



Defence Legislation Amendment Act (No. 1) 1997

No. 1, 1997

**An Act to amend the *Air Force Act 1923*, the
Defence Act 1903 and the *Naval Defence Act 1910*,
and for related purposes**

Contents

1	Short title	5
2	Commencement.....	5
3	Schedule(s)	6
Schedule 1—Amendments relating to transfers of Defence Force members		7
	<i>Air Force Act 1923</i>	7
	<i>Defence Act 1903</i>	7
	<i>Naval Defence Act 1910</i>	10
Schedule 2—Amendments relating to service chiefs		14
Part 1—Amendment of the titles of service chiefs		14
	<i>Defence Act 1903</i>	14
Part 2—Amendment of references to the Chief of Navy		15
	<i>Australian National Maritime Museum Act 1990</i>	15
	<i>Australian War Memorial Act 1980</i>	15
	<i>Defence Act 1903</i>	15
	<i>Defence Force Retirement and Death Benefits Act 1973</i>	16
	<i>Defence Forces Retirement Benefits Act 1948</i>	16
	<i>Defence Housing Authority Act 1987</i>	16
	<i>Defence (Parliamentary Candidates) Act 1969</i>	16
	<i>Defence (Re-establishment) Act 1965</i>	16
	<i>Defence (Visiting Forces) Act 1963</i>	16
	<i>Military Superannuation and Benefits Act 1991</i>	16
	<i>Naval Defence Act 1910</i>	17
	<i>Ombudsman Act 1976</i>	18
	<i>Remuneration and Allowances Act 1990</i>	18
	<i>Remuneration Tribunal Act 1973</i>	18
Part 3—Amendment of references to the Chief of Army		19
	<i>Australian War Memorial Act 1980</i>	19
	<i>Defence Act 1903</i>	19
	<i>Defence Force Retirement and Death Benefits Act 1973</i>	20
	<i>Defence Forces Retirement Benefits Act 1948</i>	20
	<i>Defence Forces Retirement Benefits (Pension Increases) Act 1961</i>	20

<i>Defence Housing Authority Act 1987</i>	21
<i>Defence (Parliamentary Candidates) Act 1969</i>	21
<i>Defence (Re-establishment) Act 1965</i>	21
<i>Defence (Visiting Forces) Act 1963</i>	21
<i>Military Superannuation and Benefits Act 1991</i>	21
<i>Ombudsman Act 1976</i>	21
<i>Remuneration and Allowances Act 1990</i>	21
<i>Remuneration Tribunal Act 1973</i>	21
Part 4—Amendment of references to the Chief of Air Force	22
<i>Air Force Act 1923</i>	22
<i>Australian War Memorial Act 1980</i>	22
<i>Defence Act 1903</i>	22
<i>Defence Force Retirement and Death Benefits Act 1973</i>	23
<i>Defence Forces Retirement Benefits Act 1948</i>	23
<i>Defence Housing Authority Act 1987</i>	23
<i>Defence (Parliamentary Candidates) Act 1969</i>	23
<i>Defence (Re-establishment) Act 1965</i>	23
<i>Defence (Visiting Forces) Act 1963</i>	23
<i>Military Superannuation and Benefits Act 1991</i>	23
<i>Ombudsman Act 1976</i>	24
<i>Remuneration and Allowances Act 1990</i>	24
<i>Remuneration Tribunal Act 1973</i>	24
Part 5—Amendment of references to service chiefs	25
<i>Defence Act 1903</i>	25
<i>Defence Force Discipline Act 1982</i>	25
<i>Defence Force Discipline Appeals Act 1955</i>	26
<i>Defence Housing Authority Act 1987</i>	27
<i>Defence (Parliamentary Candidates) Act 1969</i>	27
<i>Defence (Visiting Forces) Act 1963</i>	27
<i>Income Tax Assessment Act 1936</i>	27

