

2013-2014-2015

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Defence Legislation (Enhancement of
Military Justice) Bill 2015**

No. , 2015

(Defence)

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

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 1—Main amendments		3
	<i>Defence Force Discipline Act 1982</i>	3
Schedule 2—Director of Defence Counsel Services		11
	<i>Defence Act 1903</i>	11
	<i>Defence Force Discipline Act 1982</i>	14
Schedule 3—Amendments relating to certain office holders		15
	<i>Military Justice (Interim Measures) Act (No. 1) 2009</i>	15

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

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Defence Legislation (Enhancement of*
6 *Military Justice) Act 2015*.

7 **2 Commencement**

8 This Act commences on the day after this Act receives the Royal
9 Assent.

1 **3 Schedules**

2 Legislation that is specified in a Schedule to this Act is amended or
3 repealed as set out in the applicable items in the Schedule
4 concerned, and any other item in a Schedule to this Act has effect
5 according to its terms.

1 **Schedule 1—Main amendments**
2

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

4 **1 Subsection 3(1) (definition of *old system offence*)**

5 Repeal the definition.

6 **2 Subsection 3(1) (definition of *previous service law*)**

7 Repeal the definition.

8 **3 Subsection 3(1) (subparagraph (b)(ii) of the definition of**
9 ***service offence*)**

10 Omit “civilian; or”, substitute “civilian.”.

11 **4 Subsection 3(1) (paragraph (c) of the definition of *service***
12 ***offence*)**

13 Repeal the paragraph.

14 **5 Subsection 3(1) (at the end of the definition of *service***
15 ***offence*)**

16 Add:

17 Note: A service offence is an offence against a law of the Commonwealth:
18 see section 3A.

19 **6 Subsection 3(15)**

20 Repeal the subsection.

21 **7 After section 3**

22 Insert:

23 **3A Character of service offences**

24 For the purposes of any law of the Commonwealth other than this
25 Act or the regulations, a service offence is an offence against a law
26 of the Commonwealth.

27 **8 Section 10**

28 Omit “, other than old system offences”.

1 **9 Subsection 11(4)**

2 Repeal the subsection.

3 **10 After section 33**

4 Insert:

5 **33A Assault occasioning actual bodily harm**

6 A person who is a defence member or a defence civilian is guilty
7 of an offence if:

8 (a) the person is:

9 (i) on service land; or

10 (ii) in a service ship, service aircraft or service vehicle; or

11 (iii) in a public place; and

12 (b) the person assaults another person; and

13 (c) the assault causes actual bodily harm to the other person.

14 Penalty: Imprisonment for 5 years.

15 **11 Paragraphs 40D(1)(d) and (2)(d)**

16 Omit "\$100", substitute "3 penalty units".

17 **12 At the end of Subdivision C of Division 5A of Part III**

18 Add:

19 **47Q Unauthorised use of Commonwealth credit card**

20 (1) A person who is a defence member or a defence civilian is guilty
21 of an offence if the person uses a Commonwealth credit card, or a
22 Commonwealth credit card number, to obtain cash, goods or
23 services otherwise than for the Commonwealth.

24 Maximum punishment: Imprisonment for 5 years.

25 (2) Subsection (1) does not apply to a particular use of a
26 Commonwealth credit card or Commonwealth credit card number
27 if the person has lawful authority for the use.

28 Note: The defendant bears an evidential burden in relation to the matter in
29 subsection (2). See subsection 13.3(3) of the *Criminal Code*.

30 (3) In this section:

1 **Commonwealth credit card** means a credit card issued to, or made
2 available for use by, the Commonwealth to enable the
3 Commonwealth to obtain cash, goods or services on credit.

4 **13 Paragraphs 59(3)(f), (5)(e) and (6)(e)**

5 Omit “\$100”, substitute “3 penalty units”.

6 **14 Section 62**

7 Repeal the section, substitute:

8 **62 Commanding or ordering a service offence to be committed**

9 (1) A defence member who commands or orders a person to commit a
10 service offence (the *relevant service offence*) is guilty of an
11 offence.

12 Maximum punishment:

13 (a) if the relevant service offence is punishable by a fixed
14 punishment—that fixed punishment; or

15 (b) otherwise—a punishment that is not more severe than the
16 maximum punishment for the relevant service offence.

17 (2) For the defence member to be guilty, the defence member must be
18 reckless as to whether the relevant service offence is committed.

19 (3) Subsection (2) has effect subject to subsection (6).

20 (4) The defence member may be found guilty even if:

21 (a) the relevant service offence is not committed; or

22 (b) committing the relevant service offence is impossible.

