



Defence Reserve Service (Protection) Act 2001

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About this compilation

This compilation

This is a compilation of the *Defence Reserve Service (Protection) Act 2001* that shows the text of the law as amended and in force on 27 November 2017 (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). 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If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.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 to protect members of the Reserves in their employment and education, to facilitate their return to civilian life, and for related purposes

Part 1—Introduction

1 Short title

This Act may be cited as the *Defence Reserve Service (Protection) Act 2001*.

2 Commencement

This Act commences on the 28th day after the day on which it receives the Royal Assent.

3 Overview of the Act

- (1) The following is a simplified overview of the Act.
- (2) This Act sets out entitlements and prohibitions that apply in relation to people who are rendering, or have rendered, defence service as members of the Reserves. In some cases, the entitlements extend to their dependants.
- (3) The kind of defence service rendered by a particular member determines the scope of the prohibitions and entitlements available in relation to him or her: see Part 3.
- (4) Part 4 contains prohibitions against conduct that discriminates against members in their employment or other work. This Part applies to all types of defence service.
- (5) Part 5 sets out the consequences for a member's employment if he or she was employed when he or she started to render defence service. This Part applies to all kinds of defence service.

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- (6) Part 6 protects members from having their partnerships dissolved while the members are absent on defence service. This Part applies to all kinds of defence service.
- (7) Part 7 requires an education institution to make reasonable adjustments for a member who undertakes defence service.
- (8) Part 8 postpones debts that a member (or his or her dependant) is liable to pay and that would otherwise fall due after the member starts rendering:
 - (a) defence service as a result of a call out; or
 - (b) operational service.Interest accrues on the postponed debts. Part 8 also stays proceedings in respect of the postponed debts.
- (9) Part 9 protects a member or his or her dependant from bankruptcy proceedings. It applies only if the member has rendered:
 - (a) defence service as a result of a call out; or
 - (b) operational service.
- (10) Part 10 allows for a member who has rendered defence service as a result of a call out to get access to loans and guarantees to enable him or her to resume civilian life after returning from that service.
- (11) Part 11 deals with enforcement and remedies. Part 12 deals with minor miscellaneous matters.

4 Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) In particular, obligations that this Act imposes on employers or other persons (however described) are imposed on the Crown just as they are imposed on everyone else.
- (3) However, this Act does not make the Crown liable to be prosecuted for an offence.

5 Application of *Criminal Code*

The *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

6 Act extends to the external Territories

This Act extends to every external Territory.

Part 2—Interpretation

7 Definitions

In this Act, unless the contrary intention appears:

absent on defence service has the meaning given by section 24A and subsections 28(3) and (4).

ADI (authorised deposit-taking institution) means a corporation that is an ADI for the purposes of the *Banking Act 1959*.

Australian education institution means an education institution (within the meaning of the *Student Assistance Act 1973*) in Australia.

body administering an Australian education institution means:

- (a) the institution (if it is a body corporate); or
- (b) in any other case—the body or other person (including the Crown) who has ultimate responsibility for administering the institution.

call out means an order under section 28, 51A, 51AA, 51AB, 51B, 51C or 51CA of the *Defence Act 1903*.

civil penalty provision has the same meaning as in the Regulatory Powers Act.

commission agent means a person who:

- (a) works for another person as the agent of that other person; and
- (b) is wholly or partly remunerated by commission.

company title interest, in relation to land, means a right:

- (a) to occupy the land; or
- (b) to occupy a building or part of a building erected on the land;

arising out of the holding of shares, or out of a contract to purchase shares, in a company that owns the land or building.

contract of employment has the meaning given by section 10.

contractor means a person who contracts to perform work for another person under a contract for services (other than as an employee).

defence service means service (including training) as a member of the Reserves.

dependant has the meaning given by section 9.

employment includes:

- (a) appointment or employment by the Commonwealth, a State or Territory; and
- (b) appointment or employment by an authority of the Commonwealth or of a State or Territory (including a local government body); and
- (c) an apprenticeship; and
- (d) a traineeship arrangement; and
- (e) full-time, part-time and casual work;

but does not include:

- (f) work under a contract for services; or
- (g) work as a commission agent.

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

financial arrangement has the meaning given by section 40A.

harass has a meaning affected by subsection 23A(3).

hire purchase agreement means a contract for the hire of goods where:

- (a) the hirer has the right or obligation to buy the goods; and
- (b) the charge that is or may be made for the hire, together with any other amount payable under the contract (including an

Section 7

amount to buy the goods or to exercise an option to do so), is more than the price of the goods; and

- (c) title in the goods does not pass to the hirer until the option to purchase is exercised.

land includes:

- (a) buildings and improvements on land; and
- (b) a legal or equitable estate or interest in land; and
- (c) a right, power or privilege over, or in relation to, land; and
- (d) a company title interest in land.

loan includes the provision of credit or any other form of financial accommodation.

member means a person who is, or has been, a member of a part of the Reserves, but does not include a person called upon to serve in the Defence Force under section 60 of the *Defence Act 1903*.

operational service:

- (a) subject to paragraph (d), includes defence service in circumstances involving one or more of the following:
 - (i) war (within the meaning of the *Defence Act 1903*) or warlike operations;
 - (ii) a time of defence emergency (within the meaning of the *Defence Act 1903*);
 - (iii) defence preparation;
 - (iv) peacekeeping or peace enforcement;
 - (v) assistance to Commonwealth, State, Territory or foreign government authorities and agencies in matters involving Australia's national security or affecting Australian defence interests;
 - (vi) support to community activities of national or international significance;
 - (vii) civil aid, humanitarian assistance, medical or civil emergency or disaster relief; and
- (b) subject to paragraph (d), includes defence service prescribed by the regulations for the purposes of this paragraph; and

- (c) subject to paragraph (d), includes defence service by a member involving:
 - (i) preparing to render particular operational service covered by paragraph (a) or (b); or
 - (ii) decompressing after rendering operational service covered by paragraph (a) or (b); and
- (d) does not include defence service prescribed by the regulations for the purposes of this paragraph.

protected co-worker has the meaning given by subsection 23A(5).

protected period, in relation to a member who is rendering, or has rendered, defence service in relation to which Part 5 or Part 8 applies, means the shorter of the following periods:

- (a) the period that begins immediately after the day on which the member ceased to render the defence service and that is equal to the length of that service;
- (b) the period of 12 months beginning immediately after the day on which the member ceased to render that service.

protected worker has the meaning given by subsection 23A(4).

reasonable adjustment has the meaning given by subsection 38(4).

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

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

start day of continuous full time service to which Part 8, 9 or 10 applies has the meaning given by subsection 13(3).

this Act includes the regulations.

9 Meaning of *dependant*

- (1) In this Act:

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dependant of a member who is or was rendering continuous full time service to which Part 8, 9 or 10 applies (see section 13) means:

- (a) the member's partner; or
 - (b) a person who was wholly or partly dependent on the member for financial support immediately before the start day of the service; or
 - (c) a person who became, or becomes, wholly or partly dependent on the member for financial support while the member was or is rendering the service; or
 - (d) a person to whom:
 - (i) a pension is payable under the *Veterans' Entitlements Act 1986*; or
 - (ii) compensation is payable under the *Military Rehabilitation and Compensation Act 2004*; because of the member's incapacity or death; or
 - (e) if the member died while rendering the service—the widow or widower of the member.
- (2) In this section, the following expressions have the same meanings as in the *Veterans' Entitlements Act 1986*:
- (a) **widow**;
 - (b) **widower**.

- (3) In this section:

partner has the same meaning as in the *Military Rehabilitation and Compensation Act 2004*.

10 Meaning of *contract of employment*

- (1) In this Act:

contract of employment includes:

- (a) a contract of apprenticeship; and
- (b) an arrangement under which a person is employed.

Note: For **employment**, see section 7.

