

2016-2017-2018

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Defence Amendment (Call Out of the
Australian Defence Force) Bill 2018**

No. , 2018

(Attorney-General)

**A Bill for an Act to amend the *Defence Act 1903*,
and for related purposes**

Contents

1	Short title.....	1
2	Commencement.....	1
3	Schedules.....	2
Schedule 1—Amendments		3
Part 1—Amendments		3
<i>Defence Act 1903</i>		3
<i>Defence Reserve Service (Protection) Act 2001</i>		58
Part 2—Application of amendments		59

A Bill for an Act to amend the *Defence Act 1903*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act is the *Defence Amendment (Call Out of the Australian Defence Force) Act 2018*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments

Part 1—Amendments

Defence Act 1903

1 Subsection 4(1) (definition of *call out order*)

Repeal the definition, substitute:

call out order:

- (a) in Division 3 of Part III—has the meaning given by subsection 28(1); and
- (b) in Part IIIAAA—has the meaning given by section 31.

2 Part IIIAAA

Repeal the Part, substitute:

Part IIIAAA—Calling out the Defence Force to protect Commonwealth interests, States and self-governing Territories

Division 1—Introduction

30 Simplified outline of this Part

The Defence Force can be called out under a call out order made under this Part. A call out order is made by the Governor-General if the Prime Minister, the Minister and the Attorney-General (who are called the authorising Ministers) are satisfied of various matters.

There are 2 general kinds of call out orders: Commonwealth interests orders and State protection orders. For both kinds of call out orders, the Defence Force can be called out immediately or, under a contingent call out order, if specified circumstances arise.

Under a Commonwealth interests order, the Defence Force is called out to protect Commonwealth interests in Australia or the Australian offshore area. The order might apply in a State or Territory, or in the Australian offshore area, or in more than one of those places. Each State or self-governing Territory in which domestic violence is occurring, or is likely to occur, must generally be consulted before the Governor-General makes a Commonwealth interests order.

A State or self-governing Territory can apply for a State protection order to protect the State or Territory from domestic violence.

A power under a call out order may be exercised in a State or Territory either because the State or Territory is specified in the order or because the power is exercised in the State or Territory for a purpose specified in the order.

As far as reasonably practicable, the Chief of the Defence Force must assist, and cooperate with, the police force of a State or Territory that is affected by a call out of the Defence Force.

Members of the Defence Force can exercise certain powers if the Defence Force is called out under a call out order. There are 3 categories of powers:

- (a) powers that generally can be exercised only if authorised by an authorising Minister; and
- (b) powers that can be exercised in an area that has been declared by the authorising Ministers; and
- (c) powers for protecting infrastructure that has been declared by the authorising Ministers.

Expedited call out orders, specified area declarations and infrastructure declarations can be made by the authorising Ministers or other Ministers in sudden and extraordinary emergencies.

Call out orders, specified area declarations and infrastructure declarations are all provided to the Presiding Officers for tabling in each House of the Parliament.

An independent review of this Part is to be commenced at least every 5 years. The operation, effectiveness and implications of this Part can also be reviewed on the initiative of the Independent National Security Legislation Monitor under the *Independent National Security Legislation Monitor Act 2010*.

31 Definitions

In this Part:

Australian offshore area means:

- (a) Australian waters; or
 - (b) the exclusive economic zone adjacent to the coast of Australia; or
 - (c) the sea over the continental shelf of Australia;
- and includes the airspace over an area covered by paragraph (a), (b) or (c).

Note: The exclusive economic zone adjacent to the coast of an external Territory, and the sea over the continental shelf of an external Territory, are part of the Australian offshore area (see the definition of ***Australia*** in section 4).

Australian waters means:

- (a) the territorial sea of Australia; or
- (b) the waters of the sea on the landward side of the territorial sea of Australia;

but does not include the internal waters of a State or self-governing Territory.

Note: The territorial sea of an external Territory, and the waters of the sea on the landward side of the territorial sea of an external Territory, are part of Australian waters (see the definition of ***Australia*** in section 4).

authorised Defence officer means:

- (a) an officer; or
- (b) an officer in a class of officers;

authorised, by the Chief of the Defence Force under subsection 51A(6), to be an authorised Defence officer.

authorising Ministers means the Prime Minister, the Minister and the Attorney-General.

call out order means an order made under section 33, 34, 35 or 36.

Commonwealth interests order means a call out order made under section 33 or 34.

contingent call out order means a call out order made under section 34 or 36.

criminal act means an act or omission that would, if done or omitted to be done in the Jervis Bay Territory, contravene the substantive criminal law of the Jervis Bay Territory.

declared infrastructure means infrastructure, or a part of infrastructure, that is declared under section 51H.

domestic violence has the same meaning as in section 119 of the Constitution.

expedited order means an order made under section 51U.

expedited order or declaration means an order or declaration made under section 51U.

facility includes a fixed or floating structure or installation of any kind (but does not include a means of transport).

infrastructure includes physical facilities, supply chains, information technologies and communication networks or systems.

infrastructure declaration means a declaration made under section 51H.

internal waters of a State or self-governing Territory:

- (a) means the waters of the sea within the limits of the State or Territory; and
- (b) includes the airspace over those waters.

location includes any premises or place.

means of transport means a vehicle, vessel, aircraft, train or other means of transporting persons or goods (whether or not manned).

member of the police force, of a Territory for which the Australian Federal Police provides police services, means a member or special

member of the Australian Federal Police providing police services for the Territory.

Minister for Home Affairs means the Minister who administers the *Australian Federal Police Act 1979*.

person who may be detained, in relation to a call out order, means a person:

- (a) who is likely to pose a threat to any person's life, health or safety, or to public health or public safety; or
- (b) both:
 - (i) who has committed an offence, against a law of the Commonwealth, a State or a Territory, that is related to the domestic violence or threat specified in the call out order; and
 - (ii) whom it is necessary, as a matter of urgency, to detain.

Note: For paragraph (b), in order to detain a person, a member of the Defence Force must believe on reasonable grounds that the conditions in that paragraph have been met.

police force, of a Territory for which the Australian Federal Police provides police services, means the Australian Federal Police, to the extent that it provides police services for the Territory.

premises includes:

- (a) a place that is private property; and
- (b) in the Australian offshore area—a facility.

Presiding Officer means the President of the Senate or the Speaker of the House of Representatives.

search of a person means:

- (a) a search of the person or of things in the possession of the person that may include:
 - (i) requiring the person to remove the person's overcoat, coat or jacket and any gloves, shoes and hat; and
 - (ii) an examination of those items; or
- (b) a search of the person conducted by quickly running the hands over the person's outer garments and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person;

but does not include:

- (c) requiring the person to remove all of the person's garments;
or
- (d) an examination of the person's body cavities.

search authorisation has the meaning given by subsection 51A(1).

self-governing Territory means:

- (a) the Australian Capital Territory; or
- (b) the Northern Territory and its internal waters.

specified area means an area that is declared to be a specified area in a declaration that is in force under section 51.

specified area declaration means a declaration in force under section 51.

State includes the internal waters of the State.

