



# Defence Legislation Amendment Act 1990

No. 75 of 1990

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## **An Act to amend the law relating to defence, and for related purposes**

*[Assented to 22 October 1990]*

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

### **Short title**

1. This Act may be cited as the *Defence Legislation Amendment Act 1990*.

### **Commencement**

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

(2) Subject to subsection (3), the amendment of section 9, and the repeal of sections 32C and 33, of the *Defence Act 1903*, and the repeal of section 23 of the *Naval Defence Act 1910*, made by section 3 commence on a day to be fixed by Proclamation.

(3) If the commencement of the amendment, and the repeals, mentioned in subsection (2) made by section 3 is not fixed by Proclamation published in the *Gazette* within the period of 6 months

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beginning on the day on which this Act receives the Royal Assent, then, on and after the first day after the end of that period, that section is to be taken not to have made that amendment and those repeals.

(4) Subsection 4 (1) is to be taken to have commenced on 30 June 1989.

(5) The amendment of section 85ZL of the *Crimes Act 1914* made by section 5 commences, or is to be taken to have commenced, as the case requires, immediately after the commencement of section 10 of the *Crimes Legislation Amendment Act 1989*.

**Amendments of legislation about the administration of the Defence Force**

3. The Acts specified in Schedule 1 are amended as set out in that Schedule.

**Amendments of legislation about defence pensions**

4. (1) The Acts specified in Schedule 2 are amended as set out in that Schedule.

(2) The amendments made by subsection (1) do not reduce any payment made before this Act receives the Royal Assent.

**Amendments about references to the Defence Intelligence Organisation**

5. The Acts specified in Schedule 3 are amended as set out in that Schedule.

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**SCHEDULE 1**

Section 3

**AMENDMENTS OF LEGISLATION ABOUT THE  
ADMINISTRATION OF THE DEFENCE FORCE**

***Defence Act 1903***

**Subsection 9 (4):**

Omit the subsection.

**Section 19:**

Repeal the section.

**Section 32C:**

Repeal the section.

**Section 33:**

Repeal the section.

**Subsection 39 (2):**

(a) After “(4),” insert “(4A),”.

(b) Omit “his or her intention to claim a discharge”, substitute “the claim”.

**After subsection 39 (4):**

Insert the following subsections:

“(4A) A soldier of the Australian Regular Army or Regular Army Supplement is not entitled to claim a discharge under subsection (2) unless the soldier has completed at least 6 years, or, if the Chief of the General Staff determines a shorter period, that period, of service.

“(4B) In determining a period for the purposes of subsection (4A), the Chief of the General Staff must have regard to the effect of the determination on:

- (a) the ability of the Army to carry out its current and possible future military operations; and
- (b) the size, and composition, of the Army; and
- (c) the training of the Army.”.

**Section 39:**

Add at the end the following subsections:

“(7) A claim under subsection (2) cannot be withdrawn or varied except with the approval of the Chief of the General Staff.

“(8) In considering an application for approval under subsection (7), the Chief of the General Staff must have regard to the effect of the decision about approval on:

- (a) the ability of the Army to carry out its current and possible future military operations; and

**SCHEDULE 1—continued**

(b) the management of Army personnel.”.

**Subsection 120A (4):**

Omit “38”, substitute “39”.

***Defence Force Discipline Act 1982***

**Subsection 63 (1):**

Omit “Attorney-General”, substitute “Director of Public Prosecutions”.

**Subparagraph 63 (1) (a) (i):**

Omit “, rape”.

**After subparagraph 63 (1) (a) (i):**

Insert the following subparagraph:

“(ia) an offence against section 92A, 92B, 92C, 92D or 92E of the *Crimes Act 1900* of the State of New South Wales, in its application to the Australian Capital Territory, as amended or affected by Ordinances in force in that Territory;”.

**Subparagraph 63 (1) (a) (ii):**

After “Minister” insert “, the Director of Public Prosecutions or a person authorised by the Director of Public Prosecutions to give consent”.

