



# **Defence Legislation (Enhancement of Military Justice) Act 2015**

**No. 106, 2015**

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

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



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	2
<b>Schedule 1—Main amendments</b>		<b>3</b>
	<i>Defence Force Discipline Act 1982</i>	3
<b>Schedule 2—Director of Defence Counsel Services</b>		<b>11</b>
	<i>Defence Act 1903</i>	11
	<i>Defence Force Discipline Act 1982</i>	14
<b>Schedule 3—Amendments relating to certain office holders</b>		<b>15</b>
	<i>Military Justice (Interim Measures) Act (No. 1) 2009</i>	15





# Defence Legislation (Enhancement of Military Justice) Act 2015

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

[Assented to 30 June 2015]

The Parliament of Australia enacts:

### 1 Short title

This Act may be cited as the *Defence Legislation (Enhancement of  
Military Justice) Act 2015*.

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## **2 Commencement**

This Act commences on the day after this Act receives the Royal Assent.

## **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

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

#### **1 Subsection 3(1) (definition of *old system offence*)**

Repeal the definition.

#### **2 Subsection 3(1) (definition of *previous service law*)**

Repeal the definition.

#### **3 Subsection 3(1) (subparagraph (b)(ii) of the definition of *service offence*)**

Omit “civilian; or”, substitute “civilian.”.

#### **4 Subsection 3(1) (paragraph (c) of the definition of *service offence*)**

Repeal the paragraph.

#### **5 Subsection 3(1) (at the end of the definition of *service offence*)**

Add:

Note: A service offence is an offence against a law of the Commonwealth: see section 3A.

#### **6 Subsection 3(15)**

Repeal the subsection.

#### **7 After section 3**

Insert:

#### **3A Character of service offences**

For the purposes of any law of the Commonwealth other than this Act or the regulations, a service offence is an offence against a law of the Commonwealth.

#### **8 Section 10**

Omit “, other than old system offences”.

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**9 Subsection 11(4)**

Repeal the subsection.

**10 After section 33**

Insert:

**33A Assault occasioning actual bodily harm**

A person who is a defence member or a defence civilian is guilty of an offence if:

- (a) the person is:
  - (i) on service land; or
  - (ii) in a service ship, service aircraft or service vehicle; or
  - (iii) in a public place; and
- (b) the person assaults another person; and
- (c) the assault causes actual bodily harm to the other person.

Penalty: Imprisonment for 5 years.

**11 Paragraphs 40D(1)(d) and (2)(d)**

Omit "\$100", substitute "3 penalty units".

**12 At the end of Subdivision C of Division 5A of Part III**

Add:

**47Q Unauthorised use of Commonwealth credit card**

- (1) A person who is a defence member or a defence civilian is guilty of an offence if the person uses a Commonwealth credit card, or a Commonwealth credit card number, to obtain cash, goods or services otherwise than for the Commonwealth.

Maximum punishment: Imprisonment for 5 years.

- (2) Subsection (1) does not apply to a particular use of a Commonwealth credit card or Commonwealth credit card number if the person has lawful authority for the use.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) In this section:
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**Commonwealth credit card** means a credit card issued to, or made available for use by, the Commonwealth to enable the Commonwealth to obtain cash, goods or services on credit.

### **13 Paragraphs 59(3)(f), (5)(e) and (6)(e)**

Omit “\$100”, substitute “3 penalty units”.

### **14 Section 62**

Repeal the section, substitute:

### **62 Commanding or ordering a service offence to be committed**

- (1) A defence member who commands or orders a person to commit a service offence (the *relevant service offence*) is guilty of an offence.

Maximum punishment:

- (a) if the relevant service offence is punishable by a fixed punishment—that fixed punishment; or
  - (b) otherwise—a punishment that is not more severe than the maximum punishment for the relevant service offence.
- (2) For the defence member to be guilty, the defence member must be reckless as to whether the relevant service offence is committed.
- (3) Subsection (2) has effect subject to subsection (6).
- (4) The defence member may be found guilty even if:
- (a) the relevant service offence is not committed; or
  - (b) committing the relevant service offence is impossible.
- (5) Any defences, procedures, limitations or qualifying provisions that apply to the relevant service offence apply also to the offence of commanding or ordering a person to commit the relevant service offence.
- (6) Any special liability provisions (within the meaning of the *Criminal Code*) that apply to the relevant service offence apply also to the offence of commanding or ordering a person to commit the relevant service offence.