State protection order means a call out order made under section 35 or 36.

substantive criminal law means law (including unwritten law):

- (a) creating offences or imposing criminal liability for offences;
or
- (b) dealing with capacity to incur criminal liability; or
- (c) providing a defence or providing for the reduction of the degree of criminal liability; or
- (d) providing for the confiscation of property used in, or derived from, the commission of an offence; or
- (e) dealing with other subjects declared by the regulations to be within the ambit of the substantive criminal law of the Jervis Bay Territory; or
- (f) providing for the interpretation of laws of the kinds mentioned above.

thing includes any means of transport.

thing that may be seized, in relation to a call out order, means a thing that:

- (a) is likely to pose a threat to any person's life, health or safety, or to public health or public safety; or
- (b) is likely to cause serious damage to property; or
- (c) is connected with the domestic violence or threat specified in the call out order, and that it is necessary, as a matter of urgency, to seize.

utilised under a call out order: the Defence Force, or a member of the Defence Force, is **utilised** under a call out order if the Defence Force or member is utilised under section 39.

vessel means:

- (a) a ship, boat, raft, pontoon or submersible craft; or
 - (b) any other thing capable of carrying persons or goods through or on water;
- (whether or not crewed) and includes a hovercraft and other non-displacement craft.

Division 2—Calling out the Defence Force

Subdivision A—Simplified outline of this Division

32 Simplified outline of this Division

A call out order is made by the Governor-General if the Prime Minister, the Minister and the Attorney-General (who are called the authorising Ministers) are satisfied of various matters.

There are 2 general kinds of call out orders: Commonwealth interests orders and State protection orders. For both kinds of call out orders, the Defence Force can be called out immediately or, under a contingent call out order, if specified circumstances arise.

Under a Commonwealth interests order, the Defence Force is called out to protect Commonwealth interests in Australia or the Australian offshore area. The order might apply in a State or Territory, or in the Australian offshore area, or in more than one of those places. Each State or self-governing Territory in which domestic violence is occurring, or is likely to, would or would be

likely to occur, must generally be consulted before the Governor-General makes a Commonwealth interests order.

A State or self-governing Territory can apply for a State protection order to protect the State or Territory from domestic violence.

A power under a call out order may be exercised in a State or Territory either because the State or Territory is specified in the order or because the power is exercised in the State or Territory for a purpose specified in the order.

As far as reasonably practicable, the Chief of the Defence Force must assist, and cooperate with the police force of, a State or Territory that is affected by a call out of the Defence Force.

Subdivision B—Making call out orders

33 Calling out the Defence Force to protect Commonwealth interests

Conditions for making order

- (1) The Governor-General may make an order under subsection (3) if the authorising Ministers are satisfied that:
 - (a) any of the following applies:
 - (i) domestic violence that would, or would be likely to, affect Commonwealth interests is occurring or is likely to occur in Australia;
 - (ii) there is a threat in the Australian offshore area to Commonwealth interests (whether those interests are in that area or elsewhere);
 - (iii) domestic violence that would, or would be likely to, affect Commonwealth interests is occurring or is likely to occur in Australia, and there is a threat in the Australian offshore area to those or any other Commonwealth interests; and
 - (b) the Defence Force should be called out and the Chief of the Defence Force should be directed to utilise the Defence Force to protect the Commonwealth interests against the domestic violence or threat, or both; and

(c) one or more of Divisions 3, 4 and 5 should apply in relation to the order.

Note 1: See section 38 if domestic violence is occurring or is likely to occur in a State or self-governing Territory that does not request a call out order.

Note 2: An expedited order may be made by one or more Ministers in sudden and extraordinary emergencies (see Division 7).

(2) In determining whether the authorising Ministers are satisfied as mentioned in paragraph (1)(b) in relation to domestic violence that is occurring or is likely to occur in one or more States or self-governing Territories, the authorising Ministers:

(a) must consider:

- (i) the nature of the domestic violence; and
- (ii) whether the utilisation of the Defence Force would be likely to enhance the ability of each of those States and Territories to protect the Commonwealth interests against the domestic violence; and

(b) may consider any other matter that the authorising Ministers consider is relevant.

Power of Governor-General to make order

(3) The Governor-General may, by written order, call out the Defence Force and direct the Chief of the Defence Force to utilise the Defence Force to protect the Commonwealth interests against the domestic violence or threat, or both.

Note: For additional rules in relation to making, varying and revoking call out orders, see section 37.

(4) However, the Reserves must not be called out or utilised in connection with an industrial dispute.

Content of order

(5) The order must:

(a) state that it is made under this section; and

(b) specify:

- (i) the domestic violence or threat, or both; and
- (ii) the Commonwealth interests; and

- (iii) for domestic violence occurring or likely to occur in one or more States or self-governing Territories—each of those States and Territories; and
- (c) state which of Divisions 3, 4 and 5 apply in relation to the order; and
- (d) state that the order:
 - (i) comes into force when it is made; and
 - (ii) ceases to be in force at the end of a specified period (which must not end more than 20 days after it is made), unless it is revoked earlier.

When order is in force

- (6) The order is in force as stated in accordance with paragraph (5)(d).

Note: The order can be extended under section 37.

34 Contingent call out of the Defence Force to protect Commonwealth interests

Conditions for making order

- (1) The Governor-General may make an order under subsection (3) if the authorising Ministers are satisfied that:
 - (a) if specified circumstances were to arise:
 - (i) domestic violence that would, or would be likely to, affect Commonwealth interests would occur, or would be likely to occur, in Australia; or
 - (ii) there would be, or it is likely there would be, a threat in the Australian offshore area to Commonwealth interests (whether those interests are in that area or elsewhere); or
 - (iii) domestic violence that would, or would be likely to, affect Commonwealth interests would occur, or would be likely to occur, in Australia and there would be, or it is likely there would be, a threat in the Australian offshore area to those or any other Commonwealth interests; and
 - (b) if the specified circumstances were to arise, for reasons of urgency, it would be impracticable for a Commonwealth interests order to be made under section 33; and

- (c) if the circumstances arise, the Defence Force should be called out and the Chief of the Defence Force should be directed to utilise the Defence Force to protect the Commonwealth interests against the violence or threat, or both; and
- (d) if the circumstances arise, one or more of Divisions 3, 4 and 5 should apply in relation to the order.

Note 1: See section 38 if domestic violence would occur, or would be likely to occur, in a State or self-governing Territory that does not request a call out order.

Note 2: An expedited order may be made by one or more Ministers in sudden and extraordinary emergencies (see Division 7).

- (2) In determining whether the authorising Ministers are satisfied as mentioned in paragraph (1)(c) in relation to domestic violence that would occur, or would be likely to occur, in one or more States or self-governing Territories if specified circumstances were to arise, the authorising Ministers:
 - (a) must consider:
 - (i) the nature of the domestic violence; and
 - (ii) whether the utilisation of the Defence Force would be likely to enhance the ability of each of those States and Territories to protect the Commonwealth interests against the domestic violence; and
 - (b) may consider any other matter that the authorising Ministers consider is relevant.

Power of Governor-General to make order

- (3) The Governor-General may, by written order, specify that, if the specified circumstances arise:
 - (a) the Defence Force is called out; and
 - (b) the Chief of the Defence Force is directed to utilise the Defence Force to protect the Commonwealth interests against the domestic violence or threat, or both.

Note: For additional rules in relation to making, varying and revoking call out orders, see section 37.

- (4) However, the Reserves must not be called out or utilised in connection with an industrial dispute.

Content of order

- (5) The order must:
- (a) state that it is made under this section; and
 - (b) specify:
 - (i) the circumstances to which the order relates; and
 - (ii) the domestic violence or threat, or both; and
 - (iii) the Commonwealth interests; and
 - (iv) for domestic violence that would, or would be likely to, occur in one or more States or self-governing Territories—each of those States and Territories; and
 - (c) state which of Divisions 3, 4 and 5 apply in relation to the order; and
 - (d) state that the order:
 - (i) comes into force when it is made; and
 - (ii) ceases to be in force at the end of a specified period, unless it is revoked earlier.

When order is in force

- (6) The order is in force as stated in accordance with paragraph (5)(d).

Note: The order can be extended under section 37.

