



# **Defence Legislation Amendment Act 2019**

**No. 1, 2019**

**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/>)



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# Defence Legislation Amendment Act 2019

No. 1, 2019

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

[Assented to 1 March 2019]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Defence Legislation Amendment Act 2019*.

### 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
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column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	1 March 2019
2. Schedule 1	The day after this Act receives the Royal Assent.	2 March 2019
3. Schedule 2	The 28th day after this Act receives the Royal Assent.	29 March 2019
4. Schedule 3	The day after this Act receives the Royal Assent.	2 March 2019

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Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## Schedule 1—Appointments

### *Defence Force Discipline Act 1982*

#### 1 Subsection 3(1)

Insert:

*Deputy Chief Judge Advocate* means a Deputy Chief Judge Advocate appointed under section 188EC.

#### 2 Section 117

Before “For the purposes of this Act”, insert “(1)”.

#### 3 At the end of section 117

Add:

- (2) An appointment of a judge advocate of a court martial under subparagraph 119(1)(a)(iii) is on a part-time basis.

#### 4 After section 117

Insert:

#### 118 Remuneration of judge advocate of court martial

- (1) A judge advocate of a court martial is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the judge advocate is to be paid the remuneration that is determined under Part IIIA of the *Defence Act 1903*.
- (2) A judge advocate of a court martial is to be paid the allowances that are determined under Part IIIA of the *Defence Act 1903*.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

#### 5 After subsection 127(1)

Insert:

- (1A) An appointment under subsection (1) is on a part-time basis.
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**6 Subsection 127(2) (note)**

Omit “3 years”, substitute “5 years”.

**7 After section 127**

Insert:

**127A Remuneration of Defence Force magistrate**

- (1) A Defence Force magistrate is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Defence Force magistrate is to be paid the remuneration that is determined under Part IIIA of the *Defence Act 1903*.
- (2) A Defence Force magistrate is to be paid the allowances that are determined under Part IIIA of the *Defence Act 1903*.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**8 Subsection 180(3)**

Omit “defence member”, substitute “member of the Defence Force”.

**9 Subsection 185(5)**

Omit “defence member” (wherever occurring), substitute “member of the Defence Force”.

**10 Subsection 186(1)**

Repeal the subsection, substitute:

- (1) The Governor-General may terminate the appointment of the Judge Advocate General, or a Deputy Judge Advocate General, not being a Justice or Judge of a federal court or of a Supreme Court of a State or Territory:
  - (a) for misbehaviour; or
  - (b) if the Judge Advocate General, or the Deputy Judge Advocate General, (as the case may be) is unable to perform the duties of his or her office because of physical or mental incapacity.



**11 Subsection 186(2)**

Omit “or a Deputy Judge Advocate General (not being a Justice or Judge of a federal court or of a Supreme Court of a State or Territory)”, substitute “, or a Deputy Judge Advocate General, not being a Justice or Judge of a federal court or of a Supreme Court of a State or Territory”.

**12 Subsection 186(3)**

Omit “or a Deputy Judge Advocate General”, substitute “, or a Deputy Judge Advocate General”.

**13 After subsection 188A(1)**

Insert:

(1A) The Chief Judge Advocate holds office on a full-time basis.

**14 At the end of section 188A**

Add:

- (4) The Judge Advocate General may, by notifiable instrument, determine:
- (a) the criteria that apply to the selection of an officer for appointment under this section; and
  - (b) the process for selecting the officer.

**15 After section 188A**

Insert:

**188AA Terms and conditions of appointment**

The Chief Judge Advocate holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Judge Advocate General.

**16 After section 188C**

Insert:

**188CA Oath or affirmation**

- (1) The Chief Judge Advocate must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
- (2) An oath or affirmation under this section is to be made before:
  - (a) the Judge Advocate General; or
  - (b) a Deputy Judge Advocate General.

**17 Section 188D**

Before “The Chief Judge Advocate”, insert “(1)”.

**18 At the end of section 188D**

Add:

- (2) The resignation takes effect on the day it is received by the Judge Advocate General or, if a later day is specified in the resignation, on that later day.

