

Defence (Parliamentary Candidates) Act 1969

No. 60, 1969

Compilation No. 9

Compilation date: 1 July 2016

Includes amendments up to: Act No. 164, 2015

Registered: 14 July 2016

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a compilation of the *Defence (Parliamentary Candidates) Act 1969* that shows the text of the law as amended and in force on 1 July 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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An Act to make provision in relation to Members of the Defence Force who desire to become Candidates for election as Members of the Parliament of Australia or of a State or of certain other legislative or advisory Bodies

Part I—Preliminary

1 Short title

This Act may be cited as the *Defence (Parliamentary Candidates) Act 1969.*

2 Commencement

This Act shall come into operation on the day on which it receives the Royal Assent.

3 Repeal

The Defence (Parliamentary Candidates) Act 1966 is repealed.

5 Interpretation

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

arm of the Defence Force means the Navy, the Army or the Air Force.

election includes general election.

enlisted member means a member who is not an officer.

member means a member of the Defence Force.

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officer means a member who is an officer for the purposes of the Defence Act.

rank includes classification.

Reserve means:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve.

Superannuation Rules means the Rules for the administration of the superannuation scheme established under the *Military Superannuation and Benefits Act 1991*.

the appropriate Reserve, in relation to an officer, means the Reserve that is appropriate to him having regard to the arm of the Defence Force of which he is a member.

the declared date, in relation to an election, means the date on which a notice under section 6 is published in the *Gazette* in relation to the election.

the Defence Act means the Defence Act 1903-1966.

the Defence Force means the Defence Force of Australia.

the Defence Forces Retirement Benefits Act means the Defence Forces Retirement Benefits Act 1948-1969.

the Defence Force Retirement and Death Benefits Act means the Defence Force Retirement and Death Benefits Act 1973.

(2) In the application of a provision to a person who has been transferred to a Reserve under section 7, to a person who has been discharged from the Defence Force under section 8 or to a person whose continuous full-time service has been terminated under section 9, a reference in that provision to the relevant election shall be read as a reference to the election in relation to which he made the application in pursuance of which he was so transferred or discharged or his continuous full-time service was so terminated.

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6 Declared date

- (1) Where an officer has been transferred to a Reserve under section 7, an enlisted member has been discharged from the Defence Force under section 8 or the continuous full-time service of a member has been terminated under section 9, the Minister shall, when he is satisfied that the result of the relevant election is certain, declare, by notice published in the *Gazette*, that he is so satisfied.
- (2) The Minister shall, before making a declaration under the last preceding subsection in relation to an election, have regard to any dispute, and any proceedings in relation to a dispute, with respect to the election.
- (3) The Minister may, for the purposes of subsection (1), treat the result of an election as being certain if, at the expiration of thirty days after the return of the writ relating to the election, the validity of the election has not been disputed in accordance with law and the Minister has no reason to believe that it will be so disputed.

Part II—Discharge etc. from Defence Force of parliamentary candidates

7 Transfer of officers to Reserve

- (1) Where:
 - (a) an officer who is a member of the Permanent Navy, the Regular Army or the Permanent Air Force applies to the Chief of the Defence Force to be transferred to the appropriate Reserve; and
 - (b) he satisfies the Chief of the Defence Force that he intends, if he is so transferred, to become a candidate for election as a member of a House of the Parliament of Australia or of a State or of the Legislative Assembly of the Northern Territory or a prescribed legislative or advisory body for another Territory at an election specified by him in the application;

the Chief of the Defence Force may transfer him to the appropriate Reserve.

8 Discharge of enlisted members

Where:

- (a) an enlisted member who is a member of the Permanent Navy, the Regular Army or the Permanent Air Force applies to the Chief of the Defence Force to be discharged from that arm of the Defence Force; and
- (b) he satisfies the Chief of the Defence Force that he intends, if he is so discharged, to become a candidate for election as a member of a House of the Parliament of Australia or of a State or of the Legislative Assembly of the Northern Territory or a prescribed legislative or advisory body for another Territory at an election specified by him in the application;

the Chief of the Defence Force may discharge him accordingly.

