1939; No. 216, 1973; No. 132, 1979; No. 65, 1987 rs. 141, 2001
S. 118A .....	ad. No. 36, 1917 am. No. 80, 1950; No. 92, 1964; No. 51, 1965; No. 93, 1966; No. 96, 1975; No. 132, 1979; No. 153, 1982; No. 10, 2001
S. 118B .....	ad. No. 65, 1987

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 119.....	rs. No. 36, 1917 am. No. 47, 1918; No. 216, 1973 rs. No. 96, 1975 am. No. 132, 1979; No. 178, 1981
S. 120A.....	ad. No. 36, 1917 rs. No. 39, 1983 am. No. 164, 1984; No. 65, 1985; No. 76, 1986; No. 65, 1987; No. 75, 1990; No. 95, 1993; No. 1, 1997; No. 116, 1999; No. 10, 2001; No. 26, 2005; No. 95, 2010
S. 120B.....	ad. No. 65, 1985 am. No. 75, 1988; Nos. 146 and 179, 1999; Nos. 52 and 80, 2004
S. 121.....	am. No. 96, 1975; No. 153, 1982
S. 122.....	am. No. 5, 1912; No. 36, 1917; No. 216, 1973; No. 96, 1975; No. 155, 1979; No. 70, 1980 rep. No. 153, 1982 ad. No. 65, 1987
S. 122AA.....	ad. No. 21, 1991 am. No. 46, 1998; No. 77, 2001; No. 101, 2006
S. 122A.....	ad. No. 41, 1989
S. 122B.....	ad. No. 6, 2008
S. 123.....	rep. No. 216, 1973 ad. No. 65, 1987 am. No. 104, 1988; No. 41, 1989; No. 146, 1999
S. 123A.....	ad. No. 15, 1909 am. No. 74, 1939 rs. No. 59, 1951; No. 51, 1965 am. No. 216, 1973; No. 96, 1975 rs. No. 165, 1984 am. No. 65, 1985; No. 1, 1997
S. 123AA.....	ad. No. 5, 1912 rs. No. 59, 1951 am. No. 93, 1966; No. 96, 1975; No. 132, 1979 rs. 141, 2001 am. No. 135, 2003
S. 123B.....	ad. No. 15, 1909 am. No. 216, 1973
S. 123BA.....	ad. No. 92, 1964 am. No. 96, 1975 rep. No. 65, 1987
S. 123BB.....	ad. No. 92, 1964 am. No. 96, 1975 rep. No. 153, 1982
S. 123BC.....	ad. No. 92, 1964 rep. No. 153, 1982
S. 123C.....	ad. No. 15, 1909 rep. No. 216, 1973
S. 123D.....	ad. No. 37, 1910 rep. No. 59, 1951



**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 123E .....	ad. No. 37, 1910 am. No. 74, 1939; No. 216, 1973 rep. No. 132, 1979
S. 123F .....	ad. No. 59, 1951 rs. No. 96, 1975 am. No. 1, 1997
S. 123G.....	ad. No. 39, 1983 am. No. 99, 1988; No. 121, 2005
S. 123H.....	ad. No. 46, 2009
S. 123J.....	ad. No. 46, 2009
<b>Part XI</b>	
S. 124.....	am. No. 12, 1904; No. 15, 1909; No. 37, 1910; No. 3, 1915; No. 36, 1917; No. 47, 1918; No. 1, 1927; No. 74, 1939; No. 71, 1949; Nos. 19 and 59, 1951; No. 98, 1952; No. 20, 1953; No. 92, 1964; No. 51, 1965; No. 93, 1966; No. 216, 1973; No. 96, 1975; No. 4, 1977; No. 132, 1979 (as am. by No. 164, 1984) Nos. 61 and 178, 1981; No. 153, 1982; No. 39, 1983; Nos. 164 and 165, 1984; Nos. 65 and 193, 1985; No. 163, 1986; No. 146, 1999; No. 10, 2001; No. 135, 2003; Nos. 121 and 142, 2005; No. 159, 2006; No. 6, 2008; No. 18, 2009
Heading to Part XII .....	am. No. 74, 1939 rep. No. 19, 1951
Part XII .....	ad. No. 15, 1909 rep. No. 19, 1951 ad. No. 92, 1964 rep. No. 51, 1965
S. 125.....	ad. No. 15, 1909 am. No. 37, 1910 rep. No. 19, 1951 ad. No. 92, 1964 rep. No. 51, 1965
S. 126.....	ad. No. 15, 1909 am. No. 37, 1910; No. 45, 1934 rep. No. 19, 1951 ad. No. 92, 1964 rep. No. 51, 1965
S. 127.....	ad. No. 15, 1909 am. No. 37, 1910; No. 15, 1911; No. 5, 1912; No. 74, 1939 rep. No. 19, 1951 ad. No. 92, 1964 rep. No. 51, 1965
S. 128.....	ad. No. 15, 1909 rs. No. 37, 1910 rep. No. 19, 1951 ad. No. 92, 1964 rep. No. 51, 1965

