



Defence Legislation Amendment (2017 Measures No. 1) Act 2017

No. 117, 2017

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	3
Schedule 1—Testing for prohibited substances		4
Part 1—Testing		4
<i>Defence Act 1903</i>		4
Part 2—Positive test results		5
<i>Defence Act 1903</i>		5
Part 3—Accredited laboratories		8
<i>Defence Act 1903</i>		8
Schedule 2—Reserve service		9
Part 1—Scope of protections		9
Division 1—Scope of Parts 5, 6 and 7 of the Defence Reserve Service (Protection) Act 2001		9
<i>Defence Reserve Service (Protection) Act 2001</i>		9
Division 2—Scope of Parts 8, 9 and 10 of the Defence Reserve Service (Protection) Act 2001		10
<i>Defence Reserve Service (Protection) Act 2001</i>		10
Division 3—Definition of defence service		18
<i>Defence Reserve Service (Protection) Act 2001</i>		18
Part 2—Enforcement and remedies		19
Division 1—Main amendments		19
<i>Defence Reserve Service (Protection) Act 2001</i>		19
Division 2—Amendments contingent on the Regulatory Powers (Standardisation Reform) Act 2017		26
<i>Defence Reserve Service (Protection) Act 2001</i>		26
<i>Regulatory Powers (Standardisation Reform) Act 2017</i>		27
Part 3—Discrimination and harassment		28
<i>Defence Reserve Service (Protection) Act 2001</i>		28
Part 4—Employment protection		32

<i>Defence Reserve Service (Protection) Act 2001</i>	32
Part 5—Education protection	37
<i>Defence Reserve Service (Protection) Act 2001</i>	37
Part 6—Jurisdiction of courts	40
<i>Defence Reserve Service (Protection) Act 2001</i>	40
Part 7—Other provisions	41
Schedule 3—Australian Geospatial-Intelligence Organisation	42
<i>Intelligence Services Act 2001</i>	42
<i>Navigation Act 2012</i>	44
<i>Telecommunications Act 1997</i>	45
Schedule 4—Australian Defence Force Cover Act 2015	46
Part 1—Medical discharge	46
<i>Australian Defence Force Cover Act 2015</i>	46
Part 2—Eligible children	50
<i>Australian Defence Force Cover Act 2015</i>	50
Part 3—Other amendments	54
<i>Australian Defence Force Cover Act 2015</i>	54



Defence Legislation Amendment (2017 Measures No. 1) Act 2017

No. 117, 2017

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

[Assented to 30 October 2017]

The Parliament of Australia enacts:

1 Short title

This Act is the *Defence Legislation Amendment (2017 Measures No. 1) Act 2017*.

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
Provisions	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	30 October 2017
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	30 April 2018
3. Schedule 2, Part 1	The 28th day after this Act receives the Royal Assent.	27 November 2017
4. Schedule 2, Part 2, Division 1	The 28th day after this Act receives the Royal Assent.	27 November 2017
5. Schedule 2, item 73	The 28th day after this Act receives the Royal Assent. However, the provisions do not commence at all if Schedule 6 to the <i>Regulatory Powers (Standardisation Reform) Act 2017</i> commences on or before that day.	27 November 2017
6. Schedule 2, item 74	Immediately before the commencement of Schedule 6 to the <i>Regulatory Powers (Standardisation Reform) Act 2017</i> . However, the provisions do not commence at all if that Schedule commences on or before the 28th day after this Act receives the Royal Assent.	6 November 2018
7. Schedule 2, Parts 3 to 7	The 28th day after this Act receives the Royal Assent.	27 November 2017

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
8. Schedules 3 and 4	The day after this Act receives the Royal Assent.	31 October 2017

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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—Testing for prohibited substances

Part 1—Testing

Defence Act 1903

1 Section 93 (definition of *narcotic substance*)

Repeal the definition.

2 Section 93 (definition of *prohibited substance*)

Repeal the definition, substitute:

prohibited substance means a substance that is a prohibited substance because of a determination under subsection 93B(1).

3 Paragraph 95(2)(b)

After “must not”, insert “, subject to subsection (4),”.

4 At the end of section 95

Add:

- (3) The person being tested may request that the test be conducted in the presence of one particular person (in addition to any person whose presence is necessary for the purposes of conducting or supervising the test).
- (4) If the person being tested makes such a request, the test may be conducted in the presence of the person requested.
- (5) To avoid doubt, the test may be conducted even if the requested person is not present.

5 Application of amendments

The amendments made by this Part apply in relation to a prohibited substance test conducted on or after the commencement of this item.

Part 2—Positive test results

Defence Act 1903

6 Section 93 (definition of *relevant authority*)

Repeal the definition.

7 Section 93

Insert:

terminate the service of a person to whom this Part applies means:

- (a) if the person is a defence member—terminate the service of the member; or
- (b) if the person is a defence civilian—terminate the arrangement under which the person is a defence civilian.

8 At the end of subsection 98(1)

Add “, unless the result must be disregarded under subsection (2)”.

9 Subsection 98(2)

Repeal the subsection, substitute:

- (2) A positive test result must be disregarded in the circumstances (if any) specified in the Defence Instructions.

10 Subsection 100(1)

Omit “relevant authority in relation to the person”, substitute “Chief of the Defence Force”.

11 Paragraph 100(1)(b)

Repeal the paragraph, substitute:

- (b) invite the person to give to the Chief of the Defence Force a written statement of reasons as to why the person’s service should not be terminated.

12 Subsection 100(2)

Omit “relevant authority”, substitute “Chief of the Defence Force”.

13 Sections 101 to 104

Repeal the sections, substitute:

101 Termination

- (1) The Chief of the Defence Force must terminate the service of a person if:
 - (a) the person is given a notice under section 100; and
 - (b) either:
 - (i) the person does not give to the Chief of the Defence Force, within the period specified in the notice, a statement of reasons why the service should not be terminated; or
 - (ii) having considered such a statement given by the person, the Chief of the Defence Force is of the opinion that the service should be terminated.
- (2) The termination must be in writing, and a copy given to the person.
- (3) The termination takes effect on the day specified in it, which must be a day occurring:
 - (a) on or after the day a copy of the termination is given to the person; and
 - (b) no later than 3 months after the day referred to in paragraph (a).