23 (5) Any defences, procedures, limitations or qualifying provisions that
24 apply to the relevant service offence apply also to the offence of
25 commanding or ordering a person to commit the relevant service
26 offence.

27 (6) Any special liability provisions (within the meaning of the
28 *Criminal Code*) that apply to the relevant service offence apply
29 also to the offence of commanding or ordering a person to commit
30 the relevant service offence.

- 1 (7) It is not an offence to command or order a person to commit an
2 offence against any of the following provisions of the *Criminal*
3 *Code*:
4 (a) section 11.1 (attempt);
5 (b) section 11.4 (incitement);
6 (c) section 11.5 (conspiracy).

7 **15 Section 65**

8 Repeal the section.

9 **16 Subparagraph 68(1)(h)(ii)**

10 Omit “\$500”, substitute “15 penalty units”.

11 **17 Subsection 72(1)**

12 Omit “Sections 16, 19A to 19AZD (other than section 19AH), 20, 20A
13 and 20AA of the *Crimes Act 1914*”, substitute “Sections 16 and 19A to
14 19AZD (other than section 19AH) of the *Crimes Act 1914* (the *applied*
15 *Crimes Act provisions*)”.

16 **18 After subsection 72(1)**

17 Insert:

- 18 (1A) Despite the applied Crimes Act provisions, a service tribunal that
19 imposes a punishment of imprisonment for a specific period (the
20 *sentence*) on a convicted person:
21 (a) must not make a recognizance release order in relation to the
22 person; and
23 (b) may fix a non-parole period in respect of the sentence, even
24 if:
25 (i) the sentence does not exceed 3 years; or
26 (ii) if 2 or more sentences are imposed—the sentences in
27 the aggregate do not exceed 3 years.

28 **19 Subsection 72(2)**

29 Omit “the provisions of the *Crimes Act 1914* as applied by virtue of
30 subsection (1) to the service tribunal shall”, substitute “the applied
31 Crimes Act provisions, as modified by subsection (1A), is to”.

1 **20 At the end of section 72**

2 Add:

- 3 (3) In addition to the effect of the provisions of Division 5 of Part IB
4 of the *Crimes Act 1914* (as applied by subsection (1) and modified
5 by subsection (1A)), those provisions have the same effect in
6 relation to a non-parole period fixed by a service tribunal in respect
7 of a sentence of, or sentences aggregating, 3 years or less as those
8 provisions have in relation to a non-parole period fixed by a
9 service tribunal in respect of a sentence of, or sentences
10 aggregating, more than 3 years but less than 10 years.

11 **21 Subsection 79(2)**

12 Omit “an amount not less than \$100”, substitute “3 penalty units or
13 more”.

14 **22 Subsection 96(5)**

15 Repeal the subsection.

16 **23 Subsection 105A(2)**

17 Repeal the subsection, substitute:

- 18 (2) The charge may be referred to the Director of Military
19 Prosecutions by:
20 (a) a commanding officer in relation to the person; or
21 (b) an officer who is superior to a commanding officer.

22 **24 Section 131B**

23 Repeal the section.

24 **25 At the end of paragraphs 142(1)(a), (b), (ba) and (c)**

25 Add “and”.

26 **26 Paragraph 142(1)(d)**

27 Omit “offence; and”, substitute “offence.”.

28 **27 Paragraph 142(1)(e)**

29 Repeal the paragraph.

1 **28 Paragraph 144(4)(b)**

2 Repeal the paragraph.

3 **29 Section 169BB (cell at table item 2, column headed**
4 **“Relevant discipline officer”)**

5 Repeal the cell, substitute:

Any discipline officer

6 **30 After section 190**

7 Insert:

8 **190A Disclosing certain convictions of service offences by a court**
9 **martial or a Defence Force magistrate**

10 (1) This section applies if, before or after the commencement of this
11 section, a court martial or a Defence Force magistrate:

12 (a) convicts a person of a service offence (other than a
13 Schedule 1A offence); or

14 (b) convicts a person of a Schedule 1A offence and imposes a
15 punishment of imprisonment on the person.

16 (2) A service chief or an authorized officer may disclose the fact that a
17 person has been convicted of the offence, and any information
18 relating to the conviction, to an authority of the Commonwealth, or
19 of a State or a Territory, for purposes connected with investigating,
20 prosecuting or keeping records in relation to offences against laws
21 of the Commonwealth, the State or the Territory.

22 (3) For the purpose of complying with a requirement or an
23 authorisation to disclose, for a lawful purpose, the fact that a
24 person has been convicted of an offence against a law of the
25 Commonwealth that is a service offence, the disclosure must
26 expressly refer to the offence as a service offence.