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 129.....	ad. No. 15, 1909 rep. No. 37, 1910 ad. No. 36, 1917 rep. No. 19, 1951 ad. No. 92, 1964 rep. No. 51, 1965
S. 130.....	ad. No. 15, 1909 rep. No. 19, 1951 ad. No. 92, 1964 rep. No. 51, 1965
S. 131.....	ad. No. 15, 1909 rep. No. 45, 1934 ad. No. 92, 1964 rep. No. 51, 1965
S. 132.....	ad. No. 15, 1909 rep. No. 19, 1951 ad. No. 92, 1964 rep. No. 51, 1965
S. 132A .....	ad. No. 36, 1917 rep. No. 19, 1951
S. 133.....	ad. No. 15, 1909 rep. No. 19, 1951 ad. No. 92, 1964 rep. No. 51, 1965
S. 134.....	ad. No. 15, 1909 am. No. 15, 1911; No. 3, 1915; No. 36, 1917; No. 16, 1918; No. 74, 1939 rep. No. 19, 1951 ad. No. 92, 1964 rep. No. 51, 1965
S. 135.....	ad. No. 15, 1909 am. No. 15, 1911; No. 5, 1912; No. 36, 1914; No. 47, 1918 rep. No. 19, 1951 ad. No. 92, 1964 rep. No. 51, 1965
S. 135A .....	ad. No. 36, 1914 rep. No. 19, 1951
S. 135B .....	ad. No. 36, 1914 rs. No. 47, 1918 rep. No. 19, 1951
S. 135C.....	ad. No. 36, 1914 rep. No. 19, 1951
S. 136.....	ad. No. 15, 1909 rep. No. 19, 1951 ad. No. 92, 1964 rep. No. 51, 1965
S. 137.....	ad. No. 15, 1909 am. No. 74, 1939 rep. No. 19, 1951

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
Part XIII .....	ad. No. 15, 1909 rep. No. 19, 1951
S. 138.....	ad. No. 15, 1909 am. No. 37, 1910; No. 36, 1914; No. 36, 1917; No. 47, 1918; No. 74, 1939 rep. No. 19, 1951
S. 139.....	ad. No. 15, 1909 rep. No. 19, 1951
S. 140.....	ad. No. 15, 1909 am. No. 37, 1910 rep. No. 36, 1914 ad. No. 36, 1917 rep. No. 19, 1951
S. 140A .....	ad. No. 37, 1910 rep. No. 36, 1914
S. 141.....	ad. No. 15, 1909 rep. No. 19, 1951
Heading to Part XIV.....	am. No. 74, 1939 rep. No. 19, 1951
Part XIV .....	ad. No. 15, 1909 rep. No. 19, 1951
S. 142.....	ad. No. 15, 1909 am. No. 15, 1911; No. 5, 1912; No. 36, 1914; No. 47, 1918; No. 45, 1934 rep. No. 19, 1951
S. 142A .....	ad. No. 47, 1918 am. No. 74, 1939 rep. No. 19, 1951
S. 143.....	ad. No. 15, 1909 am. No. 74, 1939 rep. No. 19, 1951
Ss. 144, 145.....	ad. No. 15, 1909 rep. No. 19, 1951
S. 146.....	ad. No. 15, 1909 rs. No. 5, 1912; No. 47, 1918 rep. No. 19, 1951
Part XV .....	ad. No. 15, 1909 rep. No. 65, 1987
S. 147.....	ad. No. 15, 1909 rs. No. 37, 1910 am. No. 92, 1964; No. 96, 1975 rep. No. 65, 1987
S. 147A .....	ad. No. 37, 1910 rs. No. 92, 1964 am. No. 153, 1982; No. 65, 1985 rep. No. 65, 1987
S. 147B .....	ad. No. 37, 1910 rep. No. 92, 1964

**Table of Amendments**

ad. = added or inserted    am. = amended    rep. = repealed    rs. = repealed and substituted

Provision affected	How affected
S. 148.....	ad. No. 15, 1909 rs. No. 37, 1910 am. No. 36, 1917; No. 16, 1918; No. 45, 1934 rs. No. 71, 1949 am. No. 92, 1964 rep. No. 51, 1965
S. 148A.....	ad. No. 71, 1949 am. No. 132, 1979 rep. No. 65, 1985
Ss. 149, 150.....	ad. No. 15, 1909 rep. No. 37, 1910
S. 151.....	ad. No. 15, 1909 rep. No. 96, 1975
S. 152.....	ad. No. 15, 1909 rep. No. 37, 1910
Heading to First Schedule .....	rep. No. 96, 1975
Heading to Schedule 1 .....	ad. No. 96, 1975 rep. No. 153, 1982
Schedule 1 .....	rep. No. 153, 1982
Heading to Second Schedule .....	rep. No. 96, 1975
Heading to Schedule 2 .....	ad. No. 96, 1975 rep. No. 65, 1987
Second Schedule .....	rs. No. 92, 1964
Schedule 2 .....	rep. No. 65, 1987
Third Schedule .....	rep. No. 92, 1964