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9 Termination of continuous full-time service

Where:

- (a) a member of the Naval Reserve, the Army Reserve or the Air Force Reserve who is rendering continuous full-time service applies to the Chief of the Defence Force for the termination of that service; and
- (b) he satisfies the Chief of the Defence Force that he intends, if that service is so terminated, to become a candidate for election as a member of a House of the Parliament of Australia or of a State or of the Legislative Assembly of the Northern Territory or a prescribed legislative or advisory body for another Territory at an election specified by him in the application;

the Chief of the Defence Force may terminate that service accordingly.

Part III—Re-instatement of unsuccessful candidates

10 Re-instatement of officers

- (1) The Chief of the Defence Force may, upon application being made in writing to him by an officer who has been transferred to a Reserve under section 7 for his re-instatement in the force of which he was a member immediately before he was so transferred (being application made not later than two months after the date that is the declared date in relation to the relevant election or within such further period as the Chief of the Defence Force, in special circumstances, allows), transfer the officer to that force with the rank held by him immediately before he was transferred to the Reserve.
- (2) Except as provided by Rules 62 and 63 of the Superannuation Rules, section 80 of the Defence Forces Retirement Benefits Act and by sections 52 and 54 of the Defence Force Retirement and Death Benefits Act, where an officer is, under the last preceding subsection, transferred to the force of which he was a member immediately before he was transferred to a Reserve under section 7 of this Act, he shall, upon being transferred to that force, be deemed to have continued to have been a member of that force during the period when he was a member of the Reserve but, subject to the next succeeding subsection, he shall be deemed to have been absent on leave without pay during that period.
- (3) Where the last preceding subsection applies in relation to an officer who, immediately before he was transferred to a Reserve, was serving under an appointment for a specified period, the period in respect of which he is, under that subsection, deemed to have been absent on leave without pay shall not be taken into account in calculating the period that he has served under that appointment.

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(4) Notwithstanding the last preceding subsection or anything contained in any other law of Australia, the period in respect of which an officer is, under this section, deemed to have been absent on leave without pay shall be treated as a period of service in calculating the entitlement of the officer to long service leave or furlough.

11 Re-instatement of enlisted members

- (1) The Chief of the Defence Force may, upon application being made in writing to him by a person who has been discharged from an arm of the Defence Force under section 8 for his re-instatement in the force of which he was a member immediately before he was discharged (being application made not later than two months after the date that is the declared date in relation to the relevant election or within such further period as the Chief of the Defence Force, in special circumstances, allows), cause the person to be re-enlisted in that force with the rank held by him immediately before he was discharged.
- (2) Except as provided by Rules 62 and 63 of the Superannuation Rules, section 80 of the Defence Forces Retirement Benefits Act and by sections 52 and 54 of the Defence Force Retirement and Death Benefits Act, where a person is re-enlisted in a force by virtue of the last preceding subsection, he shall, upon re-enlistment, be deemed to have continued to have been a member of that force during the period commencing upon his being discharged and ending upon his re-enlistment but, subject to the next succeeding subsection, he shall be deemed to have been absent on leave without pay during that period.
- (3) Where the last preceding subsection applies in relation to a person, the period in respect of which he is, under that subsection, deemed to have been absent on leave without pay shall not be taken into account in calculating the period that he has served under the engagement under which he was serving immediately before he was discharged.

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Section 12

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- (4) Any form of oath or affirmation that a person is, by any law of Australia, required to take or make upon enlistment in an arm of the Defence Force may, in respect of a person who is re-enlisted in that arm of the Defence Force by virtue of subsection (1), be modified appropriately.
- (5) Notwithstanding subsection (3) or anything contained in any other law of Australia, the period in respect of which a person is, under this section, deemed to have been absent on leave without pay shall be treated as a period of service in calculating the entitlement of that person to long service leave or furlough.

