



Defence Legislation Amendment Act (No. 1) 2009

No. 46, 2009

**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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Defence Legislation Amendment Act (No. 1) 2009

No. 46, 2009

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

[Assented to 24 June 2009]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Defence Legislation Amendment Act (No. 1) 2009*.

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.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
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.	24 June 2009
2. Schedule 1	The earlier of: (a) the 28th day after the day on which this Act receives the Royal Assent; and (b) 1 July 2009.	1 July 2009
3. Schedule 2	The 28th day after the day on which this Act receives the Royal Assent.	22 July 2009

Note: This table relates only to the provisions of this Act as originally passed by both Houses of 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Tactical payment scheme

Defence Act 1903

1 At the end of Part X

Add:

123H Tactical payment scheme for activities of the Defence Force outside Australia

- (1) The Minister may authorise the making of one or more payments to a person (even though the payments would not otherwise be authorised by law or required to meet a legal liability) if:
 - (a) the person suffers loss, damage or injury outside Australia because of an incident that occurs in the course of an activity of the Defence Force outside Australia; and
 - (b) the person is not an Australian citizen; and
 - (c) the Minister considers it appropriate to authorise the payments.
- (2) A payment cannot be made to the person more than 12 months after the relevant incident.
- (3) The total amount of the payments to the person must not be more than the amount specified in regulations in force for the purposes of subparagraph 65(2)(a)(ia) of the *Financial Management and Accountability Act 1997*.
- (4) This section does not limit, and is not limited by, section 33 of the *Financial Management and Accountability Act 1997*.

Note: Payments under this section must be made from money appropriated by the Parliament.

123J Delegations in relation to the tactical payment scheme

- (1) The Minister may, in writing, delegate his or her powers under section 123H to any of the following persons:
 - (a) the Secretary;
 - (b) the Chief of the Defence Force;

Schedule 1 Tactical payment scheme

- (c) an officer in command of an activity of the Defence Force outside Australia;
 - (d) an APS employee who holds, or performs the duties of, an APS 6 position, or an equivalent or higher position, in the Department.
- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Minister.

Schedule 2—Defence Home Ownership Assistance Scheme Act 2008

Part 1—Rejoining members

1 Section 3 (definition of *effective service*)

Omit “the person in accordance with the regulations”, substitute:

the person that:

- (a) if the person has, at any time before, on or after the commencing day, stopped being a member of the Defence Force, and, more than 5 years later, again become a member of the Defence Force—does not include service before the person again became a member of the Defence Force; and
- (b) in any case—is recognised as effective service in accordance with the regulations.

2 At the end of section 8 (after the note)

Add:

- (3) A person is not eligible as a serving member at a particular time if the person is eligible as a rejoining incapacitated member (see section 10) or as a rejoining member (see section 11) at that time.

Note: If a member of the Defence Force has had a break in service of more than 5 years before rejoining the Defence Force, the member’s service before rejoining the Defence Force no longer counts as effective service (see the definition of *effective service* in section 3).

3 Paragraphs 10(1)(b) and 11(c)

Omit “on or after 1 July 2008,”, substitute “before, on or after the commencing day,”.

4 Application—rejoining members amendments

The amendments made by this Part apply in relation to:

- (a) a decision in respect of the giving of a subsidy certificate under section 16 of the *Defence Home Ownership Assistance Scheme Act 2008*, if the decision is made on or after the day the amendments commence; and

Schedule 2 Defence Home Ownership Assistance Scheme Act 2008

Part 1 Rejoining members

- (b) the payment of subsidy to a person under that Act during an entitlement period, if the subsidy certificate to which the entitlement period relates was given to the person on or after the day the amendments commence.

Note: The amendments commence 28 days after the day this Act receives the Royal Assent.

Part 2—Subsidy certificates and service credits

5 Subsection 16(2)

Omit “if section 17, 18, 19 or 20 applies”, substitute:

if:

- (a) section 17, 18, 19 or 20 applies; and
- (b) either:
 - (i) the applicant has a service credit (see section 46); or
 - (ii) for a case in which section 18 (surviving partners) applies—the applicant has a service credit, or would, if the subsidy certificate were in force, have a service credit (because of the operation of section 63).

Note: As soon as a subsidy certificate given under section 18 (surviving partners) comes into force, the surviving partner has the service credit the deceased partner would have had, if he or she had not died (see sections 63 and 64).

