



Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Act 2020

No. 146, 2020

**An Act to amend the law relating to the Australian
Defence Force, 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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No. 146, 2020

An Act to amend the law relating to the Australian Defence Force, and for related purposes

[Assented to 17 December 2020]

The Parliament of Australia enacts:

1 Short title

This Act is the *Defence Legislation Amendment (Enhancement of
Defence Force Response to Emergencies) Act 2020*.

No. 146, 2020

*Defence Legislation Amendment (Enhancement of Defence Force
Response to Emergencies) Act 2020*

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2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	18 December 2020

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Amendments

Defence Act 1903

1 Paragraph 24(c)

Repeal the paragraph, substitute:

- (c) is called out under Division 3 of this Part for a period of service that is specified by the Chief of the Defence Force to be continuous full time service; or
- (d) is called upon under Division 1 of Part IV.

2 Subsections 28(1) and (2)

Repeal the subsections, substitute:

- (1) The Governor-General may, by notifiable instrument, make an order (a *call out order*) calling out some or all of the Reserves for service.

3 Subsection 28(4)

Repeal the subsection (not including the heading), substitute:

- (4) In making or revoking a call out order, the Governor-General is to act with the advice of the Minister.
- (4A) Before giving advice to the Governor-General in relation to the making or revoking of a call out order, the Minister must consult the Prime Minister.

4 Subsections 28(5), (6) and (7)

Repeal the subsections.

5 Section 29 (heading)

Omit “**during call out**”, substitute “**while covered by call out order**”.

6 Subsection 29(1)

Omit “continuous full time service for the period”, substitute “service for the period or periods”.

7 Subsections 29(2), (3), (4) and (5)

Repeal the subsections, substitute:

- (2) Unless it ends earlier, and despite any specification by the Chief of the Defence Force, a period ends on the day on which the revocation of the call out order takes effect.

Other service not affected

- (3) This section does not limit a requirement to render service otherwise than under this section.

8 Paragraph 120A(3D)(b)

Omit “continuous full time”.

Defence Reserve Service (Protection) Act 2001

9 Section 7 (definition of start day)

Omit “continuous full time”.

10 Subsection 9(1) (definition of dependant)

Omit “continuous full time”.

11 Section 11 (table items 5 and 6, column headed “applies to these kinds of defence service...”, paragraph (a))

Omit “continuous full time”, substitute “any”.

12 Section 11 (table item 7)

Omit “Continuous full time”, substitute “Any”.

13 Subsection 13(1)

Omit “continuous full time”.

14 Paragraph 40(1)(a)

Omit “continuous full time”, substitute “any”.

15 Paragraph 62(1)(a)

Omit “continuous full time”, substitute “any”.

16 Subsection 65(1)

Omit “continuous full time”.

17 Paragraph 70(2)(a)

Omit “continuous full-time defence”.

Part 2—Application provisions

18 Application of amendments

The amendments made by this Schedule apply in relation to a call out order made under section 28 of the *Defence Act 1903* on or after the commencement of this Schedule.

Schedule 2—Immunity

Defence Act 1903

1 Subsection 4(1)

Insert:

protected person: see subsection 123AA(3).

2 After paragraph 120A(3D)(e)

Insert:

(ea) the power under subsection 123AA(4) to authorise persons to perform duties in respect of the provision of assistance mentioned in subsection 123AA(1)—to:

- (i) an officer of the Navy who holds a rank not below the rank of Commodore; or
- (ii) an officer of the Army who holds a rank not below the rank of Brigadier; or
- (iii) an officer of the Air Force who holds a rank not below the rank of Air Commodore;

3 After subsection 120A(3D)

Insert:

Delegation by Secretary

- (4) The Secretary may, by instrument in writing, delegate the Secretary's power under subsection 123AA(4) to authorise persons to perform duties in respect of the provision of assistance mentioned in subsection 123AA(1) to an SES employee in the Department.

