



# **Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001**

**No. 10, 2001**



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**An Act to amend the law relating to the Defence  
Force, and for related purposes**

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## **An Act to amend the law relating to the Defence Force, and for related purposes**

*[Assented to 22 March 2001]*

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Defence Legislation Amendment  
(Enhancement of the Reserves and Modernisation) Act 2001*.

### **2 Commencement**

- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
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- (2) The following items of Schedule 2 commence on a day or days to be fixed by Proclamation: items 12 to 15, 19, 27 to 31, 67, 68 and 75 to 77.
  - (3) If a provision mentioned in subsection (2) does not commence under that subsection within the period of 12 months beginning on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.
  - (4) Schedule 3 commences at the same time as the *Defence Reserve Service (Protection) Act 2001*.
  - (5) Schedule 4 commences on the day on which this Act receives the Royal Assent.

### **3 Schedule(s)**

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

### **4 Regulations**

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient for carrying out or giving effect to this Act.

## **Schedule 1—Calling out the Reserves**

### ***Defence Act 1903***

#### **1 Sections 50D, 50E, 50F and 50G**

Repeal the sections, substitute:

#### **50D Calling out the Reserves**

*Governor-General may call out the Reserves*

- (1) The Governor-General may, by publishing a written order in the *Gazette*, call out for continuous full time service:
  - (a) the Reserves; or
  - (b) one or more of the following:
    - (i) a specified part or parts of the Reserves;
    - (ii) a specified class or classes of members in the Reserves;
    - (iii) a specified member or members of the Reserves.

*Circumstances required for call out*

- (2) However, the Governor-General may only make an order in circumstances (whether within or outside Australia) involving any one or more of the following:
  - (a) war or warlike operations;
  - (b) defence emergency;
  - (c) defence preparation;
  - (d) peacekeeping or peace enforcement;
  - (e) assistance to Commonwealth, State, Territory or foreign government authorities and agencies in matters involving Australia's national security or affecting Australian defence interests;
  - (f) support to community activities of national or international significance;
  - (g) civil aid, humanitarian assistance, medical or civil emergency or disaster relief.

*Advice to Governor-General*

- (3) In making or revoking an order, the Governor-General is to act with the advice of:
- (a) the Executive Council; or
  - (b) if, after the Minister has consulted the Prime Minister, the Minister is satisfied that, for reasons of urgency, the Governor-General should act with the advice of the Minister alone—the Minister.

*When order takes effect*

- (4) An order takes effect on:
- (a) the day specified in the order; or
  - (b) if no day is specified—the day on which the order is published in the *Gazette*.

*When revocation of order takes effect*

- (5) A revocation of an order takes effect on:
- (a) the day specified in the revocation; or
  - (b) if no day is specified—the day on which the revocation is published in the *Gazette*.

*Effect of revocation of order*

- (6) To avoid doubt, if an order is revoked the call out under that order ends.

*Further orders*

- (7) The fact that an order has been published under this section in relation to particular circumstances does not prevent further orders being published under this section in relation to the same circumstances.

**50E Period of service during call out**

*Direction by Chief of the Defence Force or a service chief*

- (1) A member of the Reserves who is covered by a call out order under section 50D is bound to render the period of continuous full time naval, military or air force service (as appropriate) that the Chief of
-



the Defence Force or a service chief directs in relation to the member.

*Directions may be specific or general*

- (2) Such a direction may apply to the member specifically, by reference to a part or class of the Reserves that includes the member, or by reference to the Reserves as a whole.

*Length of period of service*

- (3) The period of service specified in a direction under subsection (1):
- (a) must start on the day on which the relevant call out order takes effect; and
  - (b) may be indefinite or limited.

However, a direction has no effect to the extent that it specifies a period of service after the day on which the call out under the order ends.

*Direction must be in writing*

- (4) A direction under this section must be in writing.

*Further directions*

- (5) The fact that a direction has been given in relation to an order under section 50D does not prevent further directions being given in relation to the same order.

*Continuous full time service otherwise than under this section*

- (6) Nothing in this section prevents a member of the Reserves from being bound to render continuous full time naval, military or air force service otherwise than under this section.

## **2 Subsections 120A(4), (4A) and (4B)**

Omit “, 50E, 50F”.

## **3 Application of amendments**

The amendments made by this Schedule apply in relation to all members of the Reserves, whether they became members of the Reserves before or after the Schedule commenced.

