

2004-2005-2006

The Parliament of the
Commonwealth of Australia

THE SENATE

As read a third time

**Defence Legislation Amendment (Aid to
Civilian Authorities) Bill 2006**

No. , 2006

**A Bill for an Act to amend the *Defence Act 1903*,
and for related purposes**

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1 THIS bill originated in the Senate; and,
2 having this day passed, is now ready for
3 presentation to the House of
4 Representatives for its concurrence.

5 HARRY EVANS
6 *Clerk of the Senate*

7 The Senate
8 8 February 2006

9 **A Bill for an Act to amend the *Defence Act 1903*,**
10 **and for related purposes**

11 The Parliament of Australia enacts:

12 **1 Short title**

13 This Act may be cited as the *Defence Legislation Amendment (Aid*
14 *to Civilian Authorities) Act 2006*.

15 **2 Commencement**

16 This Act commences on the day after it receives the Royal Assent.

17 **3 Schedule(s)**

18 Each Act that is specified in a Schedule to this Act is amended or
19 repealed as set out in the applicable items in the Schedule

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2

concerned, and any other item in a Schedule to this Act has effect according to its terms.

1
2 **Schedule 1—Incidents in the Australian**
3 **offshore area**
4

5 ***Defence Act 1903***

6 **1 Subsection 51(1)**

7 Insert:

8 ***Australian offshore area*** means:

- 9 (a) Australian waters; or
10 (b) the exclusive economic zone of Australia (including its
11 external Territories); or
12 (c) the sea over the continental shelf of Australia (including its
13 external Territories); or
14 (d) an area prescribed by the regulations;

15 and includes the airspace over an area covered by paragraph (a),
16 (b), (c) or (d).

17 **2 Subsection 51(1)**

18 Insert:

19 ***Australian waters*** means:

- 20 (a) the territorial sea of Australia; and
21 (b) the waters of the sea on the landward side of the territorial
22 sea of Australia; and
23 (c) the territorial sea of each external Territory; and
24 (d) the waters of the sea on the landward side of the territorial
25 sea of each external Territory;

26 but does not include the internal waters of a State or self-governing
27 Territory.

28 **3 Subsection 51(1)**

29 Insert:

30 ***continental shelf*** has the same meaning as in the *Seas and*
31 *Submerged Lands Act 1973*.

32 **4 Subsection 51(1)**

1 Insert:

2 *exclusive economic zone* has the same meaning as in the *Seas and*
3 *Submerged Lands Act 1973*.

4 **5 Subsection 51(1)**

5 Insert:

6 *internal waters*, in relation to a State or self-governing Territory,
7 means the waters of the sea within the limits of the State or
8 Territory and includes the airspace over those waters.

9 **6 Subsection 51(1)**

10 Insert:

11 *offshore designated area* means an area in relation to which a
12 declaration is in force under section 51SL.

13 **7 Subsection 51(1)**

14 Insert:

15 *offshore general security area* means an area in relation to which a
16 declaration is in force under section 51SF.

17 **8 Subsection 51(1)**

18 Insert:

19 *offshore member in charge*, in relation to an offshore search
20 authorisation, has the meaning given by paragraph 51SG(2)(c).

21 **9 Subsection 51(1)**

22 Insert:

23 *offshore search authorisation* means an authorisation under
24 section 51SG.

25 **10 Subsection 51(1)**

26 Insert:

27 *offshore search members*, in relation to a search authorisation, has
28 the meaning given by paragraph 51SG(2)(d).

1 **11 Subsection 51(1)**

2 Insert:

3 *territorial sea* has the same meaning as in the *Seas and Submerged*
4 *Lands Act 1973*.

5 **12 After section 51A**

6 Insert:

7 **51AA Order about utilising Defence Force in the offshore area etc.**
8 **to protect Commonwealth interests**

9 *Conditions for making of order utilising the Defence Force in the*
10 *offshore area*

11 (1) Subsection (2) applies if the authorising Ministers are satisfied
12 that:

- 13 (a) there is a threat in the Australian offshore area to
14 Commonwealth interests (whether in that area or elsewhere);
15 and
16 (b) the Defence Force should be called out and the Chief of the
17 Defence Force should be directed to utilise the Defence Force
18 in the Australian offshore area to protect the Commonwealth
19 interests against the threat; and
20 (c) either Division 2A or 3A, or both, and Division 4 should
21 apply in relation to the order.

22 *Power of Governor-General to make order utilising the Defence*
23 *Force in the Australian offshore area*

24 (2) If this subsection applies, the Governor-General may, by written
25 order, call out the Defence Force and direct the Chief of the
26 Defence Force to utilise the Defence Force in the Australian
27 offshore area to protect the Commonwealth interests against the
28 threat concerned.

29 (3) However, the Reserves must not be called out or utilised in
30 connection with an industrial dispute.

1 *Conditions for also utilising the Defence Force in the internal*
2 *waters*

- 3 (4) Subsection (5) applies if the authorising Ministers are satisfied
4 that:
- 5 (a) in relation to the threat mentioned in paragraph (1)(a),
6 domestic violence is occurring or is likely to occur in the
7 internal waters of a State or self-governing Territory; and
 - 8 (b) the State or Territory is not, or is unlikely to be, able to
9 protect the Commonwealth interests against the domestic
10 violence; and
 - 11 (c) the Chief of the Defence Force should be directed to utilise
12 the Defence Force in the internal waters of the State or
13 Territory to protect the Commonwealth interests against the
14 domestic violence.

15 *Power of Governor-General to direct utilising the Defence Force*
16 *in the internal waters*

- 17 (5) If this subsection applies, the Governor-General may, in the order
18 under subsection (2), also direct the Chief of the Defence Force to
19 utilise the Defence Force in the internal waters of the State or
20 Territory to protect the Commonwealth interests against the
21 domestic violence.

22 *Involvement of State or Territory*

- 23 (6) If subsection (5) applies:
- 24 (a) the Governor-General may make the direction referred to in
25 subsection (5) whether or not the Government of the State or
26 the self-governing Territory requests the making of the
27 direction; and
 - 28 (b) if the Government of the State or the self-governing Territory
29 does not request the making of the direction referred to in
30 subsection (5), an authorising Minister must, subject to
31 subsection (7), consult that Government about the making of
32 the direction.

1 *Exception to paragraph (6)(b)*

- 2 (7) However, paragraph (6)(b) does not apply if the authorising
3 Ministers are satisfied that, for reasons of urgency, it is
4 impracticable to comply with the requirements of that paragraph.

5 *Content of the order*

- 6 (8) The order:
7 (a) must state that it is made under this section; and
8 (b) must specify:
9 (i) the threat to which the order relates; and
10 (ii) the Commonwealth interests; and
11 (iii) if the order includes a direction mentioned in
12 subsection (5)—the State or Territory to which the
13 direction relates and the domestic violence; and
14 (c) must state that Division 2A or 3A, or both, and Division 4
15 apply in relation to the order; and
16 (d) must state that the order comes into force when it is made
17 and that, unless it is revoked earlier, it ceases to be in force
18 after a specified period (which must not be more than 20
19 days).

20 *When order is in force*

- 21 (9) The order is in force as stated in accordance with paragraph (8)(d).

22 *Revocation of order*

- 23 (10) If the authorising Ministers cease to be satisfied as mentioned in
24 subsection (1), the Governor-General must revoke the order.

25 *Advice to Governor-General*

- 26 (11) In making or revoking the order, the Governor-General is to act
27 with the advice of:
28 (a) except where paragraph (b) applies—the Executive Council;
29 or
30 (b) if an authorising Minister is satisfied that, for reasons of
31 urgency, the Governor-General should, for the purposes of
32 this subsection, act with the advice of the authorising
33 Minister—the authorising Minister.

1 *Effect of revocation of order etc.*

2 (12) To avoid doubt, if the order is revoked or ceases to be in force, the
3 call out of the Defence Force under the order ends and the Chief of
4 the Defence Force must cease utilising the Defence Force as
5 mentioned in subsection (2) or (5).