35 Calling out the Defence Force to protect States and Territories

Conditions for making order

- (1) The Governor-General may make an order under subsection (3) if:
- (a) a State Government or Government of a self-governing Territory applies to the Commonwealth Government to protect the State or Territory against domestic violence that is occurring, or is likely to occur, in the State or Territory; and
 - (b) the authorising Ministers are satisfied that:
 - (i) the Defence Force should be called out and the Chief of the Defence Force should be directed to utilise the Defence Force to protect the State or Territory against the domestic violence; and
 - (ii) one or more of Divisions 3, 4 and 5 should apply in relation to the order.

Note: An expedited order may be made by one or more Ministers in sudden and extraordinary emergencies (see Division 7).

- (2) In determining whether the authorising Ministers are satisfied as mentioned in subparagraph (1)(b)(i) in relation to domestic violence that is occurring, or is likely to occur, in the State or self-governing Territory, the authorising Ministers:
- (a) must consider:
 - (i) the nature of the domestic violence; and
 - (ii) whether the utilisation of the Defence Force would be likely to enhance the ability of the State or Territory to protect the State or Territory against the domestic violence; and
 - (b) may consider any other matter that the authorising Ministers consider is relevant.

Power of Governor-General to make order

- (3) The Governor-General may, by written order, call out the Defence Force and direct the Chief of the Defence Force to utilise the Defence Force to protect the State or Territory against the domestic violence.

Note: For additional rules in relation to making, varying and revoking call out orders, see section 37.

- (4) However, the Reserves must not be called out or utilised in connection with an industrial dispute.

Content of order

- (5) The order must:
- (a) state that it is made under this section; and
 - (b) specify:
 - (i) the domestic violence; and
 - (ii) the State or Territory; and
 - (c) state which of Divisions 3, 4 and 5 apply in relation to the order; and
 - (d) state that the order:
 - (i) comes into force when it is made; and

- (ii) ceases to be in force at the end of a specified period (which must not end more than 20 days after it is made), unless it is revoked earlier.

When order is in force

- (6) The order is in force as stated in accordance with paragraph (5)(d).

Note: The order can be extended under section 37.

36 Contingent call out of the Defence Force to protect States and Territories

Conditions for making order

- (1) The Governor-General may make an order under subsection (3) if:
 - (a) a State Government or Government of a self-governing Territory applies to the Commonwealth Government to protect the State or Territory against domestic violence that would occur, or would be likely to occur, in the State or Territory if specified circumstances were to arise; and
 - (b) the authorising Ministers are satisfied that, if the specified circumstances were to arise, for reasons of urgency, it would be impracticable for a State protection order to be made under section 35; and
 - (c) the authorising Ministers are satisfied that, if the specified circumstances arise:
 - (i) the Defence Force should be called out and the Chief of the Defence Force should be directed to utilise the Defence Force to protect the State or Territory against the domestic violence; and
 - (ii) one or more of Divisions 3, 4 and 5 should apply in relation to the order.

Note: An expedited order may be made by one or more Ministers in sudden and extraordinary emergencies (see Division 7).

- (2) In determining whether the authorising Ministers are satisfied as mentioned in subparagraph (1)(c)(i) in relation to domestic violence that would occur, or would be likely to occur, in the State or self-governing Territory if specified circumstances were to arise, the authorising Ministers:

- (a) must consider:
 - (i) the nature of the domestic violence; and
 - (ii) whether the utilisation of the Defence Force would be likely to enhance the ability of the State or Territory to protect the State or Territory against the domestic violence; and
- (b) may consider any other matter that the authorising Ministers consider is relevant.

Power of Governor-General to make order

- (3) The Governor-General may, by written order, specify that, if the specified circumstances arise:
 - (a) the Defence Force is called out; and
 - (b) the Chief of the Defence Force is directed to utilise the Defence Force to protect the State or Territory against the domestic violence.

Note: For additional rules in relation to making, varying and revoking call out orders, see section 37.

- (4) However, the Reserves must not be called out or utilised in connection with an industrial dispute.

Content of order

- (5) The order must:
 - (a) state that it is made under this section; and
 - (b) specify:
 - (i) the circumstances to which the order relates; and
 - (ii) the domestic violence; and
 - (iii) the State or Territory; and
 - (c) state which of Divisions 3, 4 and 5 apply in relation to the order; and
 - (d) state that the order:
 - (i) comes into force when it is made; and
 - (ii) ceases to be in force at the end of the period specified in the order, unless it is revoked earlier.

When order is in force

- (6) The order is in force as stated in accordance with paragraph (5)(d).

Note: The order can be extended under section 37.

Subdivision C—Common provisions for making, varying and revoking call out orders

37 Making, varying and revoking call out orders

Variation of order

- (1) The Governor-General may, in writing, vary a call out order if:
- (a) the authorising Ministers are still satisfied as mentioned in subsection 33(1), 34(1), 35(1) or 36(1) (as the case requires); and
 - (b) the order, as varied, complies (subject to subsection (2)) with the following provisions (as the case requires):
 - (i) subsections 33(3) to (5);
 - (ii) subsections 34(3) to (5);
 - (iii) subsections 35(3) to (5);
 - (iv) subsections 36(3) to (5); and
 - (c) for a State protection order—the State or Territory that applied for the order requests the variation.

Note: See section 38 if a Commonwealth interests order specifies a State or self-governing Territory that does not request a variation.

- (2) The Governor-General may vary a call out order to extend the period during which the order is in force. However, a period that is varied in an order under section 33 or 35 must not end more than 20 days after the variation takes effect.

Note: Sections 33 and 35 allow the Defence Force to be called out immediately.

Revocation of order

- (3) The Governor-General must, in writing, revoke a call out order if:
- (a) one or more authorising Ministers cease to be satisfied as mentioned in subsection 33(1), 34(1), 35(1) or 36(1) (as the case requires); or

- (b) for a State protection order—the State Government or Government of the self-governing Territory withdraws its application to the Commonwealth Government for the call out order.

When variation or revocation takes effect

- (4) A variation or revocation of a call out order takes effect when the order is varied or revoked.

Advice to Governor-General

- (5) In making, varying or revoking a call out order, the Governor-General is to act with the advice of:
 - (a) the Executive Council; or
 - (b) without limiting paragraphs 16A(a) and (b) of the *Acts Interpretation Act 1901*, if, despite paragraph (a), an authorising Minister is satisfied that, for reasons of urgency, the Governor-General should act with the advice of the authorising Minister—the authorising Minister.

Effect of revocation of call out order etc.

- (6) To avoid doubt, if a call out order is revoked or ceases to be in force:
 - (a) the call out of the Defence Force under the order ends; and
 - (b) the Chief of the Defence Force must cease utilising the Defence Force under section 39.

Notice to State or self-governing Territory

- (7) As soon as reasonably practicable after making, varying or revoking a Commonwealth interests order that specifies a State or self-governing Territory, an authorising Minister must arrange for the Government of the State or Territory to be notified of the making, variation or revocation of the order. However, a failure to do so does not affect the validity of the making, variation or revocation of the order.

Further orders

- (8) The fact that a call out order has been made does not prevent further call out orders being made in relation to the same matter.

38 Commonwealth interests orders or variations that were not requested by a State or Territory

- (1) The Governor-General may make or vary a Commonwealth interests order in relation to domestic violence whether or not any State or self-governing Territory in which the domestic violence is occurring, is likely to occur, would occur, or would be likely to occur, requests the order or variation (as the case requires).
- (2) However, if any Government of those States or Territories does not request the order or variation, an authorising Minister must (subject to subsection (3)) consult that Government about the order or variation before the Governor-General makes or varies the order.

Note: An authorising Minister is not required to consult in relation to an expedited call out order (see subsection 51V(6)).