12 Re-instatement of members rendering continuous full-time service

- (1) The Chief of the Defence Force may, upon application being made in writing to him by a person whose continuous full-time service has been terminated under section 9 for his re-instatement as a member rendering continuous full-time service (being application made not later than two months after the date that is the declared date in relation to the relevant election or within such further period as the Chief of the Defence Force, in special circumstances, allows), cause the person to be accepted for further continuous full-time service in the part of the Defence Force in which he was serving immediately before his continuous full-time service was terminated, for such period as is agreed upon between the Chief of the Defence Force and the person, with the rank held by him immediately before his continuous full-time service was terminated.
- (2) Except as provided by Rules 62 and 63 of the Superannuation Rules, section 80 of the Defence Forces Retirement Benefits Act and by sections 52 and 54 of the Defence Force Retirement and Death Benefits Act, where a person is, under the last preceding subsection, accepted for further continuous full-time service, he shall be deemed to have been absent on leave without pay during the period commencing upon the termination of his continuous full-time service and ending on the commencement of the further continuous full-time service.

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(3) Notwithstanding the last preceding subsection or anything contained in any other law of Australia, the period in respect of which a person is, under this section, deemed to have been absent on leave without pay shall be treated as a period of service in calculating the entitlement of that person to long service leave or furlough.

13 Compulsory re-instatement of officers

- (1) Where:
 - (a) an officer has been transferred to a Reserve under section 7;
 - (b) the Chief of the Defence Force is satisfied that:
 - (i) he was not nominated in the relevant election; or
 - (ii) having been nominated in the relevant election, he failed to be elected in that election; and
 - (c) he has not made application having effect for the purposes of section 10 for re-instatement in the force of which he was a member immediately before he was transferred to a Reserve; the Chief of the Defence Force may, by notice in writing served on him before the expiration of a period of one month after the date that is the declared date in relation to the relevant election, require him to make to the Chief of the Defence Force, not later than the expiration of a period of two months after the declared date, application in writing for his re-instatement in the force of which he was a member immediately before he was transferred to the Reserve.
- (2) If, at the expiration of the period of two months after the declared date, the officer has not made application in writing to the Chief of the Defence Force for re-instatement in the force of which he was a member immediately before he was transferred to a Reserve, he shall be deemed to have made such an application on the last day of that period and section 10 applies in relation to him accordingly.

14 Compulsory re-instatement of enlisted members

(1) Where:

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Section 14

- (a) a person has been discharged from the Defence Force under section 8:
- (b) the Chief of the Defence Force is satisfied that:
 - (i) he was not nominated in the relevant election; or
 - (ii) having been nominated in the relevant election, he failed to be elected in that election; and
- (c) he has not made application having effect for the purposes of section 11 for re-instatement in the force of which he was a member immediately before he was discharged;

the Chief of the Defence Force may, by notice in writing served on him before the expiration of a period of one month after the date that is the declared date in relation to the relevant election, require him to make to the Chief of the Defence Force, not later than the expiration of a period of two months after the declared date, application in writing for his re-instatement in the force of which he was a member immediately before his discharge.

- (2) If, at the expiration of the period of two months after the declared date, the person has not made application in writing to the Chief of the Defence Force for re-instatement in the force of which he was a member immediately before he was discharged, he shall be deemed to have made such an application on the last day of that period and on that day to have been re-enlisted, in accordance with section 11, in the force of which he was a member immediately before he was discharged, and that section applies in relation to him accordingly.
- (3) Any requirement of any other law of Australia that a person enlisting in an arm of the Defence Force shall take an oath or make an affirmation does not apply in relation to the re-enlistment of a person by virtue of the last preceding subsection.

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Part IV—Miscellaneous

16 Return of member, family and household effects etc. to place of enlistment

(1) Where an officer has been transferred to a Reserve under section 7, an enlisted member has been discharged from the Defence Force under section 8 or the continuous full-time service of a member has been terminated under section 9, the Chief of the Defence Force shall, if he so requests, arrange for him to travel, at the expense of the Defence Force, from the place where he is serving when he is so transferred or discharged, or his continuous full-time service is terminated, to the place at which he resided immediately before he became a member or to such other place as is agreed upon between him and the Chief of the Defence Force.