**19 At the end of Division 2 of Part XI**

Add:

**188EA Termination of appointment**

- (1) The Judge Advocate General may terminate the appointment of the Chief Judge Advocate:
  - (a) for misbehaviour; or
  - (b) if the Chief Judge Advocate is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Judge Advocate General must terminate the appointment of the Chief Judge Advocate if:
  - (a) the Chief Judge Advocate:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

- (b) the Chief Judge Advocate is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.
- (3) The Chief Judge Advocate ceases to hold office if:
  - (a) the Chief Judge Advocate ceases to be:
    - (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or
    - (ii) a member of the Reserves who is rendering continuous full-time service; or
  - (b) the Chief Judge Advocate ceases to be a member of the judge advocates' panel.

### **188EB Acting appointments**

The Judge Advocate General may, by written instrument, appoint a person who is a Deputy Chief Judge Advocate to act as the Chief Judge Advocate:

- (a) during a vacancy in the office of the Chief Judge Advocate (whether or not an appointment has previously been made to the office); or
- (d) during any period, or during all periods, when the Chief Judge Advocate:
  - (i) is absent from duty or from Australia; or
  - (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see sections 33AB and 33A of the *Acts Interpretation Act 1901*.

## **20 After Division 2 of Part XI**

Insert:

### **Division 2A—Deputy Chief Judge Advocate**

#### **188EC Deputy Chief Judge Advocate**

- (1) The Judge Advocate General may, by written instrument, appoint one or more Deputy Chief Judge Advocates.
  - (2) A Deputy Chief Judge Advocate holds office on a full-time basis.
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- (3) A Deputy Chief Judge Advocate holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
- (4) A Deputy Chief Judge Advocate may be reappointed, but must not hold office for a total of more than 10 years.
- (5) The Judge Advocate General may, by notifiable instrument, determine:
  - (a) the criteria that apply to the selection of a person for appointment under this section; and
  - (b) the process for selecting the person.

#### **188ED Terms and conditions of appointment**

A Deputy Chief Judge Advocate holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Judge Advocate General.

#### **188EE Role of Deputy Chief Judge Advocate**

A Deputy Chief Judge Advocate is to provide administrative assistance to the Chief Judge Advocate.

#### **188EF Eligibility requirements**

A person is not eligible to be a Deputy Chief Judge Advocate unless the person is:

- (a) an officer holding a rank not lower than the naval rank of captain or the rank of colonel or group captain; and
- (b) a member of the judge advocates' panel.

#### **188EG Oath or affirmation**

- (1) A Deputy Chief Judge Advocate must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.
- (2) An oath or affirmation under this section is to be made before:
  - (a) the Judge Advocate General; or
  - (b) a Deputy Judge Advocate General.

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**188EH Resignation**

- (1) A Deputy Chief Judge Advocate may resign his or her appointment by giving the Judge Advocate General a written resignation.
- (2) The resignation takes effect on the day it is received by the Judge Advocate General or, if a later day is specified in the resignation, on that later day.

**188EI Remuneration**

- (1) A Deputy Chief Judge Advocate is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, a Deputy Chief Judge Advocate is to be paid the remuneration that is determined under Part IIIA of the *Defence Act 1903*.
- (2) A Deputy Chief Judge Advocate is to be paid the allowances that are determined under Part IIIA of the *Defence Act 1903*.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

**188EJ Termination of appointment**

- (1) The Judge Advocate General may terminate the appointment of a Deputy Chief Judge Advocate:
  - (a) for misbehaviour; or
  - (b) if the Deputy Chief Judge Advocate is unable to perform the duties of his or her office because of physical or mental incapacity.
- (2) The Judge Advocate General must terminate the appointment of a Deputy Chief Judge Advocate if:
  - (a) the Deputy Chief Judge Advocate:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with his or her creditors; or
    - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the Deputy Chief Judge Advocate is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months.

(3) A Deputy Chief Judge Advocate ceases to hold office if:

(a) the Deputy Chief Judge Advocate ceases to be:

- (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or
- (ii) a member of the Reserves who is rendering continuous full-time service; or

(b) the Deputy Chief Judge Advocate ceases to be a member of the judge advocates' panel.