Delegates

- (4) If a delegate of the Chief of the Defence Force gives a notice to a person under section 100, the same delegate must not terminate the service of the person under this section.

Note 1: The Chief of the Defence Force or another delegate may terminate the service instead of the first delegate.

Note 2: For delegations, see subsection 120A(3D).

14 After paragraph 109(1)(i)

Insert:

- (ia) the circumstances in which a positive test result must be disregarded;

15 Subsection 120A(3)

Repeal the subsection.

16 Paragraph 120A(3D)(e)

Omit “, 101, 103 and 104”, substitute “and 101”.

17 Application of amendments

The amendments made by this Part apply in relation to a positive test result returned by a prohibited substance test after the commencement of this item, whether the test was conducted before, on or after that commencement.

Part 3—Accredited laboratories

Defence Act 1903

18 Section 93 (definition of *accredited authority*)

Repeal the definition.

19 Section 93

Insert:

accredited laboratory means a laboratory or other body, or a person, specified in the Defence Instructions to be an accredited laboratory for the purposes of this Part.

20 Section 93 (definition of *positive test result*)

Omit “accredited authority”, substitute “accredited laboratory”.

21 Section 108

Omit “accredited authority”, substitute “accredited laboratory”.

22 Paragraph 109(1)(b)

Omit “accredited authorities”, substitute “accredited laboratories”.

Schedule 2—Reserve service

Part 1—Scope of protections

Division 1—Scope of Parts 5, 6 and 7 of the Defence Reserve Service (Protection) Act 2001

Defence Reserve Service (Protection) Act 2001

1 Subsections 3(5) and (6)

Omit “(except for certain kinds of voluntary continuous full time service)”.

2 Subsection 3(7)

Omit “continuous full time defence service (except for certain kinds of voluntary continuous full time service)”, substitute “defence service”.

3 Section 11 (table items 2, 3 and 4)

Repeal the items, substitute:

2	Part 5	Employment protection	All kinds of defence service
3	Part 6	Partnership protection	All kinds of defence service
4	Part 7	Education protection	All kinds of defence service

4 Section 12

Repeal the section.

5 Subsection 24(1)

Omit “except for certain kinds of voluntary continuous full time service (see Part 3)”.

6 Subsection 30(1)

Omit “to which this Part applies”.

7 Subsection 30(1) (note)

Repeal the note.

8 Subsection 34(1)

Omit “except for certain kinds of voluntary continuous full time service (see Part 3)”.

9 Subsection 37(1)

Omit “continuous full time defence service except for certain kinds of voluntary continuous full time service (see Part 3)”, substitute “defence service”.

10 Application of amendments

The amendments made by this Division apply in relation to defence service that a member starts to render on or after the commencement of this item.

Division 2—Scope of Parts 8, 9 and 10 of the Defence Reserve Service (Protection) Act 2001

Defence Reserve Service (Protection) Act 2001

11 Subsections 3(8) and (9)

Repeal the subsections, substitute:

- (8) Part 8 postpones debts that a member (or his or her dependant) is liable to pay and that would otherwise fall due after the member starts rendering:

- (a) defence service as a result of a call out; or
- (b) operational service.

Interest accrues on the postponed debts. Part 8 also stays proceedings in respect of the postponed debts.

- (9) Part 9 protects a member or his or her dependant from bankruptcy proceedings. It applies only if the member has rendered:

- (a) defence service as a result of a call out; or
- (b) operational service.

12 Subsection 3(10)

Omit “after being called out”, substitute “as a result of a call out”.

13 Section 7

Insert:

call out means an order under section 28, 51A, 51AA, 51AB, 51B, 51C or 51CA of the *Defence Act 1903*.

14 Section 7 (definition of *call out day*)

Repeal the definition.

15 Section 7

Insert:

financial arrangement has the meaning given by section 40A.

operational service:

- (a) subject to paragraph (d), includes defence service in circumstances involving one or more of the following:
 - (i) war (within the meaning of the *Defence Act 1903*) or warlike operations;
 - (ii) a time of defence emergency (within the meaning of the *Defence Act 1903*);
 - (iii) defence preparation;
 - (iv) peacekeeping or peace enforcement;
 - (v) assistance to Commonwealth, State, Territory or foreign government authorities and agencies in matters involving Australia's national security or affecting Australian defence interests;
 - (vi) support to community activities of national or international significance;
 - (vii) civil aid, humanitarian assistance, medical or civil emergency or disaster relief; and
- (b) subject to paragraph (d), includes defence service prescribed by the regulations for the purposes of this paragraph; and
- (c) subject to paragraph (d), includes defence service by a member involving:
 - (i) preparing to render particular operational service covered by paragraph (a) or (b); or
 - (ii) decompressing after rendering operational service covered by paragraph (a) or (b); and

(d) does not include defence service prescribed by the regulations for the purposes of this paragraph.

start day of continuous full time service to which Part 8, 9 or 10 applies has the meaning given by subsection 13(3).

16 Subsection 9(1) (definition of *dependant*)

Omit “as a result of an order under section 28, 51A, 51AA, 51AB, 51B, 51C or 51CA of the *Defence Act 1903*”, substitute “to which Part 8, 9 or 10 applies (see section 13)”.

17 Subsection 9(1) (paragraph (b) of the definition of *dependant*)

Omit “member’s call out day”, substitute “start day of the service”.

18 Subsection 9(1) (paragraphs (c) and (e) of the definition of *dependant*)

Omit “such”, substitute “the”.