6 *Notice to State or self-governing Territory*

7 (13) If the order includes a direction mentioned in subsection (5), then
8 as soon as is reasonably practicable after the order is made or
9 revoked, an authorising Minister must arrange for the Government
10 of the State or the self-governing Territory specified in the order to
11 be notified of the making or revocation of the order. However, if
12 this is not done, the validity of the making or revocation of the
13 order is not affected.

14 *Further orders*

15 (14) The fact that the order has been made does not prevent further
16 orders being made in relation to the same matter.

17 **13 Subsection 51F(1)**

18 Omit “subsection (2)”, substitute “subsections (2) and (3)”.

19 **14 At the end of section 51F**

20 Add:

21 (3) This section does not apply in relation to an order under
22 section 51AA to the extent that the Defence Force is being utilised
23 in the Australian offshore area.

24 Note: This section will still apply in relation to an order under section 51AA
25 to the extent that the Defence Force is being utilised in the internal
26 waters of a State or self-governing Territory.

27 **15 After Division 3 of Part IIIAAA**

28 Insert:

1 **Division 3A—Powers in the Australian offshore area etc.**

2 **Subdivision A—Preliminary**

3 **51SA Application of this Division and Division 4**

4 If an order states in accordance with paragraph 51AA(8)(c) that
5 this Division and Division 4 apply in relation to the order, the
6 following provisions of this Division, and the provisions of
7 Division 4, apply.

8 **51SB Geographic application**

9 This Division and Division 4 (in its operation in relation to this
10 Division) apply only in:
11 (a) the Australian offshore area; and
12 (b) if the order under section 51AA includes a direction
13 mentioned in subsection 51AA(5)—the internal waters of the
14 State or self-governing Territory specified in the order.

15 **51SC International obligations**

16 The authorising Ministers or an authorising Minister must, in
17 giving an authorisation or making a declaration under this
18 Division, have regard to Australia's international obligations.

19 **51SD Definitions**

20 In this Division:

21 *facility* includes a fixed or floating structure or installation of any
22 kind.

23 *vessel* means:

- 24 (a) a ship, boat, raft, pontoon or submersible craft; or
25 (b) any other thing capable of carrying persons or goods through
26 or on water;

27 and includes a hovercraft (or other non-displacement craft) and a
28 floating structure or installation.

1 **Subdivision B—Special powers of members of the Defence**
2 **Force**

3 **51SE Special powers of members of the Defence Force**

4 *Special powers*

5 (1) Subject to this section, a member of the Defence Force who is
6 being utilised in accordance with section 51D may, under the
7 command of the Chief of the Defence Force, do any one or more of
8 the following:

9 (a) take any one or more of the following actions:

- 10 (i) take measures (including the use of force) against a
11 vessel or an aircraft, up to and including destroying the
12 vessel or aircraft;
13 (ii) give an order relating to the taking of such measures;
14 (iii) capture a vessel or aircraft;
15 (iv) board a facility, vessel or aircraft;
16 (v) recapture a facility, vessel or aircraft;
17 (vi) prevent, or put an end to, acts of violence;
18 (vii) protect persons from acts of violence;

19 (b) in connection with taking any such action, do any one or
20 more of the following:

- 21 (i) free any hostage from a facility, vessel or aircraft;
22 (ii) if the member finds a person whom the member
23 believes on reasonable grounds to have committed an
24 offence against a law of the Commonwealth, a State or
25 Territory—detain the person for the purpose of placing
26 the person in the custody of a member of a police force
27 at the earliest practicable time;
28 (iii) control the movement of persons, vessels or aircraft;
29 (iv) evacuate persons to a place of safety;
30 (v) search persons, facilities, vessels or aircraft for
31 dangerous things or other things related to the threat
32 concerned;
33 (vi) seize any dangerous thing or other thing related to the
34 threat concerned found in such a search;

35 (c) do anything incidental to anything in paragraph (a) or (b).

1 Note: Subdivision B of Division 4 sets out what is to happen if a thing is
2 seized under this subsection.

- 3 (2) Subparagraph (1)(a)(i) does not apply to the taking of measures
4 unless:
- 5 (a) the member of the Defence Force takes the measures under,
6 or under the authority of, an order of a superior; and
 - 7 (b) the member was under a legal obligation to obey the order;
8 and
 - 9 (c) the order was not manifestly unlawful; and
 - 10 (d) the member has no reason to believe that circumstances have
11 changed in a material way since the order was given; and
 - 12 (e) the member has no reason to believe that the order was based
13 on a mistake as to a material fact; and
 - 14 (f) taking the measures was reasonable and necessary to give
15 effect to the order.

- 16 (3) Subparagraph (1)(a)(ii) does not apply to giving an order unless:
- 17 (a) the member of the Defence Force gives the order under, or
18 under the authority of, an order (a **superior order**) of a
19 superior; and
 - 20 (b) the member was under a legal obligation to obey the superior
21 order; and
 - 22 (c) the superior order was not manifestly unlawful; and
 - 23 (d) the member has no reason to believe that circumstances have
24 changed in a material way since the superior order was given;
25 and
 - 26 (e) the member has no reason to believe that the superior order
27 was based on a mistake as to a material fact; and
 - 28 (f) giving the order was reasonable and necessary to give effect
29 to the superior order.

30 *Ministerial authorisation*

- 31 (4) However, the member must not:
- 32 (a) take any action mentioned in paragraph (1)(a); or
 - 33 (b) do any of the things mentioned in paragraph (1)(b) or (c) in
34 connection with taking that action;
- 35 unless an authorising Minister has in writing authorised taking that
36 action.

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Exception

- (5) Subsection (4) does not apply if the member believes on reasonable grounds that there is insufficient time to obtain the authorisation because a sudden and extraordinary emergency exists.

Subdivision C—Powers that may be exercised anywhere in an offshore area

51SF Declaration of offshore general security area

- (1) The authorising Ministers may, in writing, declare that a specified area is an offshore general security area for the purposes of the application of this Division and Division 4 in relation to members of the Defence Force who are being utilised in accordance with section 51D.
- (2) The area:
 - (a) may be specified by reference to an area surrounding one or more vessels or aircraft, or surrounding a class of vessels or aircraft, being an area the boundaries of which change as the location of the vessels or aircraft changes; and
 - (b) may include areas within the internal waters of a State or Territory if the order under section 51AA includes the internal waters of the State or Territory.

Statement to be made available

- (3) If the authorising Ministers make a declaration under subsection (1), they must arrange for a statement that:
 - (a) summarises the content of the order under section 51AA; and
 - (b) states that the declaration has been made; and
 - (c) describes the offshore general security area and its boundaries;to be:
 - (d) notified to persons in the offshore general security area to the extent that this is practicable; and
 - (e) published in the *Gazette*; and
 - (f) forwarded, within 24 hours after the declaration is made, to the Presiding Officer of each House of the Parliament for tabling in that House.

1 (4) However, subsection (3) does not apply if the authorising Ministers
2 declare, in writing, that they are satisfied that the application of
3 subsection (3) would prejudice the exercise of powers under
4 Subdivision B by members of the Defence Force who are being
5 utilised in accordance with section 51D.

6 *Houses to sit within 6 days*

7 (5) Each House of the Parliament must sit within 6 days after its
8 Presiding Officer receives the statement that is forwarded in
9 accordance with paragraph (3)(f).

10 *Effect of failure to publish*

11 (6) A failure to comply with subsection (3) does not make the
12 declaration ineffective to any extent.

13 **51SG Authorisation to search facilities in the offshore general**
14 **security area for dangerous and other things**

15 (1) If, while the Defence Force is being utilised in accordance with
16 section 51D:
17 (a) the Chief of the Defence Force; or
18 (b) an officer of the Defence Force, or an officer of the Defence
19 Force included in a class of officers, authorised by the Chief
20 of the Defence Force for the purposes of this section;
21 believes on reasonable grounds that:
22 (c) there is a dangerous thing on a facility in the offshore general
23 security area and it is necessary as a matter of urgency to
24 make the dangerous thing safe or prevent it from being used;
25 or
26 (d) there is another thing on a facility in the offshore general
27 security area that is related to the threat concerned and it is
28 necessary as a matter of urgency to seize the thing;
29 he or she may give an authorisation under this section.