27 Note: Part VIIC of the *Crimes Act 1914* exempts a person from having to
28 disclose a spent conviction.

1 **190B Disclosing certain convictions by a summary authority, a court**
2 **martial or a Defence Force magistrate**

3 (1) This section applies if, before or after the commencement of this
4 section:

5 (a) a summary authority convicts a person of a service offence;
6 or

7 (b) a court martial or a Defence Force magistrate convicts a
8 person of a Schedule 1A offence and does not impose a
9 punishment of imprisonment on the person.

10 (2) The conviction has effect for service purposes only.

11 (3) The convicted person is not required to disclose to any person, for
12 any purpose (other than a service purpose), the fact that the person
13 has been convicted of the offence.

14 Note: A person who has been convicted of an offence to which this section
15 applies is not required to disclose the conviction for service purposes
16 if the conviction is spent within the meaning of Part VIIC of the
17 *Crimes Act 1914*.

18 (4) Subsections (2) and (3) have effect despite section 3A.

19 **31 Paragraph 191(1)(c)**

20 Repeal the paragraph.

21 **32 Schedule 1**

22 Repeal the Schedule.

23 **33 Clause 2 of Schedule 2 (table, column 2)**

24 Omit “of an amount not exceeding \$500.”, substitute “not exceeding 15
25 penalty units”.

26 **34 Subclause 1(4) of Schedule 3 (table item 2, column 2)**

27 Omit “exceeding \$100 but not exceeding \$250”, substitute “not
28 exceeding 7 penalty units”.

29 **35 Subclause 1(4) of Schedule 3 (table item 2, column 3)**

30 Omit “\$100”, substitute “3 penalty units”.

1 **36 Subclause 2(3) of Schedule 3 (table item 5, column 2)**

2 Omit “exceeding \$100 but not exceeding \$250”, substitute “not
3 exceeding 7 penalty units”.

4 **37 Subclause 2(3) of Schedule 3 (table item 5, column 3)**

5 Omit “\$100”, substitute “3 penalty units”.

1 **Schedule 2—Director of Defence Counsel**
2 **Services**
3

4 ***Defence Act 1903***

5 **1 Subsection 4(1)**

6 Insert:

7 ***accused person*** has the same meaning as in the *Defence Force*
8 *Discipline Act 1982*.

9 ***court martial*** means a court martial convened under the *Defence*
10 *Force Discipline Act 1982*.

11 ***Defence Force magistrate*** has the same meaning as in the *Defence*
12 *Force Discipline Act 1982*.

13 ***Director of Defence Counsel Services*** means the person appointed
14 under subsection 110ZA(2) as the Director of Defence Counsel
15 Services or a person acting as the Director of Defence Counsel
16 Services.

17 ***legal officer*** has the same meaning as in the *Defence Force*
18 *Discipline Act 1982*.

19 ***legal practitioner*** has the same meaning as in the *Defence Force*
20 *Discipline Act 1982*.

21 **2 Subsection 61CU(5)**

22 Omit “lawyer”, substitute “legal practitioner”.

23 **3 Subsection 89(2)**

24 Repeal the subsection, substitute:

25 (2) In this section:

26 ***judge advocate*** has the same meaning as in the *Defence Force*
27 *Discipline Act 1982*.

28 ***summary authority*** has the same meaning as in the *Defence Force*
29 *Discipline Act 1982*.

1 **4 Section 110T (definition of *lawyer*)**

2 Repeal the definition.

3 **5 Paragraph 110XH(2)(d)**

4 Omit “lawyer”, substitute “legal practitioner”.

5 **6 After Part VIIC**

6 Insert:

7 **Part VIID—Director of Defence Counsel Services**

8

9 **110ZA Director of Defence Counsel Services**

- 10 (1) There is to be a Director of Defence Counsel Services.
- 11 (2) The Director of Defence Counsel Services is to be appointed by the
- 12 Chief of the Defence Force by written instrument.
- 13 (3) The Chief of the Defence Force must not appoint a person to be the
- 14 Director of Defence Counsel Services unless the person:
- 15 (a) is enrolled as a legal practitioner and has been so enrolled for
- 16 not less than 5 years; and
- 17 (b) is a member of the Permanent Forces or is a member of the
- 18 Reserves who is rendering continuous full-time service; and
- 19 (c) holds a rank not lower than the naval rank of captain or the
- 20 rank of colonel or group captain.