19 Section 11 (table items 5, 6 and 7)

Repeal the items, substitute:

5	Part 8	Financial liability protection	(a) continuous full time service as a result of a call out; and (b) continuous full time service that is operational service; (see section 13)
6	Part 9	Bankruptcy protection	(a) continuous full time service as a result of a call out; and (b) continuous full time service that is operational service; (see section 13)
7	Part 10	Loans and guarantees	Continuous full time service as a result of a call out (see section 13)

20 Section 13

Repeal the section, substitute:

13 Call outs and operational service

- (1) Parts 8, 9 and 10 apply in relation to continuous full time service that a member renders as a result of a call out.
- (2) Parts 8 and 9 also apply in relation to continuous full time service that is operational service.
- (3) The *start day* of defence service to which subsection (1) or (2) applies is:
 - (a) if subsection (1) applies—the day on which the member becomes liable to render the service; or
 - (b) otherwise—the day on which the member starts to render the service.

21 Division 1 of Part 8 (heading)

Repeal the heading, substitute:

Division 1—Overview of Part

22 Subsection 40(1)

Repeal the subsection, substitute:

- (1) This Part applies (see Part 3) to:
 - (a) continuous full time service as a result of a call out; and
 - (b) continuous full time service that is operational service.

23 Subsection 40(2)

Omit “member’s call out day”, substitute “start day of the service”.

24 Sections 41 to 44

Repeal the sections, substitute:

40A Meaning of *financial arrangement*

In this Act:

financial arrangement means any of the following:

- (a) a secured or unsecured loan;
- (b) a hire purchase agreement;
- (c) an agreement to buy something (including land);

- (d) an agreement to lease something (including land);
- (e) a guarantee.

41 Financial liabilities that arise before start day of service

- (1) This Part applies to a liability to make a payment under a financial arrangement if:
 - (a) the liability is a liability of:
 - (i) a member who renders defence service; or
 - (ii) a dependant of a member who renders defence service; and
 - (b) the liability arose before the start day of the service.
- (2) This section is subject to the exceptions in sections 44, 45 and 46.

42 Options exercised on or after start day of service

- (1) This Part also applies to a liability to make a payment under a financial arrangement if:
 - (a) the liability is a liability of:
 - (i) a member who renders defence service; or
 - (ii) a dependant of a member who renders defence service; and
 - (b) the liability arose when the member or dependant exercised, on or after the start day of the service, an option under the financial arrangement to buy or lease something (including land); and
 - (c) the option was granted before the start day.
- (2) This section is subject to the exceptions in sections 44, 45 and 46.

43 Rates etc. on land

Liabilities that arise before start day

- (1) This Part applies to a liability to pay rates, or other taxes imposed in respect of land, if:
 - (a) the liability is a liability of:
 - (i) a member who renders defence service; or

- (ii) a dependant of a member who renders defence service;
and
- (b) the liability arose before the start day of the service.

Liabilities that arise on or after start day

- (2) This Part also applies to a liability to pay rates, or other taxes imposed in respect of land, if:
 - (a) the liability is a liability of:
 - (i) a member who renders defence service; or
 - (ii) a dependant of a member who renders defence service;
and
 - (b) the member or dependant exercised, on or after the start day of the service, an option under a financial arrangement to buy or lease the land to which the rates or other taxes relate; and
 - (c) the option was granted before the start day; and
 - (d) the liability to pay the rates or other taxes arose on or after the day the member or dependant exercised the option.

Exceptions

- (3) This section does not apply to a liability to pay GST (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*).
- (4) This section is subject to section 46.

44 Part does not apply to security holder already exercising remedies

This Part does not apply to a liability to make a payment under a financial arrangement if:

- (a) the liability is a liability of:
 - (i) a member who renders defence service; or
 - (ii) a dependant of a member who renders defence service;
and
- (b) before the start day of the service, a court orders that a party to the financial arrangement may exercise all or any of the party's remedies to enforce any security under the arrangement (including enter land if the security is land).

25 Subsections 45(1), 49(1) and 52(1)

Omit “an agreement”, substitute “a financial arrangement”.

26 Section 53 (heading)

Repeal the heading, substitute:

53 Interest payable on postponed payments under a financial arrangement

27 Subsection 53(1)

Omit “an agreement”, substitute “a financial arrangement”.

28 Paragraphs 53(3)(a) and (b)

Omit “agreement”, substitute “financial arrangement”.

29 Paragraph 53(3)(b)

Omit “member’s call out day”, substitute “start day of the member’s defence service”.

30 Paragraph 53(4)(a)

Omit “agreement”, substitute “financial arrangement”.

31 Subsection 54(3)

Omit “member’s call out day”, substitute “start day of the member’s defence service”.

32 Paragraph 56(2)(a)

Repeal the paragraph, substitute:

- (a) if the liability arose under a financial arrangement—the terms and conditions of the financial arrangement; and

33 Section 57

Omit “an agreement”, substitute “a financial arrangement”.

34 Paragraphs 57(a) and (b)

Omit “member’s call out day”, substitute “start day of the member’s defence service”.

35 Section 58 (heading)

Repeal the heading, substitute:

58 Instruments made on or after start day not affected

36 Paragraph 58(a)

Omit “an agreement”, substitute “a financial arrangement”.

37 Paragraph 58(a)

Omit “call out day”, substitute “start day of the defence service”.

38 Subsection 59(1)

Omit “an agreement”, substitute “a financial arrangement”.

39 Subsection 62(1)

Repeal the subsection, substitute:

- (1) This Part applies (see Part 3) to:
- (a) continuous full time service as a result of a call out; and
 - (b) continuous full time service that is operational service.

40 Subsection 62(2)

Omit “following a call out”.

41 Subsection 63(1)

Omit “member’s call out day for”, substitute “start day of”.

42 Subsection 65(2)

Omit “after being called out”.

43 Application of amendments

The amendments made by this Division apply in relation to defence service if the start day of the service occurs on or after the day this item commences.

Division 3—Definition of defence service

Defence Reserve Service (Protection) Act 2001

44 Section 7 (definition of defence service)

Omit “in a part”, substitute “as a member”.

Part 2—Enforcement and remedies

Division 1—Main amendments

Defence Reserve Service (Protection) Act 2001

45 Section 7

Insert:

civil penalty provision has the same meaning as in the Regulatory Powers Act.