Part 6—Other amendments relating to service chiefs	28
<i>Defence Act 1903</i>	28
<i>Defence Force Discipline Act 1982</i>	28
<i>Defence Force Re-organization Act 1975</i>	28
<i>Defence Housing Authority Act 1987</i>	29
<i>Defence (Parliamentary Candidates) Act 1969</i>	29
<i>Military Superannuation and Benefits Act 1991</i>	29
<i>Office of National Assessments Act 1977</i>	29
Schedule 3—Other amendments	30
<i>Defence Act 1903</i>	30
<i>Naval Defence Act 1910</i>	30



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An Act to amend the *Air Force Act 1923*, the *Defence Act 1903* and the *Naval Defence Act 1910*, and for related purposes

[Assented to 19 February 1997]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Defence Legislation Amendment Act (No. 1) 1997*.

2 Commencement

- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (2) Subject to subsection (3), Schedules 1 and 3 commence on a day or days to be fixed by Proclamation.

- (3) If a provision of this Act does not commence 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.

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—Amendments relating to transfers of Defence Force members

Air Force Act 1923

1 At the end of paragraph 4B(b)

Add:

- ; or (iii) the Australian Army; or
- (iv) the Australian Navy.

2 At the end of paragraph 4C(b)

Add:

- ; or (iii) the Australian Army; or
- (iv) the Australian Navy.

3 At the end of paragraph 4D(4)(b)

Add:

- ; or (iv) the Australian Army; or
- (v) the Australian Navy.

Defence Act 1903

4 After Division 3 of Part II

Insert:

Division 3A—Transfer of officers to other arms of the Defence Force

27AA Transfer of officers

- (1) The Chief of Army may, by written instrument, transfer the appointment of an officer of the Army to the Australian Navy or the Australian Air Force if:
 - (a) the officer consents to the transfer; and
 - (b) the Chief of Navy or the Chief of Air Force (as the case may be) approves the transfer.

- (2) The instrument must specify:
 - (a) the day on which the transfer takes effect; and
 - (b) the period of service for which the officer is appointed to the Australian Navy or the Australian Air Force (as the case may be); and
 - (c) the part of that arm of the Defence Force to which the officer is appointed; and
 - (d) the rank that the officer is to hold in that arm of the Defence Force, and the officer's seniority in that rank.
- (3) If the officer is required, under a determination referred to in paragraph 17(2)(c), to complete a period of service:
 - (a) that requirement continues to apply to the officer after the transfer takes effect; and
 - (b) the Chief of Navy or the Chief of Air Force (as the case may be) may, without reference to the Governor-General, reject the officer's resignation in the same way that the Chief of Army could have rejected it under subsection 17(2).
- (4) For all purposes connected with the officer's appointment or service as an officer of the Australian Navy, service rendered by the officer as a member of the Army before the transfer is taken to have been rendered as a member of the Australian Navy.
- (5) For all purposes connected with the officer's appointment or service as an officer of the Australian Air Force, service rendered by the officer as a member of the Army before the transfer is taken to have been rendered as a member of the Australian Air Force.

5 At the end of paragraph 32(2)(b)

Add:

- ; or (iii) the Australian Navy; or
- (iv) the Australian Air Force.

6 At the end of paragraph 32(3)(b)

Add:

- ; or (iii) the Australian Navy; or
- (iv) the Australian Air Force.

7 At the end of paragraph 32(4)(b)

Add:

- ; or (iii) the Australian Navy; or
- (iv) the Australian Air Force.

8 At the end of paragraph 32A(4)(b)

Add:

- ; or (iii) the Australian Navy; or
- (iv) the Australian Air Force.

9 At the end of paragraph 32A(5)(b)

Add:

- ; or (iii) the Australian Navy; or
- (iv) the Australian Air Force.