30 *What the authorisation must say*

31 (2) The authorisation must:
32 (a) authorise entry to, and search of, the facility; and
33 (b) describe the facility; and

- 1 (c) state the name, rank and service number of a member of the
2 Defence Force (the *offshore member in charge*) who is to be
3 in charge of the search; and
4 (d) authorise the member in charge, and any other member of the
5 Defence Force assisting the member, (the *offshore search*
6 *members*) to carry out the search; and
7 (e) authorise each offshore search member to seize any thing
8 found on the facility in the course of the search that he or she
9 believes on reasonable grounds to be a dangerous thing or a
10 thing that is related to the threat concerned; and
11 (f) state that, if any offshore search member believes on
12 reasonable grounds that a person who is on or near the
13 facility while the search is being carried out has a dangerous
14 thing or a thing that is related to the threat concerned in his or
15 her possession, the member is authorised to:
16 (i) search the person; and
17 (ii) seize any dangerous thing or other thing related to the
18 threat concerned found in the search; and
19 (g) state the time during which the authorisation remains in
20 force, which must not be more than 24 hours.

21 Note: Subdivision B of Division 4 sets out what is to happen if a thing is
22 seized under this subsection.

23 *Effect of the authorisation*

- 24 (3) The authorisation has effect according to its terms.

25 *Further authorisations possible*

- 26 (4) Paragraph (2)(g) does not prevent the issue of further
27 authorisations in relation to the same facility.

28 **51SH Copy of offshore search authorisation to be given to occupier**
29 **etc.**

30 *Right of occupier to be given copy of offshore search authorisation*
31 *etc.*

- 32 (1) If the occupier of the facility specified in the offshore search
33 authorisation, or another person who apparently represents the

1 occupier, is present on the facility when the search is being carried
2 out, the offshore member in charge must:

- 3 (a) identify himself or herself to that person; and
4 (b) give that person a copy of the offshore search authorisation.

5 *Right of person searched to be shown copy of offshore search*
6 *authorisation*

- 7 (2) The offshore member in charge must, before any person (other
8 than a person who has been given a copy of the offshore search
9 authorisation under subsection (1)) is searched in accordance with
10 the offshore search authorisation, show the person a copy of the
11 offshore search authorisation.

12 **51SI Occupier etc. entitled to be present during search**

- 13 (1) If the occupier of the facility specified in the offshore search
14 authorisation, or another person who apparently represents the
15 occupier, is present on the facility when the search is being carried
16 out, the person is entitled to observe the search being carried out.

17 *Search not to be impeded*

- 18 (2) The entitlement to observe the search being carried out ceases if
19 the person impedes the search.

20 *Multiple searches*

- 21 (3) This section does not prevent 2 or more areas of the facility being
22 searched at the same time.

23 **51SJ Search of vessel or aircraft in the offshore general security** 24 **area for dangerous or other things**

- 25 (1) If a member of the Defence Force who is being utilised in
26 accordance with section 51D believes on reasonable grounds that a
27 dangerous thing, or another thing that is related to the threat
28 concerned, is in or on a vessel or aircraft in the offshore general
29 security area, the member may:
30 (a) erect barriers or other structures for the purpose of stopping
31 the vessel or aircraft; and
32 (b) whether or not the member does so:
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- 1 (i) stop and detain the vessel or aircraft; and
2 (ii) search the vessel or aircraft, and any thing found in or
3 on the vessel or aircraft, for the dangerous thing or other
4 thing that is related to the threat concerned; and
5 (iii) seize any dangerous thing or other thing that is related
6 to the threat concerned that the member finds in the
7 search.

8 Note: Subdivision B of Division 4 sets out what is to happen if a thing is
9 seized under this subsection.

- 10 (2) If the member stops the vessel or aircraft, the member must not
11 detain it for longer than is reasonable and necessary to search it and
12 any thing found in or on it.
- 13 (3) The master of the vessel, or the captain of the aircraft, is entitled to
14 observe the search being carried out.
- 15 (4) The entitlement to observe the search being carried out ceases if
16 the master or captain impedes the search.
- 17 (5) This section does not prevent 2 or more areas of the vessel or
18 aircraft being searched at the same time.

19 **51SK Search of persons in the offshore general security area for**
20 **dangerous and other things**

21 If a member of the Defence Force who is being utilised in
22 accordance with section 51D believes on reasonable grounds that a
23 person in the offshore general security area has a dangerous thing,
24 or a thing that is related to the threat concerned, in the person's
25 possession, the member may:

- 26 (a) search the person for such a thing; and
27 (b) seize any such thing found in the search.

28 Note: Subdivision B of Division 4 sets out what is to happen if a thing is
29 seized under this section.

1 **Subdivision D—Powers that may be exercised only in relation**
2 **to an offshore designated area in the offshore general**
3 **security area**

4 **51SL Declaration of offshore designated area**

5 (1) The authorising Ministers may, in writing, declare that a specified
6 area, being the whole or a part of an offshore general security area,
7 is an offshore designated area for the purposes of the application of
8 this Division and Division 4 in relation to members of the Defence
9 Force who are being utilised in accordance with section 51D.

10 (2) The area:

11 (a) may be specified by reference to an area surrounding one or
12 more vessels or aircraft, or surrounding a class of vessels or
13 aircraft, being an area the boundaries of which change as the
14 location of the vessels or aircraft changes; and

15 (b) may include areas within the internal waters of a State or
16 Territory if the order under section 51AA includes the
17 internal waters of the State or Territory.

18 *Where no longer an offshore general security area*

19 (3) To avoid doubt, if the whole or part of the area later ceases to be
20 within an offshore general security area, the whole or the part
21 ceases to be an offshore designated area.

22 *Declaration to be notified*

23 (4) If the authorising Ministers make a declaration under
24 subsection (1), they must arrange for a statement that:

25 (a) states that the declaration has been made; and

26 (b) describes the offshore designated area and its boundaries;

27 to be notified to persons in the offshore designated area to the
28 extent that this is practicable.

29 (5) However, subsection (4) does not apply if the authorising Ministers
30 declare, in writing, that they are satisfied that the application of
31 subsection (4) would prejudice the exercise of powers under
32 Subdivision B by members of the Defence Force who are being
33 utilised in accordance with section 51D.

1 **51SM Control of movement in relation to an offshore designated**
2 **area in the offshore general security area**

3 *Powers in relation to persons in charge of vessels or aircraft*

- 4 (1) A member of the Defence Force who is being utilised in
5 accordance with section 51D may do any one or more of the
6 following in relation to a person who is in charge of a vessel or
7 aircraft:
- 8 (a) if the vessel or aircraft is in a part of the offshore general
9 security area that is outside an offshore designated area—
10 direct the person not to bring the vessel or aircraft into the
11 offshore designated area;
 - 12 (b) direct the person to take the vessel or aircraft out of an
13 offshore designated area;
 - 14 (c) direct the person to take the vessel or aircraft from a place in
15 an offshore designated area to another place in the offshore
16 designated area;
 - 17 (d) direct the person not to take the vessel or aircraft from a
18 place in an offshore designated area to any other place, or to
19 a specified place, in the offshore designated area;
 - 20 (e) compel the person to comply with a direction under any of
21 the above paragraphs.

22 *Erection of barriers etc.*

- 23 (2) A member of the Defence Force may erect barriers or other
24 structures at the boundary of, or in, an offshore designated area for
25 the purpose of stopping persons from bringing a vessel or aircraft
26 into the offshore designated area or to a place in the offshore
27 designated area.

28 *No person in charge of vessel*

- 29 (3) If there is no person in charge of a vessel or aircraft that is in an
30 offshore designated area, a member of the Defence Force may do
31 such things as are reasonable and necessary for either of the
32 following purposes:
- 33 (a) to take the vessel or aircraft to a place in the offshore general
34 security area that is outside the offshore designated area;

- 1 (b) to take the vessel or aircraft to another place in the offshore
2 designated area.