46 Subsection 14(3)

Repeal the subsection, substitute:

- (3) A breach of the Part may be a criminal offence or result in a civil penalty. Breaches can also be redressed by other civil means: see Part 11.

47 Subsection 15(2) (penalty)

Omit “for contravention of this subsection”.

48 At the end of section 15

Add:

- (3) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

49 Subsection 16(3) (penalty)

Omit “for contravention of this subsection”.

50 At the end of section 16

Add:

- (4) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

51 Subsection 17(2) (penalty)

Omit “for contravention of this subsection”.

52 At the end of section 17

Add:

- (3) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

53 Subsection 18(4) (penalty)

Omit “for contravention of this subsection”.

54 At the end of section 18

Add:

- (5) A person who contravenes subsection (1) or (2) is liable to a civil penalty.

Civil penalty: 100 penalty units.

55 Subsection 19(2) (penalty)

Omit “for contravention of this subsection”.

56 At the end of section 19

Add:

- (3) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

57 Subsection 20(2) (penalty)

Omit “for contravention of this subsection”.

58 At the end of section 20

Add:

- (3) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

59 Subsection 21(3) (penalty)

Omit “for contravention of this subsection”.

60 At the end of section 21

Add:

- (4) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

61 Subsection 22(2) (penalty)

Omit “for contravention of this subsection”.

62 At the end of section 22

Add:

- (3) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

63 Subsection 23(3) (penalty)

Omit “for contravention of this subsection”.

64 At the end of section 23

Add:

- (4) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

65 Before Division 1 of Part 11

Insert:

Division 1A—Overview of Part

72A Overview of Part

- (1) The regulations may provide for processes for making and investigating complaints about contraventions of this Act, and for mediating disputes under this Act.
- (2) A person who suffers loss or damage because of a contravention of this Act may recover the amount of the loss or damage from the person who contravened this Act.
- (3) A court that finds a person guilty of an offence against this Act in relation to another person may order the guilty person to pay compensation to the other person.
- (4) An interested person may apply to a court for the following in relation to a contravention of this Act:
 - (a) an injunction under the Regulatory Powers Act;
 - (b) a declaratory or other order.
- (5) A person prescribed by the regulations may apply to a court for a civil penalty order under the Regulatory Powers Act for a contravention of Part 4 of this Act (protection against discrimination).

Division 1B—Complaints and mediation

72B Complaints and mediation

- (1) The regulations may provide in relation to processes for any of the following:
 - (a) making and investigating complaints about alleged contraventions of this Act;
 - (b) mediating disputes between persons whose interests are affected by this Act.
- (2) This Division does not limit the other Divisions of this Part.

66 At the end of subsection 73(1)

Add “or a civil penalty order has not been made against the person (if the provision is a civil penalty provision)”.

67 Subsection 73(3)

Omit “3 years”, substitute “4 years”.

68 Subsection 74(1)

Repeal the subsection, substitute:

- (1) A court that:
 - (a) finds a person guilty of an offence against this Act in relation to another person (whether or not the court imposes a penalty); or
 - (b) makes a civil penalty order (within the meaning of the Regulatory Powers Act) against a person for contravening a civil penalty provision of this Act in relation to another person;may order the first person to pay the other person such compensation as the court thinks reasonable.

69 At the end of Part 11

Add:

Division 3—Civil penalties

76A Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, a person prescribed by the regulations for the purposes of this subsection is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) all State and Territory courts (including courts of summary jurisdiction), so far as their jurisdiction extends to the matter;
 - (b) the Federal Court of Australia or the Federal Circuit Court of Australia.

Extension to external Territories

- (4) Part 4 of the Regulatory Powers Act, as it applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

Division 4—Victimisation

76B Victimisation

- (1) A person must not subject, or threaten to subject, another person to any detriment for the reason that, or for reasons that include the reason that, the other person:
- (a) has made, or proposes to make, a complaint under regulations made for the purposes of paragraph 72B(1)(a); or
 - (b) has given, or proposes to give, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under regulations made for the purposes of that paragraph; or
 - (c) has brought, or proposes to bring, proceedings under Division 1 or 2 of this Part against any person.
- (2) A person who contravenes subsection (1) commits an offence.
- Penalty: 30 penalty units.
- (3) A person who contravenes subsection (1) is liable to a civil penalty.
- Civil penalty: 100 penalty units.

70 After section 78

Insert:

78A Physical elements of offences

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence.
- (2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

78B Contravening an offence provision or a civil penalty provision

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

71 Subsection 81(2)

Repeal the subsection, substitute:

- (2) Without limiting subsection (1), the regulations may:
 - (a) prescribe penalties, not exceeding 50 penalty units, for offences against the regulations; or
 - (b) prescribe civil penalties, not exceeding 60 penalty units, for contraventions of the regulations.

72 Application of amendments

- (1) The amendments made by items 46 to 64 of this Schedule apply to conduct occurring on or after the commencement of this item.

- (2) The amendment made by item 67 of this Schedule applies in relation to an action for a contravention of this Act if the contravention occurred on or after the commencement of this item.
- (3) Division 4 of Part 11 of the *Defence Reserve Service (Protection) Act 2001*, as added by this Division, applies in relation to:
- (a) subjecting a person to a detriment on or after the commencement of this item; or
 - (b) threatening, on or after that commencement, to subject a person to a detriment;
- whether:
- (c) the relevant complaint is made, information is given, documents are produced or proceedings are brought before, on or after that commencement; or
 - (d) the proposal to do any of those things is made before, on or after that commencement;
- whichever is applicable.
- (4) For the purposes of Division 4 of that Part and subitem (3) of this item:
- (a) a complaint made under the regulations made under the *Defence Reserve Service (Protection) Act 2001* before the commencement of this item is taken, from that commencement, to have been made under regulations made for the purposes of paragraph 72B(1)(a) of that Act, as inserted by this Division; and
 - (b) a person who, before that commencement, exercised or performed any power or functions under the regulations in relation to such a complaint is taken, from that commencement, to have exercised or performed the power or functions under regulations made for the purposes of that paragraph.