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**Note 2**

**Note 2**

Subsection 4(1), definition of *Time of War*—For Proclamations relating to the 1939-1945 war (existence of danger of war and existence of war), see *Gazette* 1939, pp. 1845 and 1849, or Statutory Rules volume 1939, pp. 781 and 782. For a Proclamation declaring that war no longer exists, see *Gazette* 1952, p. 2481.

**Note 3**

Section 63 and subsection 124(1)—Subsection 45(3) of the *Naval Defence Act 1910* provides that the power to make regulations contained in section 45 of that Act is in addition to any power to make regulations contained in the *Defence Act 1903*.

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Defence Legislation Amendment Act (No. 1) 1999* (No. 116, 1999)

**Schedule 2**

**12 Saving**

Sections 25B and 25D of the *Defence Act 1903* as in force before the commencement of this item continue to apply to an officer of the Army who was given a notice before that commencement under subsection 25B(1) of that Act as so in force.

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*Human Rights Legislation Amendment Act (No. 1) 1999* (No. 133, 1999)

**Division 1—Interpretation**

**4 Interpretation**

In this Part:

*appropriate Commissioner* means:

- (a) in relation to a complaint lodged under the old DDA—the Disability Discrimination Commissioner; and
- (b) in relation to a complaint lodged under the old RDA—the Race Discrimination Commissioner; and
- (c) in relation to a complaint lodged under the old SDA—the Sex Discrimination Commissioner.

*Court* means the Federal Court of Australia.

*holding of an inquiry* means a holding of an inquiry referred to in a notice given under:

- (a) section 83 of the old DDA; or
- (b) section 25E of the old RDA; or
- (c) section 63 of the old SDA.

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**Table A**

*new HREOCA* means the *Human Rights and Equal Opportunity Commission Act 1986* as amended by Schedule 1 to this Act.

*old DDA* means the *Disability Discrimination Act 1992* before being amended by Schedule 1 to this Act.

*old RDA* means the *Racial Discrimination Act 1975* before being amended by Schedule 1 to this Act.

*old SDA* means the *Sex Discrimination Act 1984* before being amended by Schedule 1 to this Act.

*purported complaint* means a document purporting to be a complaint.

*starting day* means the day on which this Part commences.

## **Division 2—Treatment of complaints lodged before starting day**

### **Subdivision A—Treatment of complaint depends on the stage it has reached**

#### **5 Purported complaint lodged but no decision as to whether it is a complaint**

- (1) A purported complaint is treated in the way set out in subsection (2) if, before the starting day:
  - (a) it was lodged with the Commission; and
  - (b) the Commission had not decided whether it was a complaint within the meaning of the old DDA, old RDA or old SDA.
- (2) On the starting day:
  - (a) the purported complaint is taken to have been lodged under section 46P of the new HREOCA; and
  - (b) the Commission must then decide whether it is a complaint within the meaning of the new HREOCA.

**Table A**

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**6 Administrative appeal on Commission's decision as to whether complaint**

- (1) A purported complaint is treated in the way set out in subsection (2) if:
  - (a) before the starting day, the Commission decided that it was, or was not, a complaint within the meaning of the old DDA, old RDA or old SDA; and
  - (b) on or after the starting day, the Court makes an order under the *Administrative Decisions (Judicial Review) Act 1977* to refer the matter to which the decision relates to the Commission for further consideration.
- (2) On the day on which the order is made:
  - (a) the purported complaint is taken to have been lodged under section 46P of the new HREOCA; and
  - (b) the Commission must then decide whether it is a complaint within the meaning of the new HREOCA.

**7 Complaint lodged but Commissioner not notified of it**

- (1) A purported complaint is treated in the way set out in subsection (2) if, before the starting day:
  - (a) it was lodged with the Commission; and
  - (b) the Commission decided that it was a complaint within the meaning of the old DDA, old RDA or old SDA; and
  - (c) the Commission had not notified the appropriate Commissioner of it.
- (2) On the starting day:
  - (a) the purported complaint is taken to have been lodged under section 46P of the new HREOCA; and
  - (b) the Commission is taken to have decided that it is a complaint within the meaning of the new HREOCA.



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**Table A****8 Commissioner notified of complaint but had not decided to dismiss or refer it**

- (1) A complaint is treated in the way set out in subsection (2) if, before the starting day:
- (a) the Commission had notified the appropriate Commissioner of the complaint; and
  - (b) the appropriate Commissioner had not made a decision not to inquire, or not to continue to inquire, into the complaint; and
  - (c) the appropriate Commissioner had not referred the complaint to the Commission.
- (2) On the starting day, the complaint is taken to have been referred to the President under section 46PD of the new HREOCA.