6 After subparagraph 22(b)(i)

Insert:

- (ia) if the person who holds the subsidy certificate is not a member of the Defence Force (or has stopped being a member of the Defence Force)—as soon as the person no longer has a service credit (see section 46);

7 Application—subsidy certificates and service credits amendments

- (1) The amendment made by item 5 applies in relation to a decision in respect of the giving of a subsidy certificate under section 16 of the *Defence Home Ownership Assistance Scheme Act 2008*, if the decision is made on or after the day the amendment commences.
- (2) The amendment made by item 6 applies in relation to a subsidy certificate given to a person under section 16 of the *Defence Home Ownership Assistance Scheme Act 2008* on or after the day the amendment commences.

Note: The amendments commence 28 days after the day this Act receives the Royal Assent.

Part 3—Subsidy lump sums

8 Section 26

Repeal the section, substitute:

26 Entitlement—form of subsidy

Subsidy is only payable to a person in the form of:

- (a) monthly subsidy worked out under section 49; or
- (b) both of the following:
 - (i) monthly subsidy worked out under section 49;
 - (ii) a subsidy lump sum worked out under section 54.

Note: A subsidy lump sum is only payable to a member of the Defence Force, and is only payable in relation to the first residential property bought while the person is a member of the Defence Force (see section 34).

9 Paragraph 34(1)(f)

Repeal the paragraph, substitute:

- (f) the Secretary must be satisfied that there is a reasonable expectation that monthly subsidy will be payable to the subsidised borrower during an entitlement period of:
 - (i) if the subsidised borrower is, at the time, a member of the Permanent Forces—at least one month; or
 - (ii) if the subsidised borrower is, at the time, a member of the Reserves—at least the number of months remaining in the service year;
- (g) subsection (2) (previous home ownership etc.) must not apply.

10 Subsection 34(2)

Repeal the subsection, substitute:

Previous home ownership etc.

- (2) This subsection applies if all of the following conditions are met:

- (a) the subsidised borrower has, at a time when the subsidised borrower was a member of the Defence Force, bought an interest in land in Australia;
- (b) the purchase results in the borrower, or the borrower and his or her partner together, holding a 50% or greater interest in the land:
 - (i) no matter whether the interest is held individually, as joint tenants or tenants in common; and
 - (ii) no matter whether the interest is legal or equitable;
- (c) at some time while such an interest is held:
 - (i) there is a house on the land; and
 - (ii) the house is occupied by the borrower or another person as a home, or could be occupied by the borrower or another person as a home;
- (d) either:
 - (i) the interest in land is not the interest in relation to which the request for lump sum subsidy is made; or
 - (ii) if the interest in land is the interest in relation to which the request for lump sum subsidy is made—the interest was bought before the Secretary gave the borrower the subsidy certificate on the basis of which the lump sum subsidy is requested.

11 Application—subsidy lump sum amendments

The amendments made by this Part apply in relation to a request for the payment of a subsidy lump sum made under paragraph 34(1)(a) of the *Defence Home Ownership Assistance Scheme Act 2008*, if the request is made on or after the day the amendments commence.

Note: The amendments commence 28 days after the day this Act receives the Royal Assent.

Part 4—Shared liability

12 Section 3

Insert:

loan limit has the meaning given by section 51 (monthly subsidy—loan capital), as affected by sections 51A and 51B (liability for subsidised loans shared between partners).

13 Paragraph 28(4)(c)

Repeal the paragraph, substitute:

(c) to each of 2 subsidised borrowers in his or her own right in relation to the same loan.

Note: Special rules may apply for working out the amount of loan capital (which affects the amount of subsidy) if a subsidised borrower and another person are liable in respect of the same subsidised loan (see sections 51A, 51B and 51C).

14 Subsection 51(1)

After “payable”, insert “to a subsidised borrower”.

15 Paragraph 51(1)(a)

After “owing”, insert “by the subsidised borrower”.

16 Paragraph 51(1)(b)

Repeal the paragraph, substitute:

(b) the amount of the subsidised borrower’s loan limit (see subsection (2)), as applicable from time to time during the entitlement period.

17 At the end of subsection 51(1)

Add:

Note: Special rules may apply for working out the amount of loan capital if a subsidised borrower and another person are liable in respect of the same subsidised loan (see sections 51A, 51B and 51C).

18 Subsection 51(2)

Omit “The loan limit at a particular time (the *loan limit time*) for a subsidised loan to a subsidised borrower”, substitute “The *loan limit* at a particular time (the *loan limit time*) for a subsidised borrower”.

19 Subsections 51(4) and (5)

Repeal the subsections (including the heading to subsection (4) and the note to subsection (5)).

20 After section 51

Insert:

51A Monthly subsidy—shared liability between partners for subsidised loans

Scope

- (1) This section applies to a subsidised borrower if the borrower and his or her partner are parties to a single subsidised loan, whether they are liable jointly and severally, or individually.