Division 2—Amendments contingent on the Regulatory Powers (Standardisation Reform) Act 2017

Defence Reserve Service (Protection) Act 2001

73 Section 7

Insert:

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

Regulatory Powers (Standardisation Reform) Act 2017

74 Item 1 of Schedule 6

Repeal the item.

Part 3—Discrimination and harassment

Defence Reserve Service (Protection) Act 2001

75 Section 7

Insert:

harass has a meaning affected by subsection 23A(3).

protected co-worker has the meaning given by subsection 23A(5).

protected worker has the meaning given by subsection 23A(4).

76 After subsection 14(2)

Insert:

- (2A) It is also unlawful for a person to harass a worker, partner or co-worker of the person on that ground.

77 After section 18

Insert:

18A Dissolving partnership etc.

- (1) A person who is a partner in a partnership must not, for a prohibited reason relating to another partner in the partnership, or for reasons that include a prohibited reason relating to another partner, do or threaten to do any of the following:
 - (a) dissolve the partnership;
 - (b) expel the other partner from the partnership;
 - (c) require the other partner to forfeit his or her share in the partnership;
 - (d) subject the other partner to any other detriment concerning the partnership.
- (2) Conduct mentioned in subsection (1) is for a *prohibited reason* in relation to another partner if it is engaged in because the other partner:
 - (a) may volunteer to render defence service; or
 - (b) is rendering defence service; or

- (c) is, or may become, liable to render defence service; or
 - (d) has previously rendered defence service.
- (3) A person who contravenes subsection (1) commits an offence.
- Penalty: 30 penalty units.
- (4) A person who contravenes subsection (1) is liable to a civil penalty.
- Civil penalty: 100 penalty units.

78 At the end of Part 4

Add:

Division 6—Harassment

23A Harassment

- (1) A person must not, for a prohibited reason, or for reasons that include a prohibited reason, harass another person if the other person is:
 - (a) a protected worker of the person; or
 - (b) a partner in a partnership in which the person is also a partner; or
 - (c) a protected co-worker of the person.
- (2) Conduct mentioned in subsection (1) is for a *prohibited reason* if it is engaged in because the other person:
 - (a) may volunteer to render defence service; or
 - (b) is rendering defence service; or
 - (c) is, or may become, liable to render defence service; or
 - (d) has previously rendered defence service.
- (3) *Harass* includes abuse or bully.
- (4) Each of the following is a *protected worker* of a person:
 - (a) an employee of the person;
 - (b) a commission agent or contractor of the person;
 - (c) a person who is seeking to become an employee, partner, commission agent or contractor of the person;

- (d) an officer or employee of:
 - (i) a commission agent or contractor of the person; or
 - (ii) a person who is seeking to become a commission agent or contractor of the person.
- (5) A person is a *protected co-worker* of another person if:
 - (a) the first person is an employee, commission agent or contractor of a third person; and
 - (b) the other person is an employee, commission agent or contractor of:
 - (i) the third person; or
 - (ii) a different person, if the first person and the other person work together in performing the duties of their respective employments, commission agencies or contracts.

Penalties

- (6) A person who contravenes subsection (1) commits an offence.
Penalty: 30 penalty units.
- (7) A person who contravenes subsection (1) is liable to a civil penalty.
Civil penalty: 100 penalty units.

23B Obligations of employers etc.

- (1) A person is liable to a civil penalty if:
 - (a) an employee, commission agent or contractor of the person harasses a third person for a prohibited reason, or for reasons that include a prohibited reason; and
 - (b) the third person is a protected co-worker of the employee, commission agent or contractor because of that employment, commission agency or contract.Civil penalty: 100 penalty units.
- (2) Conduct mentioned in paragraph (1)(a) is for a *prohibited reason* if it is engaged in because the third person:
 - (a) may volunteer to render defence service; or

- (b) is rendering defence service; or
 - (c) is, or may become, liable to render defence service; or
 - (d) has previously rendered defence service.
- (3) Subsection (1) does not apply if the first person takes all reasonable steps to ensure that his or her employees, commission agents and contractors do not harass protected co-workers for prohibited reasons.

Note: A person who wishes to rely on subsection (3) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection: see section 96 of the Regulatory Powers Act.

Part 4—Employment protection

Defence Reserve Service (Protection) Act 2001

79 Section 7 (definition of *absent on defence service*)

Omit “section 8”, substitute “section 24A and subsections 28(3) and (4)”.

80 Section 8

Repeal the section.

81 Subsection 10(1) (definition of *contract of employment*)

Repeal the definition, substitute:

contract of employment includes:

- (a) a contract of apprenticeship; and
- (b) an arrangement under which a person is employed.

Note: For *employment*, see section 7.

82 Division 1 of Part 5 (heading)

Repeal the heading, substitute:

Division 1—Preliminary

83 At the end of Division 1 of Part 5

Add:

24A Meaning of *absent on defence service*

A member who is employed before starting to render defence service is *absent on defence service* during any of the following periods:

- (a) any period during which the member is travelling from his or her residence to the place at which he or she is required to report for defence service;
- (b) any period while he or she is rendering defence service;

- (c) the period (if any) starting immediately after he or she ceases to render that service and ending (subject to subsections 28(3) and (4)) immediately before the earlier of the following times:
 - (i) when the member resumes work (including under Division 3 of this Part) or is reinstated in employment under that Division;
 - (ii) if the member does not apply to resume work, or to be reinstated in employment, under section 27—30 days after the member ceases to render that service.

84 Division 2 of Part 5 (heading)

Repeal the heading, substitute:

Division 2—Entitlement to be absent during defence service

85 Subsection 25(1)

Omit “, or other arrangement,”.

86 Division 3 of Part 5 (heading)

Repeal the heading.

