



Defence Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 28 September 2016

Peter Cosgrove
Governor-General

By His Excellency's Command

Marise Payne
Minister for Defence

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Part 1—Preliminary

1 Name

This is the *Defence Regulation 2016*.

2 Commencement

- (1) Each provision of this instrument 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 instrument | 1 October 2016. | 1 October 2016 |

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *Defence Act 1903*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Objects of this regulation

The objects of this instrument are as follows:

- (a) to facilitate the good governance and the effective and efficient operation of the Defence Force;
- (b) to provide the Chief of the Defence Force with the flexibility to deliver capability and preparedness outcomes (including developing force structure options);
- (c) to achieve the Government's objectives and to provide stewardship of the Defence Force;
- (d) to provide personnel management that supports the appointment, enlistment, promotion and retention of appropriate persons for service in the Defence Force.

Section 6

Note: Command in chief of the Defence Force is vested in the Governor-General: see section 68 of the Constitution.

6 Definitions

(1) In this instrument:

Act means the *Defence Act 1903*.

Australian Government officer means:

- (a) a person who holds an office or appointment under a law of the Commonwealth; or
- (b) an APS employee; or
- (c) a person employed by a body corporate incorporated for a public purpose under a law of the Commonwealth; or
- (d) a contractor engaged by the Commonwealth or by a body corporate mentioned in paragraph (c).

authorised complaint recipient: see subsection 39(2).

change a period of service: see subsection 18(3).

committee of management of an unincorporated association or body of persons means the body (however described) that governs, manages or conducts the affairs of the association or body.

Commonwealth land means land owned or occupied by the Commonwealth, but does not include land leased from the Commonwealth unless the lease is subject to a condition that the land may be used by the Defence Force for carrying out a defence operation or practice.

competent officer: see section 52.

covered service: see paragraph 25(1)(c).

death certificate means a death certificate or a corrected death certificate issued under Part 10.

defence area: see subsection 58(1).

defence award: see section 36.

defence honour: see section 35.

defence materiel means goods for use for defence purposes, and includes the following:

- (a) goods being developed for defence purposes;
- (b) goods being tested for use for defence purposes;
- (c) goods being tested for the use of similar goods for defence purposes.

enlisted member means a member other than an officer.

enlisted rank means:

- (a) in relation to the Navy—a rank below the rank of Midshipman; or

- (b) in relation to the Army and the Air Force—a rank below the rank of Officer Cadet.

initial obligation amount: see subsection 25(3).

interests of the Defence Force: see subsection (2).

pay includes all remuneration, allowances and other benefits under Part IIIA of the Act.

police officer means:

- (a) a member or special member of the Australian Federal Police; or
- (b) a member of the police force of a State or Territory.

prohibited letters: see section 75.

prohibited words: see section 74.

service chief: see subsection 7(2).

service debt calculation method: see subsection 25(4).

service obligation debt: see subsection 25(1).

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

- (2) Reasons for something being or not being in the **interests of the Defence Force** include reasons relating to one or more of the following:
- (a) a member's performance;
 - (b) a member's behaviour (including any convictions for criminal or service offences);
 - (c) a member's suitability to serve:
 - (i) in the Defence Force; or
 - (ii) in a particular role or rank;
 - (d) workforce planning in the Defence Force;
 - (e) the effectiveness and efficiency of the Defence Force;
 - (f) the morale, welfare and discipline of the Defence Force;
 - (g) the reputation and community standing of the Defence Force.

Part 2—Service chiefs

7 Appointment as service chief

- (1) The Governor-General may, by written instrument, appoint the following:
 - (a) an officer of the Navy to be Chief of Navy;
 - (b) an officer of the Army to be Chief of Army;
 - (c) an officer of the Air Force to be Chief of Air Force.
- (2) A person appointed under subsection (1) is a *service chief*.
- (3) Before the Governor-General appoints a service chief, the Minister must take into account the recommendations of the Chief of the Defence Force.
- (4) A service chief holds office for the period, and on the conditions, specified in his or her instrument of appointment.
- (5) A service chief ceases to hold office if he or she ceases to be an officer of the arm of the Defence Force for which he or she was appointed.

8 Acting appointments

The Chief of the Defence Force may, by written instrument, appoint an officer who is eligible for appointment to an office of service chief to act in the office:

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the service chief who holds the office:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

9 Resignation

- (1) A service chief may resign his or her appointment as a service chief by giving the Governor-General a written resignation.
- (2) However, the resignation does not have effect unless and until it is accepted by the Governor-General.

10 Termination of appointment as service chief

- (1) The Governor-General may, by notice in writing, terminate the appointment of a service chief.
- (2) Before the Governor-General terminates the appointment of a service chief, the Minister must have received a report about the proposed termination from the Chief of the Defence Force.

11 Remuneration and allowances

- (1) A service chief 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 service chief is to be paid the remuneration that is prescribed by the regulations.
- (2) A service chief is to be paid the allowances determined under Part IIIA of the Act.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Part 3—Service in the Defence Force

Division 1—Appointment and enlistment

12 Appointment and enlistment

- (1) The Chief of the Defence Force may:
 - (a) appoint a person as an officer of the Navy, the Army or the Air Force; or
 - (b) enlist a person in the Navy, Army or Air Force.
- (2) The Governor-General may issue a commission to an officer.
- (3) Before a person is appointed or enlisted, consideration must be given to whether the person is a fit and proper person to perform duties as such an officer or enlisted member.

Conditions of appointment or enlistment

- (4) An appointment or enlistment is subject to any conditions specified by the Chief of the Defence Force at the time of the appointment or enlistment.

Note: For example, an appointment or enlistment could be subject to a probationary period.

Period of appointment or enlistment

- (5) An appointment or enlistment is for:
 - (a) the period of service specified at the time of the appointment or enlistment;
or
 - (b) if no period is so specified—an indefinite period.

Note: A period of service may be changed under Division 4.

Oath or affirmation

- (6) A person must, before being appointed or enlisted or as soon as practicable after being appointed or enlisted:
 - (a) take the oath set out in clause 1 of Schedule 1; or
 - (b) make the affirmation set out in clause 2 of Schedule 1.
- (7) The oath or affirmation must be taken or made before a person mentioned in clause 3 of Schedule 1.

Division 2—Promotion and reduction in rank

13 Promotion

- (1) The Chief of the Defence Force may:
 - (a) promote a member to a higher rank; or
 - (b) direct a member to act in a higher rank.
- (2) A promotion or direction to act in a higher rank is subject to any conditions specified at the time of the promotion or direction.

Note: For example, a promotion or direction to act in a higher rank could be subject to a probationary period.
- (3) Before a member is promoted to, or directed to act in, a higher rank, consideration must be given to whether the member is a fit and proper person to perform duties at the higher rank.

14 Reduction in rank

- (1) The Chief of the Defence Force may reduce the rank of a member for one or more of the following reasons:
 - (a) retention of the member at his or her current rank is not in the interests of the Defence Force;
 - (b) the member cannot usefully serve at his or her current rank because of redundancy in the Defence Force;
 - (c) the member has failed to meet a condition of appointment or promotion to his or her current rank;
 - (d) the member applies for, or agrees to, the reduction.

Note: For *interests of the Defence Force*, see subsection 6(2).
- (2) For a reduction under paragraph (1)(a) or (b), the member must be given notice and at least 14 days after the date of the notice to provide a written response.

Note: For notice to members, see section 30.
- (3) However, if the member has been promoted subject to a probationary period, notice is not required during that period to return the member to the rank held immediately before the promotion.

Division 3—Transfers

15 Transfer between arms of the Defence Force

- (1) The Chief of the Defence Force may transfer a member from one arm of the Defence Force to another arm of the Defence Force.
- (2) The transfer is subject to any conditions specified by the Chief of the Defence Force.

16 Transfer from Permanent Forces to Reserves

- (1) The Chief of the Defence Force may transfer a member from the Permanent Forces to the Reserves if the transfer is in the interests of the Defence Force.
Note: For *interests of the Defence Force*, see subsection 6(2).
- (2) The member must be given notice of the transfer and at least 14 days after the date of the notice to provide a written response.

Note: For notice to members, see section 30.