- (3) Subsection (2) does not apply to a Commonwealth interests order made under section 33 if the authorising Ministers are satisfied that, for reasons of urgency, it is impracticable to comply with that subsection.

Subdivision D—Effect of making call out order

39 Chief of Defence Force to utilise Defence Force as directed

- (1) The Chief of the Defence Force must comply with this section if:
- (a) the Governor-General makes a call out order; and
 - (b) for a contingent call out order—the circumstances specified in the order arise.
- (2) The Chief of the Defence Force must utilise the Defence Force (subject to subsection (3) and section 40), in such manner as is reasonable and necessary, for the purpose specified in the order under subsection 33(3), 34(3), 35(3) or 36(3).

Note: Section 40 requires the Chief of the Defence Force to assist and cooperate with the police forces of affected States and Territories.

Limitations on power

- (3) In doing so, the Chief of the Defence Force:
 - (a) must (subject to paragraph (b)) comply with any direction that the Minister gives from time to time as to the way in which the Defence Force is to be utilised; and
 - (b) must not stop or restrict any protest, dissent, assembly or industrial action, except if there is a reasonable likelihood of:
 - (i) the death of, or serious injury to, persons; or
 - (ii) serious damage to property.

40 Assisting and cooperating with police forces of affected States and Territories

- (1) In utilising the Defence Force under a call out order (except in the Australian offshore area), the Chief of the Defence Force must, as far as is reasonably practicable, ensure that:
 - (a) the Defence Force:
 - (i) is utilised to assist any State or Territory specified in the order, and any other State or Territory in which powers under this Part may be exercised in accordance with section 44 or 51K or subsection 51(5); and
 - (ii) cooperates with the police force of those States and Territories; and
 - (b) the Defence Force is not utilised for any particular task in any of those States and Territories (except in relation to airborne aircraft) unless a member of the police force of that State or Territory requests that the Defence Force be so utilised.
- (2) A request under paragraph (1)(b) must, if reasonably practicable, be in writing.
- (3) Subsection (1) does not require or permit the Chief of the Defence Force to transfer to any extent command of the Defence Force to a State or Territory, or to a police force or member of the police force of that State or Territory.
- (4) Subsection (1) is subject to subsection 39(3).

Note: Subsection 39(3) requires the Chief of the Defence Force to comply with Ministerial directions and generally not stop or restrict protests etc.

Division 3—Special powers generally authorised by Minister

Subdivision A—Introduction

41 Simplified outline of this Division

This Part confers powers on members of the Defence Force if the Defence Force is being utilised under a call out order that specifies that this Division applies. Generally, the powers must be authorised by an authorising Minister. The powers can be exercised without Ministerial authorisation in sudden and extraordinary emergencies.

The powers in this Division can also be exercised in an area specified under Division 4. If a particular power can be exercised both under this Division and Division 4, the power is taken to be exercised under this Division (so that any rules under Division 4 that would otherwise apply to the power do not apply).

A power exercised under this Division for the purposes of a call out order can be exercised in a State or Territory that is not specified in the order if the exercise of the power is for the purpose specified in the order.

Division 6 allows members of the Defence Force exercising powers under this Division to use reasonable and necessary force. Division 6 also:

- (a) confers powers and imposes obligations if persons are detained or things are seized; and
- (b) contains an offence for failing to comply with a direction; and
- (c) deals with the consequences of the exercise of powers by members of the Defence Force if obligations imposed in relation to the exercise of those powers have not been

met or if call out orders and other instruments have not been validly made.

42 Application of this Division

This Division applies if a call out order states that this Division applies in relation to the order.

Note: The powers under this Division must generally be authorised by a Minister (see subsection 46(1)).

43 Powers that may be exercised under this Division and Division 4

- (1) To avoid doubt, a power under this Division may be exercised in an area specified under Division 4.
- (2) If a power may be exercised under this Division, and under Division 4, the power is taken, for the purposes of this Part, to be exercised under this Division.

Note: For example, searches may be undertaken under this Division and Division 4. Searches undertaken under Division 4 must be undertaken by a member of the Defence Force who is in uniform (see section 50). A member who may undertake a search under this Division and Division 4 is not required to wear a uniform.

44 Location of exercise of powers

- (1) A power may be exercised in a State or self-governing Territory under this Division in relation to a call out order if:
 - (a) the exercise of the power in that State or Territory is authorised by the order; or
 - (b) the power is exercised for the purpose specified in the order under subsection 33(3), 34(3), 35(3) or 36(3).

Note: For example, powers might be exercised in a State because:

- (a) the State is specified in the order; or
- (b) the powers are exercised in a State that is not specified in the order for the purpose of protecting a State that is specified in the order against domestic violence that is occurring in that State; or
- (c) the powers are exercised in a State that is not specified in the order for the purpose of protecting Commonwealth interests in the Australian offshore area, as specified in the order.

- (2) A power must not be exercised under this Division outside the Australian offshore area.

45 International obligations

In giving an authorisation under Subdivision B in relation to an action or power that is to be, or may be, taken or exercised in the Australian offshore area, an authorising Minister must have regard to Australia's international obligations.

Subdivision B—Special powers generally authorised by Minister

46 Special powers generally authorised by Minister

When special powers may be exercised

- (1) A member of the Defence Force who is being utilised under a call out order may, under the command of the Chief of the Defence Force, take an action under subsection (5), or exercise a power under subsection (7) or (9) in relation to taking such an action, if:
- (a) an authorising Minister has authorised in writing taking the action; or
 - (b) the member believes on reasonable grounds that there is insufficient time to obtain the authorisation because a sudden and extraordinary emergency exists.

Note: An authorisation for the purposes of paragraph (1)(a) that relates to an expedited order is not required to be in writing (see section 51W).

- (2) An authorising Minister may, under paragraph (1)(a), authorise taking an action in relation to a contingent call out order even if the circumstances specified in the order have not yet arisen.
- (3) An authorising Minister must not, under paragraph (1)(a), authorise the taking of measures against an aircraft or vessel, or the giving of an order in relation to the taking of such a measure, under paragraph (5)(d) or (e) unless the Minister is satisfied that taking the measure:
- (a) is reasonable and necessary; or

- (b) for a contingent call out order—would be reasonable and necessary if the circumstances specified in the order were to arise.
- (4) Without limiting paragraph (1)(a), the taking of an action may be authorised under that paragraph in relation to:
 - (a) particular domestic violence or a particular threat specified in the call out order; or
 - (b) any domestic violence or threat specified in the call out order.

Note: For example, the taking of a particular action may be authorised for domestic violence specified in the order, while the taking of different action may be authorised for a threat specified in the order.

Taking authorised actions

- (5) The member may take any one or more of the following actions:
 - (a) capture or recapture a location (including a facility) or thing;
 - (b) prevent, or put an end to:
 - (i) acts of violence; or
 - (ii) threats to any person's life, health or safety, or to public health or public safety;
 - (c) protect any persons from:
 - (i) acts of violence; or
 - (ii) threats to any person's life, health or safety, or to public health or public safety;
 - (d) take measures (including the use of force) against an aircraft (whether or not the aircraft is airborne) or vessel, up to and including destroying the aircraft or vessel (subject to subsection (6));
 - (e) give an order relating to the taking of measures referred to in paragraph (d) of this subsection (subject to subsection (6)).
- (6) Paragraphs (5)(d) and (e) do not authorise taking a measure against an aircraft or vessel, or the giving of an order (the **member's order**) in relation to taking such a measure, unless:
 - (a) the member of the Defence Force takes the measure, or gives the member's order, under, or under the authority of, an order (the **superior's order**) of a superior; and

- (b) the member was under a legal obligation to obey the superior's order; and
- (c) the superior's order was not manifestly unlawful; and
- (d) the member has no reason to believe that circumstances have changed in a material way since the superior's order was given; and
- (e) the member has no reason to believe that the superior's order was based on a mistake as to a material fact; and
- (f) taking the measure, or giving the member's order, was reasonable and necessary to give effect to the superior's order.