## Schedule 2—Structure of the Defence Force

### Part 1—Amendments

#### *Air Force Act 1923*

#### **1 Sections 4A, 4B, 4C and 4D**

Repeal the sections, substitute:

##### **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.

#### **2 Sections 4H and 4HA**

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Repeal the sections.

### **3 Subsections 4J(1), (2), (2A) and (2B)**

Repeal the subsections, substitute:

- (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, 51B or 51C 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*.

- (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*.

Note: The heading to section 4J is altered by omitting “**Australian**”.

### **4 Subsections 4J(3) and (4)**

Omit “**Australian**”.

### **5 Subsections 4J(5) and (6)**

Repeal the subsections.

### **6 Subsection 8A(1)**

Omit “sections 4H, 4HA and 4J”, substitute “section 4J”.

## ***Defence Act 1903***

### **7 Subsection 4(1)**

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Insert:

*Permanent Forces* means the Permanent Navy, the Regular Army and the Permanent Air Force.

**8 Subsection 4(1)**

Insert:

*Reserves* means the Naval Reserve, the Army Reserve and the Air Force Reserve.

**9 Subsection 4(1) (definition of *The Emergency Forces*)**

Repeal the definition.

**10 Subsection 4(1) (definition of *The Permanent Forces*)**

Repeal the definition.

**11 Subsection 4(1) (definition of *The Reserve Forces*)**

Repeal the definition.

**12 Division 1 of Part II (heading)**

Repeal the heading.

**13 Subsection 9BA(1)**

Omit “Division 3”, substitute “the regulations”.

**14 Divisions 2, 3 and 3A of Part II**

Repeal the Divisions.

**15 Division 4 of Part II (heading)**

Repeal the heading.

**16 Section 27A**

Repeal the section.

**17 Sections 31, 32 and 32A**

Repeal the sections, substitute:

### **31 Australian Army**

The Australian Army consists of 2 parts:

- (a) the Regular Army; and
- (b) the Army Reserve.

### **32 Regular Army**

The Regular Army consists of:

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

### **32A Army Reserve**

The Army Reserve consists of:

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

### **18 Division 2 of Part III (heading)**

Repeal the heading, substitute:

### **Division 2—The raising of the Army**

#### **19 Sections 36 to 44A**

Repeal the sections.

#### **20 Section 45**

Repeal the section, substitute:

## 45 Service of the Regular Army

Members of the Regular Army are bound to render continuous full time military service.

## 21 Section 48A

Repeal the section.

## 22 Subsections 50(1), (2), (2A) and (2B)

Repeal the subsections, substitute:

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

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

- (2A) A member of the Army Reserve is bound to render, in each training period, military service (other than continuous full time military 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 Army Reserve, or of different classes of members of the Army Reserve, or in different periods: see subsection 33(3A) of the *Acts Interpretation Act 1901*.

Note: The heading to section 50 is altered by omitting “**Australian**”.

## 23 Subsections 50(3) and (4)

Omit “**Australian**”.

## 24 Subsections 50(5) and (6)

Repeal the subsections.

## 25 Paragraph 51G(b)

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Omit “Emergency Forces or the Reserve Forces”, substitute “Reserves”.

**26 Paragraph 52(1)(b)**

Omit “the Reserve Forces and members of the Emergency Forces”, substitute “the Reserves”.

**27 Subsections 120A(1) and (1A)**

Repeal the subsections.

**28 Subsection 120A(3)**

Repeal the subsection.

**29 Subsection 120A(4)**

Omit “10C, 17, 26, 39, 44, 45, 48A,”.

**30 Subsection 120A(4AA)**

Omit “16, 21, 22, 24, 25, 25B, 25D, 27AA, 44A,”.

**31 Subsections 120A(4AB) and (4C)**

Omit “27AA, 44A,”.

**32 Paragraph 124(1)(a)**

After “reduction in rank”, insert “, retirement”.

**33 After paragraph 124(1)(a)**

Insert:

- (aa) the transfer of members between different arms, or parts of arms, of the Defence Force;
- (ab) the training of members;
- (ac) conditions of service of members;

**34 After subsection 124(1A)**

Insert:

- (1AA) Regulations under subsection (1) may make provision in relation to:
- (a) the appointment or reappointment of a member; or
  - (b) the enlistment or re-enlistment of a member; or
  - (c) the service of a member;

on the basis that, after a specified time or on a specified event occurring, the member may or must transfer to a different arm, or part of an arm, of the Defence Force, or in relation to other similar arrangements.

