



# **Defence Legislation Amendment Act (No. 1) 2005**

**No. 121, 2005**

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

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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

*[Assented to 6 October 2005]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Defence Legislation Amendment Act (No. 1) 2005*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	6 October 2005
2. Schedules 1 to 4	The day on which this Act receives the Royal Assent.	6 October 2005
3. Schedule 5	Immediately after the commencement of section 3 of the <i>Legislative Instruments Act 2003</i> .	1 January 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

## 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Criminal laws of the Australian Capital Territory**

### ***Defence Force Discipline Act 1982***

#### **1 Subsection 3(1)**

Insert:

***ancillary offence***, in relation to an offence against this Act or the regulations, means an offence against:

- (a) section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
  - (b) section 6 of the *Crimes Act 1914*;
- that relates to that other offence.

#### **2 Subsection 3(1)**

Insert:

***ancillary Territory offence***, in relation to another Territory offence (the ***first Territory offence***), means an offence against:

- (a) section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
  - (b) section 6 of the *Crimes Act 1914*; or
  - (c) section 44, 47 or 48 of the *Criminal Code 2002* of the Australian Capital Territory; or
  - (d) section 181 of the *Crimes Act 1900* of the Australian Capital Territory; or
  - (e) a provision of a law in force in the Jervis Bay Territory (other than a Commonwealth law) that is prescribed for the purposes of this paragraph (see subsection (3A));
- that relates to the first Territory offence.

#### **3 Subsection 3(1) (definition of *relevant Territory offence*)**

Repeal the definition, substitute:

***relevant Territory offence***, in relation to an offence against section 61, means the Territory offence on which the offence against section 61 is based.

#### 4 Subsection 3(1) (paragraphs (b) and (c) of the definition of *Territory offence*)

Repeal the paragraphs, substitute:

or (b) an offence punishable under any other law in force in the Jervis Bay Territory (including any unwritten law) creating offences or imposing criminal liability for offences.

Note 1: Paragraph (a) of this definition includes an offence (an *ancillary Territory offence*) against section 11.1 (attempt), section 11.4 (incitement) or section 11.5 (conspiracy) of the *Criminal Code* or section 6 (accessory after the fact) of the *Crimes Act 1914* in relation to another Territory offence within the meaning of that paragraph.

Note 2: Paragraph (b) of this definition includes an offence (an *ancillary Territory offence*) against section 44 (attempt), section 47 (incitement) or section 48 (conspiracy) of the *Criminal Code 2002* of the Australian Capital Territory or section 181 (accessory after the fact) of the *Crimes Act 1900* of the Australian Capital Territory in relation to another Territory offence within the meaning of that paragraph.

Note 3: The laws of the Australian Capital Territory in force in the Jervis Bay Territory apply, and Chapter 2 of the *Criminal Code* does not apply, for the purpose of determining criminal liability for offences referred to in paragraph (b) of this definition.

#### 5 After subsection 3(3)

Insert:

(3A) Before the Governor-General makes a regulation prescribing a provision of a law for the purposes of paragraph (e) of the definition of *ancillary Territory offence* in subsection (1), the Minister must be satisfied that the provision is equivalent to, or has the same effect as, a provision referred to in paragraph (c) or (d) of that definition.

#### 6 Subsection 3(13)

Repeal the subsection.

#### 7 Paragraph 63(1)(a)

Omit “subsection 61(1)”, substitute “section 61”.

#### 8 Subparagraph 63(1)(a)(ia)

Omit “section 92A, 92B, 92C, 92D or 92E of the *Crimes Act 1900*”, substitute “section 51, 52, 53, 54 or 55 of the *Crimes Act 1900*”.



**9 Paragraph 63(1)(b)**

Repeal the paragraph, substitute:

- (b) an offence against section 61 that is based on an ancillary Territory offence in relation to a Territory offence referred to in paragraph (a).

**10 Paragraph 64(a)**

After “another offence”, insert “(other than an offence against section 61)”.

**11 Subsection 96(4)**

Omit “or a service offence that is an ancillary offence in relation to an offence against section 61”.

**12 Paragraph 104(a)**

Omit “subsection 61(1)”, substitute “section 61”.

**13 Subparagraph 104(a)(ii)**

Omit “section 92A, 92B, 92C, 92D or 92E of the Crimes Act 1900”, substitute “section 51, 52, 53, 54 or 55 of the *Crimes Act 1900*”.

**14 At the end of paragraph 104(a)**

Add:

- (iii) an offence prescribed for the purposes of this subparagraph; or
- (iv) an ancillary Territory offence in relation to a Territory offence referred to in subparagraph (i), (ii) or (iii); or

**15 Paragraph 104(c)**

Omit “paragraph (a) or (b)”, substitute “paragraph (b)”.

**16 Paragraph 142(1)(b)**

After “this Act” (first occurring), insert “(other than section 61)”.

**17 After paragraph 142(1)(b)**

Insert:

- (ba) an offence against section 61 that is based on an ancillary Territory offence against section 11.1 of the *Criminal Code*, or section 44 of the *Criminal Code 2002* of the Australian

Capital Territory, in relation to another Territory offence (the *first Territory offence*), is an alternative offence in relation to another offence against section 61 that is based on the first Territory offence;

**18 Paragraph 190(4)(a)**

Omit “subsection 61(1)”, substitute “section 61”.

## **Schedule 2—Inquiry officers**

### *Defence Act 1903*

#### **1 Paragraph 124(1)(gc)**

Omit “investigating”, substitute “inquiry”.

#### **2 Subsection 124(2A)**

Omit “investigating”, substitute “inquiry”.

#### **3 Subsection 124(2C)**

Omit “investigating” (wherever occurring), substitute “inquiry”.