Additional powers

- (7) The member may, in connection with taking any action mentioned in subsection (5), do any one or more of the following:
 - (a) free any hostage from a location (including a facility) or thing;
 - (b) control the movement of persons or of means of transport;
 - (c) evacuate persons to a place of safety;
 - (d) search persons, locations or things for things that may be seized, or persons who may be detained, in relation to the call out order;
 - (e) seize any thing found in the search that the member believes on reasonable grounds is a thing that may be seized in relation to the call out order;
 - (f) detain any person found in the search that the member believes on reasonable grounds is a person who may be detained in relation to the call out order for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time;
 - (g) provide security (whether or not armed, and whether or not with a police force) including by patrolling or securing an area or conducting cordon operations;
 - (h) direct a person to answer a question put by the member, or to produce to the member a particular document that is readily accessible to the person, (including by requiring the person to provide identification to the member);

- (i) operate, or direct a person to operate, a facility, machinery or equipment (including electronic equipment) in a particular manner (whether or not the facility, machinery or equipment is on a facility or means of transport).

Note 1: For the definitions of *person who may be detained*, *search* and *thing that may be seized*, see section 31.

Note 2: See also sections 51P (persons to be informed of certain matters if detained), 51Q (actions to be taken if things seized) and 51R (offence for failing to comply with a direction).

- (8) A member who controls the movement of persons or of means of transport under paragraph (7)(b) must not do so for longer than is reasonable and necessary in the circumstances.

Incidental powers

- (9) The member may do anything incidental to anything in subsection (5) or (7), including enter any place or premises or board an aircraft or vessel.

Powers do not limit each other

- (10) To avoid doubt, no paragraph of subsection (5) or (7) limits the operation of any other paragraph of either of those subsections.

Division 4—Powers exercised in specified areas

Subdivision A—Introduction

47 Simplified outline of this Division

This Division confers powers on members of the Defence Force if the Defence Force is being utilised under a call out order that specifies that this Division applies. The powers are to be exercised in a specified area which may be in Australia or the Australian offshore area. The authorising Ministers specify the area in a specified area declaration.

An expedited specified area declaration can be made under Division 7 in sudden and extraordinary emergencies.

Uniforms must be worn by members of the Defence Force when exercising powers under this Division.

The powers under this Division are:

- (a) the power to search premises in the specified area; and
- (b) powers relating to means of transport in the specified area; and
- (c) powers relating to persons in the specified area.

If a call out order specifies that this Division and Division 3 apply in relation to the order, the powers under Division 3 can be exercised in the specified area. If a particular power can be exercised both under this Division and Division 3, the power is taken to be exercised under Division 3 (so that any rules under this Division that would otherwise apply to the power do not apply).

Division 6 allows members of the Defence Force exercising powers under this Division to use reasonable and necessary force. Division 6 also:

- (a) confers powers and imposes obligations if persons are detained or things are seized; and
- (b) contains an offence for failing to comply with a direction; and
- (c) deals with the consequences of the exercise of powers by members of the Defence Force if obligations imposed in relation to the exercise of those powers have not been met or if call out orders and other instruments have not been validly made.

48 Application of this Division

This Division applies if a call out order states that this Division applies in relation to the order.

49 International obligations

In making a specified area declaration under Subdivision B in relation to the Australian offshore area, the authorising Ministers must have regard to Australia's international obligations.

50 Members to wear uniforms and identification when exercising powers

- (1) A person commits an offence if:
- (a) the person is a member of the Defence Force; and
 - (b) the person is exercising powers under this Division, or under Division 6 (provisions common to Divisions 3 to 5) in its operation in relation to this Division; and
 - (c) the person does not, at all times while exercising those powers:
 - (i) wear the person's uniform; and
 - (ii) have the person's surname, the person's numbers, or the person's combination of numbers and letters of the alphabet, on or attached to the uniform in a place that is visible.

Penalty: 30 penalty units.

Exception

- (2) Subsection (1) does not apply if:
- (a) the contravention by the person occurs because of an act of another person (not being a member of the Defence force) done without the consent of the person; or
 - (b) the power is taken not to be exercised under this Division because of section 43 (powers that may be exercised under Divisions 3 and 4).

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Members to be given means to comply with obligations

- (3) The Chief of the Defence Force must take such steps as are reasonable and necessary to ensure that members do not contravene subsection (1).

Geographical application

- (4) Section 15.2 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against

subsection (1) to the extent that this section applies in relation to the Australian offshore area.

Subdivision B—Declaration of specified area

51 Declaration of specified area

- (1) The authorising Ministers may, in writing, declare an area to be a specified area, in relation to a call out order, if the area is either or both of the following:
- (a) a part of a State or Territory that is specified in the call out order;
 - (b) if the call out order specifies a threat in the Australian offshore area—a part of the Australian offshore area.

Note 1: An expedited declaration may be made by one or more other Ministers in sudden and extraordinary emergencies (see Division 7).

Note 2: A specified area declaration may be varied or revoked in accordance with subsections 33(3) and (3AA) of the *Acts Interpretation Act 1901*.

- (2) To avoid doubt, a declaration may be made under subsection (1) in relation to a contingent call out order whether or not the circumstances specified in the call out order have arisen.
- (3) A declaration made under subsection (1):
- (a) comes into force when it is made; and
 - (b) ceases to be in force if:
 - (i) it is revoked; or
 - (ii) the call out order to which it relates ceases to be in force.

Declaration of areas in the Australian offshore area and internal waters

- (4) Without limiting subsection (1), an area in the Australian offshore area or the internal waters of a State or self-governing Territory may be specified by referring to an area:
- (a) that surrounds one or more vessels or classes of vessels; and
 - (b) whose boundaries change as the location of the vessels change.

- (5) The area specified under subsection (4) in relation to a vessel whose location changes:
- (a) may move from the internal waters of a State or self-governing Territory that is specified in the call out order to the internal waters of another State or self-governing Territory if the vessel so moves; and
 - (b) may move from the internal waters of a State or self-governing Territory to the Australian offshore area if the vessel so moves; and
 - (c) may move from the Australian offshore area to the internal waters of a State or Territory if the vessel so moves.

However, the area does not move beyond the Australian offshore area, even if the vessel so moves.

Statement to be prepared

- (6) If a specified area declaration is made, the authorising Ministers must arrange for the preparation of a statement that:
- (a) summarises the content of the call out order to which the declaration relates, but without including any reference to whether Division 3 applies in relation to the order; and
 - (b) states that the declaration has been made; and
 - (c) describes the specified area and its boundaries.
- (7) The statement must:
- (a) except in the Australian offshore area—be broadcast or otherwise made public by television, radio or electronic means so as to be capable of being received within the specified area; and
 - (b) in the Australian offshore area—be notified to persons in the Australian offshore area to the extent practicable; and
 - (c) in any case—be forwarded, within 24 hours after the declaration is made, to the Presiding Officer of each House of the Parliament for tabling in that House.
- (8) However, subsections (6) and (7) do not apply if:
- (a) the call out order states that Division 3 applies in relation to the order; and
 - (b) the authorising Ministers declare, in writing, that they are satisfied that the application of subsections (6) and (7) would

prejudice the exercise of powers under Division 3 by members of the Defence Force who are being utilised under the call out order.

Houses to sit within 6 days

- (9) Each House of the Parliament must sit within 6 days after its Presiding Officer receives the statement that is forwarded in accordance with paragraph (7)(c).