**9 Commissioner decided to dismiss complaint**

- (1) A complaint is treated in the way set out in subsection (2) if:
- (a) before the starting day, the appropriate Commissioner decided not to inquire, or not to continue to inquire, into the complaint; and
  - (b) on the starting day, the complainant could have required the appropriate Commissioner to:
    - (i) refer the complaint to the President under section 71 of the old DDA if that section had not been repealed by this Act; or
    - (ii) refer the Commissioner's decision to the President, or refer the complaint to the Commission, under section 24 of the old RDA if that section had not been repealed by this Act; or
    - (iii) refer the Commissioner's decision to the President, or refer the complaint to the Commission, under section 52 of the old SDA if that section had not been repealed by this Act.
- (2) On the starting day, the President is taken to have terminated the complaint under section 46PH of the new HREOCA.

Note: The President is required to give a notice of termination of the complaint under section 14 of this Act.

**Table A**

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**10 Presidential review of Commissioner's decision to dismiss complaint**

- (1) A complaint is treated in the way set out in subsection (2) if, before the starting day:
- (a) the appropriate Commissioner decided not to inquire, or not to continue to inquire, into the complaint; and
  - (b) the complainant required the appropriate Commissioner to refer the complaint, or the Commissioner's decision, to the President; and
  - (c) the President had not made a decision under whichever of the following sections is applicable:
    - (i) section 101 of the old DDA;
    - (ii) section 24AA of the old RDA;
    - (iii) section 52A of the old SDA.
- (2) On the starting day, the President is taken to have terminated the complaint under section 46PH of the new HREOCA.

Note: The President is required to give a notice of termination of the complaint under section 14 of this Act.

**11 Administrative review of President's decision**

- (1) A complaint is treated in the way set out in subsection (2) if:
- (a) before the starting day, the President made a decision in relation to the complaint under:
    - (i) section 101 of the old DDA; or
    - (ii) section 24AA of the old RDA; or
    - (iii) section 52A of the old SDA; and
  - (b) on or after the starting day, the Court makes an order under the *Administrative Decisions (Judicial Review) Act 1977* to refer the matter to which the decision relates to the Commission for further consideration.
- (2) On the day the order is made, the President is taken to have terminated the complaint under section 46PH of the new HREOCA.

Note: The President is required to give a notice of termination of the complaint under section 14 of this Act.

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**Table A****12 Complaint referred to Commission but inquiry not started**

- (1) A complaint is treated in the way set out in subsection (2) if, before the starting day:
  - (a) the appropriate Commissioner referred the complaint to the Commission; and
  - (b) a holding of an inquiry into the complaint had not started under the old DDA, old RDA or old SDA; and
  - (c) the complaint had not been withdrawn under whichever of the following sections is applicable:
    - (i) section 79 of the old DDA;
    - (ii) section 25A of the old RDA;
    - (iii) section 59 of the old SDA.
- (2) On the starting day, the President is taken to have terminated the complaint under section 46PH of the new HREOCA.

Note: The President is required to give a notice of termination of the complaint under section 14 of this Act.

**13 Inquiry started**

- (1) A complaint is treated in the way set out in subsection (2) if, before the starting day:
  - (a) a holding of an inquiry into the complaint had started under the old DDA, old RDA or old SDA; and
  - (b) the complaint had not been withdrawn under whichever of the following sections is applicable:
    - (i) section 79 of the old DDA;
    - (ii) section 25A of the old RDA;
    - (iii) section 59 of the old SDA.
- (2) The amendments made by Schedule 1 to this Act do not apply in relation to the complaint.

**Subdivision B—Other rules about complaints lodged before starting day****14 Notice of termination**

- (1) If the President is taken to have terminated a complaint under section 9, 10, 11 or 12, then the President must notify the

**Table A**

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complainants in writing of the termination and the reasons for the termination.

- (2) Subsection (1) does not apply if all the complainants requested the appropriate Commissioner not to inquire into the complaint.
- (3) The President must give a person a copy of the notice that was given to the complainants under subsection (1) if:
  - (a) the person was a person on whose behalf the complaint was lodged; and
  - (b) the person requested the President for a copy of the notice.
- (4) The President is not required to notify any person under section 46PH of the new HREOCA.

**15 Work done by Commissioner is taken to have been done by President**

Any thing done, or information obtained, by the appropriate Commissioner in relation to a complaint that is referred to the President under section 8 is taken to have been done or obtained by the President.

