



# **Defence Legislation Amendment (Aid to Civilian Authorities) Act 2000**

**No. 119, 2000**



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**An Act to amend the *Defence Act 1903*, and for  
related purposes**

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## An Act to amend the *Defence Act 1903*, and for related purposes

[Assented to 12 September 2000]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Defence Legislation Amendment (Aid to Civilian Authorities) Act 2000*.

### 2 Commencement

This Act commences on the day on which it receives the Royal Assent.

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### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Defence Act 1903**

### **1 Paragraph 45(2)(b)**

Omit “or 51”, substitute “, 51A, 51B or 51C”.

### **2 Paragraph 50(1)(b)**

Omit “or 51”, substitute “, 51A, 51B or 51C”.

### **3 Section 51**

Omit the section heading (including the section number) and all the words before “Provided”, substitute:

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

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

#### **51 Interpretation**

##### *Definitions*

(1) In this Part:

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

*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.

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

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

**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).

**order** means an order under section 51A, 51B or 51C.

**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.

*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
  - (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) either Division 2 or Division 3, or both, 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 Governor-General is satisfied that, for reasons of urgency, it is impracticable to comply with the requirements of that paragraph.

*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 Division 2 or Division 3, 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*

- (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, or in deciding whether he or she is satisfied as mentioned in subsection (3A), 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.

## **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) either Division 2 or Division 3, or both, 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.

Note about amendment made by item 3 of this Schedule: The proviso to former section 51 of the *Defence Act 1903*, which will remain after the amendment made by item 3, is intended to form a proviso to the new subsection 51B(2) inserted by that item.

#### **4 Before Part IIIAA**

Insert:

*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 Division 2 or Division 3, 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*

- (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 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) either Division 2 or Division 3, or both, 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 Division 2 or Division 3, 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*

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

*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.

**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 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 subsection (2) 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 the State or the Territory, or to a police force or member of the police force of the State or the 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:

- (a) 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; or
- (b) utilise the Emergency Forces or the Reserve Forces unless the Minister, after consulting the Chief of the Defence Force, is satisfied that sufficient numbers of the Permanent Forces are not available.

**Division 2—Powers to recapture buildings and free hostages etc.**

**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**

### *Recapturing premises etc.*

- (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:
- (a) recapture premises, a place, a means of transport or other thing (the *subject premises etc.*); and
  - (b) in connection with any such recapture, do any one or more of the following:
    - (i) free any hostage from the subject premises etc.;
    - (ii) if the member finds in the subject premises etc. a person whom the member believes on reasonable grounds has 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) evacuate persons found in the subject premises etc. to a place of safety;
    - (iv) search the subject premises etc. for dangerous things;
    - (v) seize any dangerous thing 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 dangerous thing is seized under this section.

### *Ministerial authorisation*

- (2) However, the member must not recapture the subject premises etc., or do any of the things mentioned in paragraphs (1)(b) or (c) in connection with any recapture of the subject premises etc., unless an authorising Minister has in writing authorised the recapture.

### *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.

## **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.

*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.

*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.

#### **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 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.

**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 his or her surname and:
    - (i) numbers; or



- (ii) 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*).

*Application of Criminal Code*

- (3) Chapter 2 of the *Criminal Code* applies to an offence against this section.

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

*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 4—Provisions common to Divisions 2 and 3**

### **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 or 3 or this Division, use such force against persons and things as is reasonable and necessary in the circumstances.

*Further restrictions on use of force*

- (2) However, 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.
- (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) 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.
- (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 dangerous things are seized**

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

If a member of the Defence Force seizes a dangerous thing under Division 2 or 3, 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 or 3 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 5—Miscellaneous

### 51X Publication of order and report

#### *Single order*

- (1) If:
- (a) an order under this Part 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 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 this Part 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 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
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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 this Part 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 this Part 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 this Part 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.

*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.
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*Independent review where no orders made*

- (3) If no order under this Part 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.

**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.

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## **Schedule 2—Other Acts**

### *Air Force Act 1923*

#### **1 Paragraph 4H(1)(b)**

Omit “or 51”, substitute “, 51A, 51B or 51C”.

#### **2 Paragraph 4J(1)(b)**

Omit “or 51”, substitute “, 51A, 51B or 51C”.

### *Naval Defence Act 1910*

#### **3 Paragraph 32(1)(b)**

Omit “or 51”, substitute “, 51A, 51B or 51C”.

#### **4 Paragraph 32A(1)(b)**

Omit “or 51”, substitute “, 51A, 51B or 51C”.

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*[Minister’s second reading speech made in—  
House of Representatives on 28 June 2000  
Senate on 14 August 2000*

(128/00)

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