- (2) For the purposes of this Act, the appointment or employment of a person under a law of the Commonwealth or of a State or Territory is taken to be employment under a ***contract of employment***.

Section 11

Part 3—Which protections and benefits apply to the different kinds of defence service

11 Which protections and benefits apply to the different kinds of defence service

The following table sets out which Parts of this Act apply in relation to which kinds of defence service:

Which protections and benefits apply to the different kinds of defence service			
Item	This Part...	which deals with...	applies to these kinds of defence service...
1	Part 4	Protection against discrimination	All kinds of defence service
2	Part 5	Employment protection	All kinds of defence service
3	Part 6	Partnership protection	All kinds of defence service
4	Part 7	Education protection	All kinds of defence service
5	Part 8	Financial liability protection	(a) continuous full time service as a result of a call out; and (b) continuous full time service that is operational service; (see section 13)
6	Part 9	Bankruptcy protection	(a) continuous full time service as a result of a call out; and (b) continuous full time service that is operational service; (see section 13)
7	Part 10	Loans and guarantees	Continuous full time service as a result of a call out (see section 13)
8	Part 11	Enforcement and remedies	All kinds of defence service
9	Part 12	Other matters	All kinds of defence service

13 Call outs and operational service

- (1) Parts 8, 9 and 10 apply in relation to continuous full time service that a member renders as a result of a call out.
- (2) Parts 8 and 9 also apply in relation to continuous full time service that is operational service.
- (3) The ***start day*** of defence service to which subsection (1) or (2) applies is:
 - (a) if subsection (1) applies—the day on which the member becomes liable to render the service; or
 - (b) otherwise—the day on which the member starts to render the service.

Part 4—Protection against discrimination because of defence service

Division 1—Overview of Part

14 Overview of Part

- (1) This Part applies in relation to all kinds of defence service (see Part 3).
- (2) Essentially, the Part makes it unlawful to refuse to give work to a person on the ground that the person is rendering, has rendered, or might in the future render, defence service.
- (2A) It is also unlawful for a person to harass a worker, partner or co-worker of the person on that ground.
- (3) A breach of the Part may be a criminal offence or result in a civil penalty. Breaches can also be redressed by other civil means: see Part 11.

Division 2—Discrimination in employment

15 Refusing to employ a person

- (1) A person must not refuse or fail to offer to employ another person for the reason that, or for reasons that include the reason that, the other person:
- (a) may volunteer to render defence service; or
 - (b) is rendering defence service; or
 - (c) is, or may become, liable to render defence service; or
 - (d) has previously rendered defence service.

- (2) A person who contravenes subsection (1) commits an offence.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (3) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

16 Dismissing etc. an employee

- (1) An employer must not, for a prohibited reason, or for reasons that include a prohibited reason, do or threaten to do any of the following:

- (a) change the terms and conditions of employment of an employee to his or her prejudice;
- (b) discriminate against an employee in his or her terms and conditions of employment;
- (c) dismiss an employee.

- (2) Conduct mentioned in subsection (1) is for a ***prohibited reason*** if it is engaged in because the employee:

- (a) may volunteer to render defence service; or

Part 4 Protection against discrimination because of defence service

Division 2 Discrimination in employment

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- (b) is rendering defence service; or
- (c) is, or may become, liable to render defence service; or
- (d) has previously rendered defence service.

- (3) A person who contravenes subsection (1) commits an offence.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (4) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

17 Hindering employee from serving in Reserves

- (1) An employer must not hinder or prevent a person in the employer's employment from:

- (a) volunteering to render defence service; or
- (b) rendering defence service.

- (2) A person who contravenes subsection (1) commits an offence.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (3) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

Division 3—Discrimination in partnerships

18 Refusing to offer partnership to another person etc.

- (1) A person who proposes to form a partnership must not refuse or fail to invite another person to become a partner in the partnership for a prohibited reason or for reasons that include a prohibited reason.
- (2) A person who is a partner in a partnership must not refuse or fail to invite another person to become a partner in the partnership for a prohibited reason or for reasons that include a prohibited reason.
- (3) Conduct mentioned in subsection (1) or (2) is for a ***prohibited reason*** if it is engaged in because the other person:
 - (a) may volunteer to render defence service; or
 - (b) is rendering defence service; or
 - (c) is, or may become, liable to render defence service; or
 - (d) has previously rendered defence service.
- (4) A person who contravenes subsection (1) or (2) commits an offence.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (5) A person who contravenes subsection (1) or (2) is liable to a civil penalty.

Civil penalty: 100 penalty units.

18A Dissolving partnership etc.

- (1) A person who is a partner in a partnership must not, for a prohibited reason relating to another partner in the partnership, or for reasons that include a prohibited reason relating to another partner, do or threaten to do any of the following:

Section 19

- (a) dissolve the partnership;
 - (b) expel the other partner from the partnership;
 - (c) require the other partner to forfeit his or her share in the partnership;
 - (d) subject the other partner to any other detriment concerning the partnership.
- (2) Conduct mentioned in subsection (1) is for a ***prohibited reason*** in relation to another partner if it is engaged in because the other partner:
- (a) may volunteer to render defence service; or
 - (b) is rendering defence service; or
 - (c) is, or may become, liable to render defence service; or
 - (d) has previously rendered defence service.
- (3) A person who contravenes subsection (1) commits an offence.
- Penalty: 30 penalty units.
- (4) A person who contravenes subsection (1) is liable to a civil penalty.
- Civil penalty: 100 penalty units.

19 Hindering fellow partner from serving in Reserves

- (1) A person who is a partner in a partnership must not hinder or prevent another partner in the partnership from:
- (a) volunteering to render defence service; or
 - (b) rendering defence service.
- (2) A person who contravenes subsection (1) commits an offence.
- Penalty: 30 penalty units.
- Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.
- (3) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

Division 4—Discrimination against commission agents

20 Refusing to engage commission agent

- (1) A person must not refuse or fail to engage another person as a commission agent for the reason that, or for reasons that include the reason that, the other person, or an officer or employee of the other person:
- (a) may volunteer to render defence service; or
 - (b) is rendering defence service; or
 - (c) is, or may become, liable to render defence service; or
 - (d) has previously rendered defence service.

- (2) A person who contravenes subsection (1) commits an offence.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (3) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

21 Terminating etc. contract for services

- (1) A person must not, for a prohibited reason, or for reasons that include a prohibited reason, do, or threaten to do, either of the following:
- (a) discriminate against a commission agent in relation to the terms and conditions of the contract under which the person deals with the agent;
 - (b) terminate the contract.
- (2) Conduct mentioned in subsection (1) is for a ***prohibited reason*** if it is engaged in because the commission agent, or an officer or employee of the commission agent:

- (a) may volunteer to render defence service; or
- (b) is rendering defence service; or
- (c) is, or may become, liable to render defence service; or
- (d) has previously rendered defence service.

(3) A person who contravenes subsection (1) commits an offence.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

(4) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

Division 5—Discrimination against contractors

22 Refusing to engage contractor

- (1) A person must not refuse or fail to engage another person as a contractor for the reason that, or for reasons that include the reason that, the other person, or an officer or employee of the other person:
- (a) may volunteer to render defence service; or
 - (b) is rendering defence service; or
 - (c) is, or may become, liable to render defence service; or
 - (d) has previously rendered defence service.

- (2) A person who contravenes subsection (1) commits an offence.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

- (3) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

23 Terminating etc. contract for services

- (1) A person must not, for a prohibited reason, or for reasons that include a prohibited reason, do, or threaten to do, either of the following:
- (a) discriminate against a contractor in relation to the terms and conditions of the contract for services that the person has entered into with the contractor;
 - (b) terminate the contract for services.
- (2) Conduct mentioned in subsection (1) is for a ***prohibited reason*** if it is engaged in because the contractor, or an officer or employee of the contractor:

- (a) may volunteer to render defence service; or
- (b) is rendering defence service; or
- (c) is, or may become, liable to render defence service; or
- (d) has previously rendered defence service.

