



# **Air Force Act 1923**

**No. 33, 1923**

## **Compilation No. 11**

<b>Compilation date:</b>	1 July 2016
<b>Includes amendments up to:</b>	Act No. 120, 2015
<b>Registered:</b>	2 December 2016

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### **This compilation**

This is a compilation of the *Air Force Act 1923* that shows the text of the law as amended and in force on 1 July 2016 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### **Uncommenced amendments**

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

### **Application, saving and transitional provisions for provisions and amendments**

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### **Editorial changes**

For more information about any editorial changes made in this compilation, see the endnotes.

### **Modifications**

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

### **Self-repealing provisions**

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## **An Act relating to Air Defence**

### **1 Short title**

This Act may be cited as the *Air Force Act 1923*.

### **2 Interpretation**

In this Act unless the contrary intention appears:

*the Defence Act* means the *Defence Act 1903*.

*the Naval Defence Act* means the *Naval Defence Act 1910*.

*time of defence emergency*, *time of war* and *war* have the same meanings respectively as in the Defence Act.

### **4 Extension of Act to Territories**

This Act extends to every Territory.

#### **4A Australian Air Force**

The Australian Air Force consists of 2 parts:

- (a) the Permanent Air Force; and
- (b) the Air Force Reserve.

#### **4B Permanent Air Force**

The Permanent Air Force consists of:

- (a) officers appointed to, and airmen enlisted in, the Permanent Air Force; and
- (b) officers and airmen transferred to the Permanent Air Force from:
  - (i) the Air Force Reserve; or
  - (ii) the Australian Navy; or
  - (iii) the Australian Army.

#### **4C Air Force Reserve**

The Air Force Reserve consists of:

- (a) officers appointed to, and airmen enlisted in, the Air Force Reserve; and
- (b) officers and airmen transferred to the Air Force Reserve from:
  - (i) the Permanent Air Force; or
  - (ii) the Australian Navy; or
  - (iii) the Australian Army.

#### **4E Voluntary entry**

Except as provided by Part IV of the Defence Act, the Air Force shall be kept up by the appointment to that Force, or the enlistment in that Force, of persons who volunteer and are accepted for service in that Force.

#### **4F Territorial limits of service**

Members of the Air Force may be required to render air-force service on land or sea or in the air, and either within or beyond the territorial limits of Australia.

#### **4G Service of the Permanent Air Force**

Members of the Permanent Air Force are bound to render continuous full time air-force service.

#### **4H Flexible service arrangements for members of the Permanent Air Force**

*General determinations*

- (1) The Chief of Air Force may determine, in writing:
  - (a) a class of persons who are members of the Permanent Air Force who may render flexible service instead of continuous full time air-force service; and

- (b) a period of service, or pattern of service, that constitutes that flexible service.

Note: A person may choose not to apply to render flexible service even if the person is in a class of persons in relation to whom a determination is made under this subsection.

*Application to render flexible service*

- (2) A person who is a member of the Permanent Air Force may, in writing, apply to the Chief of Air Force to render flexible service instead of continuous full time air-force service (whether or not the person is in a class of persons covered by a determination made under subsection (1)).

*Approving and refusing application to render flexible service*

- (3) The Chief of Air Force may determine, in writing:
  - (a) that a person who has applied under subsection (2) to render flexible service may render that service; and
  - (b) the period of service, or pattern of service, that constitutes that flexible service; and
  - (c) the period during which the determination is in force.

Note: The determination may be varied or revoked (see subsections (7), (9) and (10)).

- (4) Without limiting subsection (3), if a person is in a class of persons covered by a determination made under subsection (1), the Chief of Air Force may:
  - (a) still refuse the person's application; or
  - (b) determine under subsection (3) a different period of service, or pattern of service, from the period or pattern determined under subsection (1);but only if the Chief of Air Force is satisfied that it is appropriate to do so because of operational or other requirements of the Permanent Air Force.

## Section 4H

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### *Flexible service taken to be continuous full time air-force service for certain purposes*

- (5) A person rendering flexible service in accordance with a determination under subsection (3) is taken to be rendering continuous full time air-force service for the purposes of the following:
- (a) section 120B of the *Defence Act 1903*;
  - (b) the *Defence Force Discipline Act 1982*;
  - (c) the *Defence Force Retirement and Death Benefits Act 1973*;
  - (d) the *Military Superannuation and Benefits Act 1991*;
  - (e) a determination made for the purposes of section 58B or 58H of the *Defence Act 1903*;
  - (f) any instrument made for the purposes of a provision or Act referred to in any of paragraphs (a) to (d);
  - (g) any other Act, instrument or provision prescribed by the regulations.