3 *Powers in relation to persons generally*

- 4 (4) A member of the Defence Force may do any one or more of the
5 following in relation to a person (whether or not in charge of a
6 vessel or aircraft):
7 (a) if the person is in the offshore general security area but
8 outside an offshore designated area—direct the person not to
9 enter the offshore designated area;
10 (b) direct the person to leave an offshore designated area;
11 (c) direct the person to move from a place in an offshore
12 designated area to another place in the offshore designated
13 area;
14 (d) compel the person to comply with a direction under any of
15 the above paragraphs.

16 *Powers to carry out consent searches*

- 17 (5) The power of a member under paragraph (1)(a) or (4)(a) to direct a
18 person:
19 (a) not to bring a vessel or aircraft into an offshore designated
20 area; or
21 (b) not to enter an offshore designated area;
22 includes:
23 (c) the power to direct a person not to do either of those things
24 unless the person agrees to a member searching:
25 (i) in either case—the person; and
26 (ii) in a paragraph (a) case—the vessel or aircraft and any
27 thing on the vessel or aircraft;
28 for dangerous things or other things related to the threat
29 concerned; and
30 (d) if the person agrees, the power to conduct such a search and
31 to seize any such thing that the member finds in the search.

32 Note: Subdivision B of Division 4 sets out what is to happen if a thing is
33 seized under this subsection.

1 *Powers to board vessel or aircraft to give directions*

- 2 (6) A member of the Defence Force may board any vessel or aircraft
3 for the purpose of giving a direction under any provision of this
4 section.

5 **51SN Members to wear uniforms and identification when exercising**
6 **powers**

- 7 (1) While any member of the Defence Force is exercising powers
8 under this Division, or under Division 4 in its operation in relation
9 to this Division, he or she must at all times:
10 (a) wear his or her uniform; and
11 (b) for the purposes of identification, have:
12 (i) his or her surname; or
13 (ii) his or her numbers or a combination of numbers and
14 letters of the alphabet;
15 on or attached to the front of his or her uniform.

16 Penalty: 30 penalty units.

17 *Situation where no offence committed*

- 18 (2) A member who contravenes paragraph (1)(b) is not guilty of an
19 offence if the contravention occurs because of an act of another
20 person (not being a member) done without the consent of the
21 member.

22 Note: A defendant bears an evidential burden in relation to the matter in
23 subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

24 *Members to be given means to comply with obligations*

- 25 (3) The Chief of the Defence Force must take such steps as are
26 reasonable and necessary to ensure that members do not contravene
27 subsection (1).

28 *Geographical application*

- 29 (4) Section 15.1 of the *Criminal Code* (extended geographical
30 jurisdiction—category B) applies to an offence against
31 subsection (1).

1 **Subdivision E—Other powers**

2 **51SO Power to require person to answer questions or produce**
3 **documents**

4 (1) A member of the Defence Force who is being utilised in
5 accordance with section 51D may, in connection with the exercise
6 of any power under this Division, require a person to answer a
7 question put by the member or to produce a particular document to
8 the member.

9 (2) However, the member may do so only if the member believes on
10 reasonable grounds that it is necessary for the purpose of
11 preserving the life or safety of other persons or to protect
12 Commonwealth interests against the threat concerned.

13 (3) A person commits an offence if:

- 14 (a) the person is required to answer a question or produce a
15 document under this section; and
16 (b) the person fails to comply with the requirement.

17 Penalty: 30 penalty units.

18 *Self-incrimination*

19 (4) A person is not excused from answering a question or producing a
20 document under this section on the ground that the answer to the
21 question, or the production of the document, may tend to
22 incriminate the person or make the person liable to a penalty.

23 (5) However:

- 24 (a) the answer given or document produced; or
25 (b) answering the question or producing the document; or
26 (c) any information, document or thing obtained as a direct or
27 indirect consequence of the answering of the question or the
28 production of the document;

29 is not admissible in evidence against the person in criminal
30 proceedings other than:

- 31 (d) proceedings for an offence against subsection (3); or
32 (e) proceedings for an offence against section 137.1 or 137.2 of
33 the *Criminal Code* (about false or misleading information or
34 documents) that relates to this section.
-

1 **51SP Power to require person to operate facility, vessel or aircraft**
2 **or machinery or equipment**

3 (1) A member of the Defence Force who is being utilised in
4 accordance with section 51D may, in connection with the exercise
5 of any power under this Division, require a person to operate a
6 facility, vessel or aircraft, or machinery or equipment on a facility,
7 vessel or aircraft, in a particular manner.

8 (2) However, the member may do so only if the member believes on
9 reasonable grounds that it is necessary for the purpose of
10 preserving the life or safety of other persons or to protect
11 Commonwealth interests against the threat concerned.

12 (3) A person commits an offence if:

13 (a) the person is required to operate a facility, vessel or aircraft,
14 or machinery or equipment on a facility, vessel or aircraft, in
15 a particular manner under this section; and

16 (b) the person fails to comply with the requirement.

17 Penalty for contravention of this subsection: 30 penalty units.

18 **51SQ Geographical jurisdiction for offences**

19 Section 15.4 of the *Criminal Code* (extended geographical
20 jurisdiction—category D) applies to an offence against
21 section 51SO or 51SP.

22 **16 After subsection 51T(1)**

23 Insert:

24 (1A) However, subsection (1) does not apply to the powers under
25 Subdivision E of Division 3A.

26 **17 Subdivision B of Division 4 of Part IIIAAA (heading)**

27 Repeal the heading, substitute:

28 **Subdivision B—Action to be taken if things are seized**

29 **18 Section 51V**

30 Omit “dangerous”.

1 Note: The heading to section 51V is altered by omitting “**dangerous**”.

2 **19 Subparagraph 51X(1)(c)(ii)**

3 Repeal the subparagraph, substitute:

4 (ii) any declarations of general security areas or designated
5 areas, or of offshore general security areas or offshore
6 designated areas, under the order; and

7 **20 Subparagraph 51X(2)(a)(ii)**

8 Repeal the subparagraph, substitute:

9 (ii) any declarations of general security areas or designated
10 areas, or of offshore general security areas or offshore
11 designated areas, under the orders; and

1
2 **Schedule 2—Incidents involving designated**
3 **critical infrastructure**
4

5 *Defence Act 1903*

6 **1 Subsection 51(1)**

7 Insert:

8 *designated critical infrastructure* means infrastructure, or a part of
9 infrastructure, that is declared under section 51CB.

10 **2 Subsection 51(1)**

11 Insert:

12 *infrastructure* includes physical facilities, supply chains,
13 information technologies and communication networks or systems.

14 **3 Before section 51D**

15 Insert:

16 **51CB Declaration of designated critical infrastructure**

- 17 (1) The authorising Ministers may, in writing, declare that particular
18 infrastructure, or a part of particular infrastructure, in Australia or
19 in the Australian offshore area is designated critical infrastructure.
- 20 (2) However, the authorising Ministers may do so only if they believe
21 on reasonable grounds that:
- 22 (a) there is a threat of damage or disruption to the operation of
23 the infrastructure or the part of the infrastructure; and
24 (b) the damage or disruption would directly or indirectly
25 endanger the life of, or cause serious injury to, other persons.
- 26 (3) If the authorising Ministers no longer believe those matters, they
27 must revoke the declaration.
- 28 (4) To avoid doubt, the authorising Ministers may make a declaration
29 under this section whether or not an order is in force under this
30 Division.

- 1 (5) If the infrastructure, or the part of the infrastructure, is in a State or
2 a self-governing Territory:
- 3 (a) the authorising Ministers may make the declaration referred
4 to in subsection (1) whether or not the Government of the
5 State or the self-governing Territory requests the making of
6 the declaration; and
- 7 (b) if the Government of the State or the self-governing Territory
8 does not request the making of the declaration referred to in
9 subsection (1), an authorising Minister must, subject to
10 subsection (6), consult that Government about the making of
11 the declaration.
- 12 (6) However, paragraph (5)(b) does not apply if the authorising
13 Ministers are satisfied that, for reasons of urgency, it is
14 impracticable to comply with the requirements of that paragraph.