## **21 Subsection 188FJ(1)**

Repeal the subsection, substitute:

(1) The Minister may terminate the appointment of the Registrar:

- (a) for misbehaviour; or
- (b) if the Registrar is unable to perform the duties of his or her office because of physical or mental incapacity.

## **22 Subsection 188GN(1)**

Repeal the subsection, substitute:

(1) The Minister may terminate the appointment of the Director of Military Prosecutions:

- (a) for misbehaviour; or
- (b) if the Director is unable to perform the duties of his or her office because of physical or mental incapacity.

## **23 After subsection 196(2)**

Insert:

(2AA) In making an appointment, the Chief of the Defence Force or the service chief (as the case may be) must have regard to the desirability of reflecting a diversity of expertise, experience and gender among the members of the judge advocates' panel.

## **24 Subsection 196(2A)**

Omit "3 years" (wherever occurring), substitute "5 years".

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**25 At the end of section 196**

Add:

- (6) The Chief of the Defence Force may, by notifiable instrument, determine:
  - (a) the criteria that apply to the selection of a person for appointment under this section; and
  - (b) the process for selecting the person.

**26 After section 196**

Insert:

**196AA Termination of appointment to judge advocates' panel**

- (1) The Chief of the Defence Force or a service chief (whoever made the appointment of an officer to be a member of the judge advocates' panel under subsection 196(2)) may terminate that appointment:
  - (a) for misbehaviour; or
  - (b) if the officer is unable to perform the duties of a member of the judge advocates' panel because of physical or mental incapacity.
- (2) The Chief of the Defence Force or a service chief (whoever made the appointment of an officer to be a member of the judge advocates' panel under subsection 196(2)) must terminate that appointment if the officer:
  - (a) becomes bankrupt; or
  - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  - (c) compounds with his or her creditors; or
  - (d) makes an assignment of his or her remuneration for the benefit of his or her creditors.
- (3) A person ceases to be a member of the judge advocates' panel if the person ceases to be:
  - (a) enrolled as a legal practitioner; or
  - (b) an officer (within the meaning of subsection 3(1)).

**196AB Resignation**

- (1) An officer who is a member of the judge advocates' panel may resign his or her appointment by giving the Chief of the Defence Force or a service chief (whoever made the appointment of the officer to be a member of the judge advocates' panel under subsection 196(2)) a written resignation.
- (2) The resignation takes effect on the day it is received by the Chief of the Defence Force or the service chief or, if a later day is specified in the resignation, on that later day.



## **Schedule 2—Defence Reserves**

### **Part 1—Complaints, investigations and dispute resolution**

#### ***Defence Reserve Service (Protection) Act 2001***

##### **1 Section 7**

Insert:

*Secretary* means Secretary of the Department.

##### **2 Subsection 72A(1)**

Repeal the subsection, substitute:

- (1) A person may make a complaint to the Chief of the Defence Force about an alleged contravention of a provision of this Act.
- (1A) The Chief of the Defence Force may investigate disputes between persons whose interests are affected by a provision of this Act, and establish dispute resolution services for the purpose of resolving such disputes.

##### **3 Division 1B of Part 11 (heading)**

Omit “**mediation**”, substitute “**investigations**”.

##### **4 Section 72B**

Repeal the section, substitute:

###### **72B Complaints**

- (1) A person may make a complaint to the Chief of the Defence Force about an alleged contravention of a provision of this Act.
- (2) A complaint must be made in a form and manner approved by the Chief of the Defence Force.
- (3) Subject to this Division, the Chief of the Defence Force may deal with a complaint as the Chief of the Defence Force thinks fit.

### **72C Investigation of complaints and suspected contraventions**

- (1) The Chief of the Defence Force may investigate the following:
  - (a) a complaint made under section 72B;
  - (b) a suspected contravention of a provision of this Act, whether or not a complaint has been made under section 72B.
- (2) For the avoidance of doubt, the Chief of the Defence Force is not required to investigate a complaint made under section 72B.
- (3) Subject to this Division, an investigation may be conducted in a way that the Chief of the Defence Force thinks fit, and the Chief of the Defence Force may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as the Chief of the Defence Force thinks fit.