10 At the end of Division 2 of Part III

Add:

44A Transfer of soldiers to other arms of the Defence Force

- (1) The Chief of Army may, by written instrument, transfer the enlistment of a person as a soldier in the Army to the Australian Navy as a sailor, or the Australian Air Force as an airman, if:
 - (a) the person consents to the transfer; and
 - (b) the Chief of Navy or the Chief of Air Force (as the case may be) approves the transfer.
- (2) The instrument must specify:
 - (a) the day on which the transfer takes effect; and
 - (b) the period of service for which the person is enlisted in the Australian Navy as a sailor or the Australian Air Force as an airman (as the case may be); and
 - (c) the part of that arm of the Defence Force in which the person is enlisted; and
 - (d) the rank that the person is to hold in that arm of the Defence Force, and the person's seniority in that rank.

- (3) If the person is required, under a determination referred to in paragraph 39(5)(b), to complete a period of service:
- (a) that requirement continues to apply to the person after the transfer takes effect; and
 - (b) the person cannot claim a discharge from the Navy or the Air Force (as the case may be) before the end of the period.
- (4) For all purposes connected with the person's enlistment or service as a sailor in the Australian Navy, service rendered by the person as a member of the Army before the transfer is taken to have been rendered as a member of the Australian Navy.
- (5) For all purposes connected with the person's enlistment or service as an airman in the Australian Air Force, service rendered by the person as a member of the Army before the transfer is taken to have been rendered as a member of the Australian Air Force.

11 Subsection 120A(4AA)

Omit "section 16", substitute "sections 16, 27AA and 44A".

12 After subsection 120A(4A)

Insert:

- (4AB) The Chief of Navy may, by instrument in writing, delegate to an officer of the Navy who holds a rank not below the rank of Commodore his or her powers under sections 27AA and 44A.

13 After subsection 120A(4B)

Insert:

- (4C) The Chief of Air Force may, by instrument in writing, delegate to an officer of the Air Force who holds a rank not below the rank of Air Commodore his or her powers under sections 27AA and 44A.

Naval Defence Act 1910

14 After Division 2 of Part II

Insert:

Division 2A—Transfer of officers to other arms of the Defence Force

17B Transfer of officers

- (1) The Chief of Navy may, by written instrument, transfer the appointment of an officer of the Navy to the Australian Army or the Australian Air Force if:
 - (a) the officer consents to the transfer; and
 - (b) the Chief of Army or the Chief of Air Force (as the case may be) approves the transfer.
- (2) The instrument must specify:
 - (a) the day on which the transfer takes effect; and
 - (b) the period of service for which the officer is appointed to the Australian Army or the Australian Air Force (as the case may be); and
 - (c) the part of that arm of the Defence Force to which the officer is appointed; and
 - (d) the rank that the officer is to hold in that arm of the Defence Force, and the officer's seniority in that rank.
- (3) If the officer is required, under a determination referred to in paragraph 13(2)(c), to complete a period of service:
 - (a) that requirement continues to apply to the officer after the transfer takes effect; and
 - (b) the Chief of Army or the Chief of Air Force (as the case may be) may, without reference to the Governor-General, reject the officer's resignation in the same way that the Chief of Navy could have rejected it under subsection 13(2).
- (4) For all purposes connected with the officer's appointment or service as an officer of the Australian Army, service rendered by the officer as a member of the Navy before the transfer is taken to have been rendered as a member of the Australian Army.
- (5) For all purposes connected with the officer's appointment or service as an officer of the Australian Air Force, service rendered by the officer as a member of the Navy before the transfer is taken to have been rendered as a member of the Australian Air Force.

15 At the end of paragraph 20(b)

Add:

- ; or (iii) the Australian Army; or
- (iv) the Australian Air Force.

16 At the end of paragraph 21(b)

Add:

- ; or (iii) the Australian Army; or
- (iv) the Australian Air Force.

17 At the end of paragraph 22(b)

Add:

- ; or (iii) the Australian Army; or
- (iv) the Australian Air Force.