**Paragraph 104 (a):**

Omit “is treason, murder, manslaughter, rape or bigamy;”, substitute:  
“is:

- (i) treason, murder, manslaughter or bigamy; or
- (ii) an offence against section 92A, 92B, 92C, 92D or 92E of the *Crimes Act 1900* of the State of New South Wales, in its application to the Australian Capital Territory, as amended or affected by Ordinances in force in that Territory; or”.

***Naval Defence Act 1910***

**Section 14:**

Repeal the section.

**Section 23:**

Repeal the section.

**Subsection 28 (2):**

(a) After “(4),” insert “(4A),”.

**SCHEDULE 1—continued**

- (b) Omit “his or her intention to claim a discharge”, substitute “the claim”.

**After subsection 28 (4):**

Insert the following subsections:

“(4A) A sailor of the Permanent Naval Forces is not entitled to claim a discharge under subsection (2) unless the sailor has completed at least 6 years, or, if the Chief of Naval Staff determines a shorter period, that period, of service.

“(4B) In determining a period for the purposes of subsection (4A), the Chief of Naval Staff must have regard to the effect of the determination on:

- (a) the ability of the Navy to carry out its current and possible future naval operations; and
- (b) the size, and composition, of the Navy; and
- (c) the training of the Navy.”.

**Section 28:**

Add at the end the following subsections:

“(7) A claim under subsection (2) cannot be withdrawn or varied except with the approval of the Chief of Naval Staff.

“(8) In considering an application for approval under subsection (7), the Chief of Naval Staff must have regard to the effect of the decision about approval on:

- (a) the ability of the Navy to carry out its current and possible future naval operations; and
- (b) the management of Navy personnel.”.

***Statute Law (Miscellaneous Provisions) Act (No. 1) 1985***

**Schedule 1 (amendment inserting paragraph (1) (ca) in section 58B of the *Defence Act 1903*):**

Omit the amendment.

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**SCHEDULE 2**

Subsection 4 (1)

**AMENDMENTS OF LEGISLATION ABOUT DEFENCE PENSIONS**

***Defence Force Retirement and Death Benefits Act 1973***

**Subsection 43 (2):**

- (a) Omit “Pension”, substitute “Subject to subsection (2A), pension”.
- (b) Omit “\$702”, substitute “\$5,000”.

**After subsection 43 (2):**

Insert the following subsection:

“(2A) Where the number of eligible orphans in respect of whom pensions are payable under subsection (2) because of the death of the contributing member is such that the sum of the rates of all the pensions so payable exceeds the rate at which invalidity pay would have been payable to the member in the circumstances mentioned in that subsection, then, while that position exists, there is payable, in respect of each of the orphans, instead of the pensions described in subsection (2), a pension at the rate calculated by dividing the number of orphans into the rate exceeded.”.

**Subsection 43 (3):**

- (a) After “Subject to” insert “subsection (4) and”.
- (b) Omit “\$702”, substitute “\$5,000”.

**Section 43:**

Add at the end the following subsection:

“(4) Where the number of eligible orphans in respect of whom pensions are payable under subsection (3) because of the death of the recipient member is such that the sum of the rates of all the pensions so payable exceeds the rate of the retirement or invalidity pay used for the calculation of the orphans’ pensions under that subsection, then, while that position exists, there is payable, in respect of each of the orphans, instead of the pensions described in subsection (3), a pension at the rate calculated by dividing the number of orphans into the rate exceeded.”.

***Defence Forces Retirement Benefits Act 1948***

**Subsection 55 (2):**

- (a) Omit “On”, substitute “Subject to subsection (3), on”.
- (b) Omit “\$702”, substitute “\$5,000”.

**SCHEDULE 2—continued**

**After subsection 55 (2):**

Insert the following subsection:

“(3) Where the number of children in respect of whom pensions are payable under subsection (2) because of the widow’s death is such that the sum of the rates of all the pensions so payable exceeds a rate equal to  $1\frac{1}{3}$  of the rate at which pension payable under paragraph (1) (a) would, but for her death, have been payable to her, then, while that position exists, there is payable in respect of each of the children, instead of the pensions described in subsection (2), a pension at the rate calculated by dividing the number of children into the rate exceeded.”.