### **72D Notice to produce information or documents**

- (1) This section applies if the Chief of the Defence Force reasonably believes that a person is capable of providing information, or producing a document, that is relevant to an investigation under section 72C.
- (2) The Chief of the Defence Force may, by written notice given to the person, require the person to:
  - (a) give to the Chief of the Defence Force any such information;  
or
  - (b) produce to the Chief of the Defence Force any such documents;within the period and in the manner specified in the notice.
- (3) The period specified in the notice must be at least 14 days after the day the notice is given.
- (4) The notice must set out the effect of sections 137.1 and 137.2 of the *Criminal Code*.

Note: Sections 137.1 and 137.2 of the *Criminal Code* create offences for providing false or misleading information or documents.

### **72E Compliance with notice to produce**

- (1) A person who is given a notice under subsection 72D(2) must comply with the notice within the period specified in the notice.
- (2) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

### **72F Copies and retention of documents**

The Chief of the Defence Force may:

- (a) inspect a document produced under subsection 72D(2); and
- (b) make and retain copies of the whole or a part of such a document.

### **72G Disclosure of information**

- (1) This section applies if the Chief of the Defence Force obtains information (including personal information within the meaning of the *Privacy Act 1988*) as a result of conducting an investigation under section 72C.
- (2) The Chief of the Defence Force may disclose the information to a person or entity described in an item of the following table, for a purpose described in that item, if the Chief of the Defence Force reasonably believes that the disclosure will serve that purpose.

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<b>Recipients and purposes of disclosure</b>		
<b>Item</b>	<b>Person or entity to which disclosure may be made</b>	<b>Purpose for which disclosure may be made</b>
1	a person (or the person's legal representative) who made a complaint under section 72B relevant to the investigation	the disclosure is reasonably necessary for the purpose of: (a) informing the person of the results of the investigation; or (b) the person applying to, or deciding whether to apply to, a court of competent jurisdiction under section 73, 75 or 76
2	a person (or the person's legal	the disclosure is reasonably

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## Schedule 2 Defence Reserves

### Part 1 Complaints, investigations and dispute resolution

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<b>Recipients and purposes of disclosure</b>		
<b>Item</b>	<b>Person or entity to which disclosure may be made</b>	<b>Purpose for which disclosure may be made</b>
	representative): (a) alleged to have contravened a provision of this Act; or (b) suspected of contravening a provision of this Act	necessary for the purpose of informing the person of the results of the investigation
3	any of the following: (a) the Secretary of the Department; (b) an SES employee, or acting SES employee, in the Department; (c) an APS employee in the Department; (d) a member of the Defence Force	the disclosure is likely to assist the person in the: (a) performance of duties or functions, or the exercise of powers, under this Act; or (b) administration or enforcement of this Act
4	an enforcement body within the meaning of the <i>Privacy Act 1988</i>	sharing the information is reasonably necessary for one or more enforcement related activities (within the meaning of the <i>Privacy Act 1988</i> ) conducted by, or on behalf of, the enforcement body
5	the Minister	the disclosure is likely to assist the Minister: (a) to consider a complaint or issue in relation to a matter arising under this Act; or (b) in the administration or enforcement of this Act

Note: The expressions *APS employee*, *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

### **72H Division does not limit other Divisions of this Part**

This Division does not limit the other Divisions of this Part.

## **Division 1C—Dispute resolution**

### **72J The Chief of the Defence Force may provide dispute resolution services**

- (1) The Chief of the Defence Force may establish dispute resolution services for the purpose of resolving disputes between persons whose interests are affected by a provision of this Act.
- (2) Without limiting subsection (1), the dispute resolution services may include the following:
  - (a) mediation;
  - (b) conciliation;
  - (c) compulsory conferences.