18 At the end of Part III

Add:

30A Transfer of sailors to other arms of the Defence Force

- (1) The Chief of Navy may, by written instrument, transfer the enlistment of a person as a sailor in the Navy to the Australian Army as a soldier, or the Australian Air Force as an airman, if:
 - (a) the person consents to the transfer; and
 - (b) the Chief of Army or the Chief of Air Force (as the case may be) approves the transfer.
- (2) The instrument must specify:
 - (a) the day on which the transfer takes effect; and
 - (b) the period of service for which the person is enlisted in the Australian Army as a soldier or the Australian Air Force as an airman (as the case may be); and
 - (c) the part of that arm of the Defence Force in which the person is enlisted; and
 - (d) the rank that the person is to hold in that arm of the Defence Force, and the person's seniority in that rank.

- (3) If the person is required, under a determination referred to in paragraph 28(5)(b), to complete a period of service:
 - (a) that requirement continues to apply to the person after the transfer takes effect; and
 - (b) the person cannot claim a discharge from the Army or Air Force (as the case may be) before the end of the period.
- (4) For all purposes connected with the person's enlistment or service as a soldier in the Australian Army, service rendered by the person as a member of the Navy before the transfer is taken to have been rendered as a member of the Australian Army.
- (5) For all purposes connected with the person's enlistment or service as an airman in the Australian Air Force, service rendered by the person as a member of the Navy before the transfer is taken to have been rendered as a member of the Australian Air Force.

19 Subsection 44B(3A)

Omit "section 12", substitute "sections 12, 17B and 30A".

20 After subsection 44B(3A)

Insert:

- (3B) The Chief of Army may, by instrument in writing, delegate to an officer of the Army who holds a rank not below the rank of Brigadier his or her powers under sections 17B and 30A.
- (3C) The Chief of Air Force may, by instrument in writing, delegate to an officer of the Air Force who holds a rank not below the rank of Air Commodore his or her powers under sections 17B and 30A.

Schedule 2—Amendments relating to service chiefs

Part 1—Amendment of the titles of service chiefs

Defence Act 1903

1 Paragraph 9(1)(a)

Omit “Chief of Naval Staff”, substitute “Chief of Navy”.

2 Paragraph 9(1)(b)

Omit “Chief of the General Staff”, substitute “Chief of Army”.

3 Paragraph 9(1)(c)

Omit “Chief of the Air Staff”, substitute “Chief of Air Force”.

4 Subsection 9(2)

Omit “chief of staff” (wherever occurring), substitute “service chief”.

Part 2—Amendment of references to the Chief of Navy

5 Amendment of Acts

The specified provisions of the following Acts are amended by omitting “Chief of Naval Staff” (wherever occurring) and substituting “Chief of Navy”.