**Subsection 57 (4):**

- (a) Omit “On”, substitute “Subject to subsection (5), on”.
- (b) Omit “\$702”, substitute “\$5,000”.

**After subsection 57 (4):**

Add the following subsection:

“(5) Where the number of children in respect of whom pensions are payable under subsection (4) because of the widow’s death is such that the sum of the rates of all the pensions exceeds a rate equal to  $1\frac{1}{3}$  of the rate at which pension payable under paragraph (1) (a) or subsection (3), as the case requires, would, but for her death, have been payable to her, then, while that position exists, there is payable in respect of each of the children, instead of the pensions described in subsection (4), a pension calculated by dividing the number of children into the rate exceeded.”.

**Subsection 58 (1):**

- (a) Omit “Where”, substitute “Subject to subsection (1A), where”.
- (b) Omit “\$702”, substitute “\$5,000”.

**After subsection 58 (1):**

Insert the following subsection:

“(1A) Where the number of children in respect of whom pensions are payable under subsection (1) because of the death of the member or pensioner is such that the sum of the rates of all the pensions so payable exceeds a rate equal to  $1\frac{1}{3}$  of the rate at which pension payable under paragraph 55 (1) (a) or 57 (1) (a), or subsection 57 (3), as the case requires, would, but for her death or divorce, have been payable to the widow, then, while that position exists, there is payable in respect of each of the children, instead of the pensions described in subsection (1), a pension at the rate calculated by dividing the number of children into the rate exceeded.”.

**SCHEDULE 3**

Section 5

**AMENDMENTS ABOUT REFERENCES TO THE DEFENCE  
INTELLIGENCE ORGANISATION**

***Archives Act 1983***

**Subsection 29 (8):**

Omit paragraph 29 (8) (d), substitute the following paragraph:  
“(d) the Defence Intelligence Organisation;”.

***Australian Security and Intelligence Organization Act 1979***

**Section 4 (definition of “intelligence or security agency”):**

Omit “Joint Intelligence Organization”, substitute “Defence Intelligence Organisation”.

***Crimes Act 1914***

**Section 85ZL (definition of “intelligence or security agency”):**

Omit “Joint Intelligence Organisation”, substitute “Defence Intelligence Organisation”.

***Freedom of Information Act 1982***

**Subsection 7 (2A):**

Omit “the Defence Signals Directorate or the Joint Intelligence Organization”, substitute “the Defence Intelligence Organisation or the Defence Signals Directorate”.

**Part II of Schedule 2:**

Omit “the Defence Signals Directorate and the Joint Intelligence Organization”, substitute “the Defence Intelligence Organisation and the Defence Signals Directorate”.

***Human Rights and Equal Opportunity Commission Act 1986***

**Subsection 11 (4):**

Omit “Joint Intelligence Organisation”, substitute “Defence Intelligence Organisation”.

**Subsection 21 (3):**

Omit “the Defence Signals Directorate or the Joint Intelligence Organisation”, substitute “the Defence Intelligence Organisation or the Defence Signals Directorate”.

***Inspector-General of Intelligence and Security Act 1986***

**Section 3 (definition of “agency”):**

Omit “DSD, JIO”, substitute “DIO, DSD”.



**SCHEDULE 3—continued**

**After the definition of “discrimination” in section 3:**

Insert the following definition:

“‘DIO’ means that part of the Department of Defence known as the Defence Intelligence Organisation;”.

**Section 3 (definition of “head”):**

- (a) Omit “DSD, JIO”, substitute “DIO, DSD”,
- (b) Omit “the Director of DSD, the Director of JIO”, substitute “the Director of DIO, the Director of DSD”.

**Section 3 (definition of “JIO”):**

Omit the definition.

**Subsection 8 (3):**

Omit “JIO”, substitute “DIO”.

***Privacy Act 1988***

**Subsection 7 (1):**

Omit paragraph 7 (1) (g), substitute the following paragraph:

“(g) the Defence Intelligence Organisation or the Defence Signals Directorate of the Department of Defence; or”.

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[*Minister’s second reading speech made in—  
House of Representatives on 22 August 1990  
Senate on 9 October 1990*]