



Defence Legislation Amendment Act (No. 1) 1999

No. 116, 1999



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An Act to amend legislation relating to defence, and for related purposes

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An Act to amend legislation relating to defence, and for related purposes

[Assented to 22 September 1999]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Defence Legislation Amendment Act (No. 1) 1999*.

2 Commencement

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

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- (2) Subject to subsection (3), the items in Schedules 1 and 2 commence on a day or days to be fixed by Proclamation.
 - (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.
 - (4) Schedule 5 commences on 1 January 2001.
 - (5) Item 2 in Schedule 6 is taken to have commenced immediately after the commencement of Schedule 2 to the *Defence Legislation Amendment Act (No. 1) 1997*.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Urinalysis testing of members of the Defence Force who undertake combat and combat-related duties

Defence Act 1903

1 After Part VIII

Insert:

Part VIIIA—Urinalysis testing of members of the Defence Force who undertake combat and combat-related duties

Division 1—Preliminary

91 Application of Part

This Part applies to a member who is undertaking combat duties or combat-related duties.

92 Object of Part

The object of this Part is to make provision for the urinalysis testing of members to determine whether they have used any narcotic substance.

93 Definitions

In this Part, unless the contrary intention appears:

accredited laboratory means a laboratory that, under the regulations, is an accredited laboratory for the purposes of this Part.

authorised person means a person who, under the regulations, is an authorised person for the purposes of the provision of this Part in which the expression occurs.

combat duties means duties that require, or are likely to require, the person performing them to commit, or participate directly in the commission of, an act of violence in the event of armed conflict.

combat-related duties means:

- (a) duties that require, or are likely to require, the person performing them to undertake training or preparation for, or in connection with, combat duties; or
- (b) duties that require, or are likely to require, the person performing them to work in support of a member undertaking combat duties.

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

positive test result, in relation to a member, means a finding made by an accredited laboratory, by means of testing a sample provided by the member, to the effect that the testing reveals the presence of a narcotic substance in the sample.

relevant authority, in relation to a member, means:

- (a) if the member is an officer who holds a rank not below the rank of Brigadier (or an equivalent rank)—the Minister; or
- (b) otherwise—the relevant service chief.

sample, in relation to a member, means a sample of the member's urine.

Division 2—Provision and testing of sample

94 Requirement to provide sample

An authorised person may, in circumstances specified in the regulations, require a member to provide a sample.

95 Provision of sample

- (1) A member who has been required to provide a sample is entitled to pass the sample without being observed by any other person.
- (2) Subject to subsection (1), the process of collecting a sample is to be supervised:

- (a) if the exigencies of service in the Defence Force permit—by a legally qualified medical practitioner; or
- (b) otherwise—by a person whose duties include the provision of medical assistance.

96 Notice to member explaining matters relating to dealing with sample

If a member is required to provide a sample, a person who is to supervise the process of collecting the sample must, before the sample is provided, give to the member a written notice explaining such matters relating to dealing with the sample as are prescribed by the regulations.

97 How sample is to be dealt with

- (1) The regulations may prescribe procedures for dealing with samples provided by members.
- (2) The regulations are to include provision for informing the member who provided a sample of the result of the testing of the sample.
- (3) Subject to subsection (4), the regulations may provide that particular procedures prescribed for the purposes of this section need not be strictly complied with and substantial compliance is sufficient.
- (4) Subsection (3) does not apply to procedures for ensuring that a sample is not interfered with by anyone who is not authorised to do so.

Division 3—Return of a positive test result

98 Application

- (1) This Division applies if the testing of a sample provided by a member 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 narcotic substance revealed by the testing was wholly attributable to something done in accordance with the directions or recommendations of a legally qualified medical practitioner.

99 Assessment of member for fitness or suitability for further service

An authorised person is to arrange for a legally qualified medical practitioner to provide an assessment as to whether the member who provided the sample is fit or suitable for further service in the Defence Force having regard to the positive test result.

100 Notice to be given if member assessed to be unfit or unsuitable for further service

- (1) If a member is assessed under section 99 to be unfit or unsuitable for further service, the relevant authority must give the member a written notice:
- (a) stating that the member has been so assessed; and
 - (b) inviting the member to give the relevant authority a written statement of reasons why:
 - (i) if the member is an officer—the officer’s appointment should not be terminated; or
 - (ii) if the member is not an officer—the member should not be discharged; and
 - (c) specifying 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.
- (2) In working out when a period specified in a notice given under subsection (1) ends, any period during which a complaint made by the member is being investigated is not to be taken into account.
- (3) In this section:
- complaint** by a member means a complaint that:
- (a) is made by the member:
 - (i) under the regulations; or
 - (ii) to the Defence Force Ombudsman under the *Ombudsman Act 1976*; and
 - (b) relates to the application to the member of any of the provisions of this Part.