(3) A person who contravenes subsection (1) commits an offence.

Penalty: 30 penalty units.

Note: See section 4AA of the *Crimes Act 1914* for the current value of a penalty unit.

(4) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

Division 6—Harassment

23A Harassment

- (1) A person must not, for a prohibited reason, or for reasons that include a prohibited reason, harass another person if the other person is:
 - (a) a protected worker of the person; or
 - (b) a partner in a partnership in which the person is also a partner; or
 - (c) a protected co-worker of the person.
- (2) Conduct mentioned in subsection (1) is for a *prohibited reason* if it is engaged in because the other person:
 - (a) may volunteer to render defence service; or
 - (b) is rendering defence service; or
 - (c) is, or may become, liable to render defence service; or
 - (d) has previously rendered defence service.
- (3) *Harass* includes abuse or bully.
- (4) Each of the following is a *protected worker* of a person:
 - (a) an employee of the person;
 - (b) a commission agent or contractor of the person;
 - (c) a person who is seeking to become an employee, partner, commission agent or contractor of the person;
 - (d) an officer or employee of:
 - (i) a commission agent or contractor of the person; or
 - (ii) a person who is seeking to become a commission agent or contractor of the person.
- (5) A person is a *protected co-worker* of another person if:
 - (a) the first person is an employee, commission agent or contractor of a third person; and
 - (b) the other person is an employee, commission agent or contractor of:

- (i) the third person; or
- (ii) a different person, if the first person and the other person work together in performing the duties of their respective employments, commission agencies or contracts.

Penalties

- (6) A person who contravenes subsection (1) commits an offence.

Penalty: 30 penalty units.

- (7) A person who contravenes subsection (1) is liable to a civil penalty.

Civil penalty: 100 penalty units.

23B Obligations of employers etc.

- (1) A person is liable to a civil penalty if:
- (a) an employee, commission agent or contractor of the person harasses a third person for a prohibited reason, or for reasons that include a prohibited reason; and
 - (b) the third person is a protected co-worker of the employee, commission agent or contractor because of that employment, commission agency or contract.

Civil penalty: 100 penalty units.

- (2) Conduct mentioned in paragraph (1)(a) is for a ***prohibited reason*** if it is engaged in because the third person:
- (a) may volunteer to render defence service; or
 - (b) is rendering defence service; or
 - (c) is, or may become, liable to render defence service; or
 - (d) has previously rendered defence service.
- (3) Subsection (1) does not apply if the first person takes all reasonable steps to ensure that his or her employees, commission

Part 4 Protection against discrimination because of defence service

Division 6 Harassment

Section 23B

agents and contractors do not harass protected co-workers for prohibited reasons.

Note: A person who wishes to rely on subsection (3) in proceedings for a civil penalty order bears an evidential burden in relation to the matter in that subsection: see section 96 of the Regulatory Powers Act.

Part 5—Employment protection

Division 1—Preliminary

24 Overview of Part

- (1) This Part applies in relation to all kinds of defence service.
- (2) Essentially, the Part protects the status and entitlements, such as accrued leave, of members who render the defence service while subject to employment obligations.

24A Meaning of *absent on defence service*

A member who is employed before starting to render defence service is *absent on defence service* during any of the following periods:

- (a) any period during which the member is travelling from his or her residence to the place at which he or she is required to report for defence service;
- (b) any period while he or she is rendering defence service;
- (c) the period (if any) starting immediately after he or she ceases to render that service and ending (subject to subsections 28(3) and (4)) immediately before the earlier of the following times:
 - (i) when the member resumes work (including under Division 3 of this Part) or is reinstated in employment under that Division;
 - (ii) if the member does not apply to resume work, or to be reinstated in employment, under section 27—30 days after the member ceases to render that service.

Division 2—Entitlement to be absent during defence service

25 No requirement to take leave during defence service

- (1) This section applies if a member is employed by a person under a contract of employment that allows the member any type of paid or unpaid leave.
- (2) The employer must not require the member to take the leave concurrently with all or part of his or her absence on defence service.
- (3) Subsection (2) does not apply to the extent that the member agrees to take the leave concurrently with all or part of that absence.

26 Member entitled to be absent during defence service

- (1) A member who is employed before being absent on defence service is entitled to be absent from that employment while the member is absent on defence service.
- (2) A period during which the member is absent from that employment while absent on defence service is taken not to be a period of employment under the member's contract of employment unless this Part provides otherwise.
- (3) Subsection (2) does not apply to a period throughout which the member is taking any type of paid or unpaid leave under the member's contract of employment, as mentioned in subsection 25(3).
- (4) This section does not:
 - (a) affect the operation of section 25; or
 - (b) limit the ability of a contract of employment to allow a person any type of paid or unpaid leave; or

- (c) prevent the termination of a member's contract of employment in accordance with law for a reason other than an absence mentioned in subsection (1).

Note: The protections in subsections (1) and (2) cease to apply 30 days after the member ceases to render defence service if the member does not apply to resume work under the contract of employment under section 27 before then: see paragraph 24A(c).

Division 3—Resuming work after defence service

27 Applying to resume work after defence service

- (1) A member who is absent from his or her employment while absent on defence service may apply to the employer to resume work under the member's contract of employment. An application must be in writing (unless the employer waives that requirement).
- (2) If the contract of employment was terminated in accordance with law while the member was absent on defence service but another employer (the *new employer*) is carrying on:
 - (a) the business or undertaking in which the member was employed under the contract; or
 - (b) another business or undertaking which includes that business or undertaking;the member may apply in writing to the new employer for reinstatement.
- (3) The member must apply to the employer or new employer no later than 30 days after ceasing to render defence service.
- (4) If an employee is reinstated in employment with a new employer, the contract of employment under which the member was previously employed is novated to the new employer.

28 Employer must allow member to resume work

- (1) As soon as reasonably practicable after receiving an application under section 27, the employer must:
 - (a) allow the member to resume work, or reinstate the member in employment, in the same capacity in which the member was employed immediately before the start of the member's absence on defence service; and
 - (b) ensure that the member's terms and conditions of employment (including remuneration) are at least as

favourable as those that would have applied to him or her in that capacity but for the service.

Exceptions

- (2) Subsection (1) does not apply if:
- (a) the employer agreed to the resumption or reinstatement, but the member:
 - (i) did not make himself or herself available for work as agreed between them; and
 - (ii) did not have a reasonable excuse for not doing so; or
 - (b) because of changed circumstances since the member was employed (except employing someone else to replace the member):
 - (i) it was not within the employer's power to allow the resumption or reinstatement; or
 - (ii) the employer offered to employ the member in a capacity, and under terms and conditions, that were the most favourable that it was reasonable or practicable to offer him or her.
- (3) If paragraph (2)(a) applies, the member ceases to be ***absent on defence service*** at the time the member was to have made himself or herself available for work under the agreement mentioned in that paragraph.
- (4) If paragraph (2)(b) applies, the member ceases to be ***absent on defence service***:
- (a) when the employer informs the member that it was not within the employer's power to allow the resumption or reinstatement, as mentioned in subparagraph (2)(b)(i); or
 - (b) if the member accepts the offer mentioned in subparagraph (2)(b)(ii)—when the offered employment starts; or
 - (c) if the member does not accept the offer—when the member declines the offer, or 30 days after the employer makes the offer, whichever occurs first.

Part 5 Employment protection

Division 3 Resuming work after defence service

Section 28A

28A Other rights to resume work not affected

This Division does not limit any right of a member to resume work or to be reinstated in employment under:

- (a) a contract of employment; or
- (b) any law other than this Division.