17 Voluntary transfer from Reserves to Permanent Forces

- (1) The Chief of the Defence Force may transfer a member from the Reserves to the Permanent Forces if the member applies for, or agrees to, the transfer.
- (2) The transfer is subject to any conditions specified by the Chief of the Defence Force.

Division 4—Changing periods of service

18 Voluntary change

- (1) The Chief of the Defence Force may change a period of service for a member if the member applies for, or agrees to, the change.
- (2) The change is subject to any conditions specified by the Chief of the Defence Force.
- (3) ***Change a period of service*** includes the following:
 - (a) extend a period of service;
 - (b) reduce a period of service;
 - (c) convert a fixed period of service to an indefinite period of service;
 - (d) convert an indefinite period of service to a fixed period of service.

19 Time of war or defence emergency

- (1) If a member's period of service would end during a time of war or during a defence emergency, the period of service is extended until the Chief of the Defence Force releases the member from service.
- (2) The Chief of the Defence Force must release the member from service as soon as practicable after the end of the time of war or the defence emergency.
- (3) This section does not prevent a period of service being changed during a time of war or during a defence emergency under another provision of this regulation.

20 Defence Force discipline

The Chief of the Defence Force may extend a member's period of service for the purpose of ensuring that a process under the *Defence Force Discipline Act 1982* relating to the member is completed before the member's period of service ends.

Section 21

Division 5—End of service or period of service

21 Becoming member of Reserves after service in Permanent Forces

- (1) If the period of service of a member of the Permanent Forces ends, the member becomes a member of the Reserves.

Period of Reserve service

- (2) The member's period of service in the Reserves is:
 - (a) if, before the member's service in the Permanent Forces ends, the Chief of the Defence Force specifies a period of service in the Reserves for the member—that period; or
 - (b) otherwise—an indefinite period.

When member does not become a member of the Reserves

- (3) However, the member does not become a member of the Reserves if:
 - (a) the Chief of the Defence Force directs that the member is not to become a member of the Reserves; or
 - (b) the member's service is terminated under section 24 (early termination of service) other than because of redundancy in the Defence Force; or
 - (c) the member's service is terminated (however described) under the Act or the *Defence Force Discipline Act 1982*.

22 End of service in the Reserves—5 year rule

- (1) An indefinite period of service in the Reserves ends if, during a continuous period of 5 years, the member has not been required to render service as a member of the Reserves.
- (2) However, before service ends under subsection (1), the Chief of the Defence Force may direct that the service:
 - (a) continues indefinitely; or
 - (b) ends at another time.

23 Retirement age

- (1) A member's service (whether in the Permanent Forces or the Reserves) ends when the member reaches his or her retirement age.
- (2) Subsection (1) has effect subject to:
 - (a) section 19 (time of war or defence emergency); and
 - (b) any written direction by the Chief of the Defence Force allowing the member to serve beyond the member's retirement age.
- (3) There is no retirement age for an Admiral of the Fleet, a Field Marshal or a Marshal of the Royal Australian Air Force.
- (4) Retirement ages for other members are as follows:

- (a) for a member of the Permanent Forces who holds the rank of Admiral, General or Air Chief Marshal—63 years of age;
- (b) for any other member of the Permanent Forces—60 years of age;
- (c) for a member of the Reserves—65 years of age.

24 Early termination of service

- (1) The Chief of the Defence Force may terminate the service of a member for one or more of the following reasons:
 - (a) the member is medically unfit for service in the Defence Force;
 - (b) the member cannot usefully serve because of redundancy in the Defence Force;
 - (c) retention of the member's service is not in the interests of the Defence Force;
 - (d) the member has failed to meet a condition of his or her appointment or enlistment;
 - (e) the member has been absent without leave for a continuous period of 3 months or more.

Note: For *interests of the Defence Force*, see subsection 6(2).

- (2) For termination under paragraph (1)(a), (b) or (c), the member must be given notice and at least 14 days after the date of the notice to provide a written response.

Note: For notice to members, see section 30.

- (3) However, if the member's appointment or enlistment is subject to a probationary period, notice is not required during that period.

When termination because of redundancy can occur

- (4) Termination because of redundancy (other than during a probationary period) must not occur until 5 weeks after notice is given unless the member agrees to earlier termination.

25 Service obligation debts

- (1) A member owes a debt (the *service obligation debt*) to the Commonwealth if:
 - (a) the Chief of the Defence Force changes a period of service for the member; and
 - (b) the member applied for the change; and
 - (c) the change means that the member will not complete a period of service (the *covered service*) that is:
 - (i) an initial minimum period of service; or
 - (ii) a period of service required under a return of service obligation.
- (2) The amount of the service obligation debt is the amount worked out using:
 - (a) the initial obligation amount for the covered service; and
 - (b) the service debt calculation method for the covered service.
- (3) The *initial obligation amount* for the covered service is the amount:

Section 26

- (a) determined by the Chief of the Defence Force for the covered service; and
 - (b) notified to the member:
 - (i) before the member began the initial minimum period of service; or
 - (ii) before the training or other activities or events that gave rise to the return of service obligation.
- (4) The **service debt calculation method** for the covered service is the method for reducing the initial obligation amount for the covered service according to the portion of the covered service that has been completed that was:
- (a) determined by the Chief of the Defence Force for the covered service; and
 - (b) notified to the member:
 - (i) before the member began the initial minimum period of service; or
 - (ii) before the training or other activities or events that gave rise to the return of service obligation.

Covered service begun before commencement

- (5) However, if the period of covered service began before the commencement of this section, the amount of the service obligation debt is the amount determined by the Chief of the Defence Force as if:
- (a) the *Defence (Personnel) Regulations 2002*, as in force immediately before the commencement of this section, continued in effect; and
 - (b) references in regulations 88 to 98 of those Regulations to the Chief of the member's service were references to the Chief of the Defence Force; and
 - (c) the service obligation debt were an amount covered by a condition that the member pay a specified amount of money.

Waiver of service obligation debts

- (6) The Chief of the Defence Force may waive all or part of a service obligation debt.

26 Change of reason for end of service

- (1) This section applies if:
- (a) the service of a member of the Defence Force has been terminated or has ended for a particular reason; and
 - (b) the Chief of the Defence Force is satisfied that the member's service could properly have been terminated or ended for another reason.
- (2) The Chief of the Defence Force may ensure that the member's service is treated as having been terminated or ended for the other reason:
- (a) at the request or with the agreement of the member; or
 - (b) at the request or with the agreement of the member's family.

Division 6—Service in the Reserves

27 Service in the Reserves

A member of the Reserves is bound to render service (including periods of training) as required by the Chief of the Defence Force.

Division 7—Suspension from duty

28 Suspension from duty

- (1) The Chief of the Defence Force may suspend a member from duty if:
 - (a) the member:
 - (i) has been given notice of a proposed termination of the member's service under subsection 24(2); and
 - (ii) has not been informed that the proposed termination will not proceed; or
 - (b) the member:
 - (i) has been given notice under section 100 of the Act of the return of a positive test result for a prohibited substance test; and
 - (ii) has not been informed that his or her service will not be terminated because of the result; or
 - (c) the Chief of the Defence Force has decided to terminate the member's service under subsection 24(1), but the decision has not yet taken effect.
- (2) The suspension may be:
 - (a) with pay, without pay or on part pay; and
 - (b) ended or varied at any time by the Chief of the Defence Force.
- (3) The suspension ends if the member is informed:
 - (a) for termination under section 24—that the proposed termination will not proceed; or
 - (b) for notice under section 100 of the Act—that his or her service will not be terminated because of the result.
- (4) For suspension without pay or on part pay, the member must be given notice and at least 7 days after the date of the notice to provide a written response.

Note: For notice to members, see section 30.
- (5) The Chief of the Defence Force may retrospectively vary a suspension:
 - (a) if the suspension was without pay—by changing it to suspension with pay or on part pay; or
 - (b) if the suspension was on part pay—by increasing the amount of part pay or changing it to suspension with pay.