Effect of failure to publish or sit

- (10) A failure to comply with subsection (6), (7) or (9) does not affect the validity of the declaration.

Subdivision C—Powers to search premises in specified area

51A Authorisation to search premises in specified area

- (1) The Chief of the Defence Force, or an authorised Defence officer, (the **authorising officer**) may give an authorisation (a **search authorisation**) if, while the Defence Force is being utilised under a call out order, the authorising officer believes on reasonable grounds that, on any premises in the specified area, there is:
- (a) a person who is likely to pose a threat to:
 - (i) any person's life, health or safety; or
 - (ii) public health or public safety; or
 - (b) a thing that is likely to:
 - (i) pose a threat to any person's life, health or safety; or
 - (ii) pose a threat to public health or public safety; or
 - (iii) cause serious damage to property; or
 - (c) a person or thing connected with the domestic violence or threat specified in the order.

Content of authorisation

- (2) The search authorisation must:
- (a) authorise any member of the Defence Force who is being utilised under the call out order to enter and search:
 - (i) all premises within the specified area; or

- (ii) specified premises within the specified area (including premises specified by referring to an area or a class of premises);
- for the purpose of:
- (iii) finding the person or thing mentioned in subsection (1);
or
 - (iv) determining that the person or thing mentioned in subsection (1) is not on those premises; and
- (b) authorise any member conducting a search under the authorisation to seize any thing found on the premises in the course of the search that the member believes on reasonable grounds to be a thing that may be seized in relation to the call out order; and
 - (c) state that, if any member conducting a search under the authorisation believes on reasonable grounds that a person who is at or near premises while the search is being carried out has any thing that may be seized in relation to the call out order in the person's possession, the member is authorised to:
 - (i) search the person; and
 - (ii) seize any thing found in the search that the member believes on reasonable grounds is a thing that may be seized in relation to the call out order; and
 - (d) state that, if the member finds a person at or near premises in the course of a search under the authorisation whom the member believes on reasonable grounds to be a person who may be detained in relation to the call out order, the member is authorised to:
 - (i) require the person to provide identification to the member; and
 - (ii) detain the person for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time; and
 - (e) state the time during which the authorisation remains in force, which must not be more than 24 hours.

Note 1: For the definitions of *person who may be detained*, *search* and *thing that may be seized*, see section 31.

Note 2: See also sections 51P (persons to be informed of certain matters if detained) and 51Q (actions to be taken if things seized).

Effect of the authorisation

- (3) The authorisation has effect according to its terms.

Further authorisations and powers

- (4) Paragraph (2)(e) does not prevent the issue of further authorisations in relation to the same premises.
- (5) To avoid doubt, a member of the Defence Force may exercise powers under Subdivision D in premises that are being searched in accordance with this section.

Authorisation of Defence officers

- (6) The Chief of the Defence Force may, in writing, authorise a specified officer, or an officer in a specified class of officers, to be an authorised Defence officer.

51B Information to be given to occupier etc. and those searched

Right of occupier to be given information

- (1) If a person who is the occupier of premises described in a search authorisation, or another person who apparently represents the occupier, is present at the premises when a search is being carried out, a member of the Defence Force must:
- (a) tell the person that the member is a member of the Defence Force; and
 - (b) give that person a document that:
 - (i) states that the search is authorised under this Division; and
 - (ii) sets out the effect of this section and section 51C (occupier etc. entitled to be present during search); and
 - (iii) states that things may be seized during the search; and
 - (iv) sets out contact details for inquiries in relation to things that are so seized.

Right of person searched to be given information

- (2) Before any person is searched in accordance with a search authorisation, a member of the Defence Force must give the person a copy of a document described in paragraph (1)(b).

51C Occupier etc. entitled to be present during search

- (1) If a person who is the occupier of premises described in a search authorisation, or another person who apparently represents the occupier, is present at the premises when a search is being carried out, the person is entitled to observe the search being carried out.

Search not to be impeded

- (2) The entitlement to observe the search being carried out ceases if the person impedes the search.

Multiple searches

- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

Subdivision D—Powers relating to means of transport and persons in specified area

51D Powers relating to means of transport and persons in specified area

- (1) This section applies if a member of the Defence Force who is being utilised under a call out order believes on reasonable grounds that there is in a specified area:
 - (a) a person who is likely to pose a threat to:
 - (i) any person's life, health or safety; or
 - (ii) public health or public safety; or
 - (b) a person who has in the person's possession a thing that is likely to:
 - (i) pose a threat to any person's life, health or safety; or
 - (ii) pose a threat to public health or public safety; or
 - (iii) cause serious damage to property; or

- (c) a person connected with the domestic violence or threat specified in the order; or
- (d) a thing that is likely to:
 - (i) pose a threat to any person's life, health or safety; or
 - (ii) pose a threat to public health or public safety; or
 - (iii) cause serious damage to property; or
- (e) a thing connected with the domestic violence or threat specified in the order.

Powers relating to any means of transport or person, and other general powers

- (2) Any member of the Defence Force who is being utilised under the call out order may do any one or more of the following:
 - (a) erect barriers or other structures, at the border of, or in any part of, the specified area;
 - (b) stop any person (including a person mentioned in subsection (1)), or means of transport, in the specified area (whether or not barriers were erected);
 - (c) direct any person:
 - (i) not to enter the specified area; or
 - (ii) to leave, or not to leave, the specified area; or
 - (iii) to move from a place in the specified area to another place in the specified area; or
 - (iv) not to move from a place in the specified area to another place in the specified area;
 - (d) direct a person in charge of any means of transport:
 - (i) not to bring the means of transport into the specified area; or
 - (ii) to take, or not to take, the means of transport out of the specified area; or
 - (iii) to take the means of transport from a place in the specified area to another place in the specified area; or
 - (iv) not to take the means of transport from a place in the specified area to any other place, or to a specified place, in the specified area;

- (e) if there is no person in charge of a means of transport that is in a specified area—take any action that is reasonable and necessary for either of the following purposes:
 - (i) taking the means of transport out of the specified area;
 - (ii) taking the means of transport from a place in the specified area to another place in the specified area;
 - (f) direct a person in charge of a means of transport not to move the means of transport within the specified area (including by bringing it into or taking it out of that area) unless the person agrees to a member searching:
 - (i) the person; and
 - (ii) the means of transport and any thing in or on the means of transport;
 - (g) direct any person not to move within the specified area (including by coming into or going out of that area) unless the person agrees to a member searching the person;
 - (h) if a person agrees to a search under paragraph (f) or (g)—conduct the search and:
 - (i) seize any thing found in the search that the member believes on reasonable grounds is a thing that may be seized in relation to the call out order; or
 - (ii) detain the person, if the member believes on reasonable grounds that the person is a person who may be detained in relation to the call out order, for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time;
 - (i) direct a person in the specified area to answer a question put by the member, or to produce to the member a particular document that is readily accessible to the person, (including by requiring the person to provide identification to the member);
 - (j) operate, or direct a person to operate, a facility, machinery or equipment (including electronic equipment) in a particular manner (whether or not the facility, machinery or equipment is on a facility or means of transport), if the member believes on reasonable grounds that doing so is reasonable and necessary for the purpose of:
 - (i) preserving the life or safety of any person in the specified area; or
-

- (ii) protecting against the threat of the person or thing mentioned in subsection (1).

Note 1: For the definitions of *person who may be detained*, *search* and *thing that may be seized*, see section 31.

Note 2: See also sections 51E (general provisions relating to section 51D), 51P (persons to be informed of certain matters if detained), 51Q (actions to be taken if things seized) and 51R (offence for failing to comply with a direction).