## Schedule 3—Naval defence

### *Naval Defence Act 1910*

#### **1 Paragraph 38(5)(b)**

Omit “18”, substitute “20”.

#### **2 Subsection 38(6)**

Omit “19 years”, substitute “21 years or such lower age as is prescribed”.

## **Schedule 4—Military superannuation and benefits**

### ***Military Superannuation and Benefits Act 1991***

#### **1 Section 20**

Omit “other than Part 8”.

#### **2 Part 8**

Repeal the Part.

#### **3 Subsection 52(4)**

Repeal the subsection.

#### **4 Saving provision**

- (1) Despite the repeals and the amendment made by this Schedule, the *Military Superannuation and Benefits Act 1991* continues to apply, in relation to a person who was a member of the Scheme immediately before commencement, as if those repeals and that amendment had not happened.
- (2) For the purposes of Part 8 of the *Military Superannuation and Benefits Act 1991* as continued in force by this item, *salary* has whichever of the following meanings is applicable:
  - (a) the meaning prescribed by regulations under this paragraph;
  - (b) if no regulations are in force under paragraph (a)—the meaning given by Part 8 of the *Military Superannuation and Benefits Act 1991*, as in force immediately before commencement.
- (3) In this item:

**commencement** means the time at which this item commenced.

**Scheme** has the same meaning as in the *Military Superannuation and Benefits Act 1991*.

## **Schedule 5—Technical amendments relating to legislative instruments**

### ***Defence Act 1903***

#### **1 Subsection 52(1)**

Omit “instrument in writing”, substitute “legislative instrument”.

#### **2 Subsection 52(4)**

Repeal the subsection, substitute:

(4) Determinations are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

(4A) Paragraph 14(1)(a) of the *Legislative Instruments Act 2003* applies as if the reference to disallowable legislative instruments included a reference to instruments made under section 58B or 58H of the *Defence Act 1903*.

#### **3 Subsection 61CX(2)**

After “Minister may”, insert “, by legislative instrument,”.

#### **4 Subsection 61CX(3)**

Repeal the subsection.

#### **5 Section 116N**

Repeal the section.

#### **6 Subsection 116ZD(1)**

After “Minister may”, insert “, by legislative instrument,”.

#### **7 Subsection 116ZD(3)**

Repeal the subsection.

#### **8 Subsection 123G(1)**

After “Minister may”, insert “, by legislative instrument,”.

#### **9 Subsections 123G(3) and (4)**

Repeal the subsections.

***Defence Force Discipline Act 1982***

**10 Subsection 68(2)**

Omit “instrument in writing”, substitute “legislative instrument”.

**11 Subsection 68A(2)**

Omit “instrument in writing”, substitute “legislative instrument”.

**12 Section 68B**

Repeal the section.

**13 Subsection 149(1)**

Omit “(1)”.

**14 Subsection 149(1)**

After “General may”, insert “, by legislative instrument,”.

**15 Subsections 149(2) and (3)**

Repeal the subsections.

***Defence Force (Home Loans Assistance) Act 1990***

**16 Subsections 3C(1)**

After “Minister may”, insert “, by legislative instrument,”.

**17 Subsection 3C(3)**

Omit “by writing”, substitute “, by legislative instrument,”.

**18 Subsection 3C(5)**

Repeal the subsection.

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

**19 Subsection 49F(1)**

Omit “(1) The Minister may”, substitute “The Minister may, by legislative instrument,”.

**20 Subsections 49F(2) and (3)**

Repeal the subsections.

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

**21 Subsection 80E(1)**

Omit “(1) The Minister may”, substitute “The Minister may, by legislative instrument”.

**22 Subsections 80E(2) and (3)**

Repeal the subsections.

***Defence (Special Undertakings) Act 1952***

**23 Subsections 15(1), (2) and (3)**

Repeal the subsections, substitute:

- (1) Orders made under section 14 are legislative instruments for the purposes of the *Legislative Instruments Act 2003*.

***Explosives Act 1961***

**24 Subsections 16(1), (2) and (3)**

Repeal the subsections, substitute:

- (1) Orders made under the regulations are legislative instruments.

***Military Rehabilitation and Compensation Act 2004***

**25 Subsection 286(4)**

Omit “disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*”, substitute “legislative instrument”.

Note 1: The heading to subsection 286(1) is altered by omitting “written”.

Note 2: The heading to subsection 286(4) is altered by omitting “Disallowable” and substituting “Legislative”.

**26 Subsection 286(5)**

Repeal the subsection, substitute:

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(5) A determination under this section is taken to be made on the day on which the Minister approved the determination.

**27 Subsection 293(3) (definition of *specified rate per kilometre*)**

Omit “determines in writing”, substitute “, by legislative instrument, determines”.

**28 Subsection 293(4)**

Repeal the subsection.

***Military Superannuation and Benefits Act 1991***

**29 Subsection 2(1)**

Omit “7, sections 42 and 47, paragraph 49(1)(a) and sections”, substitute “7 and sections 42, 47 and”.

**30 Subsection 5(1)**

Omit “signed instrument”, substitute “legislative instrument signed by the Minister”.

**31 Subsection 5A(3)**

Omit “48(2) of the *Acts Interpretation Act 1901*”, substitute “12(2) of the *Legislative Instruments Act 2003*”.

**32 Subsection 30(1) (paragraph (f) of the definition of *eligible member*)**

Omit “in writing”, substitute “by legislative instrument”.

**33 Section 49**

Repeal the section.

***Naval Defence Act 1910***

**34 Subsection 42A(6)**

Repeal the subsection.

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*[Minister's second reading speech made in—  
Senate on 17 August 2005  
House of Representatives on 15 September 2005]*

(136/05)