Division 8—Forfeiture of pay—absent without leave

29 Forfeiture of pay—absent without leave

- (1) If a member is absent from duty without leave, the member's pay is forfeited to the Commonwealth.
- (2) To avoid doubt, subsection (1):
 - (a) applies whether or not the member has been charged with or convicted of a service offence in relation to the absence; and
 - (b) may apply to a member who is in civil custody.
- (3) The Chief of the Defence Force may determine that some or all pay otherwise forfeited under this section is not forfeited.

Section 30

Division 9—Notice to members

30 Notice to members

Content of notice

- (1) If a provision of this Part requires notice of an action to be given to a member, the notice must:
 - (a) state that the action is proposed; and
 - (b) set out the reason for the proposal; and
 - (c) invite the member to provide a written response as to why the proposed action should not be taken; and
 - (d) set out the facts and circumstances necessary for the member to prepare the written response; and
 - (e) specify the period for providing the written response.

When action can occur

- (2) The action must not take place before one of the following occurs:
 - (a) the member provides the written response;
 - (b) the member states in writing that he or she does not intend to provide the written response;
 - (c) the period for providing the written response ends.

Part 4—Honorary ranks

31 Honorary officer ranks

- (1) The Governor-General or the Chief of the Defence Force may appoint an officer or another person to an officers' rank that is to be held as an honorary rank.
- (2) An honorary rank does not confer or imply a right to command, other than any right to command which the Chief of the Defence Force confers on the officer or person.
- (3) The Governor-General or the Chief of the Defence Force may at any time revoke an appointment to an officers' rank made under this section.

32 Honorary enlisted ranks

- (1) The Chief of the Defence Force may appoint an enlisted member or another person to an enlisted rank that is to be held as an honorary rank.
- (2) An honorary rank does not confer or imply a right to command, other than any right to command which the Chief of the Defence Force confers on the enlisted member or person.
- (3) The Chief of the Defence Force may at any time revoke an appointment to an enlisted rank made under this section.

Part 5—Privileges after end of service

33 Title after end of service

- (1) If a member's service in the Defence Force has ended, the Chief of the Defence Force may grant to the former member an honorary title relating to the member's former appointment.
- (2) An honorary title does not confer or imply:
 - (a) a right to command; or
 - (b) a position in, or membership of, the Defence Force.
- (3) The Chief of the Defence Force may at any time revoke the grant of an honorary title to a former member.

34 Wearing of uniform after end of service

- (1) If a member's service in the Defence Force has ended, the Chief of the Defence Force may:
 - (a) permit the former member to wear a uniform relating to the former member's service; and
 - (b) specify conditions to which the permission is subject.
- (2) The Chief of the Defence Force may at any time revoke permission for a former member to wear a particular uniform.

Part 6—Defence honours and awards

35 Defence honours

For section 110T of the Act, each item in the following table specifies a *defence honour*.

| Defence honours | |
|-----------------|--|
| Item | Name of honour |
| 1 | Victoria Cross for Australia |
| 2 | Victoria Cross |
| 3 | Star of Gallantry |
| 4 | Companion of the Distinguished Service Order |
| 5 | Distinguished Service Cross (Australia) |
| 6 | Conspicuous Service Cross |
| 7 | Nursing Service Cross |
| 8 | Royal Red Cross (1st Class) |
| 9 | Distinguished Service Cross (Imperial) |
| 10 | Military Cross |
| 11 | Distinguished Flying Cross |
| 12 | Air Force Cross |
| 13 | Royal Red Cross (2nd Class) |
| 14 | Medal for Gallantry |
| 15 | Distinguished Service Medal (Australia) |
| 16 | Distinguished Conduct Medal |
| 17 | Conspicuous Gallantry Medal |
| 18 | Conspicuous Gallantry Medal (Flying) |
| 19 | Conspicuous Service Medal |
| 20 | Distinguished Service Medal (Imperial) |
| 21 | Military Medal |
| 22 | Distinguished Flying Medal |
| 23 | Air Force Medal |
| 24 | Queen's Gallantry Medal |
| 25 | Commendation for Gallantry |
| 26 | Queen's Commendation for Brave Conduct |
| 27 | Queen's Commendation for Valuable Service in the Air |
| 28 | Mention in Despatches |
| 29 | Commendation for Distinguished Service |

Section 36

36 Defence awards

For section 110T of the Act, each item in the following table specifies a *defence award*.

| Defence awards | |
|-----------------------|--|
| Item | Name of award |
| 1 | Naval General Service Medal 1915–62 |
| 2 | General Service Medal 1918–62 |
| 3 | 1939–45 Star |
| 4 | Atlantic Star |
| 5 | Air Crew Europe Star |
| 6 | Africa Star |
| 7 | Pacific Star |
| 8 | Burma Star |
| 9 | Italy Star |
| 10 | France and Germany Star |
| 11 | Defence Medal |
| 12 | War Medal, 1939–45 |
| 13 | Australia Service Medal 1939–45 |
| 14 | Australian Active Service Medal 1945–1975 |
| 15 | Korea Medal |
| 16 | United Nations Service Medal for Korea |
| 17 | General Service Medal 1962 |
| 18 | Vietnam Medal |
| 19 | Vietnam Logistic and Support Medal |
| 20 | Australian Active Service Medal |
| 21 | International Force East Timor Medal |
| 22 | Afghanistan Medal |
| 23 | Iraq Medal |
| 24 | Australian Service Medal 1945–75 |
| 25 | Australian General Service Medal for Korea |
| 26 | Australian Service Medal |
| 27 | Australian Operational Service Medal |
| 28 | Rhodesia Medal |
| 29 | Defence Force Service Medal |
| 30 | Reserve Force Decoration |
| 31 | Reserve Force Medal |
| 32 | Defence Long Service Medal |
| 33 | Australian Cadet Forces Service Medal |
| 34 | Champion Shots Medal |
| 35 | Army Best Shots Medal |
| 36 | Queen’s Medal for Champion Shots of the RAAF |

| Defence awards | |
|-----------------------|---|
| Item | Name of award |
| 37 | Royal Navy Long Service and Good Conduct Medal |
| 38 | Royal Navy Volunteer Reserve Decoration |
| 39 | Royal Navy Reserve Decoration |
| 40 | Royal Naval Reserve Long Service and Good Conduct Medal |
| 41 | Royal Naval Volunteer Reserve Long Service and Good Conduct Medal |
| 42 | Royal Fleet Reserve Long Service and Good Conduct Medal |
| 43 | Meritorious Service Medal |
| 44 | Long Service and Good Conduct Medal (Army) |
| 45 | Efficiency Decoration |
| 46 | Efficiency Medal |
| 47 | Meritorious Service Medal (RAAF) |
| 48 | Long Service and Good Conduct Medal (RAAF) |
| 49 | Air Efficiency Award |
| 50 | Cadet Forces Medal |
| 51 | Australian Defence Medal |
| 52 | Anniversary of National Service 1951–1972 Medal |

37 Disclosure of information about honours and awards

- (1) A person commits an offence if:
- (a) the person discloses information; and
 - (b) the information is obtained by the person as a member of the Defence Honours and Awards Appeals Tribunal, or as a person assisting the Tribunal; and
 - (c) the information is part of or relates to an application for review of a reviewable decision (within the meaning of section 110V of the Act).

Penalty: 10 penalty units.

- (2) Subsection (1) does not apply if:
- (a) the disclosure is in the performance of the person's duties as a member of the Tribunal, or as a person assisting the Tribunal; or
 - (b) the disclosure of the information is permitted or required by the Act or by procedural rules made under section 110XH of the Act; or
 - (c) the disclosure of the information is the subject of an order under section 110XD of the Act; or
 - (d) the disclosure of the information is only by or to the person to whom the information relates; or
 - (e) the disclosure of the information is authorised by the person to whom the information relates.

Part 7—Redress of grievances

38 Object of this Part

The object of this Part is to provide a process for a member to seek redress of a grievance the member has about a decision, act or omission that relates to the member's service in the Defence Force.

39 Chief of the Defence Force may authorise person to receive complaints

- (1) The Chief of the Defence Force may, by written instrument, authorise one or more of the following to receive complaints made under this Part:
 - (a) an officer;
 - (b) an APS employee who holds, or performs the duties of, a position not below APS 6 in the Department.
- (2) A person so authorised is an *authorised complaint recipient*.