4 After section 123

Insert:

123AA Immunity in relation to certain assistance

- (1) A protected person (see subsection (3)) is not subject to any liability (whether civil or criminal) in respect of anything the protected person does or omits to do, in good faith, in the performance or purported performance of the protected person's duties, if:
 - (a) the duties are in respect of the provision of assistance, by or on behalf of the ADF or the Department, to:
 - (i) the Commonwealth or a State or Territory, or a Commonwealth, State or Territory authority or agency; or
 - (ii) members of the community; and
 - (b) the assistance is provided to prepare for a natural disaster or other emergency that is imminent, or to respond to one that is occurring or recover from one that occurred recently; and
 - (c) the assistance is provided at the direction of the Minister under subsection (2).
- (2) The Minister may, in writing, direct the provision of assistance in relation to a natural disaster or other emergency if the Minister is satisfied of either or both of the following:
 - (a) the nature or scale of the natural disaster or other emergency makes it necessary, for the benefit of the nation, for the Commonwealth, through use of the ADF's or Department's special capabilities or available resources, to provide the assistance;
 - (b) the assistance is necessary for the protection of Commonwealth agencies, Commonwealth personnel or Commonwealth property.
- (3) Each of the following is a *protected person*:
 - (a) a member of the Defence Force;
 - (b) an APS employee in the Department;
 - (c) a person authorised under subsection (4) to perform duties in respect of the provision of assistance mentioned in subsection (1).
- (4) The Chief of the Defence Force, or the Secretary, may, in writing, authorise a person, or each person in a class of persons, to perform

duties in respect of the provision of assistance mentioned in subsection (1), if the person, or each person in the class of persons, is any of the following:

- (a) an APS employee or other employee of the Commonwealth or a Commonwealth authority or agency;
 - (b) a member of the naval, military or air force of a foreign country, or a member of a foreign police force (however described).
- (5) The Minister may, in writing, delegate the Minister's power to make a direction under subsection (2) to the Chief of the Defence Force or the Secretary.
- Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.
- (6) In performing a delegated function or exercising a delegated power, the delegate must comply with any written directions of the Minister.
- (7) A direction made under subsection (2) is not a legislative instrument.
- (8) This section does not prevent assistance being provided by or on behalf of the ADF or the Department in circumstances where a direction has not been made under subsection (2).

Schedule 3—Superannuation and related benefits

Part 1—Amendments

Australian Defence Force Cover Act 2015

1 Section 4 (definition of *continuous full-time Reservist*)

Repeal the definition, substitute:

continuous full-time Reservist means a member of the Reserves who is rendering a period of continuous full-time service.

2 Section 4 (definition of *defence service*)

Repeal the definition.

Australian Defence Force Superannuation Act 2015

3 Section 4 (definition of *continuous full-time Reservist*)

Repeal the definition, substitute:

continuous full-time Reservist means a member of the Reserves who is rendering a period of continuous full-time service.

4 Section 4 (definition of *defence service*)

Repeal the definition.

5 Paragraph 13(b)

After “accepted”, insert “under subsection 26(2) of the *Defence Act 1903*”.

Military Superannuation and Benefits Act 1991

6 Paragraph 6(1)(b)

Repeal the paragraph, substitute:

(b) a member of the Reserves who is rendering a period of continuous full-time service.

7 Subparagraph 7(2)(b)(ii)

Omit “under an undertaking that has been accepted”.

Part 2—Application provisions

8 Application of amendments—definition of *continuous full-time Reservist*

The amendments made by this Schedule to the definition of *continuous full-time Reservist* in section 4 of the *Australian Defence Force Cover Act 2015* and section 4 of the *Australian Defence Force Superannuation Act 2015* apply, in the case of a period of continuous full-time service rendered by a member of the Reserves under a call out order made under section 28 of the *Defence Act 1903*, to a call out order made on or after 28 November 2019.

9 Application of amendments—membership of Superannuation Scheme

The amendments made by this Schedule to sections 6 and 7 of the *Military Superannuation and Benefits Act 1991* apply, in the case of a period of continuous full-time service rendered by a member of the Reserves under a call out order made under section 28 of the *Defence Act 1903*, to a call out order made on or after 28 November 2019.

[Minister's second reading speech made in—
House of Representatives on 3 September 2020
Senate on 6 October 2020]

(117/20)

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