### **72K Conduct of dispute resolution processes**

- (1) A person's participation in a dispute resolution process may be:
  - (a) voluntary; or
  - (b) for a compulsory conference—required by a direction given to the person under subsection 72L(3).
- (2) Persons engaged in a dispute resolution process must act in good faith in relation to the conduct of that process.

### **72L Compulsory conferences**

- (1) The Chief of the Defence Force may refer disputes between persons whose interests are affected by a provision of this Act (the *parties*) to a compulsory conference for one or more of the following purposes:
  - (a) advising the parties of their rights and obligations;
  - (b) facilitating discussion between the parties;
  - (c) identifying issues in dispute;
  - (d) resolving issues in dispute.
- (2) In deciding whether to refer parties to a dispute to a compulsory conference, the Chief of the Defence Force may consider the following:
  - (a) whether a compulsory conference will assist the parties in resolving the dispute;

- (b) any other courses of action available to the parties to resolve the dispute;
- (c) the steps that have been taken by the parties to try to resolve the dispute;
- (d) whether the circumstances of the parties require the dispute to be resolved as a matter of urgency;
- (e) any other matter that the Chief of the Defence Force considers relevant.

*Direction to attend conference*

- (3) The Chief of the Defence Force may, by written notice given to a person, require the person to attend a compulsory conference.
- (4) The notice must specify the time and place of the conference, which must not be earlier than 14 days after the day the notice is given.

*Reimbursement*

- (5) If a person is given a notice under subsection (3), the person is entitled to be paid a reasonable allowance for expenses incurred by the person for transport, meals and accommodation in connection with complying with the notice.

*Penalty*

- (6) A person who is given a notice under subsection (3) must comply with the notice.
- (7) A person who contravenes subsection (6) is liable to a civil penalty.

Civil penalty:           100 penalty units.

**72M Admissibility of things said in a dispute resolution process**

Evidence of anything said, or any admission made, during a dispute resolution process under this Division is not admissible:

- (a) in any court (whether exercising federal jurisdiction or not);  
or

- (b) in any proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by the consent of the parties, to hear evidence.

**72N Division does not limit other Divisions of this Part**

This Division does not limit the other Divisions of this Part.

## Part 2—Other amendments

### *Defence Reserve Service (Protection) Act 2001*

#### **5 Section 7 (paragraphs (b) and (d) of the definition of operational service)**

Omit “the regulations”, substitute “the rules”.

#### **6 Section 7**

Insert:

*rules* means rules made under section 81.

#### **7 Section 7 (definition of *this Act*)**

Omit “the regulations”, substitute “the rules”.

#### **8 Paragraph 53(3)(b)**

Omit “the regulations”, substitute “the rules”.

#### **9 Subsection 54(3)**

Omit “the regulations”, substitute “the rules”.

#### **10 Section 66 (heading)**

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

#### **11 Section 66**

Omit “a prescribed authority may”, substitute “the Chief of the Defence Force may, on behalf of the Commonwealth”.

#### **12 Subsection 67(1)**

Omit “prescribed amount”, substitute “amount (the *maximum loan amount*) prescribed by the rules”.

#### **13 Subsection 67(2)**

Omit “prescribed amount”, substitute “maximum loan amount”.



**14 At the end of section 67**

Add:

- (3) The rules may make provision for and in relation to the indexation of a maximum loan amount.

**15 Section 68**

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

**16 Section 69**

Omit “the regulations”, substitute “the rules”.

**17 Subsection 70(1)**

Omit “A prescribed authority must not make or guarantee a loan unless”, substitute “The Chief of the Defence Force must not make or guarantee a loan on behalf of the Commonwealth unless”.

**18 Paragraph 70(1)(b)**

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

**19 Subsection 70(2)**

Repeal the subsection, substitute:

- (2) The member must apply for the loan or guarantee in the form approved, in writing, by the Chief of the Defence Force:
- (a) while the member is rendering continuous full-time defence service as a result of a call out; or
  - (b) within 12 months after the member stops rendering that service.

**20 Subsections 70(3) to (5)**

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

**21 Section 72 (heading)**

Omit “prescribed authorities”, substitute “the Chief of the Defence Force”.