87 Section 26

Repeal the section, substitute:

26 Member entitled to be absent during defence service

- (1) A member who is employed before being absent on defence service is entitled to be absent from that employment while the member is absent on defence service.
- (2) A period during which the member is absent from that employment while absent on defence service is taken not to be a period of employment under the member’s contract of employment unless this Part provides otherwise.
- (3) Subsection (2) does not apply to a period throughout which the member is taking any type of paid or unpaid leave under the

member's contract of employment, as mentioned in subsection 25(3).

- (4) This section does not:
- (a) affect the operation of section 25; or
 - (b) limit the ability of a contract of employment to allow a person any type of paid or unpaid leave; or
 - (c) prevent the termination of a member's contract of employment in accordance with law for a reason other than an absence mentioned in subsection (1).

Note: The protections in subsections (1) and (2) cease to apply 30 days after the member ceases to render defence service if the member does not apply to resume work under the contract of employment under section 27 before then: see paragraph 24A(c).

88 Before section 27

Insert:

Division 3—Resuming work after defence service

89 Section 27 (heading)

Repeal the heading, substitute:

27 Applying to resume work after defence service

90 Subsection 27(1)

Omit "whose contract of employment is suspended under section 26 may apply to the employer to resume work under the contract", substitute "who is absent from his or her employment while absent on defence service may apply to the employer to resume work under the member's contract of employment".

91 Subsection 27(3)

Omit "within", substitute "no later than".

92 Section 28 (heading)

Repeal the heading, substitute:

28 Employer must allow member to resume work

93 Paragraph 28(1)(a)

Omit “he or she started to render”, substitute “the start of the member’s absence on”.

94 At the end of section 28

Add:

- (3) If paragraph (2)(a) applies, the member ceases to be *absent on defence service* at the time the member was to have made himself or herself available for work under the agreement mentioned in that paragraph.
- (4) If paragraph (2)(b) applies, the member ceases to be *absent on defence service*:
 - (a) when the employer informs the member that it was not within the employer’s power to allow the resumption or reinstatement, as mentioned in subparagraph (2)(b)(i); or
 - (b) if the member accepts the offer mentioned in subparagraph (2)(b)(ii)—when the offered employment starts; or
 - (c) if the member does not accept the offer—when the member declines the offer, or 30 days after the employer makes the offer, whichever occurs first.

95 At the end of Division 3 of Part 5

Add:

28A Other rights to resume work not affected

This Division does not limit any right of a member to resume work or to be reinstated in employment under:

- (a) a contract of employment; or
- (b) any law other than this Division.

96 Subsection 30(2)

Before “service”, insert “absence on defence”.

97 Paragraphs 31(3)(a) and (c)

Omit “suspended contract of employment”, substitute “contract of employment with the old employer”.

98 Subsection 61(5) (definition of *preservation period*)

After “absence on defence service”, insert “(disregarding paragraph 24A(c))”.

99 Before section 77

Insert:

76C This Act does not limit other protections for members

This Act does not limit any protection that is afforded to a member, or to a former member, under any other law.

100 Application of amendments

The amendments made by this Part (other than item 99) apply in relation to an absence on defence service if the absence starts on or after the commencement of this item.

Part 5—Education protection

Defence Reserve Service (Protection) Act 2001

101 Subsection 3(7)

Omit “allows a member to re-enrol in, and resume, a course that the member had to interrupt in order to undertake”, substitute “requires an education institution to make reasonable adjustments for a member who undertakes”.

102 Section 7

Insert:

reasonable adjustment has the meaning given by subsection 38(4).

103 Subsection 37(2)

Repeal the subsection, substitute:

- (2) Essentially, the Part:
 - (a) requires a body administering an educational institution to make reasonable adjustments required because a member enrolled in a course at the institution is rendering defence service; and
 - (b) allows a member to re-enrol in, and resume, a course that was interrupted because the member rendered defence service.

104 Section 38

Repeal the section, substitute:

38 Obligations of body administering education institution

- (1) This section applies in relation to a member who is enrolled in a course at an Australian education institution before starting to render defence service.
- (2) The body administering the education institution must make reasonable adjustments to accommodate the member’s defence service.

- (3) Without limiting subsection (2), the adjustments required by that subsection could involve any of the following:
- (a) not failing the member;
 - (b) recognising assessment or practical work undertaken by the member before starting to render defence service;
 - (c) allowing the member to defer undertaking or completing assessment or practical work;
 - (d) refunding or crediting fees paid by or for the member.
- (4) An adjustment is a *reasonable adjustment* unless making the adjustment would impose an unjustifiable hardship on the body administering the education institution.
- (5) In determining whether a hardship that would be imposed on the body administering the education institution would be an unjustifiable hardship, all relevant circumstances of the particular case must be taken into account, including the following:
- (a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
 - (b) the financial circumstances of, and the estimated amount of expenditure required to be made by, the body;
 - (c) the availability of financial and other assistance to the body.
- (6) The burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.

105 Section 39 (heading)

Repeal the heading, substitute:

39 Education institution must re-enrol member etc.

106 Before subsection 39(1)

Insert:

- (1A) This section applies in relation to a member who:
- (a) is enrolled in a course at an Australian education institution during all or part of the period he or she is rendering defence service; and
 - (b) does not complete the course before ceasing to render the service; and

(c) applies to re-enrol (if necessary) and to resume the course within 30 days after ceasing to render the service.

107 At the end of section 39

Add:

(4) This section does not limit section 38.

Part 6—Jurisdiction of courts

Defence Reserve Service (Protection) Act 2001

108 At the end of paragraph 77(1)(b)

Add “or the Federal Circuit Court of Australia”.

109 At the end of subsection 77(2)

Add “or the Federal Circuit Court of Australia”.

Part 7—Other provisions

110 Acquisition of property

The amendments made by this Schedule do not apply to the extent (if any) to which their operation would result in the acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph).

Schedule 3—Australian Geospatial-Intelligence Organisation

Intelligence Services Act 2001

1 Section 3 (paragraph (a) of the definition of *incidentally obtained intelligence*)

Omit “6B(a)”, substitute “6B(1)(a)”.

2 Section 3 (paragraph (b) of the definition of *intelligence information*)

Omit “6B(a)”, substitute “6B(1)(a)”.