15 **4 After Division 2 of Part IIIAAA**

16 Insert:

17 **Division 2A—Powers to protect designated critical**
18 **infrastructure**

19 **51IA Application of this Division and Division 4**

- 20 (1) If an order states in accordance with paragraph 51A(4)(c),
21 51AA(8)(c), 51B(3)(c) or 51C(3)(c) that this Division and
22 Division 4 apply in relation to the order, the following provisions
23 of this Division, and the provisions of Division 4, apply.
- 24 (2) In relation to an order under section 51AA, this Division and
25 Division 4 (in its operation in relation to this Division) apply only
26 in:
- 27 (a) the Australian offshore area; and
28 (b) if the order includes a direction mentioned in subsection
29 51AA(5)—the internal waters of the State or self-governing
30 Territory specified in the order.

31 **51IB Powers to protect designated critical infrastructure**

32 A member of the Defence Force who is being utilised in
33 accordance with section 51D may, under the command of the Chief

1 of the Defence Force, do any one or more of the following for the
2 purpose of protecting designated critical infrastructure:

3 (a) take one or both of the following actions:

4 (i) prevent, or put an end to, damage or disruption to the
5 operation of the designated critical infrastructure;

6 (ii) prevent, or put an end to, acts of violence;

7 (b) in connection with taking any such action, do any one or
8 more of the following:

9 (i) if the member finds a person whom the member
10 believes on reasonable grounds to have committed an
11 offence against a law of the Commonwealth, a State or
12 Territory—detain the person for the purpose of placing
13 the person in the custody of a member of a police force
14 at the earliest practicable time;

15 (ii) protect persons from acts of violence;

16 (iii) control the movement of persons or of means of
17 transport;

18 (iv) evacuate persons to a place of safety;

19 (v) search persons or things for dangerous things or other
20 things related to the threat concerned;

21 (vi) seize any dangerous thing or other thing related to the
22 threat concerned found in such a search;

23 (c) do anything incidental to anything in paragraph (a) or (b).

24 Note: Subdivision B of Division 4 sets out what is to happen if a thing is
25 seized under this section.

26 **5 After subsection 51T(2)**

27 Insert:

28 (2A) Despite subsection (1), in exercising powers under Division 2A, a
29 member of the Defence Force must not, in using force against a
30 person:

31 (a) do anything that is likely to cause the death of, or grievous
32 bodily harm to, the person unless the member believes on
33 reasonable grounds that doing that thing is necessary to:

34 (i) protect the life of, or to prevent serious injury to,
35 another person (including the member); or

- 1 (ii) protect, against the threat concerned, the designated
2 critical infrastructure in respect of which the powers are
3 being exercised; or
4 (b) subject the person to greater indignity than is reasonable and
5 necessary in the circumstances.

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Schedule 3—Aviation incidents

Defence Act 1903

1 Before section 51B

Insert:

51AB Order about utilising Defence Force to protect Commonwealth interests against violence if specified circumstances arise

Conditions for making of order

- (1) Subsection (2) applies if the authorising Ministers are satisfied that:
- (a) if specified circumstances were to arise:
 - (i) domestic violence would occur or would be likely to occur in Australia that would, or would be likely to, affect Commonwealth interests; or
 - (ii) there would be, or it is likely there would be, a threat in the Australian offshore area to Commonwealth interests (whether in that area or elsewhere);and, for reasons of urgency, it would be impracticable for the Governor-General to make an order under section 51A or 51AA (as the case requires); and
 - (b) if subparagraph (a)(i) applies—the domestic violence would occur or would be likely to occur in a State or self-governing Territory that would not be, or is unlikely to be, able to protect the Commonwealth interests against the domestic violence; and
 - (c) the Chief of the Defence Force should be directed to utilise the Defence Force to protect the Commonwealth interests against the violence, or the threat in the Australian offshore area, if the specified circumstances arise; and
 - (d) Divisions 3B and 4 should apply in relation to the order.

Power of Governor-General to make order

- 1
- 2 (2) If this subsection applies, the Governor-General may, by written
3 order, direct the Chief of the Defence Force to utilise the Defence
4 Force to protect the Commonwealth interests against the domestic
5 violence, or the threat in the Australian offshore area, if the
6 specified circumstances arise.

7 *Involvement of State or Territory*

- 8 (3) If paragraph (1)(b) applies:
9 (a) the Governor-General may make the order whether or not the
10 Government of the State or the self-governing Territory
11 requests the making of the order; and
12 (b) if the Government of the State or the self-governing Territory
13 does not request the making of the order, an authorising
14 Minister must consult that Government about the making of
15 the order before the Governor-General makes it.

16 *Content of the order*

- 17 (4) The order:
18 (a) must state that it is made under this section; and
19 (b) must specify:
20 (i) the circumstances to which the order relates; and
21 (ii) if paragraph (1)(b) applies—the State or Territory in
22 which the domestic violence would occur or would be
23 likely to occur; and
24 (iii) the Commonwealth interests; and
25 (iv) the domestic violence, or the threat in the Australian
26 offshore area, as the case requires; and
27 (c) must state that Divisions 3B and 4 apply in relation to the
28 order; and
29 (d) must state that the order comes into force when it is made
30 and that, unless it is revoked earlier, it ceases to be in force at
31 the end of the period specified in the order.

32 *When order is in force*

- 33 (5) The order is in force as stated in accordance with paragraph (4)(d).

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Revocation of order

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- (6) If the authorising Ministers cease to be satisfied as mentioned in subsection (1), the Governor-General must revoke the order.

3

4

Advice to Governor-General

5

- (7) In making or revoking the order the Governor-General is to act with the advice of the Executive Council.

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7

Effect of revocation of order etc.

8

- (8) To avoid doubt, if the order is revoked or ceases to be in force, the Chief of the Defence Force must cease utilising the Defence Force as mentioned in subsection (2).

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11

Notice to State or self-governing Territory

12

- (9) If the order specifies a State or Territory under subparagraph (4)(b)(ii), as soon as is reasonably practicable after the order is made or revoked, an authorising Minister must arrange for the Government of the State or Territory to be notified of the making or revocation of the order. However, if this is not done, the validity of the making or revocation of the order is not affected.

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Further orders

19

- (10) The fact that the order has been made does not prevent further orders being made in relation to the same matter.

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21

2 Before Division 4 of Part IIIAAA

22

Insert:

23

Division 3B—Powers relating to aircraft

24

51SR Application of this Division and Division 4

25

If an order states in accordance with paragraph 51A(4)(c), 51AB(4)(c), 51B(3)(c) or 51C(3)(c) that this Division and Division 4 apply in relation to the order, the following provisions of this Division, and the provisions of Division 4, apply.

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27

28

51SS Geographical application

This Division and Division 4 (in its operation in relation to this Division) extend to the Australian offshore area.

51ST Special powers of members of the Defence Force*Taking measures against aircraft*

- (1) A member of the Defence Force who is being utilised in accordance with section 51D may, under the command of the Chief of the Defence Force:
- (a) take measures (including the use of force) against an aircraft, up to and including destroying the aircraft; or
 - (b) give an order relating to the taking of such measures; whether or not the aircraft is airborne.
- (2) Paragraph (1)(a) does not apply to the taking of measures unless:
- (a) the member of the Defence Force takes the measures under, or under the authority of, an order of a superior; and
 - (b) the member was under a legal obligation to obey the order; and
 - (c) the order was not manifestly unlawful; and
 - (d) the member has no reason to believe that circumstances have changed in a material way since the order was given; and
 - (e) the member has no reason to believe that the order was based on a mistake as to a material fact; and
 - (f) taking the measures was reasonable and necessary to give effect to the order.
- (3) Paragraph (1)(b) does not apply to giving an order unless:
- (a) the member of the Defence Force gives the order under, or under the authority of, an order (a *superior order*) of a superior; and
 - (b) the member was under a legal obligation to obey the superior order; and
 - (c) the superior order was not manifestly unlawful; and
 - (d) the member has no reason to believe that circumstances have changed in a material way since the superior order was given; and

- 1 (e) the member has no reason to believe that the superior order
2 was based on a mistake as to a material fact; and
3 (f) giving the order was reasonable and necessary to give effect
4 to the superior order.