101 Termination or discharge

- (1) If a 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 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 member to whom a notice is given under section 100 is not an officer and:
 - (a) the member does not give the relevant authority, within the period specified in the notice, a statement of reasons why the member should not be discharged; or
 - (b) having considered such a statement given by the member, the relevant authority is of the opinion that the member should be discharged;the relevant authority must discharge the member.

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 or the discharge under subsection 101(3) of a member other than an officer 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 member.
- (4) The day to be specified is a day:
 - (a) not earlier than the day on which the member 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 sample provided by a member returns a positive result (whether or not the member has been assessed under section 99 as unfit or unsuitable for further service) and:
 - (a) if the member is an officer—the officer’s appointment is not terminated under subsection 101(1) or (2); or
 - (b) if the 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 member to the next lower rank.
- (3) If the relevant service chief proposes to reduce a member’s rank, he or she must:
 - (a) inform the member in writing of the proposal; and
 - (b) give the 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 member.

104 Warning to member the testing of whose sample returns a positive result

If the testing of a sample provided by a member returns a positive result, the relevant authority may give to the member a notice containing a warning that, if the testing of a sample subsequently provided by the member returns a positive test result:

- (a) if the member is an officer—the officer’s appointment may be terminated; or
- (b) if the member is not an officer—the member may be discharged; or
- (c) in either case—the member may be reduced, or further reduced, in rank.

105 Other administrative action not precluded

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

Division 4—Miscellaneous

106 Failure to provide sample

A member is guilty of an offence if:

- (a) an authorised person has required the member under section 94 to provide a sample; and
- (b) the member intentionally refuses or fails to provide the sample.

Maximum penalty: Imprisonment for 6 months.

107 Unauthorised acts in relation to sample

A person is guilty of an offence if:

- (a) the person intentionally interferes with, or otherwise intentionally deals with, a sample provided by a member pursuant to a requirement made by an authorised person under section 94; and
- (b) the person is not authorised under this Part or the regulations to do so.

Maximum penalty: Imprisonment for 6 months.

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

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

- (a) an offence under the *Defence Force Discipline Act 1982*; or
- (b) an offence against section 6, 7 or 7A or subsection 86(1) of the *Crimes Act 1914* in relation to an offence under the *Defence Force Discipline Act 1982*.

2 Subsection 120A(4AA)

Omit “and 44A”, substitute “, 44A, 100, 101 and 103”.

3 Subsection 120A(4AB)

Omit “and 44A”, substitute “, 44A, 100, 101 and 103”.

4 Subsection 120A(4C)

Omit “and 44A”, substitute “, 44A, 100, 101 and 103”.

Schedule 2—Transfer of certain officers to the Reserve

Defence Act 1903

1 Subsection 10B(3)

Omit “subsection (4)”, substitute “this section”.

2 After subsection 10B(5)

Insert:

- (5A) At any time before the end of the term of a promotion under this section, the officer concerned may notify the Chief of Army in writing that the officer wishes to transfer to the Australian Army Reserve at the end of the term of the promotion.
- (5B) If a notification is given by an officer to the Chief of Army under subsection (5A), then, at the end of the term of the promotion:
 - (a) the officer is not retired from the Army by force of subsection (3); and
 - (b) the officer is transferred to the Australian Army Reserve by force of this paragraph.

3 Subsection 20(1)

Repeal the subsection, substitute:

- (1) When the term of an appointment of an officer under section 9 or 9AA ends, the Governor-General must:
 - (a) if, before that time, the officer has notified the Governor-General in writing that he or she wishes to be transferred to the Australian Army Reserve—transfer the officer to the Australian Army Reserve; or
 - (b) in any other case—retire the officer from the Army; as soon as is reasonably practicable.

4 Subsection 23(1)

Omit “retirement of an officer under section 20, 21 or 22”, substitute “transfer of an officer under subsection 20(1), or the retirement of an officer under section 20, 21 or 22,”.

5 Subsection 23(2)

Before “retirement (wherever occurring)”, insert “transfer or”.

6 Paragraph 23(3)(a)

After “document of”, insert “transfer or”.

7 Subsection 23(4)

Repeal the subsection, substitute:

- (4) The transfer or retirement takes effect on the day specified in the document.

Note: The heading to section 23 is altered by inserting “**transfer or**” after “**effect of**”.

8 Subsection 25B(1)

Repeal the subsection, substitute:

- (1) The Chief of Army may give to an officer of the Army a written notice stating that, if within a period specified in the notice, the officer:
- (a) retires from the Army; or
 - (b) notifies the Chief of Army in writing that the officer wishes to transfer to the Australian Army Reserve;
- the officer will be entitled to a special benefit in accordance with a determination under section 58B or 58H.