Division 4—Effect of defence service on particular entitlements of members

29 Which entitlements this Division applies to

This Division deals with determining the entitlements of a member, or of someone else arising because of the entitlements of a member, under a contract of employment or otherwise in relation to the following:

- (a) annual leave and leave loadings;
- (b) personal or carer's leave, including sick leave, family leave, bereavement leave, compassionate leave, cultural leave and other like forms of leave;
- (c) parental leave, including maternity and adoption leave;
- (d) long service leave or an amount in place of long service leave;
- (e) a prescribed matter.

30 Continuous full-time defence service

- (1) This section applies if a member resumes work, or is reinstated in employment, under this Part after rendering continuous full time defence service.
- (2) The entitlements in relation to the member's employment in respect of the period of the absence on defence service must be no less beneficial than they would have been if the member had been absent on leave without pay from the employment during that period.
- (3) In particular, the continuity of the member's employment is taken not to have been broken by his or her absence on defence service.

Section 31

31 Other defence service

- (1) This section applies if a member resumes work, or is reinstated in employment, under this Part after rendering defence service other than continuous full time defence service.

Resumption of employment

- (2) If the member resumes work for the old employer (see subsection 27(1)):
- (a) the period of the absence is taken to have been paid service in the employment; and
 - (b) the continuity of the member's employment is taken not to have been broken by his or her absence on defence service.

Reinstatement in employment

- (3) If the member is reinstated in employment with a new employer (see subsection 27(2)):
- (a) the period of employment under the contract of employment with the old employer is taken to have been served under the contract of employment entered into on the reinstatement; and
 - (b) the period of the absence is taken to have been paid service in the new employment; and
 - (c) the continuity of the period of employment under the contract of employment with the old employer with the period of employment that commenced on the reinstatement is taken not to have been broken by the member's absence on defence service.

Division 5—Termination of employment after resumption of employment etc.

32 Termination after resuming employment etc.

- (1) This section applies if an employer has (in accordance with this Part) permitted a member to resume work or reinstated a member in employment.
- (2) During the period that begins immediately after the member resumes work, or is reinstated in employment, and that is equal to the length of the member's absence on defence service, the employer must not:
 - (a) terminate the member's employment; or
 - (b) vary the member's employment by employing the member in a capacity, or under terms and conditions, less favourable to the member than the capacity in which, or the terms and conditions under which, the member was employed on resuming work or being reinstated in employment.

Exception—changed circumstances

- (3) Paragraph (2)(a) does not apply if, because of changed circumstances since the member resumed work or was reinstated (except employing someone else to replace the member), it was not within the employer's power to retain the member in employment.

Exception—employee misconduct

- (4) Subsection (2) does not apply if the termination or variation of the member's employment was because of misconduct by the member that was serious enough to justify the termination or variation.
- (5) To avoid doubt, the member's absence on defence service is not **misconduct** for the purposes of subsection (4).

Division 6—No additional obligations on employers

33 No additional obligations on employers

- (1) To avoid doubt, this Act does not oblige an employer of a member who is, or has been, absent on defence service to do any of the following in respect of the period of the absence:
- (a) to pay the member's remuneration in respect of the employment; or
 - (b) to grant the member's entitlements in respect of the employment (except as provided under this Part); or
 - (c) to meet the employer's obligations under a workers' compensation law to pay premiums, contributions or similar payments in relation to the member; or
 - (d) to meet the employer's obligations under the *Superannuation Guarantee (Administration) Act 1992* in relation to the member.
- (2) Paragraphs (1)(a) and (b) do not apply to the extent that the member would have been entitled to the benefit of the things mentioned in those paragraphs anyway if the member's absence had been for a purpose other than the purpose of rendering defence service.

Example: An employer would still have to pay the wages of a member who rendered defence service while on paid annual leave, since the member's absence on paid annual leave would not relieve the employer from having to pay wages. But once the member ran out of paid annual leave, the employer would not have to pay the member any longer until the member returned from rendering defence service.

- (3) In this section:

workers' compensation law means a law that provides for compensation or other benefits for work-related trauma suffered by employees without requiring proof of any breach by employers or by their associates.

Part 6—Partnership protection

34 Overview of Part

- (1) This Part applies in relation to all kinds of defence service.
- (2) Essentially, the Part protects members from having their partnerships dissolved while the members are absent on defence service.

35 Dissolving partnerships etc. involving a serving member

- (1) A person must not take or continue proceedings or other action against a member who is a partner in a partnership to:
 - (a) dissolve the partnership; or
 - (b) expel the member from the partnership; or
 - (c) require the member to forfeit his or her share in the partnership; or
 - (d) subject the member to any other detriment concerning the partnership;while the member is rendering defence service.
- (2) It does not matter whether the proceedings are taken or continued under a partnership agreement or otherwise.
- (3) Subsection (1) does not apply if all the partners consented to taking or continuing the proceedings or other action.

36 Dissolving partnerships etc. involving former member

- (1) A person must not take or continue proceedings or other action against a partner in a partnership who has rendered defence service to:
 - (a) dissolve the partnership; or
 - (b) expel the partner from the partnership; or

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- (c) require the partner to forfeit his or her share in the partnership; or
 - (d) subject the partner to any other detriment concerning the partnership;
- before the end of the partner's protected period.
- (2) It does not matter whether the proceedings are taken or continued under a partnership agreement or otherwise.
 - (3) Subsection (1) does not apply if all the partners consented to taking or continuing the proceedings or other action.

Part 7—Education protection

37 Overview of Part

- (1) This Part applies in relation to all kinds of defence service.
- (2) Essentially, the Part:
 - (a) requires a body administering an educational institution to make reasonable adjustments required because a member enrolled in a course at the institution is rendering defence service; and
 - (b) allows a member to re-enrol in, and resume, a course that was interrupted because the member rendered defence service.

38 Obligations of body administering education institution

- (1) This section applies in relation to a member who is enrolled in a course at an Australian education institution before starting to render defence service.
- (2) The body administering the education institution must make reasonable adjustments to accommodate the member's defence service.
- (3) Without limiting subsection (2), the adjustments required by that subsection could involve any of the following:
 - (a) not failing the member;
 - (b) recognising assessment or practical work undertaken by the member before starting to render defence service;
 - (c) allowing the member to defer undertaking or completing assessment or practical work;
 - (d) refunding or crediting fees paid by or for the member.

Section 39

- (4) An adjustment is a *reasonable adjustment* unless making the adjustment would impose an unjustifiable hardship on the body administering the education institution.
- (5) In determining whether a hardship that would be imposed on the body administering the education institution would be an unjustifiable hardship, all relevant circumstances of the particular case must be taken into account, including the following:
 - (a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
 - (b) the financial circumstances of, and the estimated amount of expenditure required to be made by, the body;
 - (c) the availability of financial and other assistance to the body.
- (6) The burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.

39 Education institution must re-enrol member etc.

- (1A) This section applies in relation to a member who:
 - (a) is enrolled in a course at an Australian education institution during all or part of the period he or she is rendering defence service; and
 - (b) does not complete the course before ceasing to render the service; and
 - (c) applies to re-enrol (if necessary) and to resume the course within 30 days after ceasing to render the service.
- (1) The body administering the Australian education institution must not exclude the member from the course, or subject the member to any other disadvantage, because he or she did not complete a requirement of the course or any assessment for the course:
 - (a) while rendering the defence service; or
 - (b) otherwise because of having rendered the defence service.
- (2) The body administering the Australian education institution must:
 - (a) allow the member to re-enrol (if necessary) in the course; and

- (b) allow the member to resume the course at a point that the body considers appropriate; and
 - (c) ensure that the conditions (if any) on the re-enrolment and resumption are the same as those that would have applied to a person who is not a member.
- (3) Subsection (2) does not apply if, because of a change in the nature of courses offered by the institution since the member was previously enrolled:
- (a) it was not reasonable or practicable to allow the member to re-enrol or resume the course in which he or she was previously enrolled; and
 - (b) the body administering the institution offered to enrol the member in another course that most closely corresponded to the course in which he or she was previously enrolled; and
 - (c) the conditions on the re-enrolment and resumption were the most favourable that it was reasonable or practicable to offer the member.
- (4) This section does not limit section 38.