Example: The regulations might allow for a soldier to enlist for a total of 8 years, with the first 4 years to be served in the Regular Army and the last 4 years in the Army Reserve, or vice versa, or any other combination of service.

(1AB) Subsection (1AA) does not limit the scope of subsection (1).

## ***Defence Force Discipline Act 1982***

### **35 Subsection 3(1) (definition of *defence member*)**

Repeal the definition, substitute:

*defence member* means:

- (a) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or
- (b) a member of the Reserves who:
  - (i) is rendering continuous full-time service; and
  - (ii) is on duty or in uniform.

### **36 Subsection 3(1) (definition of *Emergency Forces*)**

Repeal the definition.

### **37 Subsection 3(1) (definition of *Reserve Forces*)**

Repeal the definition.

### **38 Subsection 3(1)**

Insert:

*Reserves* means the Naval Reserve, the Army Reserve and the Air Force Reserve.

### **39 Subsection 3(4)**

Repeal the subsection, substitute:

- (4) For the purposes of subparagraph (b)(ii) of the definition of *defence member* in subsection (1):



- (a) a member of the Reserves is taken to be on duty from the time appointed for him or her to report to, or to attend at, a specified place for any naval, military or air force service that he or she is required to render by or under the *Defence Act 1903*, the *Naval Defence Act 1910* or the *Air Force Act 1923* until he or she is released or discharged from that service; and
- (b) a member of the Reserves is taken to be on duty while acting, or purporting to act, in his or her capacity as a member of the Reserves.

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

#### **40 Section 3 (subparagraph (h)(i) of the definition of *eligible person*)**

Repeal the subparagraph, substitute:

- (i) who is a member of the Reserves; and

#### **41 Section 3**

Insert:

*Reserves* has the same meaning as in the *Defence Act 1903*.

#### **42 Section 3 (definition of *The Emergency Forces*)**

Repeal the definition.

#### **43 Section 3 (definition of *The Reserve Forces*)**

Repeal the definition.

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

#### **44 Subsection 3(1) (definition of *Permanent Forces*)**

Repeal the definition, substitute:

*Permanent Forces* means the Permanent Navy, the Regular Army and the Permanent Air Force.

#### **45 Subsection 3(1) (definition of *Reserve*)**

Repeal the definition, substitute:

*Reserve* means:

- (a) in relation to a member of the Navy—the Naval Reserve; and
- (b) in relation to a member of the Army—the Army Reserve; and
- (c) in relation to a member of the Air Force—the Air Force Reserve.

**46 Paragraph 5A(1)(b)**

Omit “the Emergency Forces or the Reserve Forces”, substitute “a Reserve”.

**47 Paragraph 61B(1)(d)**

Omit “the Emergency Forces or the Reserve Forces”, substitute “a Reserve”.

**48 Paragraph 61B(3)(a)**

Omit “the Emergency Forces or the Reserve Forces”, substitute “a Reserve”.

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

**49 Subsection 4(1) (definition of *Permanent Forces*)**

Repeal the definition, substitute:

*Permanent Forces* means the Permanent Navy, the Regular Army or the Permanent Air Force.

**50 Subsection 4(1) (definition of *Reserve*)**

Repeal the definition, substitute:

*Reserve* means:

- (a) in relation to a member of the Navy—the Naval Reserve; and
- (b) in relation to a member of the Army—the Army Reserve; and
- (c) in relation to a member of the Air Force—the Air Force Reserve.

**51 Fourth Schedule (table, heading to columns 1 and 2)**

Repeal the heading, substitute “Permanent Navy”.

**52 Fourth Schedule (table, heading to column 3)**

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Repeal the heading, substitute “**Regular Army**”.

***Defence Forces Special Retirement Benefits Act 1960***

**53 Title**

Omit “**Australian**”.

**54 Subparagraph 4(2)(a)(i)**

Omit “**Australian**”.

**55 Paragraphs 4(2)(d) and (e)**

Omit “**Australian**”.