Loan capital rules

- (2) The following table has effect for the purposes of section 51:

Shared liability between partners			
Item	If...	the capital amount owing by the subsidised borrower on the subsidised loan on the first authorisation day for the entitlement period is taken to be...	the amount of the subsidised borrower’s loan limit at a particular time is...
1	both of the parties to the loan are subsidised borrowers	50% of the total capital amount owing on the subsidised loan at that time	the average of the amounts of the loan limits that would apply in relation to each of the subsidised borrowers at that time if he or she were the sole party to the loan.

Shared liability between partners

Item	If...	the capital amount owing by the subsidised borrower on the subsidised loan on the first authorisation day for the entitlement period is taken to be...	the amount of the subsidised borrower's loan limit at a particular time is...
2	only one of the parties to the loan is a subsidised borrower	100% of the total capital amount owing on the subsidised loan at that time	the loan limit that applies under subsection 51(2) at that time.

51B Monthly subsidy—shared liability between partners for subsidised loans if partner dies etc.

Scope

- (1) This section applies to a subsidised borrower (the *surviving borrower*) if:
- (a) the borrower's partner (the *deceased borrower*) has died; and
 - (b) at the time of death, item 1 of the table in subsection 51A(2) applied to the surviving borrower and the deceased borrower because:
 - (i) they were parties to a single subsidised loan; and
 - (ii) each of them was a subsidised borrower in his or her own right; and
 - (c) with effect from the time of death, the entitlement of the deceased borrower to the payment of subsidy in relation to the subsidised loan is transferred to the surviving borrower under section 60 (joint interest in land) or 61 (inherited interest in land).

Loan capital rules

- (2) At and after the time of death:
- (a) item 1 of the table in subsection 51A(2) continues to apply to the surviving borrower, in his or her own right, in relation to the subsidised loan; and

- (b) for the purposes of that application, the amount of the surviving borrower's loan limit at a particular time (the *loan limit time*) is the average of the amounts of the loan limits that would apply in relation to the surviving borrower and the deceased borrower at the loan limit time if:
- (i) the deceased borrower were still alive, and had the loan limit (under subsection 51(2)) that would have applied to him or her at the time of death if he or she were the sole party to the loan; and
 - (ii) the surviving borrower had the loan limit (under subsection 51(2)) that would apply to him or her at the loan limit time if he or she were the sole party to the loan.

Note: This section applies only to the surviving borrower's entitlement to subsidy in his or her own right, and not to the entitlement transferred from the deceased borrower (as mentioned in paragraph (1)(c)). For how the transferred entitlement applies to the surviving borrower, see sections 64 and 65.

51C Monthly subsidy—joint and several liability for subsidised loans between non-partners

Scope

- (1) This section applies to a subsidised borrower if:
- (a) the borrower is jointly and severally liable with another person in respect of the subsidised loan; and
 - (b) the other person is not the borrower's partner.

Loan capital rules

- (2) For the purposes of section 51:
- (a) the capital amount owing by the subsidised borrower on the subsidised loan on the first authorisation day for the entitlement period is taken to be 50% of the total capital amount owing on the subsidised loan at that time; and
 - (b) at any particular time, the subsidised borrower has the loan limit that applies under subsection 51(2).

Note 1: If liability for the subsidised loan is shared between the subsidised borrower and his or her partner, see sections 51A and 51B.

Note 2: If the subsidised borrower and another person (other than the borrower's partner) are liable individually in respect of the subsidised

loan, section 51 applies in relation to the actual capital amount owing by the borrower on the subsidised loan.

21 Application—shared liability amendments

The amendments made by this Part apply in relation to the payment of subsidy under the *Defence Home Ownership Assistance Scheme Act 2008* to a person during an entitlement period that starts on or after the day the amendments commence.

Note: The amendments commence 28 days after the day this Act receives the Royal Assent.

Part 5—Delegations

22 Paragraph 81(2)(a)

Omit “73,”.

23 Transitional—delegations amendment

Application

- (1) The amendment made by this Part applies to a delegation given under subsection 81(2) of the *Defence Home Ownership Assistance Scheme Act 2008* on or after the day the amendment commences.

Saving

- (2) A delegation in force under subsection 81(2) of the *Defence Home Ownership Assistance Scheme Act 2008* immediately before the day the amendment made by this Part commences continues to have effect, on and after that day, as if it were a delegation under that subsection as amended by this Part.

Note: The amendment commences 28 days after the day this Act receives the Royal Assent.

[*Minister’s second reading speech made in—
House of Representatives on 18 March 2009
Senate on 17 June 2009*]