



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

**No. 11, 2001**



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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**

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

**No. 11, 2001**

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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**

*[Assented to 22 March 2001]*

The Parliament of Australia enacts:

## **Part 1—Introduction**

### **1 Short title**

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

## Section 2

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### **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 (except for certain kinds of voluntary continuous full time service).
- (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 (except for certain kinds of voluntary continuous full time service).
- (7) Part 7 allows a member to re-enrol in, and resume, a course that the member had to interrupt in order to undertake continuous full time defence service (except for certain kinds of voluntary continuous full time 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 defence service as a result of being called out. 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 defence service after being called out.
- (10) Part 10 allows for a member who has rendered defence service after being called 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 8.

***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 day***, in relation to a member, means the day on which the member becomes liable to render continuous full time service as a result of an order under section 50D, 51A, 51B or 51C of the *Defence Act 1903*.

***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.

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**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) in a part 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 *Financial Management and Accountability Act 1997*.

**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 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

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(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*.

**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.

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

**service chief** means the Chief of Navy, the Chief of Army or the Chief of Air Force.

**this Act** includes the regulations.

## 8 Meaning of *absent on defence service*

A member is ***absent on defence service*** during:

- (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; and
- (b) any period while he or she is rendering defence service; and
- (c) the period (if any) after he or she has ceased to render that service until he or she resumes work, or is reinstated in employment, under Part 5.

## 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 as a result of an order under 50D, 51A, 51B or 51C of the *Defence Act 1903* means:

- (a) if the member is a member of a couple—the member’s partner; or
  - (b) a person who was wholly or partly dependent on the member for financial support immediately before the member’s call out day; 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 such service; or
  - (d) a person to whom a pension is payable under the *Veterans’ Entitlements Act 1986* because of the member’s incapacity or death; or
  - (e) if the member died while rendering such 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) ***member of a couple***;
  - (b) ***partner***;
  - (c) ***widow***;
  - (d) ***widower***.

## **10 Meaning of *contract of employment***

- (1) In this Act:
- contract of employment*** includes a contract of apprenticeship.
- (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***.

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## **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:

<b>Which protections and benefits apply to the different kinds of defence service</b>			
<b>Item</b>	<b>This Part...</b>	<b>which deals with...</b>	<b>applies to these kinds of defence service...</b>
1	Part 4	Protection against discrimination	All kinds of defence service
2	Part 5	Employment protection	All kinds of defence service except for certain kinds of voluntary continuous full time service (see section 12)
3	Part 6	Partnership protection	All kinds of defence service except for certain kinds of voluntary continuous full time service (see section 12)
4	Part 7	Education protection	All kinds of continuous full time service except for certain kinds of voluntary continuous full time service (see section 12)
5	Part 8	Financial liability protection	Continuous full time service following a call out (see section 13)
6	Part 9	Bankruptcy protection	Continuous full time service following a call out (see section 13)
7	Part 10	Loans and guarantees	Continuous full time service following a call out (see section 13)
8	Part 11	Enforcement and remedies	All kinds of defence service

<b>Which protections and benefits apply to the different kinds of defence service</b>			
<b>Item</b>	<b>This Part...</b>	<b>which deals with...</b>	<b>applies to these kinds of defence service...</b>
9	Part 12	Other matters	All kinds of defence service

## **12 Defence service following voluntary undertaking**

- (1) Parts 5, 6 and 7 do not apply in relation to continuous full time service that a member voluntarily undertook to render under subsection 32A(4) of the *Naval Defence Act 1910*, subsection 50(3) of the *Defence Act 1903* or subsection 4J(3) of the *Air Force Act 1923* unless:
  - (a) a service chief requested the member to give the undertaking on the basis that those Parts would apply to the service; and
  - (b) the member gave the undertaking on that basis.
- (2) In deciding whether to request a member to give an undertaking on that basis, a service chief must have regard to:
  - (a) the nature of the service to be rendered; and
  - (b) the member's military and civil skills and capabilities; and
  - (c) the current need of the Defence Force for the member's skills and capabilities; and
  - (d) the effect that rendering the service might have on the member's employment and education (including the effect that it might have on third parties such as employers); and
  - (e) any other relevant matter.

## **13 Continuous full time service following a call out**

Parts 8, 9 and 10 apply only in relation to continuous full time service that a member is rendering, or has rendered, as a result of an order under section 50D, 51A, 51B or 51C of the *Defence Act 1903*.

## **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.
- (3) A breach of the Part may be a criminal offence. Breaches can also be redressed by 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) is guilty of an offence.

Maximum penalty: 30 penalty units.

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

### 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
  - (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) is guilty of an offence.

**Part 4** Protection against discrimination because of defence service

**Division 2** Discrimination in employment

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Maximum penalty: 30 penalty units.

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

**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) is guilty of an offence.

Maximum penalty: 30 penalty units.

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

**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) is guilty of an offence.

Maximum penalty: 30 penalty units.

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

**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) is guilty of an offence.

Maximum penalty: 30 penalty units.

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

## **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) is guilty of an offence.

Maximum penalty: 30 penalty units.