40 Making a complaint

- (1) A member may make a complaint under this Part if the member considers:
 - (a) that a decision, act or omission in relation to the member's service is adverse or detrimental to him or her; and
 - (b) that the adverse or detrimental effect of the decision, act or omission is capable of being redressed by:
 - (i) the Chief of the Defence Force, or another member of the Defence Force; or
 - (ii) the Secretary or an employee of the Department; or
 - (iii) a delegate of, or a person authorised by, the Chief of the Defence Force or Secretary.
- (2) However, a member must not make a complaint under this Part in relation to any of the following:
 - (a) a decision or act under this Part, or an omission to make a decision or do an act under this Part;
 - (b) a decision, act or omission of the Inspector-General ADF;
 - (c) a decision, report, finding or recommendation of an inquiry under the *Defence (Inquiry) Regulations 1985*;
 - (d) a decision to give, or not to give, a particular assessment, grade or rating as the result of a performance appraisal;
 - (e) a decision, judgment or order made by a civil or criminal court, a service tribunal or the Defence Force Discipline Appeal Tribunal;
 - (f) a liability arising under section 68 or 69 of the *Public Governance, Performance and Accountability Act 2013*;
 - (g) an act that is part of the administrative process for making a decision, other than as part of a complaint about the decision.

41 Manner of making complaint

- (1) A complaint by a member under this Part must:
 - (a) be made in a form approved by the Chief of the Defence Force; and
 - (b) include information about the decision, act or omission concerned; and
 - (c) specify the redress sought; and
 - (d) be given to the member's commanding officer or to an authorised complaint recipient.
- (2) If the complaint relates to a decision to terminate the member's service, it must be made within 14 days after the member was notified of the decision.
- (3) If the complaint does not relate to a decision to terminate the member's service, it must be made:
 - (a) within 6 months after the member:
 - (i) was notified of the decision, act or omission concerned; or
 - (ii) could reasonably be expected to have known about the decision, act or omission; or
 - (b) if the Inspector-General ADF is satisfied that exceptional circumstances exist—within the time allowed by the Inspector-General ADF.

42 Action to consider complaint or redress grievance

A commanding officer or authorised complaint recipient who is given a complaint under this Part may do one or more of the following:

- (a) consider the complaint;
- (b) take action to redress the member's grievance;
- (c) refer the complaint to another person for consideration;
- (d) refer the complaint to another person who is capable of redressing the member's grievance;
- (e) refer the complaint to be dealt with under another complaint handling procedure.

43 Referral to Inspector-General ADF

- (1) A commanding officer or an authorised complaint recipient who is given a complaint under this Part by a member must, within 14 days after receiving the complaint:
 - (a) refer the complaint to the Inspector-General ADF; and
 - (b) notify the member, in writing, that the complaint has been referred to the Inspector-General ADF.
- (2) The commanding officer or authorised complaint recipient may also give the Inspector-General ADF any other information or material that the commanding officer or authorised complaint recipient considers relevant.
- (3) If the member is not notified in accordance with paragraph (1)(b), the member may give the complaint to the Inspector-General ADF.

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44 Inspector-General ADF to consider complaint

- (1) If a complaint is made by a member under this Part, the Inspector-General ADF must consider the complaint.
- (2) Subsection (1) has effect subject to section 46 of this instrument and subsection 110DB(1) of the Act.

Note: Subsection 110DB(1) of the Act provides that the Inspector-General ADF may end an inquiry or investigation if he or she is satisfied that it is not warranted having regard to all the circumstances.

- (3) In considering the complaint, the Inspector-General ADF may adopt any procedure that he or she considers appropriate in the circumstances.

45 Action by Inspector-General ADF

- (1) After considering the complaint, the Inspector-General ADF:
 - (a) must inform either the member's commanding officer or a more senior officer in the member's chain of command of the findings made by the Inspector-General ADF in relation to the complaint; and
 - (b) may inform any of the following of the findings made by the Inspector-General ADF in relation to the complaint:
 - (i) the Minister;
 - (ii) the Chief of the Defence Force;
 - (iii) a service chief;
 - (iv) the Secretary;
 - (v) a member of the Defence Force;
 - (vi) an employee of the Department;
 - (vii) any other person the Inspector-General ADF considers is affected by a finding.
- (2) The Inspector-General ADF may give a report about the complaint, including the findings and any recommendations by the Inspector-General ADF, to:
 - (a) any person mentioned in subsection (1); or
 - (b) if the report includes recommendations that the Inspector-General considers would affect another person—to the other person.
- (3) Recommendations made by the Inspector-General ADF may include, but are not limited to, action that the Inspector-General ADF considers should be taken to redress the adverse or detrimental effect of the decision, act or omission concerned.
- (4) The Inspector-General ADF must inform the member of the following:
 - (a) the findings made by the Inspector-General in relation to the complaint;
 - (b) who has been informed of the findings;
 - (c) whether other persons have been given a report about the complaint, and if so who has been given the report.

46 Inspector-General ADF may decide not to consider complaint

- (1) The Inspector-General ADF may decide not to consider the complaint, or to stop considering the complaint, if in the Inspector-General ADF's opinion:
 - (a) the commanding officer or authorised complaint recipient who received the complaint has satisfactorily resolved the complaint, or will be able to satisfactorily resolve the complaint; or
 - (b) the member's grievance has already been considered under this Part or another complaint handling procedure; or
 - (c) it would be more appropriate for the member's grievance to be dealt with under another complaint handling procedure; or
 - (d) the member did not make reasonable efforts to resolve the member's grievance before submitting the complaint under this Part; or
 - (e) the complaint does not include sufficient information about a decision, act or omission to enable the complaint to be considered; or
 - (f) the complaint is frivolous or vexatious; or
 - (g) consideration of the complaint is not warranted having regard to all the circumstances.
- (2) If the Inspector-General ADF decides not to consider the complaint, the Inspector-General ADF must notify the member, in writing, of:
 - (a) the decision; and
 - (b) the reasons for the decision.

47 Withdrawing complaint

- (1) A member may withdraw a complaint made under this Part at any time by giving written notice to:
 - (a) if the complaint has been given to the Inspector-General ADF—the Inspector-General ADF; and
 - (b) if the complaint has not been given to the Inspector-General ADF—the commanding officer or authorised complaint recipient to whom the complaint was given.
- (2) If the complaint has not been given to the Inspector-General ADF, the commanding officer or authorised complaint recipient is not required to refer the complaint to the Inspector-General ADF, but must inform the Inspector-General ADF that the complaint was made and then withdrawn.

48 Victimisation*Causing detriment to another person*

- (1) A member, or an employee of the Department, commits an offence if:
 - (a) the member or employee engages in conduct that causes detriment to another person; and
 - (b) the member or employee intends to cause the detriment because the other person:
 - (i) has made, or proposes to make, a complaint under this Part; or

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- (ii) has redressed, or proposes to redress, a member's grievance about a decision, act or omission that relates to the member's service in the Defence Force; or
- (iii) has taken, or proposes to take, any other action under this Part.

Penalty: 10 penalty units.

Threatening to cause detriment to another person

- (2) A member, or an employee of the Department, commits an offence if:
 - (a) the member or employee makes a threat to another person (the **second person**) to cause detriment to the second person or to a third person; and
 - (b) the member or employee:
 - (i) intends the second person to fear that the threat will be carried out; or
 - (ii) is reckless as to causing the second person to fear that the threat will be carried out; and
 - (c) the member or employee makes the threat because a person:
 - (i) has made, or proposes to make, a complaint under this Part; or
 - (ii) has redressed, or proposes to redress, a member's grievance about a decision, act or omission that relates to the member's service in the Defence Force; or
 - (iii) has taken, or proposes to take, any other action in relation to this Part.

Penalty: 10 penalty units.

