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The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Defence Legislation Amendment Bill
(No. 1) 2005**

No. , 2005

(Defence)

**A Bill for an Act to amend legislation relating to
defence, and for related purposes**

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1 **A Bill for an Act to amend legislation relating to**
2 **defence, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Defence Legislation Amendment Act*
6 *(No. 1) 2005*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

| Column 1 | Column 2 | Column 3 |
|---------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|---------------------|
| Provision(s) | Commencement | Date/Details |
| 1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table | The day on which this Act receives the Royal Assent. | |
| 2. Schedules 1 to 4 | The day on which this Act receives the Royal Assent. | |
| 3. Schedule 5 | Immediately after the commencement of section 3 of the <i>Legislative Instruments Act 2003</i> . | 1 January 2005 |

1 Note: This table relates only to the provisions of this Act as originally
2 passed by the Parliament and assented to. It will not be expanded to
3 deal with provisions inserted in this Act after assent.

4 (2) Column 3 of the table contains additional information that is not
5 part of this Act. Information in this column may be added to or
6 edited in any published version of this Act.

7 **3 Schedule(s)**

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9 repealed as set out in the applicable items in the Schedule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

1
2 **Schedule 1—Criminal laws of the Australian**
3 **Capital Territory**
4

5 ***Defence Force Discipline Act 1982***

6 **1 Subsection 3(1)**

7 Insert:

8 ***ancillary offence***, in relation to an offence against this Act or the
9 regulations, means an offence against:

- 10 (a) section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
11 (b) section 6 of the *Crimes Act 1914*;

12 that relates to that other offence.

13 **2 Subsection 3(1)**

14 Insert:

15 ***ancillary Territory offence***, in relation to another Territory offence
16 (the ***first Territory offence***), means an offence against:

- 17 (a) section 11.1, 11.4 or 11.5 of the *Criminal Code*; or
18 (b) section 6 of the *Crimes Act 1914*; or
19 (c) section 44, 47 or 48 of the *Criminal Code 2002* of the
20 Australian Capital Territory; or
21 (d) section 181 of the *Crimes Act 1900* of the Australian Capital
22 Territory; or
23 (e) a provision of a law in force in the Jervis Bay Territory (other
24 than a Commonwealth law) that is prescribed for the purposes
25 of this paragraph (see subsection (3A));

26 that relates to the first Territory offence.

27 **3 Subsection 3(1) (definition of *relevant Territory offence*)**

28 Repeal the definition, substitute:

29 ***relevant Territory offence***, in relation to an offence against
30 section 61, means the Territory offence on which the offence against
31 section 61 is based.

1 **4 Subsection 3(1) (paragraphs (b) and (c) of the definition of**
2 **Territory offence)**

3 Repeal the paragraphs, substitute:

4 or (b) an offence punishable under any other law in force in the
5 Jervis Bay Territory (including any unwritten law) creating
6 offences or imposing criminal liability for offences.

7 Note 1: Paragraph (a) of this definition includes an offence (an *ancillary*
8 *Territory offence*) against section 11.1 (attempt), section 11.4
9 (incitement) or section 11.5 (conspiracy) of the *Criminal Code* or
10 section 6 (accessory after the fact) of the *Crimes Act 1914* in relation
11 to another Territory offence within the meaning of that paragraph.

12 Note 2: Paragraph (b) of this definition includes an offence (an *ancillary*
13 *Territory offence*) against section 44 (attempt), section 47
14 (incitement) or section 48 (conspiracy) of the *Criminal Code 2002* of
15 the Australian Capital Territory or section 181 (accessory after the
16 fact) of the *Crimes Act 1900* of the Australian Capital Territory in
17 relation to another Territory offence within the meaning of that
18 paragraph.

19 Note 3: The laws of the Australian Capital Territory in force in the Jervis
20 Bay Territory apply, and Chapter 2 of the *Criminal Code* does not
21 apply, for the purpose of determining criminal liability for offences
22 referred to in paragraph (b) of this definition.

23 **5 After subsection 3(3)**

24 Insert:

25 (3A) Before the Governor-General makes a regulation prescribing a
26 provision of a law for the purposes of paragraph (e) of the definition
27 of *ancillary Territory offence* in subsection (1), the Minister must
28 be satisfied that the provision is equivalent to, or has the same effect
29 as, a provision referred to in paragraph (c) or (d) of that definition.