Part 8—Financial liability protection

Division 1—Overview of Part

40 Overview of part

- (1) This Part applies (see Part 3) to:
 - (a) continuous full time service as a result of a call out; and
 - (b) continuous full time service that is operational service.
- (2) Essentially, many liabilities of a member or dependant that would otherwise fall due after the member starts rendering defence service are postponed. A liability may, for example, relate to principal or interest under a loan or the purchase price of something that the member or dependant has agreed to buy. Generally, the liability must have arisen before the start day of the service.
- (3) The liabilities are postponed for the shorter of the following:
 - (a) the period that begins immediately after the member ceased to render defence service and that is equal to the length of that service;
 - (b) the period of 12 months beginning immediately after he or she ceased to render that service.
- (4) Interest accrues on the postponed liabilities. This is so regardless of whether the member or dependant had to pay interest in respect of the original liability.
- (5) This Part also stays proceedings in respect of the postponed liabilities.

Division 2—Which financial liabilities this Part applies to

40A Meaning of *financial arrangement*

In this Act:

financial arrangement means any of the following:

- (a) a secured or unsecured loan;
- (b) a hire purchase agreement;
- (c) an agreement to buy something (including land);
- (d) an agreement to lease something (including land);
- (e) a guarantee.

41 Financial liabilities that arise before start day of service

- (1) This Part applies to a liability to make a payment under a financial arrangement if:
 - (a) the liability is a liability of:
 - (i) a member who renders defence service; or
 - (ii) a dependant of a member who renders defence service;
and
 - (b) the liability arose before the start day of the service.
- (2) This section is subject to the exceptions in sections 44, 45 and 46.

42 Options exercised on or after start day of service

- (1) This Part also applies to a liability to make a payment under a financial arrangement if:
 - (a) the liability is a liability of:
 - (i) a member who renders defence service; or
 - (ii) a dependant of a member who renders defence service;
and
 - (b) the liability arose when the member or dependant exercised, on or after the start day of the service, an option under the

Part 8 Financial liability protection

Division 2 Which financial liabilities this Part applies to

Section 43

financial arrangement to buy or lease something (including land); and

(c) the option was granted before the start day.

(2) This section is subject to the exceptions in sections 44, 45 and 46.

43 Rates etc. on land

Liabilities that arise before start day

(1) This Part applies to a liability to pay rates, or other taxes imposed in respect of land, if:

(a) the liability is a liability of:

(i) a member who renders defence service; or

(ii) a dependant of a member who renders defence service;
and

(b) the liability arose before the start day of the service.

Liabilities that arise on or after start day

(2) This Part also applies to a liability to pay rates, or other taxes imposed in respect of land, if:

(a) the liability is a liability of:

(i) a member who renders defence service; or

(ii) a dependant of a member who renders defence service;
and

(b) the member or dependant exercised, on or after the start day of the service, an option under a financial arrangement to buy or lease the land to which the rates or other taxes relate; and

(c) the option was granted before the start day; and

(d) the liability to pay the rates or other taxes arose on or after the day the member or dependant exercised the option.

Exceptions

- (3) This section does not apply to a liability to pay GST (within the meaning of the *A New Tax System (Goods and Services Tax) Act 1999*).
- (4) This section is subject to section 46.

44 Part does not apply to security holder already exercising remedies

This Part does not apply to a liability to make a payment under a financial arrangement if:

- (a) the liability is a liability of:
 - (i) a member who renders defence service; or
 - (ii) a dependant of a member who renders defence service;and
- (b) before the start day of the service, a court orders that a party to the financial arrangement may exercise all or any of the party's remedies to enforce any security under the arrangement (including enter land if the security is land).

45 Part does not apply to bankruptcy or insolvency of member or dependant

- (1) This Part does not apply to a liability of a member or his or her dependant to make a payment under a financial arrangement if, while liable to make the payment, the member or dependant:
 - (a) becomes bankrupt; or
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (c) compounds with his or her creditors; or
 - (d) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (e) dies and his or her estate is being administered in bankruptcy or insolvency.

Part 8 Financial liability protection

Division 2 Which financial liabilities this Part applies to

Section 46

- (2) For the purposes of subsection (1), it does not matter whether the bankruptcy, insolvency, assignment or death happened before or after the commencement of this Act.

46 Part does not apply to trustees or representatives

Member's liability

- (1) This Part does not apply in relation to a liability of a member to make a payment as a trustee or in a representative capacity except to the extent that, in incurring the liability, the member is acting for the benefit of, or on behalf of, persons who are, or who include, the member or one or more dependants of the member.

Dependant's liability

- (2) This Part does not apply in relation to a liability of a member's dependant to make a payment as a trustee or in a representative capacity except to the extent that, in incurring the liability, the dependant is acting for the benefit of, or on behalf of, persons who are, or who include, the member, the dependant, or one or more other dependants of the member.

47 Liability exists even if payment not yet due

For the purposes of this Part, a person is *liable to make a payment* if he or she is obliged to make it, even if the due date for payment has not arrived.

48 Liability may have arisen before commencement of this Act

To avoid doubt, a liability to which this Part applies may arise before or after the commencement of this Act.

Division 3—Payments postponed and proceedings stayed

Subdivision A—Postponement

49 Payments postponed

- (1) The time for making a payment under a financial arrangement to which this Part applies is, by force of this section, postponed in accordance with this Division.
- (2) The time for making a payment of rates to which this Part applies is, by force of this section, postponed in accordance with this Division.
- (3) A time is postponed by this section even if the time had already passed when the member began to render the relevant service.
- (4) However, this section does not prevent a person from making a payment before the time to which payment is postponed.

50 Rescheduling payments

Payments by instalment

- (1) If:
 - (a) the payments are to be made by the member or dependant by instalment; and
 - (b) the first instalment falls due before the end of the member's protected period;then:
 - (c) the time for paying the first unpaid instalment is postponed so that the payment falls due at the end of the member's protected period; and
 - (d) the time for paying each later instalment is postponed for a period of the same length as the member's protected period.

Section 51

Single payment

- (2) If:
- (a) only a single payment is to be made by the member or dependant; and
 - (b) the payment falls due before the end of the member's protected period;
- the time for making the payment is postponed so that it falls due at the end of the member's protected period.

Exception in section 51

- (3) This section is subject to section 51.

51 Rescheduling if member or dependant dies

Member dies while rendering defence service

- (1) If the member dies while rendering defence service, the time for making the payment is postponed so that the payment falls due on the first anniversary of his or her death.

Dependant dies while member is rendering defence service

- (2) If the person liable to make the payment is a dependant of a member and the dependant dies while the member is rendering defence service, the time for making the payment is postponed so that the payment falls due on the first anniversary of the dependant's death.

If both subsections (1) and (2) apply

- (3) If both subsections (1) and (2) apply to a payment, the time for making the payment is postponed to the later of the 2 applicable times.

52 Higher rate of interest not payable

- (1) If a financial arrangement to which this Part applies allows interest to be paid or accepted at a reduced or lower rate if it is paid on or before the due date, interest remains payable at the reduced or lower rate even if (because of this Division) it is not so paid.
- (2) No interest is payable under any other law on the late payment of rates on land if the payments were postponed under this Division.