Search and seizure powers relating to specific means of transport

- (3) Any member of the Defence Force who is being utilised under the call out order may do any one or more of the following if the member believes on reasonable grounds that a person or thing mentioned in subsection (1) is in or on a means of transport in the specified area:
- (a) detain the means of transport;
 - (b) search the means of transport, and any thing found in or on the means of transport;
 - (c) seize any thing (including a means of transport) found in the search that the member believes on reasonable grounds is a thing that may be seized in relation to the call out order;
 - (d) detain any person found in the search who the member believes on reasonable grounds is a person who may be detained in relation to the call out order for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time.
- (4) A member who detains a means of transport under paragraph (3)(a) must not detain the means of transport for longer than is reasonable and necessary to search it and any thing found in or on it, unless the means of transport is seized in accordance with paragraph (3)(c).

Search and seizure powers relating to the suspect

- (5) Any member of the Defence Force who is being utilised under the call out order may do any one or more of the following if the member believes on reasonable grounds that a person (the *suspect*) mentioned in paragraph (1)(a), (b) or (c) is in the specified area:
- (a) search the suspect;

- (b) seize any thing found in the search that the member believes on reasonable grounds is a thing that may be seized in relation to the call out order;
- (c) detain the suspect if the member believes on reasonable grounds that the suspect is a person who may be detained in relation to the call out order for the purpose of placing the suspect in the custody of a member of a police force at the earliest practicable time.

51E General provisions relating to section 51D

Power to enter means of transport

- (1) A member of the Defence Force may enter a means of transport for the purpose of giving a direction under subsection 51D(2).

Vessels and aircraft in the Australian offshore area

- (2) The master of a vessel, or the captain of an aircraft, that is in the Australian offshore area, is entitled to observe a search that is being carried out under subsection 51D(2), (3) or (5).
- (3) The entitlement to observe the search being carried out ceases if the master or captain impedes the search of the vessel or aircraft.
- (4) Subsection (2) does not prevent 2 or more areas of the vessel or aircraft being searched at the same time.

Powers do not limit each other

- (5) To avoid doubt, no paragraph of subsection 51D(2), (3) or (5) limits the operation of any other paragraph of any of those subsections.

Division 5—Powers to protect declared infrastructure

Subdivision A—Introduction

51F Simplified outline of this Division

This Division confers powers on members of the Defence Force if the Defence Force is being utilised under a call out order that specifies that this Division applies. The powers are to protect infrastructure, in Australia or the Australian offshore area, that has been declared by the authorising Ministers in an infrastructure declaration.

An infrastructure declaration can be made whether or not a call out order is in force.

An expedited infrastructure declaration can be made under Division 7 in sudden and extraordinary emergencies.

Division 6 allows members of the Defence Force exercising powers under this Division to use reasonable and necessary force. Division 6 also:

- (a) confers powers and imposes obligations if persons are detained or things are seized; and
- (b) contains an offence for failing to comply with a direction; and
- (c) deals with the consequences of the exercise of powers by members of the Defence Force if obligations imposed in relation to the exercise of those powers have not been met or if call out orders and other instruments have not been validly made.

51G International obligations

In making an infrastructure declaration under Subdivision B authorising the exercise of powers in the Australian offshore area, the authorising Ministers must have regard to Australia's international obligations.

Subdivision B—Infrastructure declaration

51H Infrastructure declaration

- (1) The authorising Ministers may, in writing, declare that particular infrastructure, or a part of particular infrastructure, in Australia or in the Australian offshore area is declared infrastructure (whether or not a call out order is in force).

Note: An expedited declaration may be made by one or more other Ministers in sudden and extraordinary emergencies (see Division 7).

- (2) However, the authorising Ministers may do so only if they believe on reasonable grounds that:
- (a) either:
 - (i) there is a threat of damage or disruption to the operation of the infrastructure or the part of the infrastructure; or
 - (ii) if a contingent call out order is in force—if the circumstances specified in the order were to arise, there would be a threat of damage or disruption to the operation of the infrastructure or the part of the infrastructure; and
 - (b) the damage or disruption would directly or indirectly endanger the life of, or cause serious injury to, any person.
- (3) The authorising Ministers must, in writing, revoke the declaration if:
- (a) any one or more of the authorising Ministers cease to believe the matters in subsection (2); or
 - (b) if the declaration was requested by a State or self-governing Territory—the State or Territory requests the revocation.
- (4) The authorising Ministers may, in writing, vary or revoke the declaration in any other circumstances.
- (5) An infrastructure declaration:
- (a) comes into force when it is made; and
 - (b) ceases to be in force:
 - (i) if the declaration specifies a period—at the end of the specified period; or
 - (ii) otherwise—when the declaration is revoked.

Schedule 1 Amendments

Part 1 Amendments

Note: A period specified in an infrastructure declaration might be different from a period specified in a call out order to which the declaration relates.

Declarations involving States and Territories that have not been requested

- (6) The authorising Ministers may make the declaration in relation to infrastructure, or a part of infrastructure, that is in a State or a self-governing Territory whether or not the Government of the State or the self-governing Territory requests the making of the declaration.
- (7) However, if the Government of the State or the self-governing Territory does not request the declaration, an authorising Minister must (subject to subsection (8)) consult that Government about the declaration before the Ministers make it.

Note: An authorising Minister is not required to consult in relation to an expedited infrastructure declaration (see subsection 51V(6)).

- (8) Subsection (7) does not apply if the authorising Ministers are satisfied that, for reasons of urgency, it is impracticable to comply with that subsection.

Subdivision C—Powers to protect declared infrastructure

51J Application of this Subdivision

This Subdivision applies if:

- (a) a call out order states that this Division applies in relation to the order; and
- (b) an infrastructure declaration is in force in relation to infrastructure or a part of infrastructure.

51K Location of exercise of powers

- (1) A power may be exercised in a State or self-governing Territory under this Subdivision in relation to a call out order if:
 - (a) the exercise of the power in that State or Territory is authorised by the order; or

- (b) the power is exercised for the purpose specified in the order under subsection 33(3), 34(3), 35(3) or 36(3).

Note: For example, powers might be exercised in a State because:

- (a) the State is specified in the order; or
- (b) the powers are exercised in a State that is not specified in the order for the purpose of protecting a State that is specified in the order against domestic violence that is occurring in that State; or
- (c) the powers are exercised in a State that is not specified in the order for the purpose of protecting Commonwealth interests in the Australian offshore area, as specified in the order.

- (2) A power must not be exercised under this Subdivision beyond the outer limit of the Australian offshore area.

51L Powers to protect declared infrastructure

- (1) A member of the Defence Force who is being utilised under a call out order may, under the command of the Chief of the Defence Force, take any of the actions in subsection (2), or exercise any of the powers in subsection (3) or (5), for the purpose of protecting declared infrastructure.
- (2) The member may take one or more of the following actions:
- (a) prevent, or put an end to, damage or disruption to the operation of the declared infrastructure;
 - (b) prevent, or put an end to:
 - (i) acts of violence; or
 - (ii) threats to any person's life, health or safety, or to public health or public safety;
 - (c) protect any persons from:
 - (i) acts of violence; or
 - (ii) threats to any person's life, health or safety, or to public health or public safety.
- (3) The member may do any one or more of the following in connection with taking any such action:
- (a) control the movement of persons or of means of transport;
 - (b) evacuate persons to a place of safety;
 - (c) search persons, locations or things for any thing that may be seized, or any persons who may be detained, in relation to the call out order;

- (d) seize any thing found in the search that the member believes on reasonable grounds is a thing that may be seized in relation to the call out order;
- (e) detain any person found in the search that the member believes on reasonable grounds:
 - (i) is a person who may be detained in relation to the call out order; or
 - (ii) is a person who is likely to pose a risk to the operation or integrity of declared infrastructure;
for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time;
- (f) provide security (whether or not armed, and whether or not with a police force) including by patrolling or securing an area or conducting cordon operations;
- (g) direct a person to answer a question put by the member, or to produce to the member a particular document that is readily accessible to the person, (including by requiring the person to provide identification to the member);
- (h) operate, or direct a person to operate, a facility, machinery or equipment (including electronic equipment) in a particular manner (whether or not the facility, machinery or equipment is on a facility or means of transport).