3 Section 6B

Before “The functions of AGO”, insert “(1)”.

4 Paragraphs 6B(a), (b) and (c)

After “geospatial”, insert “, hydrographic, meteorological, oceanographic”.

5 Paragraph 6B(e)

Repeal the paragraph, substitute:

(e) to provide the following to persons and bodies mentioned in subsection (2):

- (i) imagery and other geospatial, hydrographic, meteorological and oceanographic products, not being intelligence obtained under paragraph (a), (b) or (c) of this subsection;
- (ii) assistance in relation to the production and use of imagery and other geospatial, hydrographic, meteorological and oceanographic products;
- (iii) assistance in relation to the production and use of imagery technologies and other geospatial, hydrographic, meteorological and oceanographic technologies; and

(ea) to provide to any persons or bodies (including Commonwealth authorities and State authorities) assistance

in relation to the performance by the persons or bodies of emergency response functions, safety functions, scientific research functions, economic development functions, cultural functions and environmental protection functions, if:

- (i) the provision of the assistance is incidental to the performance by AGO of its other functions; or
- (ii) the assistance is capable of being conveniently provided by the use of resources that are not immediately required in performing AGO's other functions; or
- (iii) the assistance is capable of being conveniently provided in the course of performing AGO's other functions; and

6 At the end of section 6B (before the note)

Add:

- ; and (h) the functions mentioned in subsection 223(2) of the *Navigation Act 2012* (to the extent they are not covered by another paragraph of this subsection).

7 Section 6B (note)

After "Note", insert "1".

8 At the end of section 6B (after the note)

Add:

Note 2: Subsection 223(2) of the *Navigation Act 2012* deals with the functions of the Australian Hydrographic Office, which is part of AGO (see subsection (3) of this section).

- (2) Paragraph (1)(e) applies to providing imagery and other products, or assistance in relation to imagery and other products or technologies, to the following:
 - (a) a Commonwealth authority;
 - (b) a State authority of a Territory;
 - (c) a foreign person or entity;
 - (d) any other person or body (including a State authority of a State) if:
 - (i) the imagery and other products or technologies are for use in, or incidental to, trade and commerce with other countries, among the States, between Territories or between a Territory and a State, or are for use outside Australia; or

- (ii) the imagery and other products or assistance are provided by way of postal, telegraphic, telephonic or other like services.

Note: For *State authority*, see section 3.

- (3) The Australian Hydrographic Office mentioned in section 223 of the *Navigation Act 2012* is part of the AGO.

Fees

- (4) AGO may, on behalf of the Commonwealth, charge a fee in relation to anything done in performing AGO's functions under paragraph (1)(e), (ea) or (h).
- (5) A fee must not be such as to amount to taxation.

9 Paragraph 11(2)(c)

Omit "6B(a)", substitute "6B(1)(a)".

10 Paragraph 11(2)(e)

Omit "6B(e) and (f)", substitute "6B(1)(e), (ea), (f) and (h)".

11 Subsection 11(3)

Omit "6B(b), (c), (d), (e), (f) and (g),", substitute "6B(1)(b) to (h)".

Navigation Act 2012

12 Paragraph 161(6)(d)

Omit "Service", substitute "Office".

13 Division 5 of Part 6 of Chapter 6 (heading)

Repeal the heading, substitute:

Division 5—The Australian Hydrographic Office and offences and civil penalties relating to taking a vessel to sea without charts, etc.

14 Section 223 (heading)

Repeal the heading, substitute:

223 Functions of the Australian Hydrographic Office

15 Subsections 223(1) and (2)

Omit “Service” (wherever occurring), substitute “Office”.

Telecommunications Act 1997

16 Paragraph 47(2)(b) of Schedule 3A

Repeal the paragraph, substitute:

- (b) that part of the Defence Department known as the Australian Hydrographic Office;

Schedule 4—Australian Defence Force Cover Act 2015

Part 1—Medical discharge

Australian Defence Force Cover Act 2015

1 Section 4 (at the end of the definition of *medically discharged*)

Add:

Note: Under section 31A, a person is taken in certain circumstances to have been medically discharged even though he or she ceased to be a covered ADF member for a different reason.

2 Subsection 18(1)

After “must”, insert “, unless subsection (2A) applies,”.

3 After subsection 18(2)

Insert:

Determinations if section 31A applies

(2A) If section 31A applies to a person, CSC must, as soon as reasonably practicable after the time CSC becomes satisfied as mentioned in paragraph 31A(b) in relation to the person, determine what was the percentage of the person’s incapacity for civil employment at the time of the person’s medical discharge.

Note: Under section 31A, a person is taken in certain circumstances to have been medically discharged even though he or she ceased to be a covered ADF member for a different reason.

(2B) If, because of the determination under subsection (2A), CSC classifies the person as class A or class B under section 19, CSC may, at the time it makes that determination, also determine what was the percentage of the person’s incapacity for civil employment at any time or times that occurred after the person’s medical discharge.

Note: For determining the person’s incapacity at a time occurring after CSC makes the determination under subsection (2A), see subsection (4).

4 Before subsection 18(3)

Insert:

*Determinations not required if pension not payable because of
Subdivision C*

5 Subsection 18(3)

Omit “subsection (1)”, substitute “subsections (1) to (2B)”.

6 Subsection 18(4)

After “civil employment”, insert “at that time”.

7 Subsection 19(2)

Omit “subsection 18(4) (which deals with a discretionary determination)”, substitute “subsection 18(2B) or (4) (discretionary determinations)”.

8 Subsection 21(1)

After “this Subdivision”, insert “(including a classification made under section 19 because of a determination under subsection 18(2A))”.

9 At the end of subsection 21(1)

Add:

Note: Subsection 18(2A) applies if a person is taken, under section 31A, to have been medically discharged even though he or she ceased to be a covered ADF member for a different reason.

10 Paragraph 21(2)(b)

Before “that earlier day”, insert “on”.

Note: This item fixes a grammatical error.