### *Determination may deal with the treatment of flexible service*

- (6) Without limiting subsection (1) or (3), a determination under that subsection in relation to a person or class of persons may deal with:
- (a) the treatment of flexible service (including how remuneration and allowances are to be treated) for the person or persons in that class; and
  - (b) whether, when the person or persons in that class are rendering flexible service, the person or persons are fulfilling their obligation to render continuous full time air-force service under section 4G.

### *Varying and revoking determinations—Chief of Air Force*

- (7) The Chief of Air Force may, at any time, vary or revoke a determination under subsection (1) or (3).
- (8) A determination under subsection (3) in relation to a person is taken to be revoked if:



- (a) the person is appointed to a position under section 179, 188FB, 188FL, 188GF or 188GP of the *Defence Force Discipline Act 1982*; or
- (b) the person ceases to be a member of the Permanent Air Force; or
- (c) the person is in a class of persons covered by a determination made under subsection (1) that is revoked.

*Revoking determinations—directions by Chief of the Defence Force*

- (9) The Chief of the Defence Force may at any time direct, in writing, the Chief of Air Force to revoke a determination under subsection (3) if the Chief of the Defence Force is satisfied that it is appropriate to do so because of operational or other requirements of the Defence Force.
- (10) The Chief of Air Force must comply with a direction given under subsection (9).

*Status of determinations*

- (11) A determination under subsection (1) or (3), and a direction under subsection (9), are not legislative instruments.

#### **4J Service of the Air Force Reserve**

- (1) A member of the Air Force Reserve is not bound to render continuous full time air-force service otherwise than:
  - (a) as provided in this section; or
  - (b) as a result of a call out order under section 50D, 51A, 51AA, 51AB, 51B, 51C or 51CA of the Defence Act.
- (2) The regulations must set, or provide for the setting of, training periods for the Air Force Reserve.

Note: Different training periods may be set for different parts of the Air Force Reserve or for different classes of members of the Air Force Reserve: see subsection 33(3A) of the *Acts Interpretation Act 1901*.

## Section 8

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- (2A) A member of the Air Force Reserve is bound to render, in each training period, air-force service (other than continuous full time air-force service) for such periods as are set by or under the regulations. However, a member may be exempted by or under the regulations from the obligation to render all, or a specified part, of that service.

Note: Different service may be required of different parts of the Air Force Reserve, or of different classes of members of the Air Force Reserve, or in different periods: see subsection 33(3A) of the *Acts Interpretation Act 1901*.

- (3) A member of the Air Force Reserve may, at any time, voluntarily undertake to render continuous full time air-force service for a period specified by him and, if that undertaking is accepted, he is bound to render that form of service for that specified period, or for such period or periods within that specified period, as the Chief of Air Force directs.
- (4) A member of the Air Force Reserve may at any time voluntarily undertake to render air-force service, other than continuous full time air-force service, for a period or periods specified by him, and, if that undertaking is accepted, the member is bound to render air-force service in accordance with that undertaking or for such period or periods within that specified period, or within those specified periods, as the case may be, as the Chief of Air Force directs.

### **8 Australian Air Force Cadets**

- (1) The body known immediately before the commencement of this subsection as the Air Training Corps is continued in existence with the new name, Australian Air Force Cadets.

*Constitution of the Australian Air Force Cadets*

- (2) The Australian Air Force Cadets consists of:
- (a) persons appointed in accordance with the regulations to be officers in that body;

- (b) persons appointed in accordance with the regulations to be instructors in that body; and
- (c) subject to subsections (5) and (6), persons who volunteer, and are accepted, in accordance with the regulations as cadets in that body.

*Relationship to the Air Force*

- (3) A person appointed to be an officer or instructor in the Australian Air Force Cadets does not become a member of the Air Force by virtue of that appointment.
- (4) A cadet in the Australian Air Force Cadets is not a member of the Air Force.

*Age requirements for cadets*

- (5) A person is not entitled to volunteer, or to be accepted, as a cadet unless he or she:
  - (a) has attained such age as is prescribed; and
  - (b) has not attained the age of 20 years.
- (6) A person ceases to be a cadet when he or she attains the age of 21 years or such lower age as is prescribed.

*Regulations about the Australian Air Force Cadets*

- (7) The regulations may make provision for and in relation to the organization, maintenance, regulation, control and discipline of the Australian Air Force Cadets, and, in particular, for and in relation to:
  - (a) the periods and conditions of service of members, other than conditions of service with respect to which determinations under section 58B of the Defence Act may be made; and
  - (b) the promotion of members.
- (8) In subsection (7), **member** means an officer, instructor or cadet in the Australian Air Force Cadets.