(7) It is not an offence to command or order a person to commit an offence against any of the following provisions of the *Criminal Code*:

- (a) section 11.1 (attempt);
- (b) section 11.4 (incitement);
- (c) section 11.5 (conspiracy).

**15 Section 65**

Repeal the section.

**16 Subparagraph 68(1)(h)(ii)**

Omit “\$500”, substitute “15 penalty units”.

**17 Subsection 72(1)**

Omit “Sections 16, 19A to 19AZD (other than section 19AH), 20, 20A and 20AA of the *Crimes Act 1914*”, substitute “Sections 16 and 19A to 19AZD (other than section 19AH) of the *Crimes Act 1914* (the *applied Crimes Act provisions*)”.

**18 After subsection 72(1)**

Insert:

- (1A) Despite the applied Crimes Act provisions, a service tribunal that imposes a punishment of imprisonment for a specific period (the *sentence*) on a convicted person:
- (a) must not make a recognizance release order in relation to the person; and
  - (b) may fix a non-parole period in respect of the sentence, even if:
    - (i) the sentence does not exceed 3 years; or
    - (ii) if 2 or more sentences are imposed—the sentences in the aggregate do not exceed 3 years.

**19 Subsection 72(2)**

Omit “the provisions of the *Crimes Act 1914* as applied by virtue of subsection (1) to the service tribunal shall”, substitute “the applied Crimes Act provisions, as modified by subsection (1A), is to”.

**20 At the end of section 72**

Add:

- (3) In addition to the effect of the provisions of Division 5 of Part IB of the *Crimes Act 1914* (as applied by subsection (1) and modified by subsection (1A)), those provisions have the same effect in relation to a non-parole period fixed by a service tribunal in respect of a sentence of, or sentences aggregating, 3 years or less as those provisions have in relation to a non-parole period fixed by a service tribunal in respect of a sentence of, or sentences aggregating, more than 3 years but less than 10 years.

**21 Subsection 79(2)**

Omit “an amount not less than \$100”, substitute “3 penalty units or more”.

**22 Subsection 96(5)**

Repeal the subsection.

**23 Subsection 105A(2)**

Repeal the subsection, substitute:

- (2) The charge may be referred to the Director of Military Prosecutions by:
- (a) a commanding officer in relation to the person; or
  - (b) an officer who is superior to a commanding officer.

**24 Section 131B**

Repeal the section.

**25 At the end of paragraphs 142(1)(a), (b), (ba) and (c)**

Add “and”.

**26 Paragraph 142(1)(d)**

Omit “offence; and”, substitute “offence.”.

**27 Paragraph 142(1)(e)**

Repeal the paragraph.

**28 Paragraph 144(4)(b)**

Repeal the paragraph.

**29 Section 169BB (cell at table item 2, column headed “Relevant discipline officer”)**

Repeal the cell, substitute:

Any discipline officer

**30 After section 190**

Insert:

**190A Disclosing certain convictions of service offences by a court martial or a Defence Force magistrate**

- (1) This section applies if, before or after the commencement of this section, a court martial or a Defence Force magistrate:
  - (a) convicts a person of a service offence (other than a Schedule 1A offence); or
  - (b) convicts a person of a Schedule 1A offence and imposes a punishment of imprisonment on the person.
- (2) A service chief or an authorized officer may disclose the fact that a person has been convicted of the offence, and any information relating to the conviction, to an authority of the Commonwealth, or of a State or a Territory, for purposes connected with investigating, prosecuting or keeping records in relation to offences against laws of the Commonwealth, the State or the Territory.
- (3) For the purpose of complying with a requirement or an authorisation to disclose, for a lawful purpose, the fact that a person has been convicted of an offence against a law of the Commonwealth that is a service offence, the disclosure must expressly refer to the offence as a service offence.