**22 Subsection 72(1)**

Omit “A prescribed authority may”, substitute “The Chief of the Defence Force may, on behalf of the Commonwealth,”.

**23 Subsection 72(1)**

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

**24 Subsection 72(3)**

Omit “a prescribed authority may”, substitute “the Chief of the Defence Force may, on behalf of the Commonwealth,”.

**25 Subsection 72(4)**

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

**26 Subsection 72A(5)**

Omit “A person prescribed by the regulations”, substitute “The Chief of the Defence Force”.

**27 Subsection 73(2)**

Omit “a prescribed person”, substitute “the Chief of the Defence Force”.

**28 Paragraph 75(2)(b)**

Omit “a prescribed person”, substitute “the Chief of the Defence Force”.

**29 Paragraph 76(2)(b)**

Omit “a prescribed person”, substitute “the Chief of the Defence Force”.

**30 Subsection 76A(2)**

Omit “a person prescribed by the regulations for the purposes of this subsection”, substitute “the Chief of the Defence Force”.

**31 Paragraph 76B(1)(a)**

Omit “under regulations made for the purposes of paragraph 72B(1)(a)”, substitute “under section 72B”.

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### **32 Paragraph 76B(1)(b)**

Omit “under regulations made for the purposes of that paragraph”, substitute “under Division 1B of this Part”.

### **33 Section 79**

Before “The Chief of the Defence Force may”, insert “(1)”.

### **34 Section 79**

After “under this Act”, insert “(other than under Part 10, or Division 1B, 1C or 3 of Part 11)”.

### **35 At the end of section 79**

Add:

- (2) The Chief of the Defence Force may, in writing, delegate all or any of the Chief of the Defence Force’s powers and functions under Part 10, or Division 1B, 1C or 3 of Part 11, to:
  - (a) an SES employee, or acting SES employee, in the Department; or
  - (b) an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent, in the Department; or
  - (c) a person who holds a rank not lower than the naval rank of captain, or the rank of colonel or group captain.

Note: The expressions *APS employee*, *SES employee* and *acting SES employee* are defined in section 2B of the *Acts Interpretation Act 1901*.

- (3) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Chief of the Defence Force.

### **36 After section 79**

Insert:

#### **79A Annual report**

- (1) The Chief of the Defence Force must, as soon as practicable after the end of each financial year, prepare a report on the administration and operation of this Act during that year.

- (2) The report must be included in the annual report prepared by the Secretary and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for the financial year.

### **37 Section 81**

Repeal the section, substitute:

### **81 Rules**

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
  - (b) provide powers of:
    - (i) arrest or detention; or
    - (ii) entry, search or seizure;
  - (c) impose a tax;
  - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
  - (e) directly amend the text of this Act.

## **Part 3—Application, saving and transitional provisions**

### **38 Definitions**

In this Part:

**amended Act** means the *Defence Reserve Service (Protection) Act 2001*, as amended by this Act.

**commencement day** means the day this item commences.

**Deputy Director** means the person appointed as the Deputy Director of the Office of Reserve Service Protection under regulation 6 of the regulations.

**Director** means the person appointed as the Director of the Office of Reserve Service Protection under regulation 5 of the regulations.

**Office** means the Office of Reserve Service Protection, established under subregulation 4(1) of the regulations.

**regulations** means the *Defence Reserve Service (Protection) Regulations 2001*, as in force immediately before the commencement day.

**the Act** means the *Defence Reserve Service (Protection) Act 2001*, as in force immediately before the commencement day.

### **39 Application provision**

- (1) Subject to item 40, section 72B of the amended Act applies in relation to complaints made to the Chief of the Defence Force under that section on or after the commencement day, regardless of whether the alleged contravention to which the complaint relates occurred before, on or after that day.
- (2) Subject to item 40, section 72C of the amended Act applies in relation to investigations commenced by the Chief of the Defence Force under that section on or after the commencement day, regardless of whether the alleged or suspected contravention to which the investigation relates occurred before, on or after that day.
- (3) Subject to item 40, section 72J of the amended Act applies in relation to dispute resolution services established under that section on or after the

commencement day, regardless of whether the dispute arose before, on or after that day.