Australian National Maritime Museum Act 1990

6 Subsection 3(1) (definition of *naval member*)

7 Subsections 17(2A) and (5A)

8 Subsection 20(2)

Australian War Memorial Act 1980

9 Paragraph 10(1)(a)

Defence Act 1903

10 Paragraphs 4(2)(e) and (h)

11 Section 8

12 Subsection 116B(1)

13 Subsection 117(2)

14 Paragraph 117A(2)(a)

15 Subsection 117A(3)

16 Subsection 120A(4A)

17 Section 123F

Defence Force Retirement and Death Benefits Act 1973

18 Paragraph 8(3)(b)

19 Subsection 9(3)

20 Subsection 23(4)

21 Section 37

Defence Forces Retirement Benefits Act 1948

22 Subsection 51(6)

Defence Housing Authority Act 1987

23 Subsection 66(1)

Defence (Parliamentary Candidates) Act 1969

24 Section 18

25 Section 19

Defence (Re-establishment) Act 1965

26 Subparagraphs 4(2)(a)(ii) and (b)(ii)

Defence (Visiting Forces) Act 1963

27 Subsection 8(7)

Military Superannuation and Benefits Act 1991

28 Paragraph 30(3)(b)

Naval Defence Act 1910

29 Section 11

30 Section 12

31 Subsections 13(1), (2), (3) and (6)

32 Subsection 13A(4)

33 Section 13B (paragraph (b) of the definition of *relevant authority*)

34 Subparagraph 13H(3)(a)(ii)

35 Subsection 13K(1)

36 Subsection 13L(1)

37 Subsections 13M(1) and (2)

38 Subsection 17A(1)

39 Paragraph 28(3)(a)

40 Subsections 28(4A), (4B), (5), (6), (7) and (8)

41 Section 30

42 Paragraph 32(2)(b)

43 Subsections 32AA(1), (2) and (4)

44 Subsections 32A(3) and (4)

45 Section 39

46 Subsections 44B(3) and (3A)

Ombudsman Act 1976

47 Subsection 3(6B)

Remuneration and Allowances Act 1990

48 Part 3 of clause 3 of Schedule 2 (table)

Remuneration Tribunal Act 1973

49 Subparagraph 3(4)(r)(iii)

Part 3—Amendment of references to the Chief of Army

50 Amendment of Acts

The specified provisions of the following Acts are amended by omitting “Chief of the General Staff” (wherever occurring) and substituting “Chief of Army”.

Australian War Memorial Act 1980

51 Paragraph 10(1)(b)

Defence Act 1903

52 Paragraphs 4(2)(f) and (h)

53 Section 8

54 Subsection 10B(4)

55 Section 10C

56 Section 16

57 Subsections 17(1), (2), (3) and (6)

58 Section 19 (paragraph (b) of the definition of *relevant authority*)

59 Subparagraph 25(3)(a)(ii)

60 Subsection 25B(1)

61 Subsection 25C(1)

62 Subsections 25D(1) and (2)

63 Subsection 26(1)

64 Paragraph 39(3)(a)

65 Subsections 39(4A), (4B), (5), (6), (7) and (8)

66 Section 44

67 Subsection 45(4)

68 Subsections 48A(1), (2) and (4)

69 Subsections 50(3) and (4)

70 Subsection 62(9)

71 Subsection 116B(1)

72 Subsections 120A(4) and (4AA)

73 Section 123F

Defence Force Retirement and Death Benefits Act 1973

74 Paragraph 8(3)(c)

75 Subsection 9(4)

76 Subsection 23(4)

77 Section 37

Defence Forces Retirement Benefits Act 1948

78 Subsection 51(6)

***Defence Forces Retirement Benefits (Pension Increases) Act
1961***

79 Part 1 of First Schedule (table 1, column 2)

Defence Housing Authority Act 1987

80 Subsection 66(2)

Defence (Parliamentary Candidates) Act 1969

81 Section 18

82 Section 19

Defence (Re-establishment) Act 1965

83 Subparagraphs 4(2)(a)(ii) and (b)(ii)

Defence (Visiting Forces) Act 1963

84 Subsection 8(7)

Military Superannuation and Benefits Act 1991

85 Paragraph 30(3)(b)

Ombudsman Act 1976

86 Subsection 3(6B)

Remuneration and Allowances Act 1990

87 Part 3 of clause 3 of Schedule 2 (table)

Remuneration Tribunal Act 1973

88 Subparagraph 3(4)(r)(iv)

Part 4—Amendment of references to the Chief of Air Force

89 Amendment of Acts

The specified provisions of the following Acts are amended by omitting “Chief of the Air Staff” (wherever occurring) and substituting “Chief of Air Force”.