5 *Ministerial authorisation*

- 6 (4) However, the member must not take measures against an aircraft,
7 or give an order of a kind mentioned in paragraph (1)(b) in
8 connection with an aircraft, unless an authorising Minister has in
9 writing authorised the taking of measures against the aircraft.

10 *Exception*

- 11 (5) Subsection (4) does not apply if:
12 (a) the member believes on reasonable grounds that there is
13 insufficient time to obtain the authorisation because a sudden
14 and extraordinary emergency exists; or
15 (b) the measures are taken in specified circumstances that an
16 authorising Minister has authorised under subsection (6).
17 (6) An authorising Minister may in writing authorise the taking of
18 measures against an aircraft in specified circumstances if this
19 Division applies because an order states in accordance with
20 paragraph 51AB(4)(c) that this Division and Division 4 apply in
21 relation to the order.

22 *Authorising Minister must be satisfied of reasonableness and*
23 *necessity*

- 24 (7) An authorising Minister must not authorise the taking of measures
25 against an aircraft unless the Minister is satisfied that:
26 (a) in the case of an authorisation under subsection (4)—taking
27 action against the aircraft is reasonable and necessary; or
28 (b) in the case of an authorisation under subsection (6)—taking
29 action against the aircraft would be reasonable and necessary
30 if the specified circumstances in question were to arise.

31 *International obligations*

- 32 (8) An authorising Minister must, in giving an authorisation under this
33 section, have regard to Australia's international obligations.
-

1 **3 Before subsection 51T(3)**

2 Insert:

3 (2B) Despite subsection (1), in exercising powers under subparagraph
4 51SE(1)(a)(i) or (ii) or Division 3B, a member of the Defence
5 Force must not, in using force against a person or thing, do
6 anything that is likely to cause the death of, or grievous bodily
7 harm to, the person unless the member believes on reasonable
8 grounds that:

- 9 (a) doing that thing is necessary to protect the life of, or to
10 prevent serious injury to, another person (including the
11 member); or
12 (b) doing that thing is necessary to protect designated critical
13 infrastructure against a threat of damage or disruption to its
14 operation; or
15 (c) doing that thing is necessary and reasonable to give effect to
16 the order under which, or under the authority of which, the
17 member is acting.

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Schedule 4—Expedited call out

Defence Act 1903

1 After section 51C

Insert:

51CA Expedited call out

Expedited call out by the Prime Minister

- (1) The Prime Minister may make an order of a kind that the Governor-General is empowered to make under section 51A, 51AA, 51AB, 51B or 51C if the Prime Minister is satisfied that:
- (a) because a sudden and extraordinary emergency exists, it is not practicable for an order to be made under that section; and
 - (b) the circumstances referred to in subsection 51A(1), 51AA(1), 51AB(1), 51B(1) or 51C(1) (as the case requires) exist.

Expedited call out by the other 2 authorising Ministers

- (2) The other 2 authorising Ministers may jointly make an order of a kind that the Governor-General is empowered to make under section 51A, 51AA, 51AB, 51B or 51C if those authorising Ministers are satisfied that:
- (a) because a sudden and extraordinary emergency exists, it is not practicable for an order to be made under that section; and
 - (b) the Prime Minister is unable to be contacted for the purposes of considering whether to make, and making, an order under subsection (1) of this section; and
 - (c) the circumstances referred to in subsection 51A(1), 51AA(1), 51AB(1), 51B(1) or 51C(1) (as the case requires) exist.

Expedited call out by an authorising Minister and another Minister

- (2A) An authorising Minister, together with the Deputy Prime Minister, the Minister for Foreign Affairs or the Treasurer, may make an order of a kind that the Governor-General is empowered to make
-

1 under section 51A, 51AA, 51AB, 51B or 51C if the Ministers are
 2 satisfied that:

- 3 (a) because a sudden and extraordinary emergency exists, it is
 4 not practicable for an order to be made under that section;
 5 and
- 6 (b) the Prime Minister is unable to be contacted for the purposes
 7 of considering whether to make, and making, an order under
 8 subsection (1) of this section; and
- 9 (c) the remaining authorising Minister is unable to be contacted
 10 for the purposes of considering whether to make, and
 11 making, an order under subsection (2) of this section; and
- 12 (d) the circumstances referred to in subsection 51A(1), 51AA(1),
 13 51AB(1), 51B(1) or 51C(1) (as the case requires) exist.

14 *Orders applying in internal waters*

- 15 (3) If the order is an order of a kind that Governor-General is
 16 empowered to make under section 51AA, the order must not direct
 17 the Chief of the Defence Force to utilise the Defence Force in the
 18 internal waters of the State or self-governing Territory unless:
 - 19 (a) if the order is made under subsection (1) of this section—the
 20 Prime Minister is satisfied that the circumstances referred to
 21 in subsection 51AA(4) exist in relation to that State or
 22 Territory; or
 - 23 (b) if the order is made under subsection (2) or (2A) of this
 24 section—the other 2 Ministers are satisfied that the
 25 circumstances referred to in subsection 51AA(4) exist in
 26 relation to that State or Territory.

27 *Order not in writing*

- 28 (4) An order under this section need not be in writing. If it is not in
 29 writing, the Prime Minister or the other 2 Ministers (as the case
 30 requires), and the Chief of the Defence Force, must each:
 - 31 (a) make a written record of the order; and
 - 32 (b) sign the record; and
 - 33 (c) cause the signing of the record to be witnessed; and
 - 34 (d) in the case of the Prime Minister or another Minister—as
 35 soon as practicable:
 - 36 (i) cause the record to be given to the Chief of the Defence
 37 Force; and

- 1 (ii) cause a copy of the record to be given to the
2 Governor-General; and
3 (e) in the case of the Chief of the Defence Force—as soon as
4 practicable:
5 (i) cause the record to be given to the Prime Minister; or
6 (ii) cause the record to be given to one of the other 2
7 Ministers, and cause a copy of the record to be given to
8 the other Minister;
9 as the case requires.

10 However, a failure to comply with paragraph (d) or (e) does not
11 affect the validity of the order.

12 *The effect of the order*

- 13 (5) Subject to subsections (7) and (8) of this section, an order made
14 under this section has effect, for all purposes (other than this
15 section), as if it were an order made by the Governor-General
16 under section 51A, 51AA, 51AB, 51B or 51C (as the case
17 requires). In particular:
18 (a) subsection 51A(4), 51AA(8), 51AB(4), 51B(3) or 51C(3) (as
19 the case requires) applies to the order; and
20 (b) the Governor-General may revoke the order in the same way,
21 and in the same circumstances, as he or she may revoke an
22 order under section 51A, 51AA, 51AB, 51B or 51C (as the
23 case requires).
- 24 (6) For the purposes of paragraph (5)(b), the reference in subsection
25 51A(6), 51AA(10) or 51AB(6) or paragraph 51B(5)(b) or
26 51C(5)(b) (as the case requires) to the authorising Ministers
27 ceasing to be satisfied is taken to be a reference to them not being
28 satisfied.

29 *Content of the order*

- 30 (7) An order made under this section:
31 (a) must state that it is made under this section, and that it has
32 effect as if it were an order made by the Governor-General
33 under section 51A, 51AA, 51AB, 51B or 51C (as the case
34 requires); and
35 (b) despite paragraph 51A(4)(d), 51AA(8)(d), 51AB(4)(d),
36 51B(3)(d) or 51C(3)(d) (as the case requires), must state that,

1 unless it is revoked earlier, it ceases to be in force after a
2 specified period (which must not be more than 5 days).

3 *When order is in force*

- 4 (8) The order:
- 5 (a) comes into force when it is made, or (if it is not in writing)
6 when:
- 7 (i) the Prime Minister, or the other 2 Ministers; and
8 (ii) the Chief of the Defence Force;
9 have complied with paragraph (4)(c); and
- 10 (b) ceases to be in force as stated in accordance with
11 paragraph (7)(b).