11 After subsection 21(2)

Insert:

(2A) A classification made under section 19 because of a determination under subsection 18(2B) of what was a person’s incapacity for civil employment at a particular time takes effect at that particular time.

Note: Subsection 18(2B) applies if a person is taken, under section 31A, to have been medically discharged even though he or she ceased to be a covered ADF member for a different reason.

12 Subsection 21(3)

Omit “or (2)”, substitute “, (2) or (2A)”.

13 Paragraph 21(3)(b)

Before “that later day”, insert “on”.

Note: This item fixes a grammatical error.

14 Subsection 21(4)

Omit “of the person”, substitute “of a person under this Subdivision, except a classification described in subsection (5),”.

15 At the end of section 21

Add:

- (5) A classification of a person made under section 19 because of a determination under subsection 18(2A) or (2B) ceases to have effect when another classification of the person under this Subdivision takes effect.

Note: The other classification takes effect before it is made if paragraph (2)(b) or subsection (2A) of this section applies.

16 At the end of Part 2

Add:

Division 6—Other provisions

31A Persons who could have been medically discharged

For the purposes of this Act, a person is taken to have been medically discharged at a time because of a physical or mental impairment if:

- (a) the person ceased at that time to be a covered ADF member other than because he or she was medically discharged; and
- (b) CSC is later satisfied that, at that time, grounds existed on which the person could have been medically discharged because of the physical or mental impairment.

Note: A person affected by a decision of CSC under paragraph (b) may request CSC to reconsider the decision under section 58.

17 Section 51

Before “If a”, insert “(1)”.

18 At the end of section 51

Add:

(2) This section does not apply if section 31A applies to the member.

Note: Under section 31A, a person is taken in certain circumstances to have been medically discharged even though he or she ceased to be a covered ADF member for a different reason.

19 Application of amendments

The amendments made by this Part apply in relation to a person who ceased or ceases to be a covered ADF member on or after 1 July 2016.

Part 2—Eligible children

Australian Defence Force Cover Act 2015

20 Subparagraph 5(1)(b)(ii)

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

21 Subparagraph 5(1)(b)(iii)

Repeal the subparagraph.

22 Subsection 10(1)

Omit “one or more eligible children of the invalid or member who are wholly or substantially dependent on the spouse”, substitute “the eligible children of the invalid or member”.

23 Subsection 10(2) (table, column headings)

Repeal the headings, substitute:

Item	Column 1	Column 2
	Number of eligible children of the invalid or member	Percentage

24 Section 15

Omit “, if there is no surviving spouse,”.

25 Subsection 26(5) (heading)

Repeal the heading, substitute:

Increase in rate—eligible children

26 Subsection 26(5)

Omit “one or more eligible children of the invalid are wholly or substantially dependent on the spouse”, substitute “there are one or more eligible children of the invalid”.

27 Paragraphs 32(a) and (b)

Repeal the paragraphs, substitute:

- (a) the surviving spouse or eligible children of the member;
or

28 Paragraph 32(c)

Omit “dependent eligible children”, substitute “eligible children”.

29 Subsection 34(4) (heading)

Repeal the heading, substitute:

Increase in rate—eligible children

30 Subsection 34(4)

Omit “one or more eligible children of the covered ADF member are wholly or substantially dependent on the spouse”, substitute “there are one or more eligible children of the covered ADF member”.

31 Subsection 39(3)

After “equal the”, insert “maximum”.

32 At the end of section 39

Add:

Effect of death of surviving spouse

(5) If:

- (a) a determination under this section relates to 2 or more persons mentioned in paragraph (1)(a) or (b); and
- (b) one of those persons dies;

the determination continues to apply in relation to the other person or persons.

33 After subsection 41(2)

Insert:

(2A) Without limiting paragraphs (1)(b) and (2)(a), the person mentioned in that paragraph may be:

- (a) one of the eligible children; or
- (b) another surviving spouse of the invalid or member.

- (2B) Without limiting when CSC may make a determination under subsection (2), CSC must consider whether to make such a determination in relation to a pension payable to a surviving spouse if CSC becomes aware that one or more of the eligible children of the invalid or member are not wholly or substantially dependent on the surviving spouse.

34 Subsection 41(3)

Omit “affect”, substitute “effect”.

Note: This item fixes a spelling error.

35 At the end of section 41

Add:

Effect of death of surviving spouse

- (4) If CSC makes a determination under subsection (2) in relation to a surviving spouse and one or more eligible children mentioned in paragraph (1)(a), and the surviving spouse dies:
- (a) a pension payable under the determination as mentioned in paragraph (2)(a) ceases to be payable to the extent that it is payable for the welfare of any of those eligible children who were wholly or substantially dependent on the spouse immediately before the spouse died; and
 - (b) a pension payable under the determination is not otherwise affected by the death of the spouse; and
 - (c) if the sum of:
 - (i) the rate of any pension payable under the determination after the death of the spouse; and
 - (ii) the rate of any pension (the *dependants’ pension*) payable to or for one or more eligible children because of the death of the surviving spouse;would otherwise exceed the maximum rate of the pension that could be payable because of the death of the surviving spouse (i.e. the rate that would be payable if the maximum eligible children pension percentage applied)—the rate of the dependants’ pension is reduced by the amount of the excess.

36 Subsection 42(3)

Omit “affect”, substitute “effect”.

Note: This item fixes a spelling error.

37 Application of amendments

The amendments made by this Part apply, and are taken to have applied, on and after 1 July 2016.

Part 3—Other amendments

Australian Defence Force Cover Act 2015

38 Paragraph 58(2)(a)

Repeal the paragraph, substitute:

- (a) be made in writing; and
- (aa) be given to CSC within:
 - (i) 30 days after CSC gives notice of the decision to the person; or
 - (ii) such further period as CSC, in special circumstances, allows; and

39 Application of amendments

The amendment made by this Part applies in relation to a decision of CSC made on or after the commencement of this item.

*[Minister's second reading speech made in—
House of Representatives on 29 March 2017
Senate on 14 September 2017]*

(63/17)