**16 Special rules apply to proceedings to enforce a determination**

Sections 46PQ, 46PR and 46PT of the new HREOCA apply for the purposes of proceedings in the Court:

- (a) for an order to enforce a determination in relation to a complaint; or
  - (b) for an order directing a Commonwealth agency (or the principal executive of a Commonwealth agency) to comply;
- if the proceedings started on or after the starting day under:
- (c) section 105A or 106F of the old DDA; or
  - (d) section 25ZC or 25ZI of the old RDA; or
  - (e) section 83A or 84F of the old SDA.

**Division 3—Other transitional and application provisions****17 Protection from civil actions**

The amendments made by items 30, 31, 83, 84, 119 and 120 of Schedule 1 do not apply to a complaint lodged before the starting day under the old DDA, old RDA or old SDA.

**18 Referrals under the old SDA**

The amendments made by items 1, 2, 85, 86, 97, 100, 122, 123, 124 and 125 of Schedule 1 do not apply to a complaint lodged before the starting day under section 50A, 50C or 50E of the old SDA.

**19 Inquiries started by Human Rights Commissioner**

The amendment made by item 52 of Schedule 1 does not apply in relation to an inquiry that the Human Rights Commissioner started before the starting day.

**20 When a person cannot lodge a complaint under the new HREOCA**

A person cannot lodge a complaint under section 46P of the new HREOCA if:

- (a) the person is a class member for a representative complaint in respect of the same subject matter; and
- (b) a holding of an inquiry into the representative complaint had started under the old DDA, old RDA or old SDA.

**21 Regulations**

- (1) The Governor-General may make regulations prescribing matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) In particular, regulations may be made in relation to matters of a transitional or saving nature arising out of the enactment of this Act.

## **Table A**

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### **22 Transitional—powers of a Secretary**

A thing done by the Commission before the commencement of this section in exercising powers referred to in subsection 43(2) of the *Human Rights and Equal Opportunity Commission Act 1986* has effect, for the purpose of the exercise by the President after the commencement of this section of powers referred to in that subsection, as if the thing had been done by the President.

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*A New Tax System (Tax Administration) Act 1999* (No. 179, 1999)

### **Schedule 11**

#### **12 Application**

The amendment made by item 11 applies to salary (within the meaning of section 120B of the *Defence Act 1903*) that first becomes payable on or after 1 July 2000.

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*Defence Legislation Amendment (Flexible Career Practices) Act 2000*  
(No. 113, 2000)

#### **4 Application of amendments**

The amendments made by items 3, 4, 5, 8, 9 and 11 of Schedule 1 do not apply in relation to appointments made before the commencement of this Act.

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*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (No. 137, 2000)

### **Schedule 2**

#### **418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:

**Table A**

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- (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
  - (b) any or all of those other provisions are repealed by this Schedule; and
  - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

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*Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001* (No. 10, 2001)

**Schedule 1****3 Application of amendments**

The amendments made by this Schedule apply in relation to all members of the Reserves, whether they became members of the Reserves before or after the Schedule commenced.

**Schedule 2****88 Saving—appointments of Chiefs under the Defence Act**

Although item 13 amends subsection 9BA(1) of the *Defence Act 1903*, that subsection continues to apply, in relation to a person who held an appointment under subsection 9(1) or 9AA(1) of that Act immediately

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**Table A**

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before that item commenced, as if that amendment, and the repeal of Division 3 of Part II of that Act, had not happened.

**89 Saving—other appointments under the Defence Act**

Although item 14 repeals Divisions 2, 3 and 3A of Part II of the *Defence Act 1903*, those provisions continue to apply, in relation to a person who held an appointment under subsection 10(1) of that Act immediately before that item commenced, as if the repeal had not happened.

**90 Saving—enlistments under the Defence Act**

Although item 19 repeals sections 36 to 44A of the *Defence Act 1903*, those sections continue to apply, in relation to a person who was enlisted under subsection 36(3) of that Act immediately before that item commenced, as if the repeal had not happened.

**93 Most of the old provisions may be superseded by new regulations**

- (1) However, the repealed provisions mentioned in items 89, 90, 91 and 92 continue to apply under those items only to the extent that they are consistent with regulations made after the repeal for the purposes of section 124 of the *Defence Act 1903*.
- (2) If such regulations are made, then:
  - (a) to the extent of the inconsistency, those provisions permanently cease to apply from the time that the inconsistency arises; and
  - (b) the regulations apply despite being inconsistent with those provisions.

**94 Saving—old regulations**

- (1) Regulations that were in effect under any Act immediately before the commencement of this item continue to have effect after that time as if members of an arm of the Defence Force who were members of a particular part or component of that arm immediately before the commencement of this item were still members of that part or component after that time, even if that part or component no longer exists.



**Table A**

Example: Assume that, immediately before the commencement of this item, regulations imposed training obligations on members of the Air Force Specialist Reserve. Those obligations would continue to apply to former members of that Reserve after commencement, even though the Air Force Specialist Reserve itself is no longer mentioned in the *Air Force Act 1923* and the members have now become members of the Air Force Reserve.