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

### **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.
- (2) A person who contravenes subsection (1) is guilty of an offence.

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Maximum penalty: 30 penalty units.

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

## **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) is guilty of an offence.

Maximum penalty: 30 penalty units.

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

### **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) is guilty of an offence.

Maximum penalty: 30 penalty units.

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

## **Part 5—Employment protection**

### **Division 1—Overview of Part**

#### **24 Overview of Part**

- (1) This Part applies in relation to all kinds of defence service except for certain kinds of voluntary continuous full time service (see Part 3).
- (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.



## **Division 2—Leave 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, or other arrangement, 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.

## **Division 3—Effect of defence service on contract of employment**

### **26 Contract suspended (rather than terminated)**

- (1) If a member was employed before starting to render defence service, the contract of employment is not terminated (or taken to be terminated) because of the member's failure to perform his or her duties under the contract while absent on defence service.
- (2) Instead, the contract is suspended while the member is absent on defence service, unless terminated earlier in accordance with law.
- (3) A period during which a contract of employment is suspended is taken not to be a period of employment under the contract unless this Part provides otherwise.
- (4) Subsection (1) does not prevent the termination of the contract if the member does not apply to resume employment under the contract within 30 days after ceasing to render defence service.

### **27 Applying to resume employment after defence service**

- (1) A member whose contract of employment is suspended under section 26 may apply to the employer to resume work under the contract. 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 within 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 re-employ member**

- (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 he or she started to render 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.

## **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 to which this Part applies.

Note: Part 3 sets out which kinds of defence service this Part applies to.

- (2) The entitlements in relation to the member's employment in respect of the period of the 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.

### **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 suspended contract of employment 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 suspended contract of employment 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 except for certain kinds of voluntary continuous full time service (see Part 3).
- (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 continuous full time defence service except for certain kinds of voluntary continuous full time service (see Part 3).
- (2) Essentially, the Part allows a member to re-enrol in, and resume, a course that was interrupted because the member was required to render defence service or voluntarily undertook defence service.

### **38 Member enrolled in course while rendering defence service**

This Part applies 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.

### **39 Obligations of body administering education institution**

- (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

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- (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.

## **Part 8—Financial liability protection**

### **Division 1—Overview**

#### **40 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, 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 member's call out day.
- (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**

### **41 Financial liabilities that arise before call out day**

- (1) This Part applies to a liability of a member or of his or her dependant that arose before the member's call out day to make a payment under one or more 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.

In this Part, they are called ***agreements***.

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

### **42 Option exercised on or after call out day**

- (1) This Part also applies to a liability of a member or of his or her dependant to make a payment under an agreement if:
  - (a) the member or dependant had an option to buy or lease something (including land) that was granted before the member's call out day; and
  - (b) on exercising the option under the agreement on or after that day, the member or dependant became liable to make the payment.

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

### **43 Rates etc. on land**

- (1) This Part also applies to the liability of a member or of his or her dependant to pay rates, or other taxes imposed in respect of land, if:
  - (a) the liability arose before the member's call out day; or

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- (b) in a case covered by section 42—the liability arises on or after the day on which the option to buy or lease the land was exercised.
- (2) Subsection (1) does not apply to the goods and services tax.
- (3) 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 of a member or his or her dependant to make a payment under an agreement if, before the member's call out day, a court orders that a party to the agreement may exercise all or any of its remedies to enforce any security under the agreement (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 an agreement 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.
- (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 an agreement 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.

##### *Single payment*

- (2) If:
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- (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 an agreement 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.

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- (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 an agreement**

- (1) Interest is payable by the member or dependant on a payment under an agreement 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 agreement concerned before the interest falls due; or
  - (b) if no rate of interest is specified in the agreement—the rate worked out in accordance with the regulations as in force at the start of the member's call out day.
- (4) The interest is payable after the start of the postponement:
  - (a) at the times specified in the agreement 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.

**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 member's call out day.
- (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:

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- (a) if the liability arose under an agreement—the terms and conditions of the agreement; 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 an agreement 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 member's call out day; or
- (b) if the security is land—the security holder has appointed or appoints a receiver who, at the member's call out day, 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 member's call out day not affected**

This Part does not prevent or alter the effect of:

- (a) any instrument concerning an agreement to which this Part applies that is made on or after the call out day 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 an agreement, 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).

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**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 and the member's protected period.

## **Part 9—Bankruptcy protection**

### **62 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 protects members from bankruptcy proceedings while the member is rendering defence service following a call out.

### **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 member's call out day for 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

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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 after being called out 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.

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

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- (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 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).
- (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 3 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) If a person is found guilty of an offence against this Act in relation to another person, the court may (whether or not it imposes a penalty) order the guilty 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:

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- (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.

### *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.

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- (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.

## Part 12—Other matters

### 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.
- (2) However, this Act does not confer any criminal jurisdiction on the Federal 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
  - (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.



**79 Delegation**

A service chief 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*) in that service.

**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) In particular, the regulations may prescribe penalties not exceeding a fine of 10 penalty units for offences against the regulations.

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

(178/00)