***Defence (Parliamentary Candidates) Act 1969***

**56 Subsection 5(1) (definition of Reserve)**

Repeal the definition, substitute:

***Reserve*** means:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve.

**57 Paragraph 7(1)(a)**

Repeal the paragraph, substitute:

- (a) an officer who is a member of the Permanent Navy, the Regular Army or the Permanent Air Force applies to the appropriate service chief to be transferred to the appropriate Reserve; and

**58 Paragraph 8(a)**

Repeal the paragraph, substitute:

- (a) an enlisted member who is a member of the Permanent Navy, the Regular Army or the Permanent Air Force applies to the appropriate service chief to be discharged from that arm of the Defence Force; and

**59 Paragraph 9(a)**

Repeal the paragraph, substitute:

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- (a) a member of the Naval Reserve, the Army Reserve or the Air Force Reserve who is rendering continuous full-time service applies to the appropriate service chief for the termination of that service; and

### ***Employment Services Act 1994***

#### **60 Paragraph 42(1)(h)**

Omit “Reserve Forces”, substitute “the Reserves”.

#### **61 Subsection 42(5)**

Omit “*Reserve Forces*”, substitute “*Reserves*”.

### ***Income Tax Assessment Act 1997***

#### **62 Section 51-5 (table items 1.3 and 1.4)**

Repeal the items, substitute:

|     |                           |                       |                      |
|-----|---------------------------|-----------------------|----------------------|
| 1.4 | a member of:              | pay and allowances as | except pay and       |
|     | (a) the Naval Reserve; or | a member              | allowances for       |
|     | (b) the Army Reserve; or  |                       | continuous full time |
|     | (c) the Air Force Reserve |                       | service              |

### ***Jury Exemption Act 1965***

#### **63 The Schedule**

Omit “the Reserve Forces” (wherever occurring), substitute “the Reserves”.

### ***Long Service Leave (Commonwealth Employees) Act 1976***

#### **64 Paragraph 12(10)(a)**

Repeal the paragraph, substitute:

- (a) on continuous full-time service in the Reserves (within the meaning of the *Defence Act 1903*); or

#### **65 Paragraph 12(10)(b)**

Omit “those Forces”, substitute “the Reserves”.

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### ***Military Superannuation and Benefits Act 1991***

#### **66 Paragraphs 6(1)(b) and (c)**

Omit “the Emergency Forces or the Reserve Forces”, substitute “the Reserves”.

### ***Naval Defence Act 1910***

#### **67 Part II**

Repeal the Part.

#### **68 Sections 19, 20, 21 and 22**

Repeal the sections, substitute:

#### **19 Australian Navy**

The Australian Navy consists of 2 parts:

- (a) the Permanent Navy; and
- (b) the Naval Reserve.

#### **20 Permanent Navy**

The Permanent Navy consists of:

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

#### **21 Naval Reserve**

The Naval Reserve consists of:

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

**69 Sections 25 to 30A**

Repeal the sections.

**70 Section 31**

Omit “Naval Forces”, substitute “Navy”.

Note: The heading to section 31 is altered by omitting “**Naval Forces**” and substituting “**Navy**”.

**71 Sections 32 and 32AA**

Repeal the sections.

**72 Subsections 32A(1), (2) and (2A)**

Repeal the subsections, substitute:

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

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

- (2A) A member of the Naval Reserve is bound to render, in each training period, naval service (other than continuous full time naval 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 Naval Reserve, or of different classes of members of the Naval Reserve, or in different periods: see subsection 33(3A) of the *Acts Interpretation Act 1901*.

Note: The heading to section 32A is altered by omitting “**Australian**”.

**73 Subsections 32A(3) and (4)**

Omit “Australian”.

**74 Subsections 32A(5) and (6)**

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Repeal the subsections.

**75 Subsections 44B(1), (1A) and (2)**

Repeal the subsections.

**76 Subsection 44B(3)**

Omit “sections 11, 13, 17A, 28, 30, 32, 32AA and”, substitute “section”.

**77 Subsections 44B(3A), (3B) and (3C)**

Repeal the subsections.

***Social Security Act 1991***

**78 Paragraph 8(8)(w)**

Repeal the paragraph, substitute:

(w) in the case of a member of:

- (i) the Naval Reserve; or
- (ii) the Army Reserve; or
- (iii) the Air Force Reserve;

the pay and allowances paid to the person as such a member (other than pay and allowances in respect of continuous full-time service);

**79 Paragraph 541D(1)(h)**

Omit “Reserve Forces”, substitute “Reserves”.

**80 Section 542G**

Repeal the section, substitute:

**542G Training camp exemption**

A person has a *training camp exemption* if the person is attending a training camp as a member of:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve.

**81 Paragraph 601(2A)(h)**

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Omit “Reserve Forces”, substitute “Reserves”.

**82 Subsection 601(7)**

Repeal the subsection, substitute:

(7) In this section:

*Reserves* means:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve.