- (2) However, regulations that continue in effect under this item do so only to the extent that they are not amended or revoked by later regulations.

**95 Regulations about transitional matters**

- (1) The regulations may make provision in relation to other saving and transitional matters in connection with the amendments made by this Schedule.
- (2) In particular, such regulations may deal with the status, after the commencement of the amendments, of persons who were members of the Defence Force immediately before that time.
- (3) Subitem (2) does not limit the scope of subitem (1).

**Schedule 3****7 Application of new Protection Act to defence service**

- (1) The *Defence Reserve Service (Protection) Act 2001* applies in relation to all defence service undertaken after that Act commences (the **commencement time**), except in so far as the service is rendered only as a result of:
- (a) being called out under Division 4 of Part III, or under Part IIIA, of the *Defence Act 1903* before the commencement time; or
  - (b) a voluntary undertaking to render continuous full time service that a member gave before the commencement time.
- (2) The *Defence (Re-establishment) Act 1965* continues to apply in relation to defence service covered by paragraph (1)(a) or (b), despite the repeal of that Act by this Schedule.

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**Table A**

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**Schedule 4**

**3 Saving—determinations under paragraph 58B(1)(b)**

Although item 2 repeals and substitutes paragraph 58B(1)(b) of the *Defence Act 1903*, any determination that was in effect under that paragraph immediately before that repeal continues in effect after that time as if it had been made under the new version of that paragraph.

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*New Business Tax System (Capital Allowances—Transitional and Consequential) Act 2001* (No. 77, 2001)

**Schedule 2**

**488 Application**

- (1) Subject to this item, the amendments made by this Schedule apply to:
- (a) depreciating assets:
    - (i) you start to hold under a contract entered into after 30 June 2001; or
    - (ii) you constructed where the construction started after that day; or
    - (iii) you start to hold in some other way after that day; and
  - (b) expenditure that does not form part of the cost of a depreciating asset incurred after that day.

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*Defence Legislation Amendment (Application of Criminal Code) Act 2001*  
(No. 141, 2001)

**4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

**Table A****Schedule 1****36 Saving—regulations**

Regulations that were in effect for the purposes of section 123AA of the *Defence Act 1903* immediately before the commencement of this item continue to have effect after that time as if they had been made for the purposes of section 123AA of that Act, as in force after that time.

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*Taxation Laws Amendment (Superannuation) Act (No. 2) 2002*  
(No. 51, 2002)

**Schedule 1****202 Application of amendments made by Part 2**

- (1) The amendment made by item 169 applies in relation to determinations under section 52 of the *Defence Act 1903* for periods starting on or after 1 July 2003.

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*Defence Legislation Amendment Act 2003* (No. 135, 2003)

**Schedule 2****25 Transitional—Australian Army Cadets**

To avoid doubt:

- (a) appointments to the Australian Cadet Corps in force under paragraph 62(2)(a) or (aa) of the *Defence Act 1903* immediately before the commencement of item 13 of this Schedule continue to have effect after that commencement as if they were appointments to the Australian Army Cadets; and
- (b) persons who are cadets in the Australian Cadet Corps under section 62 of the *Defence Act 1903* immediately before the commencement of item 13 of this Schedule continue as cadets in the Australian Army Cadets after that commencement, subject to the limitations imposed by that section (as amended).

**Table A**

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*Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004* (No. 58, 2004)

**4 Application of family law interest-splitting amendments**

- (1) The family law interest-splitting amendments apply to:
- (a) any splitting agreement, or splitting order, that has an operative time after the commencement of Schedule 1; and
  - (b) a splitting agreement, or splitting order, with an earlier operative time, if no benefits had become payable before the commencement of Schedule 1 in respect of the superannuation interest to which the agreement or order relates.
- (2) In this section:

*family law interest-splitting amendments* means the amendments made by Schedule 1, other than items 24 and 34.

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*Bankruptcy Legislation Amendment Act 2004* (No. 80, 2004)

**Schedule 1**

**212 Transitional—pre-commencement deeds and compositions**

- (1) For the purposes of this item, if a deed of assignment or a deed of arrangement was executed by a debtor and a trustee under Part X of the *Bankruptcy Act 1966* before the commencement of this item, the deed is a *pre-commencement deed*.
- (2) For the purposes of this item, if a composition was accepted before the commencement of this item by a special resolution of a meeting of creditors under section 204 of the *Bankruptcy Act 1966*, the composition is a *pre-commencement composition*.
- (3) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:
- (a) the *Bankruptcy Act 1966* and regulations under that Act; and
  - (b) the Acts amended by Part 2 of this Schedule;
- continue to apply, in relation to:

**Table A**

- (c) a pre-commencement deed; and
- (d) a pre-commencement composition; and
- (e) any matter connected with, or arising out of:
  - (i) a pre-commencement deed; or
  - (ii) a pre-commencement composition;

as if those repeals had not happened and those amendments had not been made.