9 At the end of section 25B

Add:

- (4) If:
- (a) a notice is given to an officer under subsection (1); and
 - (b) a notification is given by the officer under paragraph (1)(b);
- the officer may transfer to the Australian Army Reserve within the period specified in the notice given under subsection (1) even though he or she would not otherwise be entitled to transfer to the Australian Army Reserve.

10 Subparagraph 25C(1)(a)(iii)

After “from the Army”, insert “or transferred to the Australian Army Reserve”.

Note: The heading to section 25C is altered by inserting “**or transfer**” after “**retirement**”.

11 Section 25D

Repeal the section, substitute:

25D Retirement or transfer of officer without special benefit

- (1) This section applies to an officer:
 - (a) to whom a notice has been given under subsection 25B(1); and
 - (b) who does not, within the period specified in the notice:
 - (i) retire from the Army; or
 - (ii) transfer to the Australian Army Reserve; and
 - (c) in respect of whom the Chief of Army considers it is necessary to take action under this section in the interests of the organisational effectiveness of the Army.
- (2) The Chief of Army may, at any time after the period specified in the notice given to the officer under subsection 25B(1), give a written notice to the officer stating that the Chief of Army proposes to retire the officer at the end of a period (the *relevant period*) specified in the notice unless the officer notifies the Chief of Army in writing within the relevant period that the officer wishes to transfer to the Australian Army Reserve at or before the end of the relevant period.
- (3) The period specified in a notice given by the Chief of Army to an officer under subsection (2) must be a period of not less than 13 months starting on the day on which the notice is given to the officer.
- (4) If the officer does not notify the Chief of Army as mentioned in subsection (2), the Chief of Army may retire the officer at the end of the relevant period.
- (5) The Chief of Army retires an officer under subsection (4) by giving the officer a written notice stating that the officer is retired from the Army at the end of the relevant period.

- (6) An officer of the Army to whom a notice is given under subsection (5) is retired from the Army, by force of this subsection, at the end of the relevant period.
- (7) An officer who is retired under subsection (6) is taken for all purposes to have been compulsorily retired from the Army.

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.

Naval Defence Act 1910

13 Subsection 13A(3)

Omit “subsection (4)”, substitute “this section”.

14 After subsection 13A(5)

Insert:

- (5A) At any time before the end of the term of a promotion under this section, the officer concerned may notify the Chief of Navy in writing that the officer wishes to transfer to the Australian Naval Reserve at the end of the term of the promotion.
- (5B) If a notification is given by an officer to the Chief of Navy under subsection (5A), then, at the end of the term of the promotion:
 - (a) the officer is not retired from the Navy by force of subsection (3); and
 - (b) the officer is transferred to the Australian Naval Reserve by force of this paragraph.

15 Subsection 13C(1)

Repeal the subsection, substitute:

- (1) When the term of an appointment of an officer under section 9 or 9AA of the *Defence Act 1903* ends, the Governor-General must:
 - (a) if, before that time, the officer has notified the Governor-General in writing that he or she wishes to be

transferred to the Australian Naval Reserve—transfer the officer to the Australian Naval Reserve; or

(b) in any other case—retire the officer from the Navy; as soon as is reasonably practicable.

16 Subsection 13F(1)

Omit “retirement of an officer under section 13C, 13D or 13E”, substitute “transfer of an officer under subsection 13C(1), or the retirement of an officer under section 13C, 13D or 13E,”.

17 Subsection 13F(2)

Before “retirement” (wherever occurring), insert “transfer or”.

18 Paragraph 13F(3)(a)

After “document of”, insert “transfer or”.

19 Subsection 13F(4)

Repeal the subsection, substitute:

- (4) The transfer or retirement takes effect on the day specified in the document.

Note: The heading to section 13F is altered by inserting “**transfer or**” after “**effect of**”.

20 Subsection 13K(1)

Repeal the subsection, substitute:

- (1) The Chief of Navy may give to an officer a written notice stating that, if within a period specified in the notice, the officer:
- (a) retires from the Navy; or
 - (b) notifies the Chief of Navy in writing that the officer wishes to transfer to the Australian Naval Reserve;
- the officer will be entitled to a special benefit in accordance with a determination under section 58B or 58H of the *Defence Act 1903*.

21 At the end of section 13K

Add:

- (4) If:
- (a) a notice is given to an officer under subsection (1); and
 - (b) a notification is given by the officer under paragraph (1)(b);

the officer may transfer to the Australian Naval Reserve within the period specified in the notice given under subsection (1) even though he or she would not otherwise be entitled to transfer to the Australian Naval Reserve.

22 Subparagraph 13L(1)(a)(iii)

After “from the Navy”, insert “or transferred to the Australian Naval Reserve”.

Note: The heading to section 13L is altered by inserting “or transfer” after “retirement”.