#### **40 Transitional provision—complaints, investigations and dispute resolution services**

- (1) If, immediately before the commencement day, the Office had not completed its consideration of a complaint under regulation 15 of the regulations, the complaint has effect, on and after that day, as if it were a complaint made to the Chief of the Defence Force under section 72B of the amended Act.
- (2) If, immediately before the commencement day, the Office had not completed an investigation under regulation 16, or regulation 17, of the regulations, the investigation has effect, on and after that day, as if it were an investigation by the Chief of the Defence Force under section 72C of the amended Act.
- (3) If, immediately before the commencement day, a mediation conference had not been finalised under regulation 22 of the regulations, the mediation has effect, on and after that day, as if it were a dispute resolution service provided under section 72J of the amended Act.
- (4) If, before the commencement day, information was given to the Office in accordance with regulation 12 of the regulations, the information is taken, on and after that day, to have been information given to the Chief of the Defence Force for the purposes of the Chief of the Defence Force performing functions or responsibilities under Part 10 of the amended Act.
- (5) If, before the commencement day, a document or other information was given to the Office in accordance with subregulation 18(7) of the regulations, the document or other information is taken, on and after that day, to have been given to the Chief of the Defence Force under section 72D of the amended Act.
- (6) If, before the commencement day, the Office had made copies, taken extracts or retained the possession of documents or information under regulation 21 of the regulations, the copy, extract, document or information is taken, on and after that day, to have been copied, extracted or retained by the Chief of the Defence Force under section 72F of the amended Act.

#### **41 Transitional provision—things done in capacity of prescribed authority etc.**

- (1) If, before the commencement day, a thing was done by, or in relation to, the Office in the capacity of a prescribed authority under a provision of Part 10 of the Act, then the thing has effect, on and after that day, as if it were done by, or in relation to, the Chief of the Defence Force under that provision.
- (2) If, before the commencement day, a thing was done by, or in relation to, the Director, or Deputy Director, in the capacity of a prescribed person, or person prescribed by the regulations, under a provision of Part 11 of the Act, then the thing has effect, on and after that day, as if it were done by, or in relation to, the Chief of the Defence Force under that provision.
- (3) Nothing in this item is intended to:
  - (a) change the time at which a thing was done, or required to be done; or
  - (b) affect the operation of items 39, 40, 42 or 43 of this Schedule.

#### **42 Transitional provision—interest payments**

- (1) This item applies if:
  - (a) on or after the commencement day, interest is payable under section 53 or 54 of the amended Act by a member, or a dependant of a member; and
  - (b) the member's start day of defence service occurred before the commencement day.
- (2) Paragraph 53(3)(b), or subsection 54(3), of the amended Act applies in relation to the interest payable as if the reference to the rate of interest in that paragraph or subsection were a reference to the rate worked out in accordance with the regulations as in force at the start of the start day of the member's defence service.

#### **43 Saving provision**

- (1) Subject to subitem (4), and despite the amendments made by items 12 to 14 of this Schedule, section 67 of the Act, and regulations made for the purposes of that section, continue to apply in relation to loans made

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**Part 3** Application, saving and transitional provisions

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or guarantees given before the commencement day, as if those amendments had not been made.

- (2) Subject to subitem (4), and despite the amendments made by item 16 of this Schedule, section 69 of the Act, and regulations made for the purposes of that section, continue to apply in relation to loans made or guarantees given before the commencement day, as if those amendments had not been made.
- (3) Subject to subitem (4), and despite the amendments made by item 4 of this Schedule, section 72B of the Act, and any regulations made for the purposes of that section, continue to apply in relation to notices to produce that were given before the commencement day, as if the amendments had not been made.
- (4) For the purposes of subitems (1), (2) and (3), a reference to the Office, the Director, or the Deputy Director in regulations mentioned in those subitems, is taken to be a reference to the Chief of the Defence Force.



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## **Schedule 3—Other amendments**

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

#### **1 Subsection 3(1) (definition of *appoint*)**

Repeal the definition.