Air Force Act 1923

90 Paragraph 4H(2)(b)

91 Subsections 4HA(1), (2) and (4)

92 Subsections 4J(3) and (4)

93 Subsection 8(9)

94 Subsections 8A(1), (3), (3A), (4), (5) and (6)

Australian War Memorial Act 1980

95 Paragraph 10(1)(c)

Defence Act 1903

96 Paragraphs 4(2)(g) and (h)

97 Section 8

98 Subsection 116B(1)

99 Subsection 120A(4B)

100 Section 123F

Defence Force Retirement and Death Benefits Act 1973

101 Paragraph 8(3)(d)

102 Subsection 9(5)

103 Subsection 23(4)

104 Section 37

Defence Forces Retirement Benefits Act 1948

105 Subsection 51(6)

Defence Housing Authority Act 1987

106 Subsection 66(3)

Defence (Parliamentary Candidates) Act 1969

107 Section 18

108 Section 19

Defence (Re-establishment) Act 1965

109 Subparagraphs 4(2)(a)(ii) and (b)(ii)

Defence (Visiting Forces) Act 1963

110 Subsection 8(7)

Military Superannuation and Benefits Act 1991

111 Paragraph 30(3)(b)

Ombudsman Act 1976

112 Subsection 3(6B)

Remuneration and Allowances Act 1990

113 Part 3 of clause 3 of Schedule 2 (table)

Remuneration Tribunal Act 1973

114 Subparagraph 3(4)(r)(v)

Part 5—Amendment of references to service chiefs

Defence Act 1903

115 Paragraph 4(2)(h), subsections 9(2) and (3), paragraph 9A(1)(a) and subsections 9A(3) and 9C(1)

Omit “chief of staff” (wherever occurring), substitute “service chief”.

116 Subsections 9B(1) and (2)

Omit “a chief of staff”, substitute “the Chief of the Defence Force, the Vice Chief of the Defence Force or a service chief”.

117 Subsections 50D(2), 50D(6), 50E(2), 50F(4), 116C(3), 116E(1), 116M(1), 116M(5) and 116M(6) and section 123A

Omit “a chief of staff” (wherever occurring), substitute “the Chief of the Defence Force or a service chief”.

Note: The heading to section 116M is altered by omitting “by chief of staff”.

118 Subsection 116M(2)

Omit “A chief of staff”, substitute “The Chief of the Defence Force or a service chief”.

119 Subsections 116M(3), (4) and (6)

Omit “the chief of staff”, substitute “the Chief of the Defence Force or a service chief”.

Defence Force Discipline Act 1982

120 Subsection 3(1) (definitions of *authorized officer* and *review* and paragraph (b) of the definition of *general order*), subparagraph 3(11)(a)(ii), subsections 5(1), 5(3), 68(3), 68A(3), 97(1) and 113(1), paragraph 154(1)(a) and subsections 155(1), 155(2), 178C(1) and 195(6)

Omit “a chief of staff” (wherever occurring), substitute “the Chief of the Defence Force or a service chief”.

Note: The heading to section 155 is altered by omitting "by chief of staff".

121 Subsections 68(2) and 68A(2), section 102, subsection 105(1), section 150 and subsections 155(3), 155(4) and 196(2)

Omit "A chief of staff" (wherever occurring), substitute "The Chief of the Defence Force or a service chief".

122 Subsection 95(8)

Omit "a chief of staff", substitute "the Chief of the Defence Force, a service chief".

123 Subsection 95(9)

Omit "the chief of staff", substitute "the Chief of the Defence Force, the service chief".

124 Subsection 140(4)

Omit "chief of staff", substitute "service chief".

125 Subsections 155(1), 155(2), 195(6) and 196(2)

Omit "the chief of staff", substitute "the Chief of the Defence Force or the service chief".

126 Subsection 196B(7)

Omit "each chief of staff", substitute "the Chief of the Defence Force and each service chief".

Defence Force Discipline Appeals Act 1955

127 Section 42

Omit "A chief of staff", substitute "The Chief of the Defence Force or a service chief".

128 Subsections 51(1) and 52(1)

Omit "a chief of staff", substitute "the Chief of the Defence Force or a service chief".

Defence Housing Authority Act 1987

129 Paragraph 57(1)(b)

Omit “chief of staff”, substitute “service chief”.