23 Section 13M

Repeal the section, substitute:

13M Retirement or transfer of officer without special benefit

- (1) This section applies to an officer:
 - (a) to whom a notice has been given under subsection 13K(1); and
 - (b) who does not, within the period specified in the notice:
 - (i) retire from the Navy; or
 - (ii) transfer to the Australian Naval Reserve; and
 - (c) in respect of whom the Chief of Navy considers it is necessary to take action under this section in the interests of the organisational effectiveness of the Navy.
- (2) The Chief of Navy may, at any time after the period specified in the notice given to the officer under subsection 13K(1), give a written notice to the officer stating that the Chief of Navy proposes to retire the officer at the end of a period (the *relevant period*) specified in the notice unless the officer notifies the Chief of Navy in writing within the relevant period that the officer wishes to transfer to the Australian Naval Reserve at or before the end of the relevant period.
- (3) The period specified in a notice given by the Chief of Navy to an officer under subsection (2) must be a period of not less than 13 months starting on the day on which the notice is given to the officer.

- (4) If the officer does not notify the Chief of Navy as mentioned in subsection (2), the Chief of Navy may retire the officer at the end of the relevant period.
- (5) The Chief of Navy retires an officer under subsection (4) by giving the officer a written notice stating that the officer is retired from the Navy at the end of the relevant period.
- (6) An officer of the Navy to whom a notice is given under subsection (5) is retired from the Navy, by force of this subsection, at the end of the relevant period.
- (7) An officer who is retired under subsection (6) is taken for all purposes to have been compulsorily retired from the Navy.

24 Saving

Sections 13K and 13M of the *Naval Defence Act 1910* as in force before the commencement of this item continue to apply to an officer of the Navy who was given a notice before that commencement under subsection 13K(1) of that Act as so in force.

**Schedule 3—Delegation of powers to retire,
and terminate the appointments of,
officers**

Defence Act 1903

1 Subsection 120A(4AA)

After “16,” insert “21, 22, 24, 25, 25B, 25D,”.

Naval Defence Act 1910

2 Subsection 44B(3A)

After “12,” insert “13D, 13E, 13G, 13H, 13K, 13M,”.

Schedule 4—Amendment of the Defence Force Discipline Act 1982

1 Subsection 96(1)

Omit “3”, substitute “5”.

2 Section 196B

Repeal the section.

Schedule 5—Repeal of Act and consequential amendments

Part 1—Repeal

Supply and Development Act 1939

1 The whole of the Act

Repeal the Act.

Part 2—Consequential amendments

Disability Discrimination Act 1992

2 Subsection 4(1) (paragraph (e) of the definition of Commonwealth employee)

Omit “, *Supply and Development Act 1939*”.

Merit Protection (Australian Government Employees) Act 1984

3 Subparagraph 85(2)(k)(iv)

Repeal the subparagraph.

Public Service Act 1922

4 Paragraph 22B(14)(d)

Repeal the paragraph.

5 Subsection 22B(16)

Repeal the subsection, substitute:

(16) Regulations made for the purposes of subsection (14) in relation to persons referred to in paragraph (14)(c) have effect despite subsection 42C(1) of the *Naval Defence Act 1910*.

6 Subsection 22B(17)

Omit “or the *Supply and Development Act 1939*”.

7 Paragraph 22C(13)(d)

Repeal the paragraph.

8 Subsection 22C(15)

Repeal the subsection, substitute:

(15) Regulations made for the purposes of subsection (13) in relation to persons referred to in paragraph (13)(c) have effect despite subsection 42C(1) of the *Naval Defence Act 1910*.

9 Subsection 22C(16)

Omit “or the *Supply and Development Act 1939*”.

10 Subsection 87(1) (paragraph (j) of the definition of Commonwealth office)

Repeal the paragraph.

11 Paragraph 87(2)(h)

Repeal the paragraph.

12 Paragraph 87J(2)(f)

Repeal the paragraph.

Remuneration Tribunal Act 1973

13 Paragraph 3(4)(o)

Repeal the paragraph.

Sex Discrimination Act 1984

14 Subsection 4(1) (paragraph (e) of the definition of Commonwealth employee)

Omit “, the *Supply and Development Act 1939*”.

Schedule 6—Technical amendments

Defence Force (Home Loans Assistance) Act 1990

1 Section 3 (subparagraph (a)(ii) of the definition of *basic service period*)

Omit “service.”, substitute “service”.

Defence Legislation Amendment Act (No. 1) 1997

2 Item 125 of Schedule 2 (heading)

Repeal the heading, substitute:

125 Subsection 195(6)

Note: This amendment corrects a misdescribed amendment of the *Defence Force Discipline Act 1982*.

*[Minister’s second reading speech made in—
House of Representatives on 30 March 1999
Senate on 11 August 1999]*

(61/99)