Note: Part VIIC of the *Crimes Act 1914* exempts a person from having to disclose a spent conviction.

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**190B Disclosing certain convictions by a summary authority, a court martial or a Defence Force magistrate**

- (1) This section applies if, before or after the commencement of this section:
  - (a) a summary authority convicts a person of a service offence;  
or
  - (b) a court martial or a Defence Force magistrate convicts a person of a Schedule 1A offence and does not impose a punishment of imprisonment on the person.
- (2) The conviction has effect for service purposes only.
- (3) The convicted person is not required to disclose to any person, for any purpose (other than a service purpose), the fact that the person has been convicted of the offence.

Note: A person who has been convicted of an offence to which this section applies is not required to disclose the conviction for service purposes if the conviction is spent within the meaning of Part VIIC of the *Crimes Act 1914*.

- (4) Subsections (2) and (3) have effect despite section 3A.

**31 Paragraph 191(1)(c)**

Repeal the paragraph.

**32 Schedule 1**

Repeal the Schedule.

**33 Clause 2 of Schedule 2 (table, column 2)**

Omit “of an amount not exceeding \$500.”, substitute “not exceeding 15 penalty units”.

**34 Subclause 1(4) of Schedule 3 (table item 2, column 2)**

Omit “exceeding \$100 but not exceeding \$250”, substitute “not exceeding 7 penalty units”.

**35 Subclause 1(4) of Schedule 3 (table item 2, column 3)**

Omit “\$100”, substitute “3 penalty units”.

**36 Subclause 2(3) of Schedule 3 (table item 5, column 2)**

Omit “exceeding \$100 but not exceeding \$250”, substitute “not exceeding 7 penalty units”.

**37 Subclause 2(3) of Schedule 3 (table item 5, column 3)**

Omit “\$100”, substitute “3 penalty units”.

## **Schedule 2—Director of Defence Counsel Services**

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

#### **1 Subsection 4(1)**

Insert:

***accused person*** has the same meaning as in the *Defence Force Discipline Act 1982*.

***court martial*** means a court martial convened under the *Defence Force Discipline Act 1982*.

***Defence Force magistrate*** has the same meaning as in the *Defence Force Discipline Act 1982*.

***Director of Defence Counsel Services*** means the person appointed under subsection 110ZA(2) as the Director of Defence Counsel Services or a person acting as the Director of Defence Counsel Services.

***legal officer*** has the same meaning as in the *Defence Force Discipline Act 1982*.

***legal practitioner*** has the same meaning as in the *Defence Force Discipline Act 1982*.

#### **2 Subsection 61CU(5)**

Omit “lawyer”, substitute “legal practitioner”.

#### **3 Subsection 89(2)**

Repeal the subsection, substitute:

(2) In this section:

***judge advocate*** has the same meaning as in the *Defence Force Discipline Act 1982*.

***summary authority*** has the same meaning as in the *Defence Force Discipline Act 1982*.

**4 Section 110T (definition of *lawyer*)**

Repeal the definition.

**5 Paragraph 110XH(2)(d)**

Omit “lawyer”, substitute “legal practitioner”.

**6 After Part VIIC**

Insert:

**Part VIID—Director of Defence Counsel Services**

**110ZA Director of Defence Counsel Services**

- (1) There is to be a Director of Defence Counsel Services.
- (2) The Director of Defence Counsel Services is to be appointed by the Chief of the Defence Force by written instrument.
- (3) The Chief of the Defence Force must not appoint a person to be the Director of Defence Counsel Services unless the person:
  - (a) is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
  - (b) is a member of the Permanent Forces or is a member of the Reserves who is rendering continuous full-time service; and
  - (c) holds a rank not lower than the naval rank of captain or the rank of colonel or group captain.