53 Interest payable on postponed payments under a financial arrangement

- (1) Interest is payable by the member or dependant on a payment under a financial arrangement that is postponed under this Division until the payment is made.
- (2) The interest is payable to the person to whom the postponed payments are required to be made.
- (3) The rate of the interest is:
 - (a) the rate or rates specified in the financial arrangement concerned before the interest falls due; or
 - (b) if no rate of interest is specified in the financial arrangement—the rate worked out in accordance with the regulations as in force at the start of the start day of the member's defence service.
- (4) The interest is payable after the start of the postponement:
 - (a) at the times specified in the financial arrangement for paying interest; or
 - (b) if no times are specified or the times specified have passed—at the end of 3 months after the start of the postponement and at the end of each successive period of 3 months after that.

Section 54

54 Interest payable on payment of postponed rates etc. on land

- (1) Interest is payable by the member or dependant on a payment that is covered by section 43, and that is postponed, until the payment is made.
- (2) The interest is payable to the person to whom the postponed payments are required to be made.
- (3) The rate of the interest is the rate worked out in accordance with the regulations as in force at the start of the start day of the member's defence service.
- (4) The interest is payable at the end of each quarter that ends after the start of the postponement.

Subdivision B—Proceedings stayed

55 Proceedings stayed but rights not otherwise prejudiced

- (1) While one or more payments are postponed, all proceedings against the member or dependant concerned that were instituted before the commencement of this Act:
 - (a) to enforce the payments; or
 - (b) in respect of, or because of, non-payment;are stayed.
- (2) It does not matter how or in what forum the proceedings were instituted.
- (3) Also, while one or more payments are postponed, all remedies against the member or dependant to recover the payments are stayed.
- (4) However, this Division does not:
 - (a) prejudice or affect any stayed proceeding or remedy; or
 - (b) affect the rights or obligations of anyone;except so far as is necessary to give effect to this Division.

- (5) As soon as the postponement ceases:
- (a) all stayed proceedings may be continued; and
 - (b) all stayed remedies may be pursued.

Subdivision C—Court may order all or part of Division does not apply

56 Court may order that all or part of Division not apply

- (1) A court may order that all, or a specified part, of this Division not apply in relation to a particular payment if the court is satisfied that the operation of those provisions would cause hardship or unreasonable loss to someone other than the member or dependant.
- (2) In considering an application for an order, the court may make any interlocutory or final order (including as to costs) that the court considers just, having regard to:
- (a) if the liability arose under a financial arrangement—the terms and conditions of the financial arrangement; and
 - (b) the circumstances of the member or dependant; and
 - (c) the circumstances of the other person.

Division 4—General matters

57 Powers of security holder not affected

This Part does not affect the power of a security holder under a financial arrangement to which this Part applies to enforce the holder's rights against the member or dependant if:

- (a) the security holder was, or is, in possession of the security at the start day of the member's defence service; or
- (b) if the security is land—the security holder has appointed or appoints a receiver who, at the start day of the member's defence service, was, or is:
 - (i) in possession of the land; or
 - (ii) receiving the rents and profits of the land.

58 Instruments made on or after start day not affected

This Part does not prevent or alter the effect of:

- (a) any instrument concerning a financial arrangement to which this Part applies that is made on or after the start day of the defence service of the member concerned; or
- (b) any thing done under the instrument.

59 Joint liability

- (1) If a member or his or her dependant is liable jointly with one or more others to make a payment under a financial arrangement, this Part applies to the member's or dependant's liability in the same way as it would apply if the member or dependant were solely liable.
- (2) However, this Part does not apply to the liability of the other parties who are jointly liable (but who are not members or dependants to whose defence service this Part applies in their own right).

60 Postponement etc. not to be taken into account for purposes of statutes of limitations etc.

In working out the deadline imposed by a statute of limitations or other Commonwealth, State or Territory law for bringing actions or pursuing other remedies in respect of a liability to which this Part applies, the following periods are not to be taken into account:

- (a) the period while the time for making payments is postponed under this Part;
- (b) the period while proceedings, or proposed proceedings, are stayed under this Part.

61 Certain rights of member or dependant preserved

- (1) The right of a member or of his or her dependant to commence a proceeding, or to enforce a right, exercise a power or pursue a remedy, in relation to a liability to which this Part applies, is not barred during the preservation period:
 - (a) by the end of a period of limitation fixed by a Commonwealth, State or Territory law; or
 - (b) by an instrument with respect to the right.
- (2) The proceeding may be commenced, and the right enforced, power exercised or remedy pursued, at any time before the end of the preservation period.
- (3) It does not matter whether the right arose or arises before or after the commencement of this Act.
- (4) This section also applies in relation to a person who became or becomes a member or dependant of a member after the right arose.
- (5) In this section:

preservation period means the combined consecutive periods of the member's absence on defence service (disregarding paragraph 24A(c)) and the member's protected period.

Part 9—Bankruptcy protection

62 Overview of Part

- (1) This Part applies (see Part 3) to:
 - (a) continuous full time service as a result of a call out; and
 - (b) continuous full time service that is operational service.
- (2) Essentially, the Part protects members from bankruptcy proceedings while the member is rendering defence service.

63 Bankruptcy proceedings against member or dependant not allowed

- (1) During a member's protected period, a bankruptcy notice must not be issued, and a creditor's petition must not be presented, in relation to the member or a dependant of the member if the notice or petition relates to a debt that arose before the start day of the relevant defence service.
- (2) Subsection (1) does not apply to a person who has leave of a court with jurisdiction in bankruptcy or insolvency to issue the notice or present the petition.
- (3) The court must not grant leave unless the court is satisfied that, having regard to all the circumstances of the case (including the conduct and financial position of the member or dependant, and of the applicant), it would be inequitable to refuse to grant leave.

64 Orders court may make relating to bankruptcy of member or dependant

- (1) If:
 - (a) a creditor presents a bankruptcy petition to a court against a member or his or her dependant; and

- (b) the member or dependant satisfies the court that he or she was unable to pay the relevant debts because of circumstances directly or indirectly attributable to the member's defence service;

the court may stay the proceedings under the petition for such time and subject to such conditions as the court thinks fit.

(2) If:

- (a) a court has, on the petition of a creditor, made a sequestration order against a person who is a member or a dependant of a member; and

- (b) on application, the court is satisfied that, if the sequestration order is annulled:

- (i) the business (if any) of that person will continue to be carried on by the person or on his or her behalf; and

- (ii) there will be a reasonable prospect of that business being carried on successfully;

the court may make an order annulling the sequestration order.

(3) An order under subsection (2) annulling a sequestration order has the same effect as an annulment of the sequestration order under the *Bankruptcy Act 1966*.

(4) An order under subsection (2) may be made on such conditions (including the reimbursement of the costs incurred by the petitioning creditor in the bankruptcy proceedings) as the court thinks fit.

Part 10—Loans and guarantees to returned members

65 Overview of Part

- (1) This Part applies to continuous full time service rendered as a result of a call out (see Part 3).
- (2) Essentially, the Part allows for a member who has rendered defence service to get access to loans and guarantees to enable him or her to resume civilian life after returning from that service.

66 Prescribed authority may make loans and give guarantees

To enable a member to resume civilian life after he or she stops rendering defence service, a prescribed authority may:

- (a) make a loan to the member; or
- (b) guarantee the repayment of a loan to a member and interest on the loan.

67 Amount of loan or guarantee

- (1) The amount of a loan made, or guarantee given, to a member must not be more than the prescribed amount.
- (2) If more than one loan is made or guarantee given to a member, the sum of them must not be more than the prescribed amount.

68 Terms and conditions of loan or guarantee

A loan is made, or guarantee given, on the security and terms and conditions that the prescribed authority determines in writing.

69 Interest on loan

Interest is payable on a loan made under this Part, at the rate and under the conditions prescribed by the regulations that were in force when the loan was made.