12 *Authorisations and declarations during an expedited call out*

- 13 (9) If:
- 14 (a) one or more authorising Ministers have the power to give an
15 authorisation or make a declaration under a provision of
16 Division 2, 3, 3A or 3B; and
17 (b) that Division applies because of an order made under this
18 section;
- 19 the authorisation or declaration need not be in writing, despite any
20 requirement of the provision to the contrary.
- 21 (10) If the authorisation or declaration is not in writing, the authorising
22 Minister or authorising Ministers, and the Chief of the Defence
23 Force, must each:
- 24 (a) make a written record of the authorisation or declaration; and
25 (b) sign the record; and
26 (c) cause the signing of the record to be witnessed; and
27 (d) in the case of an authorising Minister—as soon as practicable
28 cause the record to be given to the Chief of the Defence
29 Force; and
30 (e) in the case of the Chief of the Defence Force—as soon as
31 practicable:
- 32 (i) cause the record to be given to the authorising Minister;
33 or

- 1 (ii) cause the record to be given to one of the authorising
2 Ministers, and cause a copy of the record to be given to
3 the other authorising Minister;
4 as the case requires.

5 However, a failure to comply with paragraph (d) or (e) does not
6 affect the validity of the authorisation or declaration.

- 7 (11) If the authorisation or declaration is not in writing, it comes into
8 force when the authorising Minister or authorising Ministers, and
9 the Chief of the Defence Force, have complied with
10 paragraph (10)(c).

11 *References to certain circumstances*

- 12 (12) To avoid doubt, a reference in this section to the circumstances
13 referred to in subsection 51A(1), 51AA(1), 51AB(1), 51B(1) or
14 51C(1):
15 (a) does not include a reference to the authorising Ministers
16 being satisfied as to particular matters; and
17 (b) in relation to section 51B, includes a reference to a State
18 Government having made an application of a kind referred to
19 in subsection 51B(1); and
20 (c) in relation to section 51C, includes a reference to a State
21 Government having made an application of a kind referred to
22 in subsection 51C(1).

23 *Involvement of State or Territory under subsection 51A(3) not*
24 *required*

- 25 (13) To avoid doubt, paragraph 51A(3)(b) does not apply to an order
26 under this section that would have effect as if it were an order
27 made by the Governor-General under section 51A.

1
2 **Schedule 5—Amendments consequential on**
3 **Schedules 1 to 4**
4

5 *Air Force Act 1923*

6 **1 Paragraph 4J(1)(b)**

7 Omit “51A, 51B or 51C”, substitute “51A, 51AA, 51AB, 51B, 51C or
8 51CA”.

9 *Defence Act 1903*

10 **2 Paragraph 50(1)(b)**

11 Omit “51A, 51B or 51C”, substitute “51A, 51AA, 51AB, 51B, 51C or
12 51CA”.

13 **3 Part IIIAAA (heading)**

14 Repeal the heading, substitute:

15 **Part IIIAAA—Utilisation of Defence Force to**
16 **protect Commonwealth interests and States**
17 **and self-governing Territories**

18 **4 Subsection 51(1) (definition of *order*)**

19 Repeal the definition.

20 **5 Subsection 51(1)**

21 Insert:

22 *threat concerned* means:

- 23 (a) for the purposes of the application of section 51IB or
24 subsection 51T(2A)—the threat of damage or disruption in
25 relation to which the authorising Ministers make a
26 declaration under section 51CB; or
27 (b) for the purposes of the application of one or more of the
28 provisions of Division 3A—the threat to Commonwealth

1 interests in relation to which an order under section 51AA is
2 made that causes Division 3A to apply.

3 **6 Paragraph 51A(1)(d)**

4 Repeal the paragraph, substitute:
5 (d) one or more of Divisions 2, 2A, 3 and 3B, and Division 4,
6 should apply in relation to the order.

7 **7 Paragraph 51A(4)(c)**

8 Repeal the paragraph, substitute:
9 (c) must state that one or more of Divisions 2, 2A, 3 and 3B, and
10 Division 4, apply in relation to the order; and

11 **8 Paragraph 51B(1)(c)**

12 Repeal the paragraph, substitute:
13 (c) one or more of Divisions 2, 2A, 3 and 3B, and Division 4,
14 should apply in relation to the order.

15 **9 Paragraph 51B(3)(c)**

16 Repeal the paragraph, substitute:
17 (c) must state that one or more of Divisions 2, 2A, 3 and 3B, and
18 Division 4, apply in relation to the order; and

19 **10 Paragraph 51C(1)(c)**

20 Repeal the paragraph, substitute:
21 (c) one or more of Divisions 2, 2A, 3 and 3B, and Division 4,
22 should apply in relation to the order.

23 **11 Paragraph 51C(3)(c)**

24 Repeal the paragraph, substitute:
25 (c) must state that one or more of Divisions 2, 2A, 3 and 3B, and
26 Division 4, apply in relation to the order; and

27 **12 After subsection 51D(1)**

28 Insert:

1 *Order under section 51AA*

- 2 (1A) If the Governor-General makes an order under section 51AA, the
3 Chief of the Defence Force must, subject to sections 51E, 51F and
4 51G, utilise the Defence Force, in such manner as is reasonable and
5 necessary:
6 (a) in the Australian offshore area, for the purpose of protecting
7 the Commonwealth interests specified in the order against the
8 threat concerned; and
9 (b) if the order includes a direction mentioned in subsection
10 51AA(5)—in the internal waters of the State or Territory to
11 which the direction relates, for the purpose of protecting the
12 Commonwealth interests specified in the order against the
13 domestic violence specified in the order.

14 *Order under section 51AB*

- 15 (1B) If:
16 (a) the Governor-General makes an order under section 51AB;
17 and
18 (b) the circumstances specified in the order arise;
19 the Chief of the Defence Force must, subject to sections 51E, 51F
20 and 51G, utilise the Defence Force, in such manner as is reasonable
21 and necessary:
22 (c) for the purpose of protecting the State or Territory specified
23 in the order against the domestic violence specified in the
24 order; or
25 (d) for the purpose of protecting the Commonwealth interests
26 specified in the order against the threat specified in the order;
27 as the case requires.

28 **13 Division 4 of Part IIIAAA (heading)**

29 Repeal the heading, substitute:

30 **Division 4—Provisions common to Divisions 2 to 3B**

31 **14 Subsection 51T(1)**

32 Omit “Division 2 or 3”, substitute “Division 2, 2A, 3, 3A or 3B”.

33 **15 Before subsection 51T(2)**

1 Insert:

2 (1B) To avoid doubt, any use of force by a member of the Defence
3 Force under this Part must be in accordance with this section.

4 **16 Subsection 51T(2)**

5 Omit “However”, substitute “Despite subsection (1), in exercising
6 powers under Division 2, 3 or 3A (other than subparagraph
7 51SE(1)(a)(i) or (ii) or this Division”.

8 **17 Subsection 51U(1)**

9 After “subparagraph 51I(1)(b)(ii)”, insert “, 51IB(b)(i) or
10 51SE(1)(b)(ii)”.

11 **18 Section 51V**

12 Omit “Division 2 or 3”, substitute “Division 2, 2A, 3 or 3A”.

13 **19 Section 51W**

14 Omit “Division 2 or 3”, substitute “Division 2, 2A, 3, 3A or 3B”.

15 **20 Paragraph 51X(1)(a)**

16 Omit “order under this Part”, substitute “order under Division 1”.

17 **21 Subsection 51X(2)**

18 Omit “orders under this Part”, substitute “orders under Division 1”.

19 **22 Subparagraph 51XA(1)(a)(i)**

20 Omit “order under this Part”, substitute “order under Division 1”.

21 **23 Subparagraph 51XA(1)(a)(ii)**

22 Omit “orders under this Part”, substitute “orders under Division 1”.

23 **24 Paragraph 51XA(1)(b)**

24 Omit “order under this Part”, substitute “order under Division 1”.

25 **25 Subsection 51XA(3)**

26 Omit “order under this Part”, substitute “order under Division 1”.

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

1 **26 Section 7 (definition of *call out day*)**

2 Omit “51A, 51B or 51C”, substitute “51A, 51AA, 51AB, 51B, 51C or
3 51CA”.

4 **27 Subsection 9(1) (definition of *dependant*)**

5 Omit “51A, 51B or 51C”, substitute “51A, 51AA, 51AB, 51B, 51C or
6 51CA”.

7 **28 Section 13**

8 Omit “51A, 51B or 51C”, substitute “51A, 51AA, 51AB, 51B, 51C or
9 51CA”.

10 ***Naval Defence Act 1910***

11 **29 Paragraph 32A(1)(b)**

12 Omit “51A, 51B or 51C”, substitute “51A, 51AA, 51AB, 51B, 51C or
13 51CA”.

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Schedule 6—Other amendments

Defence Act 1903

1 Subsection 51(1)

Insert:

criminal act means an act or omission that would, if done or omitted to be done in the Jervis Bay Territory, contravene the substantive criminal law of the Jervis Bay Territory.