30 **6 Subsection 3(13)**

31 Repeal the subsection.

32 **7 Paragraph 63(1)(a)**

33 Omit “subsection 61(1)”, substitute “section 61”.

34 **8 Subparagraph 63(1)(a)(ia)**

35 Omit “section 92A, 92B, 92C, 92D or 92E of the *Crimes Act 1900*”,
36 substitute “section 51, 52, 53, 54 or 55 of the *Crimes Act 1900*”.

1 **9 Paragraph 63(1)(b)**

2 Repeal the paragraph, substitute:

- 3 (b) an offence against section 61 that is based on an ancillary
4 Territory offence in relation to a Territory offence referred to
5 in paragraph (a).

6 **10 Paragraph 64(a)**

7 After “another offence”, insert “(other than an offence against
8 section 61)”.

9 **11 Subsection 96(4)**

10 Omit “or a service offence that is an ancillary offence in relation to an
11 offence against section 61”.

12 **12 Paragraph 104(a)**

13 Omit “subsection 61(1)”, substitute “section 61”.

14 **13 Subparagraph 104(a)(ii)**

15 Omit “section 92A, 92B, 92C, 92D or 92E of the Crimes Act 1900”,
16 substitute “section 51, 52, 53, 54 or 55 of the *Crimes Act 1900*”.

17 **14 At the end of paragraph 104(a)**

18 Add:

- 19 (iii) an offence prescribed for the purposes of this
20 subparagraph; or
21 (iv) an ancillary Territory offence in relation to a Territory
22 offence referred to in subparagraph (i), (ii) or (iii); or

23 **15 Paragraph 104(c)**

24 Omit “paragraph (a) or (b)”, substitute “paragraph (b)”.

25 **16 Paragraph 142(1)(b)**

26 After “this Act” (first occurring), insert “(other than section 61)”.

27 **17 After paragraph 142(1)(b)**

28 Insert:

1 (ba) an offence against section 61 that is based on an ancillary
2 Territory offence against section 11.1 of the *Criminal Code*,
3 or section 44 of the *Criminal Code 2002* of the Australian
4 Capital Territory, in relation to another Territory offence (the
5 *first Territory offence*), is an alternative offence in relation to
6 another offence against section 61 that is based on the first
7 Territory offence;

8 **18 Paragraph 190(4)(a)**

9 Omit “subsection 61(1)”, substitute “section 61”.

1
2
3

Schedule 2—Inquiry officers

4

Defence Act 1903

5

1 Paragraph 124(1)(gc)

6

Omit “investigating”, substitute “inquiry”.

7

2 Subsection 124(2A)

8

Omit “investigating”, substitute “inquiry”.

9

3 Subsection 124(2C)

10

Omit “investigating” (wherever occurring), substitute “inquiry”.

1
2
3

Schedule 3—Naval defence

4

Naval Defence Act 1910

5

1 Paragraph 38(5)(b)

6

Omit “18”, substitute “20”.

7

2 Subsection 38(6)

8

Omit “19 years”, substitute “21 years or such lower age as is prescribed”.

9

1
2 **Schedule 4—Military superannuation and**
3 **benefits**
4

5 *Military Superannuation and Benefits Act 1991*

6 **1 Section 20**

7 Omit “other than Part 8”.

8 **2 Part 8**

9 Repeal the Part.

10 **3 Subsection 52(4)**

11 Repeal the subsection.

12 **4 Saving provision**

13 (1) Despite the repeals and the amendment made by this Schedule, the
14 *Military Superannuation and Benefits Act 1991* continues to apply, in
15 relation to a person who was a member of the Scheme immediately
16 before commencement, as if those repeals and that amendment had not
17 happened.

18 (2) For the purposes of Part 8 of the *Military Superannuation and Benefits*
19 *Act 1991* as continued in force by this item, *salary* has whichever of the
20 following meanings is applicable:

21 (a) the meaning prescribed by regulations under this paragraph;

22 (b) if no regulations are in force under paragraph (a)—the
23 meaning given by Part 8 of the *Military Superannuation and*
24 *Benefits Act 1991*, as in force immediately before
25 commencement.

26 (3) In this item:

27 *commencement* means the time at which this item commenced.

28 *Scheme* has the same meaning as in the *Military Superannuation and*
29 *Benefits Act 1991*.

1
2 **Schedule 5—Technical amendments relating**
3 **to legislative instruments**
4

5 ***Defence Act 1903***

6 **1 Subsection 52(1)**

7 Omit “instrument in writing”, substitute “legislative instrument”.

8 **2 Subsection 52(4)**

9 Repeal the subsection, substitute:

10 (4) Determinations are legislative instruments for the purposes of the
11 *Legislative Instruments Act 2003*.