21 **110ZB Functions and powers of the Director of Defence Counsel**

22 **Services**

- 23 (1) The Director of Defence Counsel Services has the following
- 24 functions:
- 25 (a) to manage the provision of legal representation and advice by
- 26 legal officers to accused persons, for the purposes of a trial
- 27 by a court martial or a Defence Force magistrate, to the
- 28 extent that the exigencies of service permit;
- 29 (b) to arrange for the attendance of witnesses, to the extent that
- 30 the exigencies of service permit, on behalf of an accused
- 31 person referred to in paragraph (a);

-
- 1 (c) to establish and maintain, in accordance with
2 subsection 101F(2) of the *Defence Force Discipline Act*
3 *1982*, lists of legal officers willing to assist persons in
4 custody;
- 5 (d) to manage the provision of legal representation and advice by
6 legal officers to persons entitled to such representation or
7 advice, for the purposes of a court of inquiry, a board of
8 inquiry or a Chief of the Defence Force commission of
9 inquiry conducted under regulations made under
10 paragraph 124(1)(gc);
- 11 (e) such other functions as the Chief of the Defence Force directs
12 in writing;
- 13 (f) such other functions as are conferred on the Director of
14 Defence Counsel Services by or under this Act or any other
15 law of the Commonwealth;
- 16 (g) to do anything incidental or conducive to the performance of
17 any of the preceding functions.
- 18 (2) The Director of Defence Counsel Services has power to do all
19 things necessary or convenient to be done for or in connection with
20 the performance of his or her functions.
- 21 (3) A direction given under paragraph (1)(e) is not a legislative
22 instrument.

23 **110ZC Delegation**

24 The Director of Defence Counsel Services may delegate all or any
25 of his or her powers and functions to:

- 26 (a) a defence member holding a rank not lower than lieutenant
27 commander, major or squadron leader; or
- 28 (b) a person whose classification level appears in Group 7 or a
29 higher Group of Schedule 1 to the Classification Rules under
30 the *Public Service Act 1999*; or
- 31 (c) a person who is acting in a position usually occupied by a
32 person with a classification level of the kind mentioned in
33 paragraph (b).

34 **110ZD Protection from action**

35 An action, suit or proceeding does not lie against:

- 1 (a) the Director of Defence Counsel Services; or
2 (b) a person assisting the Director;
3 in relation to an act done, or omitted to be done, in good faith in
4 the performance or purported performance of a function, or the
5 exercise or purported exercise of a power, conferred on the
6 Director by or under this Act or any other law of the
7 Commonwealth.

8 **7 Subsection 122B(1)**

9 Omit “(1)”.

10 **8 Subsection 122B(2)**

11 Repeal the subsection.

12 ***Defence Force Discipline Act 1982***

13 **9 Subsection 3(1)**

14 Insert:

15 *Director of Defence Counsel Services* has the same meaning as in
16 the *Defence Act 1903*.

17 **10 Subsection 101F(2)**

18 Omit “Chief of the Defence Force shall”, substitute “Director of
19 Defence Counsel Services must”.

20 **11 Subsection 101F(2)**

21 Omit “Chief of the Defence Force thinks”, substitute “Director thinks”.

22 **12 Subsection 101F(2A)**

23 Repeal the subsection.

24 **13 Saving—list of legal officers**

25 A list that was in force under subsection 101F(2) of the *Defence Force*
26 *Discipline Act 1982* immediately before the commencement of this
27 Schedule continues in force on and after that commencement as if it had
28 been established under that subsection as amended by this Schedule.

1 **Schedule 3—Amendments relating to certain**
2 **office holders**
3

4 *Military Justice (Interim Measures) Act (No. 1) 2009*

5 **1 Subparagraph 2(3)(a)(i) of Schedule 3**

6 Omit “6 years”, substitute “8 years”.

7 **2 Subparagraph 2(3)(a)(ii) of Schedule 3**

8 Omit “6 year”, substitute “8 year”.

9 **3 Subitem 2(7A) of Schedule 3**

10 Omit “Subsection 188A(2) of the amended Defence Force Discipline
11 Act does”, substitute “Subsections 188A(2) and (3) of the amended
12 Defence Force Discipline Act do”.

13 **4 Subitem 2(8) of Schedule 3**

14 Omit “subsection 188A(3) and”.

15 **5 Paragraph 3(1)(a) of Schedule 3**

16 Omit “6 year”, substitute “8 year”.

17 **6 Subparagraph 4(3)(a)(i) of Schedule 3**

18 Omit “6 years”, substitute “8 years”.

19 **7 Subparagraph 4(3)(a)(ii) of Schedule 3**

20 Omit “6 year”, substitute “8 year”.

21 **8 Paragraph 5(1)(a) of Schedule 3**

22 Omit “6 year”, substitute “8 year”.

23 **9 Subitem 8(1) of Schedule 3**

24 Omit “6 year”, substitute “8 year”.