## Section 8A

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### *Administration of the Australian Air Force Cadets*

- (9) Subject to the regulations, to any determinations in force under section 58B of the Defence Act, to any directions of the Minister and to any directions of the Chief of the Defence Force, the Chief of Air Force is to administer the Australian Air Force Cadets.
- (10) A direction of the Chief of the Defence Force under subsection (9) is subject to, and must be in accordance with, any directions of the Minister.

## **8A Delegation**

### *Delegation by the Chief of Air Force*

- (1) The Chief of Air Force may, by instrument in writing, delegate to an officer of the Air Force all or any of his or her powers under section 4J.
- (1AA) The Chief of Air Force may, by instrument in writing, delegate his or her powers under section 4H to an officer of the Permanent Air Force who holds a rank not below the rank of Air Commodore.

### *Delegation by the Chief of the Defence Force*

- (1A) The Chief of the Defence Force may, by instrument in writing, delegate to the Vice Chief of the Defence Force his or her power under subsection 8(9).

### *General provisions about delegations*

- (2) A delegation under this section may be made either generally or as otherwise provided in the instrument of delegation.
- (3) A power delegated under this section shall, when exercised by the delegate, be deemed, for the purposes of this Act, to have been exercised by the person who made the delegation.

- (3A) The delegate is, in the exercise of a power delegated under this section, subject to the directions of the person who made the delegation.
- (4) A delegation under this section does not prevent the exercise of a power by the person who made the delegation.
- (5) A delegation under this section continues in force notwithstanding a change in the occupancy of, or a vacancy in, the office of the person who made the delegation.
- (6) A document purporting to be a copy of an instrument of delegation under this section and purporting to bear the signature, or a facsimile of the signature, of the person who made the delegation and an endorsement in writing that the delegation is, or was on a specified date, in force, is, upon mere production in a court or otherwise for any purpose arising under this Act, prima facie evidence that the delegation was duly made in the terms set out in the document and is, or was on the date specified, in force.

## 9 Regulations

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for securing the good government of the Air Force and the members thereof, whether within or beyond the limits of Australia, or for carrying out or giving effect to this Act.

## Endnotes

Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

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Endnote 1—About the endnotes

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be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnotes

### Endnote 2—Abbreviation key

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#### Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced



## Endnote 3—Legislation history

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Air Force Act 1923	33, 1923	1 Sept 1923	1 Sept 1923	
Air Force Act 1939	74, 1939	15 Dec 1939	s 4–7: 15 Dec 1939 (s 2)	s 7
Air Force Act 1941	12, 1941	7 Apr 1941	5 May 1941	—
Statute Law Revision Act 1950	80, 1950	16 Dec 1950	s 16, 17 and First Sch: 31 Dec 1950 (s 2)	s 16 and 17
Air Force Act 1952	15, 1952	30 May 1952	30 May 1952 (s 2)	—
Air Force Act 1956	73, 1956	29 Oct 1956	29 Oct 1956 (s 2)	—
Air Force Act 1964	94, 1964	6 Nov 1964	6 Nov 1964 (s 2)	s 4(2), 5 and 6
Air Force Act 1965	50, 1965	7 June 1965	s 3: 17 Sept 1970 (s 2(2) and gaz 1970, No GN70, p 5690) Remainder: 7 June 1965 (s 2(1))	—
Statute Law Revision Act 1973	216, 1973	19 Dec 1973	s 9(1), 10 and Sch 1: 31 Dec 1973 (s 2)	s 9(1) and 10
Defence Force Re-organization Act 1975	96, 1975	9 Sept 1975	s 91, 92 and Sch 3: 28 Oct 1975 (s 2 and gaz 1975, No GN42, p 2) s 93: 9 Feb 1976 (s 2 and gaz 1975, No GN42, p 2) s 94: 8 Sept 1980 (s 2 and gaz 1980, No GN34, p 2)	—