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

Insert:

***prohibited drug*** means:

- (a) a border controlled drug (within the meaning of section 301.4 of the *Criminal Code*); or
- (b) a border controlled plant (within the meaning of section 301.5 of the *Criminal Code*); or
- (c) an anabolic steroid (within the meaning of Part 8 of the *Crimes Act 1900* of the Australian Capital Territory).

#### **3 Subsections 4(1) to (3)**

Repeal the subsections, substitute:

- (1) The Governor-General may declare, in writing:
  - (a) a specified force to be on active service for the purposes of this Act; or
  - (b) members of the Defence Force who are serving in a specified area to be on active service for the purposes of this Act.
- (2) A declaration under subsection (1) is a legislative instrument.

#### **4 Subsection 59(9) (paragraph (a) of the definition of *prescribed quantity*)**

Omit “a narcotic substance that is”.

#### **5 Subsection 59(9) (definition of *prohibited drug*)**

Repeal the definition.

#### **6 Subsection 63(1)**

After “Director of Public Prosecutions”, insert “of the Commonwealth”.

**7 Subparagraph 63(1)(a)(ii)**

After “Director of Public Prosecutions” (wherever occurring), insert “of the Commonwealth”.

**8 Subsection 95(8)**

After “an authorized officer”, insert “(other than an authorized officer who is a commanding officer)”.

**9 Subsection 101Q(4A)**

Omit “narcotic substance”, substitute “prohibited drug”.

**10 Subsection 101Q(4B)**

Repeal the subsection.

**11 Subsection 101QA(4)**

Omit “narcotic substance”, substitute “prohibited drug”.

**12 Subsection 101QA(5)**

Repeal the subsection.

**13 Division 2 of Part VIIIA (heading)**

Repeal the heading, substitute:

**Division 2—Review by reviewing authority**

**14 Subsection 172(3A)**

Omit “A person on whom a punishment of imprisonment for life or imprisonment for a specific period is imposed may”, substitute “An authorized officer may order that a person on whom a punishment of imprisonment for life or imprisonment for a specific period is imposed”.

**15 Subsection 172(4)**

Omit “A person on whom a punishment of dismissal from the Defence Force is imposed may”, substitute “An authorized officer may order that a person on whom a punishment of dismissal from the Defence Force is imposed”.

**16 Subsection 172(5)**

Omit “A person on whom a punishment of detention is imposed by a summary authority may”, substitute “An authorized officer may order that a person on whom a punishment of detention is imposed by a summary authority”.

**17 At the end of section 176**

Add:

Note: Certain punishments do not take effect unless approved by a reviewing authority (see subsections 171(1) and (2)). Such punishments must first be approved by a reviewing authority before the execution of the punishment can be stayed under this section.

**18 Paragraph 188FM(a)**

Omit “holding the rank of”, substitute “who holds a rank not lower than”.

**19 Subsection 195(1)**

Omit “Attorney-General”, substitute “Registrar”.

**20 Subsection 195(1)**

Omit “and upon the payment of the prescribed fee (if any)”.

**21 Subsection 195(2)**

Omit “Attorney-General” (wherever occurring), substitute “Registrar”.

**22 Subsection 195(2)**

Omit “and upon the payment of the prescribed fee (if any)”.

**23 Subsection 195(3)**

Omit “Attorney-General” (wherever occurring), substitute “Registrar”.

**24 At the end of subsection 195(4)**

Add “or 148(2)”.

**25 After subsection 195(5)**

Insert:

(5A) Despite subsections (1) and (2), the Registrar may accept an application, and supply a copy of the record of the proceedings, after the expiration of the periods mentioned in those subsections.

**26 Subsection 195(6)**

Omit “Attorney-General”, substitute “Registrar”.

**27 Schedule 4 (note to Schedule heading)**

Omit “Sections 184, 188AF, 188AT, 188FF and 188GJ”, substitute “Sections 128, 184, 188CA, 188EG, 188FF and 188GJ”.

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*[Minister’s second reading speech made in—  
House of Representatives on 5 December 2018  
Senate on 14 February 2019]*

(265/18)

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