(2) Where:

- (a) at the time a person makes application having effect for the purposes of section 7, 8 or 9, he is serving at a place outside Australia;
- (b) members of his family who are dependent upon him are at that time living at or near the place where he is so serving or at or near a place outside Australia at which he previously served: and
- (c) he has been transferred to a Reserve under section 7, discharged under section 8 or his continuous full-time service has been terminated under section 9, or the Chief of the Defence Force proposes so transferring or discharging him or terminating his continuous full-time service under whichever of those sections is applicable;

the Chief of the Defence Force shall, if the person so requests:

(d) arrange for those members of his family to travel, at the expense of the Defence Force, from the place where they are living referred to in paragraph (b) to the place at which the person resided immediately before he became a member or to

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- such other place in Australia as is agreed upon between the person and the Chief of the Defence Force; and
- (e) arrange for such household furniture and such effects of the person and of those members of his family at the place at which they are so living as the Chief of the Defence Force approves to be brought from that place to the place at which the person resided immediately before he became a member or to such other place as is agreed upon between the person and the Chief of the Defence Force.
- (3) For the purposes of this section, the members of a family, in relation to any person, are taken to include the following (without limitation):
 - (a) a de facto partner of the person (within the meaning of the *Acts Interpretation Act 1901*);
 - (b) someone who is the child of the person, or of whom the person is the child, because of the definition of *child* in subsection (4);
 - (c) anyone else who would be a member of the person's family if someone mentioned in paragraph (a) or (b) is taken to be a member of the person's family.
- (4) In this section:

child: without limiting who is a child of a person for the purposes of subsection (3), someone is the *child* of a person if he or she is a child of the person within the meaning of the *Family Law Act* 1975.

dependent means wholly or substantially dependent.

17 Refund of gratuity

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- (1) Where:
 - (a) an officer has been transferred to a Reserve under section 7, an enlisted member has been discharged from the Defence Force under section 8 or the continuous full-time service of a member has been terminated under section 9; and

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- (b) subsection (2) of section 10, subsection (2) of section 11 or subsection (2) of section 12 has effect in relation to him;he shall pay to Australia an amount equal to the amount of any gratuity paid to him upon his being transferred to a Reserve, upon his being discharged or upon his continuous full-time service being terminated and shall be deemed not to have received that gratuity.
- (2) An amount payable by a person to Australia under this section may be recovered from the person in any court of competent jurisdiction as a debt due to Australia.
- (3) In this section, *gratuity* includes bounty, but does not include a gratuity paid under the Defence Forces Retirement Benefits Act.

18 Service of notice

A notice by the Chief of the Defence Force under section 13 or 14 may be served on a person:

- (a) by delivering the notice to the person; or
- (b) by posting the notice by registered post to the person at the address of the person as shown in the records of the arm of the Defence Force of which he is or was a member.

19 Delegation

- (1) The Chief of the Defence Force may, by signed writing, delegate to a person any of his or her powers or functions under this Act.
- (2) A delegation under this section continues in force despite a change in the occupancy of, or a vacancy in, the office of Chief of the Defence Force.

22 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation "(md)" added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation "(md not incorp)" is added to the details of the amendment included in the amendment history.

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Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted o = order(s)am = amended Ord = Ordinance

amdt = amendment orig = original

 $c = clause(s) \\ C[x] = Compilation No. \ x \\ par = paragraph(s)/subparagraph(s) \\ /sub-subparagraph(s)$

Ch = Chapter(s) pres = present def = definition(s) prev = previous

Dict = Dictionary (prev...) = previously

disallowed = disallowed by Parliament Pt = Part(s)

 $\begin{aligned} &\text{Div} = \text{Division(s)} & & & & & & & \\ &\text{ed} = \text{editorial change} & & & & & \\ &\text{exp} = \text{expires/expired or ceases/ceased to have} & & & & \\ &\text{renum} = \text{renumbered} & & & \end{aligned}$

effect rep = repealed

F = Federal Register of Legislation rs = repealed and substitutedgaz = gazette s = section(s)/subsection(s)

LA = Legislation Act 2003 Sch = Schedule(s)

LIA = Legislative Instruments Act 2003 Sdiv = Subdivision(s)

(md) = misdescribed amendment can be given SLI = Select Legislative Instrument effect SR = Statutory Pules

effect SR = Statutory Rules (md not incorp) = misdescribed amendment Sub-Ch = Sub-Chapter(s)

cannot be given effect SubPt = Subpart(s)

mod = modified/modification underlining = whole or part not No. = Number(s) commenced or to be commenced