## Endnotes

### Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Air Force Amendment Act 1976	138, 1976	2 Dec 1976	s 3 and 4: 29 July 1977 (s 2(2) and gaz 1977, No S151) Remainder: 2 Dec 1976 (s 2(1))	s 4 and 5
Air Force Amendment Act 1979	134, 1979	23 Nov 1979	s 4(1) and 6: 1 Jan 1985 (s 2(2)) Remainder: 23 Nov 1979 (s 2(1))	s 6
Statute Law Revision Act 1981	61, 1981	12 June 1981	s 6–13: 30 Sept 1983 (s 2(2) and gaz 1983, No S222)	s 13
Defence Force (Miscellaneous Provisions) Act 1982	153, 1982	31 Dec 1982	s 7–10 and 86–97: 3 July 1985 (s 2)	s 86–97
Defence Legislation Amendment Act 1984	164, 1984	25 Oct 1984	s 4–7 and 122: 22 Nov 1984 (s 2(1))	s 122
Defence Legislation Amendment Act 1987	65, 1987	5 June 1987	s 4–8: 1 July 1988 (s 2(6) and gaz 1988, No S173) s 9: 5 June 1987 (s 2(1))	—
Defence Legislation Amendment Act (No. 2) 1988	104, 1988	6 Dec 1988	s 4: 6 Dec 1988 (s 2(1))	—
Defence Legislation Amendment Act (No. 1) 1997	1, 1997	19 Feb 1997	Sch 1 (items 1–3): 30 Apr 1997 (s 2(2) and gaz 1997, No S91) Sch 2 (items 89–94): 19 Feb 1997 (s 2(1))	—
Defence Legislation Amendment (Aid to Civilian Authorities) Act 2000	119, 2000	12 Sept 2000	Sch 2 (items 1, 2): 12 Sept 2000 (s 2)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001	10, 2001	22 Mar 2001	Sch 2 (items 1–6, 94, 95): 19 Apr 2001 (s 2(1))	Sch 2 (items 94, 95)
Defence Legislation Amendment Act 2003	135, 2003	17 Dec 2003	Sch 2 (items 1–8): 17 June 2004 (s 2(1) item 3)	Sch 2 (item 8)
Defence Legislation Amendment (Aid to Civilian Authorities) Act 2006	3, 2006	1 Mar 2006	Sch 5 (item 1): 2 Mar 2006 (s 2)	—
Defence Legislation Amendment Act 2011	183, 2011	6 Dec 2011	Sch 1 (items 1–16): 1 Mar 2012 (s 2(1) item 2)	—
Defence Legislation Amendment (Superannuation and ADF Cover) Act 2015	120, 2015	10 Sept 2015	Sch 2 (items 1, 2): 1 July 2016 (s 2(1) item 3)	—

## Endnotes

### Endnote 4—Amendment history

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### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
Title .....	rs No 96, 1975
s 2 .....	am No 74, 1939
	rs No 94, 1964
	am No 134, 1979; No 153, 1982; No 104, 1988
s 3 .....	am No 74, 1939; No 15, 1952
	rs No 94, 1964
	am No 50, 1965; No 96, 1975; No 134, 1979
	rep No 153, 1982
s 4 .....	ad No 74, 1939
	am No 15, 1952
	rs No 94, 1964
	am No 216, 1973
s 4A.....	ad No 94, 1964
	am No 96, 1975; No 134, 1979; No 61, 1981
	rs No 10, 2001
s 4B.....	ad No 94, 1964
	am No 61, 1981
	rs No 65, 1987
	am No 1, 1997
	rs No 10, 2001
s 4C.....	ad No 94, 1964
	am No 61, 1981
	rs No 65, 1987
	am No 1, 1997
	rs No 10, 2001
s 4D.....	ad No 94, 1964
	rs No 61, 1981
	am No 65, 1987; No 1, 1997

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## Endnote 4—Amendment history

<b>Provision affected</b>	<b>How affected</b>
	rep No 10, 2001
s 4E.....	ad No 94, 1964
	rs No 50, 1965
	am No 134, 1979
s 4F.....	ad No 94, 1964
s 4G.....	ad No 94, 1964
	am No 61, 1981; No 65, 1987; No 183, 2011
s 4H.....	ad No 94, 1964
	am No 134, 1979; No 61, 1981; No 164, 1984
	rs No 65, 1987
	am No 1, 1997; No 119, 2000
	rep No 10, 2001
	ad No 120, 2015
s 4HA.....	ad No 164, 1984
	am No 1, 1997
	rep No 10, 2001
s 4J.....	ad No 94, 1964
	am No 96, 1975; No 61, 1981; No 164, 1984; No 65, 1987; No 119, 2000; No 10, 2001; No 3, 2006
s 5.....	ad No 74, 1939
	am No 73, 1956
	rep No 153, 1982
s 6.....	ad No 74, 1939
	rep No 96, 1975
s 7.....	ad No 74, 1939
	am No 216, 1973
	rep No 96, 1975
s 8.....	ad No 74, 1939
	am No 12, 1941
	rep No 80, 1950
	ad No 138, 1976

## Endnotes

### Endnote 4—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
	am No 134, 1979; No 1, 1997; No 135, 2003; No 183, 2011
s 8A.....	ad No 164, 1984
	am No 65, 1987; No 1, 1997; No 10, 2001; No 183, 2011; No 120, 2015
	ed C11
s 9 .....	ad No 74, 1939
	am No 96, 1975; No 153, 1982

**Endnote 5—Editorial changes**

In preparing this compilation for registration, the following kinds of editorial change(s) were made under the *Legislation Act 2003*.

**Subsection 8A(6)**

**Kind of editorial change**

Change to typeface

**Details of editorial change**

This compilation was editorially changed to update an occurrence of the words *prima facie* in italics to regular font.