- (3) For the purposes of subsection (2), a threat may be:
 - (a) express or implied; or
 - (b) conditional or unconditional.
- (4) In a prosecution for an offence against subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

Part 8—Medical and dental treatment

49 Provision of medical and dental treatment

- (1) The Commonwealth must arrange provision to a member of the Defence Force rendering continuous full time service of medical and dental treatment necessary to keep the member fit for the performance of the member's duties.
- (2) The provision of treatment under subsection (1) is not required to comply with a law of a State or Territory if it complies with a Defence Instruction.
- (3) The Commonwealth must arrange for the supply of pharmaceuticals required for the provision of treatment under subsection (1), including arranging associated activities such as transport, storage and possession of the pharmaceuticals.
- (4) The supply of pharmaceuticals (and associated activities) under subsection (3) is not required to comply with a law of a State or Territory if it complies with a Defence Instruction.

50 Recovery of the costs of treatment in certain circumstances

- (1) If:
 - (a) the Commonwealth provides medical or dental treatment to a member under section 49 in relation to an illness or injury; and
 - (b) the Secretary is satisfied that the member may have an enforceable claim for damages against a person for the illness or injury;the Secretary may, in writing, require the member to pay an amount to the Commonwealth for the treatment.
- (2) The amount must not exceed the expense incurred by the Commonwealth.
- (3) The amount is a debt due to the Commonwealth.
- (4) Without limiting the means by which the debt may be recovered, the Commonwealth may deduct the amount from the member's salary and allowances.
- (5) Subsection (1):
 - (a) applies regardless of when the illness or injury occurred or when the enforceable claim for damages may have arisen; and
 - (b) continues to apply to a person who ceases to be a member at any time after receiving the treatment.

Part 9—Oaths and affirmations etc. for members serving overseas

51 Oaths and affirmations etc. for members outside Australia

- (1) A competent officer may do the following for a member of the Defence Force who is serving outside Australia:
 - (a) administer an oath or affirmation;
 - (b) take an affidavit;
 - (c) witness the signing of a document.
- (2) Any writing by the competent officer evidencing the oath, affirmation, affidavit or witnessing must include the signature, name and rank of the competent officer.
- (3) However, the competent officer is not required to state the place where the oath or affirmation is administered, the affidavit is sworn or the document is witnessed.
- (4) The oath, affirmation, affidavit or witnessing has effect:
 - (a) if it is substantially in accordance with a form provided by the Commonwealth, a State or a Territory; and
 - (b) for the purposes of any law of the Commonwealth, a State or a Territory.
- (5) For the purposes of this Part, a reference to a member of the Defence Force includes a reference to:
 - (a) a person who accompanies a part of the Defence Force; or
 - (b) a member of the Defence Force who is a prisoner of war, interned or in custody in a place outside Australia.

52 Meaning of *competent officer*

Each of the following is a *competent officer*:

- (a) an officer;
- (b) a member of the naval, military or air force of Canada, New Zealand, the United Kingdom or the United States of America who holds a rank equivalent to an officer;
- (c) in relation to a member of the Defence Force who is a prisoner of war, interned or in custody in a place outside Australia—the person who is the official representative of prisoners of war or other persons detained or interned in that place.

Part 10—Certification of deaths

53 Minister may issue death certificates

- (1) The Minister may issue a death certificate for a member of the Defence Force if the Minister is satisfied that, while on service, the member:
 - (a) has died; or
 - (b) has become missing and is presumed to have died.
- (2) The certificate must state:
 - (a) the date on which the member died or is presumed to have died; or
 - (b) a date before or after which the member died or is presumed to have died.
- (3) The death certificate is evidence in all courts and for all purposes of the death, and time of death, of the member.
- (4) For the purposes of this Part, a reference to a member of the Defence Force includes a reference to:
 - (a) a person who accompanies a part of the Defence Force; or
 - (b) a member of the Defence Force who is a prisoner of war, interned or in custody in a place outside Australia.

54 Cancellation and correction of death certificates

- (1) If the Minister is satisfied that a death certificate (the *original certificate*) is incorrect, the Minister must:
 - (a) require the return of the original certificate; and
 - (b) either:
 - (i) cancel the original certificate; or
 - (ii) issue a corrected death certificate.
- (2) Subsection (1) applies whether the original certificate is incorrect in respect of:
 - (a) a particular set out in the certificate; or
 - (b) the death of the member.
- (3) If the original certificate is not returned, cancelling the original certificate or issuing a corrected death certificate does not affect the rights of a person acting in good faith in reliance on the original certificate.

Offences

- (4) A person commits an offence if:
 - (a) the person has possession or control of a death certificate; and
 - (b) the Minister requires the person to return the death certificate; and
 - (c) the person fails to comply with the requirement as soon as practicable.

Penalty: 10 penalty units.

- (5) A person commits an offence if:

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- (a) the person has possession or control of a death certificate; and
- (b) either:
 - (i) the Minister requires the person to return the death certificate; or
 - (ii) the person knows that the Minister will require the person to return the death certificate; and
- (c) the person makes use of, or purports to act in reliance on, the death certificate.

Penalty: 10 penalty units.

55 Dealing with property

- (1) This section applies if a death certificate for a member is in effect.
- (2) Leave of a court is not required for the distribution or administration of the member's estate if:
 - (a) probate of the member's will has been granted or is proposed to be granted; or
 - (b) administration of the member's estate has been granted or is proposed to be granted.
- (3) No bond, surety or other security must be required in relation to money or other property forming part of the member's estate that would not have been required if the member's death had been proved conclusively.

56 No civil or criminal liability for reliance on certificate or cancellation

A person is not subject to any civil or criminal liability only because the person has paid money or transferred property in good faith in reliance on a certificate or cancellation under this Part.

Part 11—Defence areas

Division 1—Application of Part

57 Application

- (1) This Part does not apply to a person if, immediately before the repeal of the *Defence Force Regulations 1952*, Part VII of those regulations applied to the person.

Note: For the application of Part VII of the *Defence Force Regulations 1952*, see subsection 72TB(1) of the Act.

- (2) Despite the repeal of the *Defence Force Regulations 1952*, Part VII of those regulations continue to apply in accordance with subsection 72TB(1) of the Act.

Division 2—Defence areas

58 Declaration of defence area

- (1) The Minister may, by legislative instrument, declare an area of land, sea or airspace in or adjacent to Australia to be a *defence area* for use for a defence purpose.
- (2) The declaration must:
 - (a) specify the defence purpose for which the area is required; and
 - (b) specify whether entry into a defence area is to be:
 - (i) prohibited at all times; or
 - (ii) prohibited during particular periods as determined under subsection 59(1).
- (3) The Minister must not declare an area unless:
 - (a) the area is Commonwealth land; or
 - (b) for land that is not Commonwealth land—the consent in writing of the occupier of the land has been obtained; or
 - (c) it is necessary or expedient, in the interests of the safety or defence of Australia, to use the area for the purpose of:
 - (i) testing defence materiel; or
 - (ii) carrying out a defence operation or practice; or
 - (d) the area is a depot, factory, laboratory, store or other facility used by or on behalf of the Commonwealth in relation to defence materiel.
- (4) The area may be used for the defence purpose specified in the declaration.

59 Prohibition of entry into defence area

- (1) If entry into a defence area is to be prohibited during particular periods, the Chief of the Defence Force or the Secretary may determine a period when entry is prohibited.

Note: For example, entry may be prohibited while a defence operation or practice takes place.
- (2) The Chief of the Defence Force or the Secretary must cause such notice to be given of a prohibition of entry into the area as is reasonably required, having regard to:
 - (a) whether entry is prohibited at all times; and
 - (b) the need to protect persons and property that might be affected by activities in the defence area; and
 - (c) the nature of the activities to be undertaken in the area; and
 - (d) the equipment to be used in those activities, and the risk to persons or property that is likely to arise from that use; and
 - (e) the forms of communication available for notifying the public.
- (3) A person commits an offence if:
 - (a) the person is in a defence area; and
 - (b) at the time the person is in the area, entry into the area is prohibited.

Penalty: 20 penalty units.

- (4) Subsection (3) does not apply if the person has permission from one of the following to be in the defence area at that time:
- (a) a person authorised by the Chief of the Defence Force or the Secretary to grant permission;
 - (b) an officer participating in an activity being undertaken in the defence area at that time.

Note: See section 62 for requirements concerning permission.