**110ZB Functions and powers of the Director of Defence Counsel Services**

- (1) The Director of Defence Counsel Services has the following functions:
  - (a) to manage the provision of legal representation and advice by legal officers to accused persons, for the purposes of a trial by a court martial or a Defence Force magistrate, to the extent that the exigencies of service permit;
  - (b) to arrange for the attendance of witnesses, to the extent that the exigencies of service permit, on behalf of an accused person referred to in paragraph (a);



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- (c) to establish and maintain, in accordance with subsection 101F(2) of the *Defence Force Discipline Act 1982*, lists of legal officers willing to assist persons in custody;
  - (d) to manage the provision of legal representation and advice by legal officers to persons entitled to such representation or advice, for the purposes of a court of inquiry, a board of inquiry or a Chief of the Defence Force commission of inquiry conducted under regulations made under paragraph 124(1)(gc);
  - (e) such other functions as the Chief of the Defence Force directs in writing;
  - (f) such other functions as are conferred on the Director of Defence Counsel Services by or under this Act or any other law of the Commonwealth;
  - (g) to do anything incidental or conducive to the performance of any of the preceding functions.
- (2) The Director of Defence Counsel Services has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.
- (3) A direction given under paragraph (1)(e) is not a legislative instrument.

### **110ZC Delegation**

The Director of Defence Counsel Services may delegate all or any of his or her powers and functions to:

- (a) a defence member holding a rank not lower than lieutenant commander, major or squadron leader; or
- (b) a person whose classification level appears in Group 7 or a higher Group of Schedule 1 to the Classification Rules under the *Public Service Act 1999*; or
- (c) a person who is acting in a position usually occupied by a person with a classification level of the kind mentioned in paragraph (b).

### **110ZD Protection from action**

An action, suit or proceeding does not lie against:

- (a) the Director of Defence Counsel Services; or
- (b) a person assisting the Director;

in relation to an act done, or omitted to be done, in good faith in the performance or purported performance of a function, or the exercise or purported exercise of a power, conferred on the Director by or under this Act or any other law of the Commonwealth.

**7 Subsection 122B(1)**

Omit “(1)”.

**8 Subsection 122B(2)**

Repeal the subsection.

***Defence Force Discipline Act 1982***

**9 Subsection 3(1)**

Insert:

*Director of Defence Counsel Services* has the same meaning as in the *Defence Act 1903*.

**10 Subsection 101F(2)**

Omit “Chief of the Defence Force shall”, substitute “Director of Defence Counsel Services must”.

**11 Subsection 101F(2)**

Omit “Chief of the Defence Force thinks”, substitute “Director thinks”.

**12 Subsection 101F(2A)**

Repeal the subsection.

**13 Saving—list of legal officers**

A list that was in force under subsection 101F(2) of the *Defence Force Discipline Act 1982* immediately before the commencement of this Schedule continues in force on and after that commencement as if it had been established under that subsection as amended by this Schedule.

## **Schedule 3—Amendments relating to certain office holders**

### ***Military Justice (Interim Measures) Act (No. 1) 2009***

#### **1 Subparagraph 2(3)(a)(i) of Schedule 3**

Omit “6 years”, substitute “8 years”.

#### **2 Subparagraph 2(3)(a)(ii) of Schedule 3**

Omit “6 year”, substitute “8 year”.

#### **3 Subitem 2(7A) of Schedule 3**

Omit “Subsection 188A(2) of the amended Defence Force Discipline Act does”, substitute “Subsections 188A(2) and (3) of the amended Defence Force Discipline Act do”.

#### **4 Subitem 2(8) of Schedule 3**

Omit “subsection 188A(3) and”.

#### **5 Paragraph 3(1)(a) of Schedule 3**

Omit “6 year”, substitute “8 year”.

#### **6 Subparagraph 4(3)(a)(i) of Schedule 3**

Omit “6 years”, substitute “8 years”.

#### **7 Subparagraph 4(3)(a)(ii) of Schedule 3**

Omit “6 year”, substitute “8 year”.

#### **8 Paragraph 5(1)(a) of Schedule 3**

Omit “6 year”, substitute “8 year”.

#### **9 Subitem 8(1) of Schedule 3**

Omit “6 year”, substitute “8 year”.

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*[Minister's second reading speech made in—  
House of Representatives on 26 March 2015  
Senate on 15 June 2015]*

*(50/15)*

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*Defence Legislation (Enhancement of Military Justice) Act 2015*

*No. 106, 2015*