Defence (Parliamentary Candidates) Act 1969

130 Sections 7, 8 and 9, subsections 10(1), 11(1) and 12(1), section 13, subsections 14(1), 14(2), 16(1) and 16(2)

Omit “chief of staff” (wherever occurring), substitute “service chief”.

Defence (Visiting Forces) Act 1963

131 Subsections 28(3), (6) and (8)

Omit “a chief of staff” (wherever occurring), substitute “the Chief of the Defence Force or a service chief”.

132 Subsection 28(4)

Omit “A chief of staff”, substitute “The Chief of the Defence Force or a service chief”.

133 Subsection 28(7)

Omit “or of chief of staff”, substitute “, of Chief of the Defence Force or of service chief”.

134 Paragraph 28(8)(b)

Omit “the chief of staff”, substitute “the Chief of the Defence Force or the service chief”.

Income Tax Assessment Act 1936

135 Subsection 79B(1B)

Omit “a chief of staff” (wherever occurring), substitute “the Chief of the Defence Force or a service chief”.

Part 6—Other amendments relating to service chiefs

Defence Act 1903

136 Paragraph 4(2)(h)

Omit “the Chief of the Defence Force,”.

137 Subsection 9B(4)

Repeal the subsection.

Defence Force Discipline Act 1982

138 Subsection 3(1) (definition of *chief of staff*)

Repeal the definition.

139 Subsection 3(1)

Insert:

service chief means the Chief of Navy, the Chief of Army or the Chief of Air Force.

Defence Force Re-organization Act 1975

140 After section 2

Insert:

2A References to service chiefs

- (1) A reference in this Act to the Chief of Defence Force Staff includes a reference to the Chief of the Defence Force.
- (2) A reference in this Act to the Chief of Naval Staff includes a reference to the Chief of Navy.
- (3) A reference in this Act to the Chief of the General Staff includes a reference to the Chief of Army.
- (4) A reference in this Act to the Chief of the Air Staff includes a reference to the Chief of Air Force.

Defence Housing Authority Act 1987

141 Subsection 3(1) (definition of *chief of staff*)

Repeal the definition.

142 Subsection 3(1)

Insert:

service chief means the Chief of Navy, the Chief of Army or the Chief of Air Force.

Note: The heading to section 66 is altered by omitting "chiefs of staff" and substituting "service chiefs".

Defence (Parliamentary Candidates) Act 1969

143 Subsection 5(1) (definition of *appropriate chief of staff*)

Repeal the definition.

144 Subsection 5(1)

Insert:

appropriate service chief means:

- (a) in relation to a person who is or has been a member of the Navy—the Chief of Navy; or
- (b) in relation to a person who is or has been a member of the Army—the Chief of Army; or
- (c) in relation to a person who is or has been a member of the Air Force—the Chief of Air Force.

Military Superannuation and Benefits Act 1991

145 Subsections 36(1) and (3)

Omit "Chief of Staff" (wherever occurring), substitute "service chief".

Office of National Assessments Act 1977

146 Section 3 (paragraph (c) of the definition of *prescribed Commonwealth officer*)

Omit "Chief of Staff", substitute "service chief".

Schedule 3—Other amendments

Defence Act 1903

1 Paragraph 17(2)(ba)

Omit “colonel”, substitute “Major”.

2 After subsection 120A(1)

Insert:

- (1A) The Governor-General may, by written instrument, delegate to the Chief of the Defence Force or to the Chief of Army all or any of his or her powers under section 10B.

Naval Defence Act 1910

3 Paragraph 13(2)(ba)

Omit “captain”, substitute “Lieutenant-Commander”.

4 After subsection 44B(1)

Insert:

- (1A) The Governor-General may, by written instrument, delegate to the Chief of the Defence Force or to the Chief of Navy all or any of his or her powers under section 13A.

*[Minister’s second reading speech made in—
House of Representatives on 21 August 1996
Senate on 6 February 1997]*

(108/96)