60 Requirement to remove property from defence area

- (1) If entry to a defence area is not prohibited at all times, the Chief of the Defence Force or the Secretary may direct that a person is required to ensure that an item of movable property is not present in the area during a period that entry is prohibited.
- (2) To avoid doubt, a direction may identify the person to whom it applies by reference to a class of persons, and the property to which it applies by reference to a class of property.

Note: For example, a direction may require owners of vehicles, vessels and aircraft to ensure these items are not present.

- (3) A direction may apply to a particular period during which entry is prohibited, or to all such periods.
- (4) The Chief of the Defence Force or the Secretary must cause such notice to be given of the direction as is reasonably required, having regard to:
- (a) the persons to whom the requirement applies; and
 - (b) the kind of property to which the requirement applies; and
 - (c) the period during which the requirement applies; and
 - (d) the forms of communication available for notifying the persons affected.
- (5) A person commits an offence if:
- (a) a direction under this section requires the person to ensure an item of movable property is not present in a defence area during a period; and
 - (b) the item is present in the area during that period.

Penalty: 20 penalty units.

- (6) Subsection (5) does not apply if the person has permission from one of the following for the item of property to be in the defence area during that period:
- (a) a person authorised by the Chief of the Defence Force or the Secretary to grant permission;
 - (b) an officer participating in an activity being undertaken in the defence area during that period.

Note: See section 62 for requirements concerning permission.

Section 61

61 Installation of equipment

- (1) The Chief of the Defence Force may authorise the installation, placement or construction of equipment (including a structure) for defence purposes within a defence area, including on the sea-bed or in the subsoil beneath an area.
- (2) If entry to the area is not prohibited at all times, the Chief of the Defence Force must cause such notice to be given of the location of the equipment, and of activities that would be likely to interfere with the operation of the equipment, as is reasonably required having regard to:
 - (a) the nature of the equipment; and
 - (b) the risk of damage to the equipment; and
 - (c) the risk of other interference with the operation of the equipment; and
 - (d) the forms of communication available for notifying persons in reasonable proximity to the equipment.
- (3) A person commits an offence if the person interferes with the operation of equipment installed, placed or constructed in a defence area as authorised under this section.

Penalty: 20 penalty units.

- (4) Subsection (3) does not apply if the person has permission from one of the following to engage in conduct that might or will interfere with the operation of the equipment:
 - (a) a person authorised by the Chief of the Defence Force or the Secretary to grant permission;
 - (b) an officer participating in a kind of activity for which the equipment was installed.

Note: See section 62 for requirements concerning permission.

62 Permission requirements

- (1) Permission for the purposes of section 59, 60 or 61 must be given in writing and must specify the period for which the permission is effective.
- (2) Permission may be subject to conditions (including conditions in relation to the conduct of the person to whom the permission is given) that are reasonably required for:
 - (a) the protection of persons and property in the defence area; or
 - (b) the safety or defence of Australia; or
 - (c) the protection of official secrets.
- (3) A person commits an offence if:
 - (a) the person is given permission for the purposes of section 59, 60 or 61; and
 - (b) the person engages in conduct that is in breach of a condition of the permission.

Penalty: 20 penalty units.

63 Removal from defence area

- (1) A person may be removed from a defence area if the person:
 - (a) is in the defence area in contravention of subsection 59(3); or
 - (b) fails to comply with a condition of permission given to the person for the purposes of section 59 or 61.
- (2) An item of movable property may be removed from a defence area if:
 - (a) the item is in the defence area in contravention of subsection 60(5); or
 - (b) a condition of permission given for the purposes of section 60 in relation to the item is not complied with.
- (3) The person or item may be removed by or under the direction of:
 - (a) a member of the Defence Force; or
 - (b) a police officer; or
 - (c) an Australian Government officer; or
 - (d) a person authorised by the Minister.
- (4) The power of removal is without prejudice to any proceedings that may be taken against a person.

64 Offence of obstructing or hindering

- (1) A person commits an offence if:
 - (a) the person obstructs or hinders another person; and
 - (b) the other person is:
 - (i) a member of the Defence Force; or
 - (ii) a police officer; or
 - (iii) an Australian Government officer; or
 - (iv) a person authorised by the Minister for section 63; and
 - (c) the other person is exercising a power under section 63 to remove a person or item of movable property.

Penalty: 20 penalty units.

- (2) A person commits an offence if:
 - (a) the person obstructs or hinders another person; and
 - (b) the other person is acting under a direction given under section 63.

Penalty: 20 penalty units.

65 Other defence operations and practices

Nothing in this Division affects the power of the Commonwealth to undertake defence operations and practices outside of defence areas.

66 Division binds the Crown

This Division binds the Crown in each of its capacities.

Division 3—Compensation

67 Compensation for loss or damage

- (1) The Commonwealth is liable to pay a reasonable amount of compensation to a person who suffers any of the following forms of loss or damage as a result of the operation of this Part:
 - (a) a personal injury;
 - (b) damage to property;
 - (c) a loss of income.
- (2) Without limiting how the loss or damage may be caused by the operation of this Part, subsection (1) applies if the person:
 - (a) is ordinarily resident in a place when it is declared a defence area under section 58, and suffers the loss or damage because of the declaration; or
 - (b) suffers the loss or damage because of the use of land for an activity in a defence area.
- (3) If the Commonwealth and the person do not agree on the amount of compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

68 Compensation for acquisition of property

- (1) If the operation of this Part would result in an 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), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

Part 12—Aid to civilian authorities

69 Aid to civilian authorities

- (1) This section applies if the Defence Force is called out:
 - (a) other than under Part IIIAAA of the Act; and
 - (b) to protect either of the following against domestic violence:
 - (i) Commonwealth interests in Australia;
 - (ii) a State or self-governing Territory.
- (2) The Chief of the Defence Force must utilise the Defence Force in a way that is reasonable and necessary to protect the Commonwealth interests, the State or the self-governing Territory.
- (3) The Chief of the Defence Force must comply with any directions given by the Minister about the utilisation of the Defence Force, except that:
 - (a) the Defence Force must not be used to stop or restrict any protest, dissent, assembly or industrial action except where there is a reasonable likelihood of the death of, or serious injury to, persons or serious damage to property; and
 - (b) the Reserves must not be used unless the Minister, after consulting the Chief of the Defence Force, is satisfied that sufficient members of the Permanent Forces are not available.
- (4) In protecting a State or self-governing Territory, the Chief of the Defence Force must, as far as is reasonably practicable, ensure that the Defence Force:
 - (a) cooperates with the police force of the State or Territory; and
 - (b) undertakes particular tasks only if requested in writing to do so by one or more of the following:
 - (i) a member of the police force of the State or Territory;
 - (ii) an officer of a civil authority specified by the Minister.
- (5) This section does not require or permit the Chief of the Defence Force to transfer any command of the Defence Force.

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Part 13—Visiting Forces

70 Countries to which provisions of Part IXA of the Act apply

For subsection 116A(2) of the Act, each provision of Part IXA of the Act applies in relation to each of the countries in the following table.

Countries to which each provision of Part XIA of the Act applies

Argentina
Bangladesh
Brazil
Brunei Darussalam
Cambodia
Canada
Chile
China
Czech Republic
Denmark
Egypt
Fiji
France
Germany
Hungary
India
Indonesia
Iraq
Ireland
Italy
Japan
Jordan
Kenya
Malaysia
Mozambique
Nepal
Netherlands
New Zealand
Norway
Pakistan
Papua New Guinea
Philippines
Poland
Portugal

Countries to which each provision of Part XIA of the Act applies

Qatar
 Republic of Korea
 Singapore
 South Africa
 Spain
 Sri Lanka
 Sweden
 Thailand
 Timor-Leste
 Tonga
 Turkey
 United Arab Emirates
 United Kingdom
 United States of America
 Uruguay
 Zimbabwe

71 Form of warrant

For section 116F of the Act, the form in Schedule 2 is prescribed as the form of a warrant.

72 Sentences imposed by service tribunals of other countries

- (1) This section applies if a sentence is imposed on a member of the Defence Force by a service tribunal of a country to which section 116B of the Act applies, while the member is attached to the forces of that country.
- (2) The sentence may, to the extent to which it has not been enforced outside Australia, be enforced in Australia as if it had been imposed by a court martial constituted under the *Defence Force Discipline Act 1982*.
- (3) This section does not authorise carrying out a sentence of death or corporal punishment.