2 Subsection 51(1)

Insert:

substantive criminal law means law (including unwritten law):

- (a) creating offences or imposing criminal liability for offences; or
- (b) dealing with capacity to incur criminal liability; or
- (c) providing a defence or providing for the reduction of the degree of criminal liability; or
- (d) providing for the confiscation of property used in, or derived from, the commission of an offence; or
- (e) dealing with other subjects declared by regulation to be within the ambit of the substantive criminal law of the Jervis Bay Territory; or
- (f) providing for the interpretation of laws of the kinds mentioned above.

3 After paragraph 51A(1)(a)

Insert:

(aa) the domestic violence would, or would be likely to, affect Commonwealth interests; and

4 Subsection 51A(3A)

Omit “Governor-General is”, substitute “authorising Ministers are”.

5 Subsection 51A(7)

1 Omit “or in deciding whether he or she is satisfied as mentioned in
2 subsection (3A),”.

3 **6 Section 51G**

4 Repeal the section, substitute:

5 **51G Restriction on certain utilisation of Defence Force**

6 In utilising the Defence Force in accordance with section 51D, the
7 Chief of the Defence Force must not stop or restrict any protest,
8 dissent, assembly or industrial action, except where there is a
9 reasonable likelihood of the death of, or serious injury to, persons
10 or serious damage to property.

11 **7 Division 2 of Part IIIAAA (heading)**

12 Repeal the heading, substitute:

13 **Division 2—Powers to recapture locations or things,
14 prevent or end acts of violence and protect
15 persons from acts of violence**

16 **8 Subsections 51I(1) and (2)**

17 Repeal the subsections, substitute:

18 *Special powers*

19 (1) Subject to this section, a member of the Defence Force who is
20 being utilised in accordance with section 51D may, under the
21 command of the Chief of the Defence Force do any one or more of
22 the following:

23 (a) take any one or more of the following actions:

- 24 (i) recapture a location or thing;
25 (ii) prevent, or put an end to, acts of violence;
26 (iii) protect persons from acts of violence;

27 (b) in connection with taking any such action, do any one or
28 more of the following:

- 29 (i) free any hostage from a location or thing;
30 (ii) if the member finds a person whom the member
31 believes on reasonable grounds to have committed an

- 1 offence against a law of the Commonwealth, a State or
2 Territory—detain the person for the purpose of placing
3 the person in the custody of a member of a police force
4 at the earliest practicable time;
- 5 (iii) control the movement of persons or of means of
6 transport;
- 7 (iv) evacuate persons to a place of safety;
- 8 (v) search persons or locations or things for dangerous
9 things or other things related to the domestic violence
10 that is occurring or is likely to occur;
- 11 (vi) seize any dangerous thing, or other thing related to the
12 domestic violence that is occurring or is likely to occur,
13 found in such a search; and
- 14 (c) do anything incidental to anything in paragraph (a) or (b).

15 Note: Subdivision B of Division 4 sets out what is to happen if a thing is
16 seized under this subsection.

17 *Ministerial authorisation*

- 18 (2) However, the member must not:
- 19 (a) take any action mentioned in paragraph (1)(a); or
20 (b) do any of the things mentioned in paragraph (1)(b) or (c) in
21 connection with taking that action;
- 22 unless an authorising Minister has in writing authorised taking that
23 action.

24 **9 At the end of section 51I**

25 Add:

26 *Definitions*

- 27 (4) In this section:

28 *location* includes any premises or place.

29 *thing* includes any means of transport, but does not include an
30 aircraft that is airborne.

31 **10 After subsection 51K(2)**

32 Insert:

1 (2AA) However, subsection (2) does not apply if:

- 2 (a) the order mentioned in section 51J also states, in accordance
3 with paragraph 51A(4)(c), 51B(3)(c) or 51C(3)(c), that
4 Division 2 applies in relation to the order; and
5 (b) the authorising Ministers declare, in writing, that they are
6 satisfied that the application of subsection (2) would
7 prejudice the exercise of powers under Division 2 by
8 members of the Defence Force who are being utilised in
9 accordance with section 51D.

10 **11 At the end of section 51Q**

11 Add:

- 12 (4) However, subsection (3) does not apply if the authorising Ministers
13 declare, in writing, that they are satisfied that the application of
14 subsection (3) would prejudice the exercise of powers under
15 Division 2 by members of the Defence Force who are being
16 utilised in accordance with section 51D.

17 **12 Paragraph 51S(1)(b)**

18 Repeal the paragraph, substitute:

- 19 (b) for the purposes of identification, have:
20 (i) his or her surname; or
21 (ii) his or her numbers or a combination of numbers and
22 letters of the alphabet;
23 on or attached to the front of his or her uniform.

24 **13 After Division 4 of Part IIIAAA**

25 Insert:

26 **Division 4A—Applicable criminal law**

27 **51WA Applicable criminal law**

- 28 (1) The substantive criminal law of the Jervis Bay Territory, as in
29 force from time to time, applies in relation to a criminal act of a
30 member of the Defence Force that is done, or purported to be done,
31 under this Part.

1 (2) The substantive criminal law of the States and the other Territories,
2 as in force from time to time, does not apply in relation to a
3 criminal act of a member of the Defence Force that is done, or
4 purported to be done, under this Part.

5 (3) To avoid doubt, Chapter 2 of the *Criminal Code* does not apply to
6 an act done, or purported to be done, under this Part that is a
7 criminal act (except to the extent that it constitutes an offence
8 against the law of the Commonwealth).

9 (4) To avoid doubt, the functions of the Director of Public
10 Prosecutions under section 6 of the *Director of Public*
11 *Prosecutions Act 1983* in relation to the law of the Jervis Bay
12 Territory as applied by subsection (1) are exclusive of the
13 corresponding functions of any officer of a State or Territory, in
14 relation to the law of the Jervis Bay Territory as so applied, under a
15 law corresponding to that Act.

16 Note: It is not intended that this section or Act restrict or limit the power of
17 State or Territory police to investigate any criminal acts done, or
18 purported to be done, by Defence Force members when operating
19 under Part IIIAAA of this Act.

20 **51WB Defence of superior orders in certain circumstances**

21 (1) Subject to subsection (2), the fact that a criminal act was done, or
22 purported to be done, by a member of the Defence Force under this
23 Part under an order of a superior does not relieve the member of
24 criminal responsibility.

25 (2) It is a defence to a criminal act done, or purported to be done, by a
26 member of the Defence Force under this Part that:
27 (a) the criminal act was done by the member under an order of a
28 superior; and
29 (b) the member was under a legal obligation to obey the order;
30 and
31 (c) the order was not manifestly unlawful; and
32 (d) the member had no reason to believe that circumstances had
33 changed in a material respect since the order was given; and
34 (e) the member had no reason to believe that the order was based
35 on a mistake as to a material fact; and
36 (f) the action taken was reasonable and necessary to give effect
37 to the order.

1 (3) Subsection (2) does not limit the defences that may be available to
2 the person.

3 **14 After section 51XA**

4 Insert:

5 **51XB Instruments that are not legislative instruments**

6 An order, authorisation or declaration made under this Part is not a
7 legislative instrument.