12 (4A) Paragraph 14(1)(a) of the *Legislative Instruments Act 2003* applies
13 as if the reference to disallowable legislative instruments included a
14 reference to instruments made under section 58B or 58H of the
15 *Defence Act 1903*.

16 **3 Subsection 61CX(2)**

17 After “Minister may”, insert “, by legislative instrument,”.

18 **4 Subsection 61CX(3)**

19 Repeal the subsection.

20 **5 Section 116N**

21 Repeal the section.

22 **6 Subsection 116ZD(1)**

23 After “Minister may”, insert “, by legislative instrument,”.

24 **7 Subsection 116ZD(3)**

25 Repeal the subsection.

26 **8 Subsection 123G(1)**

27 After “Minister may”, insert “, by legislative instrument,”.

1 **9 Subsections 123G(3) and (4)**

2 Repeal the subsections.

3 ***Defence Force Discipline Act 1982***

4 **10 Subsection 68(2)**

5 Omit “instrument in writing”, substitute “legislative instrument”.

6 **11 Subsection 68A(2)**

7 Omit “instrument in writing”, substitute “legislative instrument”.

8 **12 Section 68B**

9 Repeal the section.

10 **13 Subsection 149(1)**

11 Omit “(1)”.

12 **14 Subsection 149(1)**

13 After “General may”, insert “, by legislative instrument,”.

14 **15 Subsections 149(2) and (3)**

15 Repeal the subsections.

16 ***Defence Force (Home Loans Assistance) Act 1990***

17 **16 Subsections 3C(1)**

18 After “Minister may”, insert “, by legislative instrument,”.

19 **17 Subsection 3C(3)**

20 Omit “by writing”, substitute “, by legislative instrument,”.

21 **18 Subsection 3C(5)**

22 Repeal the subsection.

23 ***Defence Force Retirement and Death Benefits Act 1973***

24 **19 Subsection 49F(1)**

1 Omit “(1) The Minister may”, substitute “The Minister may, by
2 legislative instrument,”.

3 **20 Subsections 49F(2) and (3)**

4 Repeal the subsections.

5 ***Defence Forces Retirement Benefits Act 1948***

6 **21 Subsection 80E(1)**

7 Omit “(1) The Minister may”, substitute “The Minister may, by
8 legislative instrument,”.

9 **22 Subsections 80E(2) and (3)**

10 Repeal the subsections.

11 ***Defence (Special Undertakings) Act 1952***

12 **23 Subsections 15(1), (2) and (3)**

13 Repeal the subsections, substitute:

14 (1) Orders made under section 14 are legislative instruments for the
15 purposes of the *Legislative Instruments Act 2003*.

16 ***Explosives Act 1961***

17 **24 Subsections 16(1), (2) and (3)**

18 Repeal the subsections, substitute:

19 (1) Orders made under the regulations are legislative instruments.

20 ***Military Rehabilitation and Compensation Act 2004***

21 **25 Subsection 286(4)**

22 Omit “disallowable instrument for the purposes of section 46A of the
23 *Acts Interpretation Act 1901*”, substitute “legislative instrument”.

24 Note 1: The heading to subsection 286(1) is altered by omitting “*written*”.

25 Note 2: The heading to subsection 286(4) is altered by omitting “*Disallowable*” and
26 substituting “*Legislative*”.

1 **26 Subsection 286(5)**

2 Repeal the subsection, substitute:

3 (5) A determination under this section is taken to be made on the day on
4 which the Minister approved the determination.

5 **27 Subsection 293(3) (definition of *specified rate per*
6 *kilometre*)**

7 Omit “determines in writing”, substitute “, by legislative instrument,
8 determines”.

9 **28 Subsection 293(4)**

10 Repeal the subsection.

11 ***Military Superannuation and Benefits Act 1991***

12 **29 Subsection 2(1)**

13 Omit “7, sections 42 and 47, paragraph 49(1)(a) and sections”,
14 substitute “7 and sections 42, 47 and”.

15 **30 Subsection 5(1)**

16 Omit “signed instrument”, substitute “legislative instrument signed by
17 the Minister”.

18 **31 Subsection 5A(3)**

19 Omit “48(2) of the *Acts Interpretation Act 1901*”, substitute “12(2) of
20 the *Legislative Instruments Act 2003*”.

21 **32 Subsection 30(1) (paragraph (f) of the definition of *eligible*
22 *member*)**

23 Omit “in writing”, substitute “by legislative instrument”.

24 **33 Section 49**

25 Repeal the section.

26 ***Naval Defence Act 1910***

- 1 **34 Subsection 42A(6)**
2 Repeal the subsection.