**83 Subsection 603(1)**

Repeal the subsection, substitute:

- (1) A person is taken to satisfy the activity test in respect of a period when the person is attending a training camp as a member of:
  - (a) the Naval Reserve; or
  - (b) the Army Reserve; or
  - (c) the Air Force Reserve.

**84 Section 1212 (definition of *Reserve service*)**

Repeal the definition, substitute:

*Reserve service* means attending a training camp as a member of any of the following:

- (a) the Naval Reserve; or
- (b) the Army Reserve; or
- (c) the Air Force Reserve.

***Superannuation Guarantee (Administration) Act 1992***

**85 Section 29**

Note: The heading to section 29 is altered by omitting “Reserve Forces” and substituting “Reserves”.

***Superannuation Act 1922***

**86 Subsection 4(1) (paragraph (a) of the definition of *Service*)**

Repeal the paragraph, substitute:

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- (a) continuous service as a member of the Permanent Navy, the Regular Army or the Permanent Air Force; and

***Veterans' Entitlements Act 1986***

**87 Paragraph 5H(8)(za)**

Repeal the paragraph, substitute:

(za) in the case of a member of:

- (i) the Naval Reserve; or
- (ii) the Army Reserve; or
- (iii) the Air Force Reserve;

the pay and allowances paid to the person as such a member (other than pay and allowances in respect of continuous full-time service);

## Part 2—Saving and transitional provisions

### 88 Saving—appointments of Chiefs under the Defence Act

Although item 13 amends subsection 9BA(1) of the *Defence Act 1903*, that subsection continues to apply, in relation to a person who held an appointment under subsection 9(1) or 9AA(1) of that Act immediately before that item commenced, as if that amendment, and the repeal of Division 3 of Part II of that Act, had not happened.

### 89 Saving—other appointments under the Defence Act

Although item 14 repeals Divisions 2, 3 and 3A of Part II of the *Defence Act 1903*, those provisions continue to apply, in relation to a person who held an appointment under subsection 10(1) of that Act immediately before that item commenced, as if the repeal had not happened.

### 90 Saving—enlistments under the Defence Act

Although item 19 repeals sections 36 to 44A of the *Defence Act 1903*, those sections continue to apply, in relation to a person who was enlisted under subsection 36(3) of that Act immediately before that item commenced, as if the repeal had not happened.

### 91 Saving—appointments under the Naval Defence Act

Although item 67 repeals Part II of the *Naval Defence Act 1910*, that Part continues to apply, in relation to a person who held an appointment under subsection 8(1) of that Act immediately before that item commenced, as if the repeal had not happened.

### 92 Saving—enlistments under the Naval Defence Act

Although item 69 repeals sections 25 to 30A of the *Naval Defence Act 1910*, those sections continue to apply, in relation to a person who was enlisted under subsection 25(3) of that Act immediately before that item commenced, as if the repeal had not happened.

### 93 Most of the old provisions may be superseded by new regulations

- (1) However, the repealed provisions mentioned in items 89, 90, 91 and 92 continue to apply under those items only to the extent that they are

consistent with regulations made after the repeal for the purposes of section 124 of the *Defence Act 1903*.

- (2) If such regulations are made, then:
  - (a) to the extent of the inconsistency, those provisions permanently cease to apply from the time that the inconsistency arises; and
  - (b) the regulations apply despite being inconsistent with those provisions.

#### **94 Saving—old regulations**

- (1) Regulations that were in effect under any Act immediately before the commencement of this item continue to have effect after that time as if members of an arm of the Defence Force who were members of a particular part or component of that arm immediately before the commencement of this item were still members of that part or component after that time, even if that part or component no longer exists.

Example: Assume that, immediately before the commencement of this item, regulations imposed training obligations on members of the Air Force Specialist Reserve. Those obligations would continue to apply to former members of that Reserve after commencement, even though the Air Force Specialist Reserve itself is no longer mentioned in the *Air Force Act 1923* and the members have now become members of the Air Force Reserve.

- (2) However, regulations that continue in effect under this item do so only to the extent that they are not amended or revoked by later regulations.

#### **95 Regulations about transitional matters**

- (1) The regulations may make provision in relation to other saving and transitional matters in connection with the amendments made by this Schedule.
- (2) In particular, such regulations may deal with the status, after the commencement of the amendments, of persons who were members of the Defence Force immediately before that time.
- (3) Subitem (2) does not limit the scope of subitem (1).