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Defence (Parliamentary Candidates) Act 1969	60, 1969	5 Sept 1969	5 Sept 1969	
Defence (Parliamentary Candidates) Act 1973	84, 1973	19 June 1973	1 Oct 1972	_
as amended by				
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	_
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	31 Dec 1973	s. 9(1)
Election Candidates (Public Service and Defence Force) Act 1974	59, 1974	27 Sept 1974	Parts II and III (ss. 3– 10): 27 Aug 1974 Remainder: Royal Assent	_
Defence Force Re-organization Act 1975	96, 1975	9 Sept 1975	ss. 139(a), (c), (d), 140–143, 144(a), (b), (d), 145, 146(a), (b), (d), (e), 147(b), (c), 149, 151 and 152: 9 Feb 1976 (see Gazette 1975, No. G42) (a) ss. 138, 139(b), 144(c), 146(c), 147(a), 148, 150, 153 and 154: 28 Oct 1975 (see Gazette 1975, No. G42) (a)	s. 155
Statute Law Revision Act 1981	61, 1981	12 June 1981	s. 115: Royal Assent (b) s. 116: 30 Sept 1983 (see Gazette 1983, No. S222) (b)	_

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Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Defence Force Superannuation Legislation Amendment Act 1991	126, 1991	2 Sept 1991	s 32–36: 2 Sept 1991 (s 2(1))	_
Defence Legislation Amendment Act (No. 1) 1997	1, 1997	19 Feb 1997	Sch 2 (items 5, 24, 25, 50, 81, 82, 89, 107, 108, 130, 143, 144): 19 Feb 1997 (s 2(1))	_
Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001	10, 2001	22 Mar 2001	Sch 2 (items 56–59, 94, 95): 19 Apr 2001 (s 2(1))	Sch 2 (items 94, 95)
Same-Sex Relationships (Equal Treatment in Commonwealth Laws— General Law Reform) Act 2008	144, 2008	9 Dec 2008	Sch 4 (item 47): 10 Dec 2008 (s 2(1) item 12)	_
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 5 (item 3): 24 June 2014 (s 2(1) item 7)	_
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 30–35): 1 July 2016 (s 2(1) item 2)	_

- (a) The Defence (Parliamentary Candidates) Act 1969 was amended by sections 139–154 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.

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- (b) The Defence (Parliamentary Candidates) Act 1969 was amended by sections 115 and 116 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.

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Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Title	am. No. 59, 1974
Part I	
s. 4	rep. No. 216, 1973
s. 5	am. No. 84, 1973; No. 96, 1975; No. 61, 1981; No. 126, 1991; No. 1, 1997; No. 10, 2001; No. 164, 2015
s. 6	am. No. 96, 1975
Part II	
s 7	am. No. 59, 1974; No. 96, 1975; No. 1, 1997; No. 10, 2001; No 31, 2014; No. 164, 2015
s 8	am. No. 59, 1974; No. 96, 1975; No. 1, 1997; No. 10, 2001; No 31, 2014; No. 164, 2015
s. 9	am. No. 59, 1974; No. 96, 1975; No. 61, 1981; No. 1, 1997; No. 10, 2001; No 31, 2014; No. 164, 2015
Part III	
s 10	am. No. 84, 1973; No. 96, 1975; No. 126, 1991; No. 1, 1997; No. 164, 2015
s 11	am. No. 84, 1973; No. 96, 1975; No. 126, 1991; No. 1, 1997; No. 164, 2015
s 12	am. No. 84, 1973; No. 96, 1975; No. 126, 1991; No. 1, 1997; No. 164, 2015
s. 13	am. No. 96, 1975; No. 1, 1997; No. 164, 2015
s. 14	am. No. 96, 1975; No. 61, 1981; No. 1, 1997; No. 164, 2015
s. 15	am. No. 84, 1973
	rep. No. 96, 1975
Part IV	
s. 16	am. No. 96, 1975; No. 1, 1997; No. 144, 2008; No. 164, 2015
s. 17	am. No. 96, 1975
s. 18	am. No. 96, 1975; No. 1, 1997; No. 164, 2015
s. 19	rs. No. 96, 1975; No. 164, 2015
	am. No. 1, 1997

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Endnotes

Endnote 4—Amendment history

Provision affected	How affected
ss. 20, 21	rep. No. 96, 1975

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