70 Pre-conditions for loan or guarantee

- (1) A prescribed authority must not make or guarantee a loan unless:
 - (a) the requirements of subsections (2), (3) and (4) are met; and
 - (b) the prescribed authority takes into account the matter in subsection (5).
- (2) The member must apply in the prescribed form for the loan or guarantee within the prescribed period.
- (3) The prescribed authority must approve the particular purpose for which the loan is made or guarantee given.
- (4) The prescribed authority must be satisfied that the applicant is likely to be able to repay the amount of the loan made or guaranteed within a reasonable period.
- (5) In determining whether to make a loan or give a guarantee, the prescribed authority must take into account the effect of the applicant's defence service on his or her capacity and opportunities to establish or re-establish himself or herself in civilian life without assistance under this Part.

71 Review by Administrative Appeals Tribunal

Application may be made to the Administrative Appeals Tribunal for the review of a decision to refuse to make a loan or give a guarantee.

72 Agreements between prescribed authorities and States etc.

- (1) A prescribed authority may enter into an agreement with a State, a Territory, a State or Territory authority or an ADI (the *delegate*)

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for the delegate to perform those functions of the prescribed authority under this Part that are specified in the agreement.

- (2) If, under an agreement, the delegate makes or guarantees a loan to a member, the delegate may take any security for the loan or guarantee in its own name.
- (3) For the purposes of this Part, a prescribed authority may make loans, or give guarantees, to a State or Territory authority or an ADI that is itself making loans or giving guarantees under an agreement.
- (4) The prescribed authority must have the Finance Minister's consent:
 - (a) to enter into an agreement mentioned in subsection (1); and
 - (b) to make a loan or give a guarantee mentioned in subsection (3).

Part 11—Enforcement and remedies

Division 1A—Overview of Part

72A Overview of Part

- (1) The regulations may provide for processes for making and investigating complaints about contraventions of this Act, and for mediating disputes under this Act.
- (2) A person who suffers loss or damage because of a contravention of this Act may recover the amount of the loss or damage from the person who contravened this Act.
- (3) A court that finds a person guilty of an offence against this Act in relation to another person may order the guilty person to pay compensation to the other person.
- (4) An interested person may apply to a court for the following in relation to a contravention of this Act:
 - (a) an injunction under the Regulatory Powers Act;
 - (b) a declaratory or other order.
- (5) A person prescribed by the regulations may apply to a court for a civil penalty order under the Regulatory Powers Act for a contravention of Part 4 of this Act (protection against discrimination).

Division 1B—Complaints and mediation

72B Complaints and mediation

- (1) The regulations may provide in relation to processes for any of the following:
 - (a) making and investigating complaints about alleged contraventions of this Act;
 - (b) mediating disputes between persons whose interests are affected by this Act.
- (2) This Division does not limit the other Divisions of this Part.

Division 1—Civil enforcement

73 Actions for loss or damage

- (1) A person who suffers loss or damage because another person contravenes, or was involved in contravening, a provision of this Act may bring an action in a court of competent jurisdiction to recover the amount of the loss or damage from the other person. This is so even if the other person did not commit an offence (if the contravention is also an offence) or a civil penalty order has not been made against the person (if the provision is a civil penalty provision).
- (2) An action mentioned in subsection (1) may be brought by a prescribed person on behalf of the person who suffers the loss or damage.
- (3) An action under subsection (1) may only be begun within 4 years after the day on which the cause of action arose.
- (4) This section does not affect any right or liability that a person has under any other law.
- (5) For the purposes of this section, a person is *involved in a contravention* if, and only if, the person has:
 - (a) aided, abetted, counselled or procured the contravention; or
 - (b) has induced, whether by threats or promises or otherwise, the contravention; or
 - (c) has been in any way, by act or omission, directly or indirectly, knowingly concerned in or party to the contravention; or
 - (d) has conspired with others to effect the contravention.

Division 2—Orders that courts may make

74 Orders for compensation after offence

- (1) A court that:
 - (a) finds a person guilty of an offence against this Act in relation to another person (whether or not the court imposes a penalty); or
 - (b) makes a civil penalty order (within the meaning of the Regulatory Powers Act) against a person for contravening a civil penalty provision of this Act in relation to another person;may order the first person to pay the other person such compensation as the court thinks reasonable.
- (2) An order under subsection (1) may be enforced as if it were a judgment of the court.

75 Injunctions for contravention of this Act

Application for injunctions

- (1) If a person has engaged, engages or proposes to engage in conduct consisting of an act or omission that constitutes an offence or other contravention of this Act, either of the following persons may apply to a court of competent jurisdiction for an injunction under subsection (2) or (3):
 - (a) an interested person;
 - (b) a prescribed person acting on behalf of an interested person.

Prohibitory injunctions

- (2) If a person has engaged, is engaging or is proposing to engage in conduct constituting an offence or other contravention of this Act, the court may grant an injunction restraining the person from engaging in the conduct. The court may grant the injunction:

- (a) whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
- (b) whether or not the person has previously engaged in conduct of that kind.

Mandatory injunctions

- (3) If:
 - (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail to do an act; and
 - (b) the refusal or failure did, does or would constitute an offence or other contravention of this Act;the court may grant an injunction requiring the person to do the act.
The court may grant the injunction:
 - (c) whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do the act; and
 - (d) whether or not the person has previously refused or failed to do the act.

Interim injunctions

- (4) Before deciding an application for an injunction under this section, the court may grant an interim injunction:
 - (a) restraining a person from engaging in conduct; or
 - (b) requiring a person to do an act.

Discharging or varying injunctions

- (5) On application, the court may discharge or vary an injunction.

No undertakings as to damages if applicant is prescribed person

- (6) A prescribed person cannot be required, as a condition of granting an interim injunction, to give an undertaking as to damages.

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Powers conferred are in addition to other powers of the court

- (7) The powers conferred on a court by this section are in addition to (and do not limit) any other powers of the court.

76 Court may make other orders if transaction or proceeding in contravention of this Act

- (1) A court of competent jurisdiction may make any other order (including a declaratory order) it thinks fit if a person enters a transaction, or brings a proceeding, in contravention of this Act.
- (2) The court may make an order under this section only on application by:
- (a) an interested person; or
 - (b) a prescribed person acting on behalf of an interested person.
- (3) An order under subsection (1) may be enforced as if it were a judgment of the court.
- (4) This section does not affect a person's liability to a penalty for a contravention of this Act.

Division 3—Civil penalties

76A Civil penalty provisions

Enforceable civil penalty provisions

- (1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

- (2) For the purposes of Part 4 of the Regulatory Powers Act, a person prescribed by the regulations for the purposes of this subsection is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

- (3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
- (a) all State and Territory courts (including courts of summary jurisdiction), so far as their jurisdiction extends to the matter;
 - (b) the Federal Court of Australia or the Federal Circuit Court of Australia.

Extension to external Territories

- (4) Part 4 of the Regulatory Powers Act, as it applies in relation to the civil penalty provisions of this Act, extends to every external Territory.

Division 4—Victimisation

76B Victimisation

- (1) A person must not subject, or threaten to subject, another person to any detriment for the reason that, or for reasons that include the reason that, the other person:
 - (a) has made, or proposes to make, a complaint under regulations made for the purposes of paragraph 72B(1)(a); or
 - (b) has given, or proposes to give, any information, or has produced, or proposes to produce, any documents to a person exercising or performing any power or function under regulations made for the purposes of that paragraph; or
 - (c) has brought, or proposes to bring, proceedings under Division 1 or 2 of this Part against any person.
- (2) A person who contravenes subsection (1) commits an offence.
Penalty: 30 penalty units.
- (3) A person who contravenes subsection (1) is liable to a civil penalty.
Civil penalty: 100 penalty units.

Part 12—Other matters

76C This Act does not limit other protections for members

This Act does not limit any protection that is afforded to a member, or to a former member, under any other law.