**213 Transitional—pre-commencement authorities**

- (1) For the purposes of this item, if:
- (a) an authority given by a debtor under section 188 of the *Bankruptcy Act 1966* became effective before the commencement of this item; and
  - (b) as at the commencement of this item, none of the following had happened:
    - (i) the execution by the debtor and the trustee of a deed of assignment under Part X of the *Bankruptcy Act 1966*;
    - (ii) the execution by the debtor and the trustee of a deed of arrangement under Part X of the *Bankruptcy Act 1966*;
    - (iii) the acceptance of a composition by a special resolution of a meeting of the debtor's creditors under section 204 of the *Bankruptcy Act 1966*;
- the authority is a ***pre-commencement authority***.
- (2) Despite the repeals and amendments made by Parts 1 and 2 of this Schedule:
- (a) the *Bankruptcy Act 1966* and regulations under that Act; and
  - (b) the Acts amended by Part 2 of this Schedule;
- continue to apply, in relation to:
- (c) a pre-commencement authority; and
  - (d) the control of the debtor's property following a pre-commencement authority becoming effective; and
  - (e) a meeting of the debtor's creditors called under a pre-commencement authority; and
  - (f) whichever of the following is applicable:
    - (i) a deed of assignment executed after the commencement of this item by the debtor and the trustee under Part X of

**Table A**

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- the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;
- (ii) a deed of arrangement executed after the commencement of this item by the debtor and the trustee under Part X of the *Bankruptcy Act 1966* in accordance with a special resolution of such a meeting;
  - (iii) a composition accepted after the commencement of this item by a special resolution of such a meeting; and
- (g) any other matter connected with, or arising out of:
- (i) a pre-commencement authority; or
  - (ii) a deed of assignment mentioned in subparagraph (f)(i); or
  - (iii) a deed of arrangement mentioned in subparagraph (f)(ii); or
  - (iv) a composition mentioned in subparagraph (f)(iii);

as if those repeals had not happened and those amendments had not been made.

**215 Transitional—regulations**

- (1) The regulations may make provision for matters of a transitional nature arising from the amendments made by Parts 1 and 2 of this Schedule.
- (2) The Governor-General may make regulations for the purposes of subitem (1).

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*Defence Legislation Amendment Act (No. 2) 2005* (No. 142, 2005)

**Schedule 2**

**6 Saving provision in relation to certain regulations**

- (1) Part 7 of the *Defence (Inquiry) Regulations 1985*, as in force immediately before the commencement of Part VIIIIB of the *Defence Act 1903*, continues in force, on and after that commencement, as if it had been made under paragraph 124(1)(h) of the *Defence Act 1903*.
- (2) Any inquiry that, immediately before the commencement of Part VIIIIB of the *Defence Act 1903*, was being conducted under Part 7 of the

**Table A**

*Defence (Inquiry) Regulations 1985*, is taken after that commencement to continue under the regulations continued in force by subitem (1).

- (3) Subitem (1) does not prevent the amendment or repeal of Part 7 of the *Defence (Inquiry) Regulations 1985*.

**7 Transitional regulations**

The Governor-General may make regulations in relation to transitional matters arising out of the amendments of the *Defence Act 1903* made by this Schedule.

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*Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*  
(No. 101, 2006)

**Schedule 6****1 Application of Schedule 1 and 2 amendments**

Except as mentioned in items 2 and 3, the repeals and amendments made by Schedules 1 and 2 apply:

- (a) so far as they affect assessments—to assessments for the 2006-07 income year and all later income years; and
- (b) otherwise—to acts done or omitted to be done, or states of affairs existing, after the commencement of the repeals and amendments.

**6 Object**

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

**Table A**

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**7 Making and amending assessments, and doing other things, in relation to past matters**

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.



**Table A**

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

**8 Saving of provisions about effect of assessments**

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

**9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty**

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
  - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or
  - (ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and
- (b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

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**Table A**

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**10 Repeals disregarded for the purposes of dependent provisions**

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

**11 Schedule does not limit operation of section 8 of the *Acts Interpretation Act 1901***

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

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*Defence Legislation Amendment Act 2006* (No. 159, 2006)

**Schedule 1**

**256 Application of amendments**

- (1) The amendments made by this Schedule apply in relation to a service offence committed by a person on or after the commencement day.
- (2) The amendments made by this Schedule also apply in relation to a service offence committed by a person before the commencement day if, before the commencement day, the person had not been charged with the offence under the old DFDA.