73 Evidence of facts by certificate

- (1) For the purpose of legal proceedings within Australia, the Minister may, in writing, certify that:
 - (a) on a specified date, a named person was a member of the Defence Force attached to the forces of a specified country, being a country in relation to which section 116B of the Act applies; and
 - (b) on the specified date, a specified service tribunal of the country passed a sentence set out in the certificate on the named person; and
 - (c) the sentence, or a part of it specified in the certificate, has not been enforced.

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- (2) The certificate is, when produced in the proceedings, sufficient evidence of the certified facts unless the contrary is proved.

Part 14—Prohibited words and letters

74 Prohibited words

The following are *prohibited words*:

- (a) Active Reserve;
- (b) Air Force;
- (c) Air Force Reserve;
- (d) Army Reserve;
- (e) Australian Air Force;
- (f) Australian Air Force Reserve;
- (g) Australian Army;
- (h) Australian Army Reserve;
- (i) Australian Defence Force;
- (j) Australian Defence Force Reserves;
- (k) Australian Flying Corps;
- (l) Australian Imperial Forces;
- (m) Australian Military Forces;
- (n) Australian Navy;
- (o) Australian Regular Army;
- (p) Defence Force;
- (q) Defence Force Reserves;
- (r) Defence Reserves;
- (s) Her Majesty's Australian Ship;
- (t) High Readiness Reserve;
- (u) HMA Ship;
- (v) Naval Reserve;
- (w) Permanent Air Force;
- (x) Permanent Military Forces;
- (y) Regular Army;
- (z) Royal Australian Air Force;
- (za) Royal Australian Naval Reserve;
- (zb) Royal Australian Navy;
- (zc) Specialist Reserve;
- (zd) Standby Reserve.

75 Prohibited letters

The following are *prohibited letters*:

- (a) ADF;
- (b) AFC;
- (c) AIF;
- (d) AMF;
- (e) ARA;

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- (f) HMAS;
- (g) RAAF;
- (h) RAN;
- (i) RANR.

76 Use of prohibited words or letters

- (1) A person commits an offence if:
 - (a) the person uses prohibited words or prohibited letters; and
 - (b) the use is in connection with:
 - (i) a trade, business, calling or profession; or
 - (ii) an organisation or body of persons; and
 - (c) the use is not in accordance with a consent obtained under section 77.

Penalty: 10 penalty units.

- (2) Strict liability applies to paragraph (1)(c).

77 Consent to use prohibited words or letters

Application

- (1) A person may apply to the Minister for consent to use prohibited words or prohibited letters in connection with:
 - (a) a trade, business, calling or profession; or
 - (b) an organisation or body of persons.
- (2) An application under subsection (1) must:
 - (a) be in writing; and
 - (b) set out the prohibited words or prohibited letters to which the application relates; and
 - (c) set out the proposed use of the prohibited words or prohibited letters.

Matters to which the Minister must have regard

- (3) Without limiting the matters to which the Minister may have regard when deciding whether to approve the application, the Minister must have regard to the following:
 - (a) either:
 - (i) the trade, business, calling or profession of the applicant; or
 - (ii) the purposes, constitution and structure of the applicant;
 - (b) if the applicant has previously been given consent to use prohibited words or prohibited letters—the way in which the applicant used the prohibited words or prohibited letters to which the consent related;
 - (c) the period for which consent is sought.

Minister may request further information

- (4) The Minister may, by written notice, require the applicant to give the Minister further information in connection with the application.

Consent may be subject to conditions

- (5) Consent may be given subject to conditions, including but not limited to conditions about the following matters:
- (a) notifying the Minister about any change to:
 - (i) the purposes, constitution or structure of the applicant; or
 - (ii) the trade, business, calling or profession of the applicant; or
 - (iii) any other matter, to the extent that the change may affect the ability of the applicant to use the prohibited words or prohibited letters in the applicant's trade, business, calling or profession;
 - (b) the period for which consent is given;
 - (c) the way in which the applicant may, or may not, use the prohibited words or prohibited letters to which the consent relates;
 - (d) the protection and use of the prohibited words or prohibited letters to which the consent relates.

78 Review by Administrative Appeals Tribunal

Applications may be made to the Administrative Appeals Tribunal for review of:

- (a) a decision of the Minister under section 77 to refuse an application for consent; or
- (b) a decision of the Minister under section 77 relating to a condition.

79 Treatment of partnerships

- (1) This Part applies to a partnership as if it were a person, but with the changes set out in this section.
- (2) An offence against this Part that would otherwise have been committed by the partnership is taken to have been committed by each partner in the partnership, at the time the offence was committed, who:
 - (a) did the relevant act or made the relevant omission; or
 - (b) aided, abetted, counselled or procured the relevant act or omission; or
 - (c) was in any way knowingly concerned in, or party to, the relevant act or omission (whether directly or indirectly and whether by any act or omission of the partner).

80 Treatment of unincorporated associations and bodies

- (1) This Part applies to an unincorporated association or body of persons as if it were a person, but with the changes set out in this section.
- (2) An offence against this Part that would otherwise have been committed by the association or body is taken to have been committed by each member of the committee of management of the association or body, at the time the offence was committed, who:
 - (a) did the relevant act or made the relevant omission; or
 - (b) aided, abetted, counselled or procured the relevant act or omission; or

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- (c) was in any way knowingly concerned in, or party, to the relevant act or omission (whether directly or indirectly and whether by any act or omission of the member).

Part 15—War graves**81 War graves**

Despite any law of a State or Territory, the Director of War Graves, or an officer of the Defence Force in charge of a unit specifically raised for the purpose of the registration of, or inquiries concerning, the graves of deceased members of the Defence Force:

- (a) may establish or cause to be established such cemeteries as are required for the burial of bodies of persons who have died while on service as members of the Defence Force or as a result of service as members of the Defence Force; and
- (b) may authorise and direct the exhumation and the reinterment, cremation or other disposal of the body of:
 - (i) a member of the Defence Force who has died while on service; or
 - (ii) a person who, immediately before his or her death, was a dependant of a member of the Defence Force on service, and whose grave is located in the Terendak Military Cemetery in Malaysia; and
- (c) may enter a cemetery and inspect, maintain or execute any work in connection with the grave of a person who has died while on service as a member of the Defence Force or as a result of service as a member of the Defence Force or authorise any other person to enter a cemetery and inspect, maintain or execute any work in connection with such a grave.

Part 16—Delegations

82 Delegation of Minister's powers

- (1) The Minister may, by instrument in writing, delegate his or her powers or functions under Part 10 to the following:
 - (a) an officer of the Navy who holds a rank not below the rank of Commodore;
 - (b) an officer of the Army who holds a rank not below the rank of Brigadier;
 - (c) an officer of the Air Force who holds a rank not below the rank of Air Commodore;
 - (d) an SES employee performing duty in the Department.
- (2) The Minister may, by instrument in writing, delegate his or her powers or functions under Part 14 to the following:
 - (a) an officer of the Navy who holds a rank not below the rank of Lieutenant Commander;
 - (b) an officer of the Army who holds a rank not below the rank of Major;
 - (c) an officer of the Air Force who holds a rank not below the rank of Squadron Leader;
 - (d) an APS employee who holds, or performs the duties of, a position not below APS 6 in the Department.

83 Delegation of Secretary's powers

- (1) The Secretary may, by instrument in writing, delegate his or her powers under Part 8 to the following:
 - (a) an officer of the Navy who holds a rank not below the rank of Commodore;
 - (b) an officer of the Army who holds a rank not below the rank of Brigadier;
 - (c) an officer of the Air Force who holds a rank not below the rank of Air Commodore;
 - (d) an SES employee performing duty in the Department.
- (2) The Secretary may, by instrument in writing, delegate his or her powers under Part 11 to the following:
 - (a) an officer of the Navy who holds a rank not below the rank of Lieutenant Commander;
 - (b) an officer of the Army who holds a rank not below the rank of Major;
 - (c) an officer of the Air Force who holds a rank not below the rank of Squadron Leader;
 - (d) an APS employee who holds, or performs the duties of, a position not below APS 6 in the Department.