77 Jurisdiction of courts

- (1) The following courts may hear and determine matters arising under this Act:
 - (a) all State and Territory courts (including courts of summary jurisdiction), so far as their jurisdiction extends to those matters;
 - (b) the Federal Court of Australia or the Federal Circuit Court of Australia.
- (2) However, this Act does not confer any criminal jurisdiction on the Federal Court of Australia or the Federal Circuit Court of Australia.
- (3) To avoid doubt, nothing in this Act limits the jurisdiction of a court or other body under any other law of the Commonwealth, a State or a Territory in relation to matters covered by this Act.

78 Unincorporated bodies

- (1) This Act applies to an unincorporated body or association (the **body**) as if it were a person other than an individual, but it applies with the following change.

Imposition of obligations

- (2) The change is that obligations that would be imposed on the body are imposed instead on:
 - (a) if the body is a partnership—each partner; or

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- (b) in any other case—each member of the committee of management of the body;
but they may be discharged by any of the partners or any of those members.

78A Physical elements of offences

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence.
- (2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

78B Contravening an offence provision or a civil penalty provision

- (1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the *conduct provision*) commits an offence or is liable to a civil penalty.
- (2) For the purposes of this Act, and the Regulatory Powers Act to the extent that it relates to this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

79 Delegation

The Chief of the Defence Force may, by signed writing, delegate all or any of his or her powers and functions under this Act to an officer (within the meaning of the *Defence Act 1903*).

80 Severability: additional effect of Act

- (1) Without limiting its effect apart from this section, this Act also has effect as provided by this section.

- (2) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions of corporations to which paragraph 51(xx) of the Constitution applies.
- (3) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place in the course of, or in relation to, trade or commerce:
 - (a) between Australia and places outside Australia; or
 - (b) among the States; or
 - (c) within a Territory, between a State and a Territory or between 2 Territories.
- (4) This Act also has the effect that it would have if its operation were expressly confined to acts or omissions taking place in a Territory.

81 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting subsection (1), the regulations may:
 - (a) prescribe penalties, not exceeding 50 penalty units, for offences against the regulations; or
 - (b) prescribe civil penalties, not exceeding 60 penalty units, for contraventions of the regulations.

Endnotes

Endnote 1—About the endnotes

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

Endnote 1—About the endnotes

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

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
Defence Reserve Service (Protection) Act 2001	11, 2001	22 Mar 2001	19 Apr 2001 (s 2)	
Defence Legislation Amendment Act 2003	135, 2003	17 Dec 2003	Sch 2 (item 29): 19 April 2001 (s 2(1) item 10)	—
Military Rehabilitation and Compensation (Consequential and Transitional Provisions) Act 2004	52, 2004	27 Apr 2004	Sch 3 (item 19): 1 July 2004 (s 2(1))	—
Defence Legislation Amendment (Aid to Civilian Authorities) Act 2006	3, 2006	1 Mar 2006	2 Mar 2006 (s 2)	—
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 8 (item 117) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14
as amended by Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

Defence Reserve Service (Protection) Act 2001

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Compilation No. 8

Compilation date: 27/11/17

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Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Defence Legislation Amendment (First Principles) Act 2015	164, 2015	2 Dec 2015	Sch 2 (items 36–44, 80): 1 July 2016 (s 2(1) item 2)	Sch 2 (item 80)
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 131–133): 10 Mar 2016 (s 2(1) item 6)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 2 (items 20–23): 21 Oct 2016 (s 2(1) item 1)	—
Defence Legislation Amendment (2017 Measures No. 1) Act 2017	117, 2017	30 Oct 2017	Sch 2 (items 1–73, 75–110): 27 Nov 2017 (s 2(1) items 3–5, 7)	Sch 2 (items 10, 43, 72, 100, 110)
Regulatory Powers (Standardisation Reform) Act 2017	124, 2017	6 Nov 2017	Sch 6: <u>awaiting commencement (s 2(1) item 3)</u>	Sch 6 (item 3)
as amended by				
Defence Legislation Amendment (2017 Measures No. 1) Act 2017	117, 2017	30 Oct 2017	Sch 2 (item 74): <u>awaiting commencement (s 2(1) item 6)</u>	—

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 117, 2017
Part 2	
s 7	am No 3, 2006; No 62, 2014; No 164, 2015; No 117, 2017; <u>No 124, 2017 (as rep by No 117, 2014)</u>
s 8	rep No 117, 2017
s 9	rs No 52, 2004
	am No 3, 2006; No 164, 2015; No 117, 2017
s 10	am No 117, 2017
Part 3	
s 11	am No 117, 2017
s 12	am No 135, 2003; No 164, 2015
	rep No 117, 2017
s 13	am No 3, 2006; No 164, 2015
	rs No 117, 2017
Part 4	
Division 1	
s 14	am No 117, 2017
Division 2	
s 15	am No 4, 2016; No 61, 2016; No 117, 2017
s 16	am No 4, 2016; No 61, 2016; No 117, 2017
s 17	am No 4, 2016; No 61, 2016; No 117, 2017
Division 3	
s 18	am No 4, 2016; No 61, 2016; No 117, 2017
s 18A.....	ad No 117, 2017
s 19	am No 4, 2016; No 61, 2016; No 117, 2017
Division 4	
s 20	am No 4, 2016; No 61, 2016; No 117, 2017

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 21	am No 4, 2016; No 61, 2016; No 117, 2017
Division 5	
s 22	am No 4, 2016; No 61, 2016; No 117, 2017
s 23	am No 4, 2016; No 61, 2016; No 117, 2017
Division 6	
Division 6	ad No 117, 2017
s 23A.....	ad No 117, 2017
s 23B.....	ad No 117, 2017
Part 5	
Division 1	
Division 1 heading.....	rs No 117, 2017
s 24	am No 117, 2017
s 24A.....	ad No 117, 2017
Division 2	
Division 2 heading.....	rs No 117, 2017
s 25	am No 117, 2017
Division 3 heading.....	rep No 117, 2017
s 26	rs No 117, 2017
Division 3	
Division 3 heading.....	ad No 117, 2017
s 27	am No 117, 2017
s 28	am No 117, 2017
s 28A.....	ad No 117, 2017
Division 4	
s 30	am No 117, 2017
s 31	am No 117, 2017
Part 6	
s 34	am No 117, 2017
Part 7	
s 37	am No 117, 2017
s 38	rs No 117, 2017

Endnote 4—Amendment history

Provision affected	How affected
s 39	am No 117, 2017
Part 8	
Division 1	
Division 1 heading.....	rs No 117, 2017
s 40	am No 117, 2017
Division 2	
s 40A.....	ad No 117, 2017
s 41	rs No 117, 2017
s 42	rs No 117, 2017
s 43	rs No 117, 2017
s 44	rs No 117, 2017
s 45	am No 117, 2017
Division 3	
Subdivision A	
s 49	am No 117, 2017
s 52	am No 117, 2017
s 53	am No 117, 2017
s 54	am No 117, 2017
Subdivision C	
s 56	am No 117, 2017
Division 4	
s 57	am No 117, 2017
s 58	am No 117, 2017
s 59	am No 117, 2017
s 61	am No 117, 2017
Part 9	
s 62	am No 117, 2017
s 63	am No 117, 2017
Part 10	
s 65	am No 117, 2017

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Part 11	
Division 1A	
Division 1A.....	ad No 117, 2017
s 72A.....	ad No 117, 2017
Division 1B	
Division 1B.....	ad No 117, 2017
s 72B.....	ad No 117, 2017
Division 1	
s 73	am No 117, 2017
Division 2	
s 74	am No 117, 2017
s 75	rs <u>No 124, 2017</u>
Division 3	
Division 3	ad No 117, 2017
s 76A.....	ad No 117, 2017
Division 4	
Division 4	ad No 117, 2017
s 76B.....	ad No 117, 2017
Part 12	
s 76C.....	ad No 117, 2017
s 77	am No 117, 2017
s 78A.....	ad No 117, 2017
s 78B.....	ad No 117, 2017
s 79	am No 164, 2015
s 81	am No 117, 2017