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*Fair Work (State Referral and Consequential and Other Amendments) Act 2009*  
(No. 54, 2009)

**Schedule 8**

**159 Transitional provision relating to the appointment of the President of the Defence Force Remuneration Tribunal**

- (1) Despite the amendment made by item 94, an appointment as President of the Defence Force Remuneration Tribunal in effect under section 58G of the *Defence Act 1903* immediately before the

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commencement of that amendment continues in effect on and after that commencement, subject to:

- (a) its terms; and
  - (b) the amendments made by this Schedule.
- (2) However, for the purposes of an appointment continued in effect by subitem (1), the requirement in paragraph 58L(2)(c) of the *Defence Act 1903* (as amended by this Act) that the President of the Defence Force Remuneration Tribunal be a Deputy President of FWA may be met instead by the President being a presidential member of the Commission (within the meaning of section 58F of the *Defence Act 1903* as in force immediately before the commencement of item 93).

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*Military Justice (Interim Measures) Act (No. 1) 2009* (No. 91, 2009)

**Schedule 1****181 Saving provision**

An appointment by the Governor-General that was in force, immediately before the commencement of item 180, under subsection 116C(2) of the *Defence Act 1903* as then in force, continues to have effect after that commencement as if it were an appointment under subsection 116C(2) of that Act as in force after that commencement.

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*Defence Legislation Amendment Act (No. 1) 2010* (No. 95, 2010)

**Schedule 1****2 Definitions**

In this Part:

***amended Act*** means the *Defence Act 1903* as amended by Part 1 of this Schedule.

***commencement*** means the commencement of this Schedule.

***new Tribunal*** means the Defence Honours and Awards Appeals Tribunal established by section 110U of the amended Act.

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*old Tribunal* means the Defence Honours and Awards Tribunal that was established under the executive power of the Commonwealth in 2008.

**3 Completion of reviews and inquiries by new Tribunal**

- (1) If the old Tribunal had started dealing with a review or inquiry before the commencement but had not completed the review or inquiry by the commencement:
- (a) the new Tribunal is to complete the review or inquiry, and take any related action, in accordance with the amended Act; and
  - (b) for that purpose, anything done by or in relation to the old Tribunal for the purpose of the review or inquiry is taken to have been done by or in relation to the new Tribunal.
- (2) If:
- (a) before the commencement, an application for review had been properly made to the old Tribunal but the old Tribunal had not yet started to deal with the review by the commencement; or
  - (b) before the commencement, the Minister had directed the old Tribunal to inquire into a matter but the old Tribunal had not yet started to deal with the inquiry by the commencement;
- the new Tribunal must deal with the application or direction as if it had been properly made or given under the amended Act.

**4 Members of the old Tribunal are automatically appointed to the new Tribunal**

- (1) Subject to this item:
- (a) the person who, immediately before the commencement, held office as the Chair of the old Tribunal is taken, on the commencement, to be appointed under the amended Act as the Chair of the new Tribunal; and
  - (b) each other person who, immediately before the commencement, held office as a member (other than the Chair) of the old Tribunal is taken, on the commencement, to be appointed under the amended Act as a member (other than the Chair) of the new Tribunal.

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- (2) The period for which a person is, by paragraph (1)(a) or (b), taken to be appointed as the Chair, or another member, of the new Tribunal is to be determined in writing by the Minister. The period determined must be either be 12 months or 24 months.
- (3) In making determinations under subitem (2), the Minister must endeavour to ensure that there is a reasonably equal division between the number of persons taken to be appointed for 12 months, and the number of persons taken to be appointed for 24 months.
- (4) For the purpose of the application of subsection 110YB(3) of the amended Act in relation to a person who is taken to be appointed as the Chair of the new Tribunal:
- (a) the period for which the person held office as the Chair of the old Tribunal is to be counted towards the limit specified in that subsection; and
  - (b) if the person is taken to be appointed as the Chair of the new Tribunal for 24 months—subsection 110YB(3) of the amended Act has effect in relation to the person as if it specified a limit of 7 consecutive years (rather than 6 consecutive years).
- (5) For the purpose of the application of subsection 110YB(4) of the amended Act in relation to a person who is taken to be appointed as a member (other than the Chair) of the new Tribunal:
- (a) the period for which the person held office as a member (other than the Chair) of the old Tribunal is to be counted towards the limit specified in that subsection; and
  - (b) if the person is taken to be appointed as a member of the new Tribunal for 24 months—subsection 110YB(4) of the amended Act has effect in relation to the person as if it specified a limit of 7 consecutive years (rather than 6 consecutive years).

### **5 Regulations dealing with transition from old Tribunal to new Tribunal**

- (1) The Governor-General may make regulations dealing with matters of a transitional, saving or application nature relating to the transition from the old Tribunal to the new Tribunal.
- (2) The provisions of this Part have effect subject to any such regulations.
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**Schedule 2**

**9 Application of amendments**

The amendments made by this Schedule apply in relation to positive test results returned after the commencement of this Schedule.

**Schedule 3**

**5 Application of amendments**

The amendments made by this Schedule apply in relation to:

- (a) the making of determinations on or after the commencement of this Schedule; and
- (b) the making of variations or revocations of determinations on or after that commencement.