84 Delegation of Chief of the Defence Force's powers

- (1) The Chief of the Defence Force may, by instrument in writing, delegate his or her powers under Part 3, 4 or 5 to the following:
 - (a) an officer;

- (b) a member enlisted in the Navy who holds a rank not below the rank of Chief Petty Officer;
 - (c) a member enlisted in the Army who holds a rank not below the rank of Warrant Officer Class 2;
 - (d) a member enlisted in the Air Force who holds a rank not below the rank of Flight Sergeant;
 - (e) an APS employee who holds, or performs the duties of, a position not below APS 4 in the Department.
- (2) The Chief of the Defence Force may, by instrument in writing, delegate his or her powers under Part 7 to the following:
- (a) an officer of the Navy who holds a rank not below the rank of Commodore;
 - (b) an officer of the Army who holds a rank not below the rank of Brigadier;
 - (c) an officer of the Air Force who holds a rank not below the rank of Air Commodore;
 - (d) an SES employee performing duty in the Department.
- (3) The Chief of the Defence Force may, by instrument in writing, delegate his or her powers under Part 11 to the following:
- (a) an officer of the Navy who holds a rank not below the rank of Lieutenant Commander;
 - (b) an officer of the Army who holds a rank not below the rank of Major;
 - (c) an officer of the Air Force who holds a rank not below the rank of Squadron Leader;
 - (d) an APS employee who holds, or performs the duties of, a position not below APS 6 in the Department.

Part 17—Transitional provisions

85 Processes begun under *Defence Force Regulations 1952* or *Defence (Personnel) Regulations 2002*

The *Defence Force Regulations 1952* and the *Defence (Personnel) Regulations 2002* continue to apply in relation to an application made, or a process begun, under those regulations before their repeal.

86 Applications relating to prohibited words or letters

- (1) An application for consent made under the *Defence (Prohibited Words and Letters) Regulations 1957* but not decided before 1 July 2016 is taken, after that day, to be an application under section 77 of this instrument.
- (2) A consent to use prohibited words or prohibited letters, given under the *Defence (Prohibited Words and Letters) Regulations 1957*, that has not expired before 1 July 2016 has effect, after that day, as if it were given under section 77 of this instrument.

87 Defence areas

- (1) An authorisation under regulation 34 of the *Defence Force Regulations 1952* continues in effect despite the repeal of those regulations, and may be revoked as if those regulations had not been repealed.
- (2) Part VII of the *Defence Force Regulations 1952* continues to apply in relation to a prohibited area that was, immediately before the repeal of those regulations, declared under subregulation 35(1) of those regulations.
- (3) Part XI of the *Defence Force Regulations 1952* continues to apply in relation to a defence practice area that was, immediately before the repeal of those regulations, declared under subregulation 49(1) of those regulations.
- (4) A claim for compensation relating to an authorisation mentioned in subsection (1), or relating to an area mentioned in subsection (2) or (3), may be dealt with under the *Defence Force Regulations 1952* as if those regulations had not been repealed, even if the authorisation or the declaration of the area has been revoked before the claim arises.

88 Retirement age

- (1) If, immediately before the repeal of the *Defence (Personnel) Regulations 2002*, a member's compulsory retirement age under those regulations (the ***existing retirement age***) was not:
 - (a) for a member other than a chaplain—the compulsory retirement age specified for the member in Schedule 1 of those regulations; or
 - (b) for a chaplain—the compulsory retirement age specified for the chaplain in subregulation 116(1) of those regulations;

then the member's retirement age for the purpose of section 24 of this instrument is the existing retirement age.

- (2) A member who, immediately before the repeal of the *Defence (Personnel) Regulations 2002*, was able to make an election under those regulations in relation to the member's compulsory retirement age may make the election as if those regulations had not been repealed. If the member does so, the member's retirement age for the purpose of section 24 of this instrument is in accordance with the election.
- (3) The Chief of the Defence Force may revoke an extension of a compulsory retirement age that was made under subregulation 11(1) or 12(1) of the *Defence (Personnel) Regulations 2002*. If the extension is revoked, the retirement age of a member whose compulsory retirement age was extended is to be determined as if the extension had been revoked before the repeal of those regulations.

89 Medical and dental treatment

If, immediately before the repeal of the *Defence Force Regulations 1952*, the Minister would have been able to require a member to pay an amount to the Commonwealth for treatment provided to the member under regulation 58E of those regulations, the Secretary may exercise the power in subsection 50(1) of this instrument as if the treatment had been provided under section 49 of this instrument.

Schedule 1—Oath and affirmation

Note: See subsections 12(6) and (7).

1 Form of oath

The oath is as follows:

I, *(insert full name of person)* swear that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, as a member of the

(insert Royal Australian Navy, Australian Army, or Royal Australian Air Force)

(insert

for the period of *(number of years)*, and any extensions of that period,

or

until retiring age,)

and that I will resist Her enemies and faithfully discharge my duty according to law.

SO HELP ME GOD!

(person's signature)

Taken and subscribed before me on *(insert date)*

(insert signature, name and title of the person before whom the oath is taken and subscribed)

2 Form of affirmation

The affirmation is as follows:

I, *(insert full name of person)* promise that I will well and truly serve Her Majesty Queen Elizabeth the Second, Her Heirs and Successors according to law, as a member of the

(insert Australian Navy, Australian Army, or Australian Air Force)

(insert

for the period of *(number of years)*, and any extensions of that period,

or

until retiring age,)

and that I will resist Her enemies and faithfully discharge my duty according to law.

(person's signature)

Made and subscribed before me on *(insert date)*

(insert signature, name and title of the person before whom the affirmation is made and subscribed)

3 Persons before whom oath or affirmation may be taken or made

The oath or affirmation may be taken or made before any of the following:

- (a) an officer of the Navy, Army or Air Force;
- (b) a member enlisted in the Navy who holds a rank not below the rank of Warrant Officer;
- (c) a member enlisted in the Army who holds a rank not below the rank of Warrant Officer Class 1;
- (d) a member enlisted in the Air Force who holds a rank not below the rank of Warrant Officer;
- (e) a Justice of the Peace, a Commissioner for Affidavits or a Commissioner for Declarations.

Schedule 2—Form of warrant

Note: See section 71.

Commonwealth of Australia

Defence Act 1903

TO each member or special member of the Australian Federal Police, each member of the police force of a State or Territory and each member of the Defence Force.

WHEREAS section 116F of the *Defence Act 1903* provides that where the designated authority of a country in relation to which that section applies, by writing signed by him or her, requests an officer authorised by the Chief of the Defence Force, by order in writing, for the purposes of Division 3 of Part IXA of that Act for assistance in the apprehension of a member of the forces of that country, not being an Australian citizen, who is an absentee without leave from those forces, the authorised officer may, in his discretion, issue a warrant in accordance with the prescribed form authorising a member or a special member of the Australian Federal Police or a member of the police force of a State or Territory or any member of the Defence Force to arrest that absentee:

AND WHEREAS _____, the Chief of the Defence Force, by order in writing dated _____, authorised me for the purposes of Division 3 of Part IXA of that Act:

AND WHEREAS the designated authority of _____, a country to which section 116F of the *Defence Act 1903* applies, has, by writing signed by him or her, made a request to me for assistance in the apprehension of a member of the forces of that country, being a person described in the Schedule, who is an absentee without leave from those forces:

AND WHEREAS that person is not an Australian citizen:

NOW THEREFORE I, _____, an officer of the Defence Force, by this warrant authorise you to arrest the person described in the Schedule.

SCHEDULE

Full name: Rank:
Number:
Unit or station:
Date of birth:
Citizenship: Gender: Race:
Height: Weight: Build:
Complexion: Colour of eyes: Colour of hair:
Other distinguishing marks or features:
Date on which and place from which absent without leave:

Date of warrant:

(Signature of authorised officer)

(Rank and appointment)

Schedule 3—Repeals

1 Repeal of Regulations

Repeal the following Regulations:

Defence Force Regulations 1952

Defence (Personnel) Regulations 2002

Defence (Prohibited Words and Letters) Regulations 1957