## **Schedule 3—Repeal of the Defence (Re-establishment) Act 1965 and consequential amendments**

### **Part 1—Repeal of Act and amendments**

#### *Defence Act 1903*

##### **1 Subsection 118A(1)**

Omit “Parts III and”, substitute “Part”.

##### **2 Subsection 118A(2)**

Omit “Parts III and IV or for voluntarily enlisting or attempting to enlist in any force raised under section 35”, substitute “Part IV”.

##### **3 Subsection 118A(4)**

Omit “Parts III and IV or of having voluntarily enlisted or attempted to enlist in a force raised for active service”, substitute “Part IV”.

##### **4 Subsection 118A(6)**

Repeal the subsection.

#### *Defence (Re-establishment) Act 1965*

##### **5 The whole of the Act**

Repeal the Act.

#### *Disability Services Act 1986*

##### **6 Subsection 23(1) (definition of *cost*)**

Repeal the definition, substitute:

*cost*, in relation to a person’s rehabilitation program, means the cost, as determined by the Secretary, of and incidental to the program, and includes any allowances paid to the person under section 24 but does not include any part of the cost that is not borne by the Commonwealth.

## **Part 2—Application and transitional provisions**

### **7 Application of new Protection Act to defence service**

- (1) The *Defence Reserve Service (Protection) Act 2001* applies in relation to all defence service undertaken after that Act commences (the **commencement time**), except in so far as the service is rendered only as a result of:
- (a) being called out under Division 4 of Part III, or under Part IIIA, of the *Defence Act 1903* before the commencement time; or
  - (b) a voluntary undertaking to render continuous full time service that a member gave before the commencement time.
- (2) The *Defence (Re-establishment) Act 1965* continues to apply in relation to defence service covered by paragraph (1)(a) or (b), despite the repeal of that Act by this Schedule.

### **8 Application of new Protection Act to existing contracts and other arrangements**

The *Defence Reserve Service (Protection) Act 2001* applies, in accordance with subitem 7(1), in relation to all contracts of employment, other contracts, partnerships, courses and all other arrangements, even if the contract, partnership, course or arrangement began before the commencement time.

### **9 Saving—benefits under Parts V and VA of the old Act**

Although this Schedule repeals the *Defence (Re-establishment) Act 1965*, Parts V and VA of that Act continue to apply, in relation to people who were receiving any assistance or benefits under those Parts immediately before the repeal, as though the repeal had not happened.

### **10 Regulations**

The regulations may make provision in relation to application, saving and transitional matters in connection with the enactment of the *Defence Reserve Service (Protection) Act 2001* or the repeal of the *Defence (Re-establishment) Act 1965*.

## **Schedule 4—Allowances and benefits to employers etc.**

### *Defence Act 1903*

#### **1 At the end of paragraph 58B(1)(a)**

Add “and”.

#### **2 Paragraph 58B(1)(b)**

Repeal the paragraph, substitute:

- (b) the payment of allowances or other pecuniary benefits (except allowances or benefits by way of remuneration) to or for members or cadets, including the payment of additional compensation to members of the Reserves to whom compensation is payable under the *Safety, Rehabilitation and Compensation Act 1988*; and

#### **3 Saving—determinations under paragraph 58B(1)(b)**

Although item 2 repeals and substitutes paragraph 58B(1)(b) of the *Defence Act 1903*, any determination that was in effect under that paragraph immediately before that repeal continues in effect after that time as if it had been made under the new version of that paragraph.

#### **4 At the end of paragraphs 58B(1)(c), (d) and (e)**

Add “and”.

#### **5 Paragraph 58B(1)(f)**

Omit “examination.”, substitute “examination; and”.

#### **6 After paragraph 58B(1)(g)**

Insert:

- (ga) payments, by way of compensation, incentives or other benefits, to:
  - (i) members of the Reserves; or
  - (ii) their dependants; or
  - (iii) their employers, business or professional partners or other associates; or

(iv) other persons;  
in relation to the availability of the members for defence service, or for losses incurred or inconvenience suffered because of the members' absence on defence service (including losses incurred or inconvenience suffered because of the operation of the *Defence Reserve Service (Protection) Act 2001*); and

**7 After subsection 58B(1)**

Insert:

(1AA) Expressions used in paragraph (1)(ga) that are defined in the *Defence Reserve Service (Protection) Act 2001* have the same meaning as in that Act.

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[*Minister's second reading speech made in—  
House of Representatives on 9 November 2000  
Senate on 7 February 2001*]

(179/00)