Note 1: For the definitions of *person who may be detained*, *search* and *thing that may be seized*, see section 31.

Note 2: See also sections 51P (persons to be informed of certain matters if detained), 51Q (actions to be taken if things seized) and 51R (offence for failing to comply with a direction).

- (4) A member who controls the movement of persons or of means of transport under paragraph (3)(a) must not do so for longer than is reasonable and necessary in the circumstances.
- (5) The member may do anything incidental to anything in subsection (2) or (3).

Powers do not limit each other

- (6) To avoid doubt, no paragraph of subsection (2) or (3) limits the operation of any other paragraph of either of those subsections.

Division 6—Provisions common to Divisions 3 to 5

51M Simplified outline of this Division

A member of the Defence Force who is being utilised under a call out order may use reasonable and necessary force, whether the member is exercising a power under this Part or not. Additional limitations apply in relation to the use of force against persons.

Powers (such as the power to make a thing safe and prevent it from being used), and obligations, apply under this Division if a member detains a person or seizes a thing under any of Divisions 3 to 5.

A person may commit an offence if a person fails to comply with a direction given to the person under Division 3, 4 or 5.

This Division also deals with the consequences of the exercise of powers by members of the Defence Force if obligations imposed in relation to the exercise of those powers have not been met or if call out orders and other instruments have not been validly made.

51N Use of reasonable and necessary force

- (1) A member of the Defence Force who is being utilised under a call out order (whether or not the member is exercising a power under this Part):
 - (a) may use such force against persons and things as is reasonable and necessary in the circumstances (subject to subsections (2) and (3)); and
 - (b) if using force against persons—must do so in accordance with this section.

Restrictions on use of force

- (2) A member of the Defence Force must not use force against persons or things in exercising a power under paragraph 46(7)(h), 51D(2)(i) or 51L(3)(g) to direct a person to answer a question put by a member of the Defence Force, or to produce to a member of the

Defence Force a particular document that is readily accessible to the person.

- (3) In using force against a person, a member of the Defence Force must not do anything that is likely to cause the death of, or grievous bodily harm to, the person unless:
- (a) the member believes on reasonable grounds that doing that thing:
 - (i) is necessary to protect the life of, or to prevent serious injury to, a person (including the member); or
 - (ii) in relation to powers exercised under Division 5—is necessary to protect the declared infrastructure in respect of which the powers are being exercised against the domestic violence or threat specified in the call out order; or
 - (iii) in relation to powers exercised under paragraph 46(5)(d) or (e)—is reasonable and necessary to give effect to the order under which, or under the authority of which, the member is acting; and
 - (b) if a person against whom force is to be used is attempting to escape being detained by fleeing—the person has, if practicable, been called on to surrender and the member believes on reasonable grounds that the person cannot be apprehended in any other manner.

Note: Division 5 provides powers in relation to declared infrastructure. Paragraphs 46(5)(d) and (e) allow measures to be taken against aircraft and vessels.

- (4) In using force against a person (except when exercising a power under paragraph 46(5)(d) or (e)), a member of the Defence Force must not subject a person to greater indignity than is reasonable and necessary in the circumstances.
- (5) A reference in this section to using force against a person is taken to include a reference to using force against a thing if the use of force against the thing is likely to cause the death of, or grievous bodily harm to, a person.

51P Persons to be informed of certain matters if detained

- (1) A member of the Defence Force who detains a person under this Part must inform the person, at the time the person is detained, of the following (as the case requires):
 - (a) the offence against the law of the Commonwealth, the State or the Territory that the person is reasonably believed to have committed;
 - (b) both of the following:
 - (i) that the person is believed to be likely to pose a threat to any person's life, health or safety, or to public health or public safety;
 - (ii) the reasons for that belief;
 - (c) both of the following:
 - (i) that the person is believed to be likely to pose a risk to the operation or integrity of declared infrastructure;
 - (ii) the reasons for that belief.
- (2) Subsection (1) does not apply to the detention of a person if:
 - (a) the person should, in the circumstances, know the substance of the offence, threat or risk; or
 - (b) the person's actions make it impracticable for the member to inform the person of the offence, threat or risk.
- (3) For the purposes of paragraph (1)(a), it is sufficient if the person is informed of the substance of the offence, and it is not necessary that this be done in language of a precise or technical nature.

51Q Action to be taken if things are seized

- (1) If a thing is seized under Division 3, 4 or 5, a member of the Defence Force may take any action that is reasonable and necessary to make the thing safe or prevent it being used.
- (2) Without limiting subsection (1), the member may destroy the thing if:
 - (a) the member believes on reasonable grounds that it is reasonable and necessary to do so to make the thing safe; or
 - (b) the member believes on reasonable grounds:

- (i) that using the thing would be likely to pose a threat to any person's life, health or safety, or to public health or public safety, or cause serious damage to property; and
 - (ii) that it is reasonable and necessary to destroy it to prevent it from being used.
- (3) If the thing was seized from a person, a member of the Defence Force must:
 - (a) give the person a receipt for the thing (even if the thing has been destroyed), if it is practicable to do so; and
 - (b) if the thing has not been destroyed and the member believes on reasonable grounds that the thing has been used or otherwise involved in the commission of an offence against a law of the Commonwealth, a State or a Territory—give the thing to a member of a police force at the earliest practicable time; and
 - (c) if the thing has not been destroyed and paragraph (b) does not apply:
 - (i) return the thing to the person, if it is practicable to do so; or
 - (ii) give it to a member of a police force, at the earliest practicable time.
- (4) If a member of the Defence Force believes on reasonable grounds that a thing seized from a person has been used or otherwise involved in the commission of an offence against a law of the Commonwealth, a State or a Territory, the member may:
 - (a) require the person to provide identification to the member; and
 - (b) detain the person for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time.

51R Offence for failing to comply with a direction

- (1) A person commits an offence if:
 - (a) the person is given a direction under Division 3, 4 or 5; and
 - (b) the person fails to comply with the direction.

Penalty: 60 penalty units.

Geographical jurisdiction for offences

- (2) Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against subsection (1).

51S Exercise of powers when certain obligations not complied with

Members who fail to comply with obligations

- (1) If, before, while or after exercising a power under any of Divisions 3 to 5 or this Division, a member of the Defence Force fails to comply with any obligation imposed under this Part that relates to the exercise of the power, the member is not, and is taken not to have been, entitled to exercise the power unless the member exercised the power in good faith.

Members exercising powers in relation to invalid order etc.

- (2) A member of the Defence Force is not liable to an action, suit or proceeding, whether civil or criminal, in relation to the exercise, or purported exercise, of powers under any of Divisions 3 to 5 or this Division in relation to a call out order, infrastructure declaration, specified area declaration or authorisation if:
- (a) the order, declaration or authorisation was not validly made; and
 - (b) if the member made the authorisation—the powers were exercised or purportedly exercised in good faith.

Division 7—Expedited orders and declarations

51T Simplified outline of this Division

In sudden and extraordinary emergencies:

- (a) a call out order may be made under this Division by authorising Ministers, or other Ministers, instead of the Governor-General; and
- (b) a specified area declaration or infrastructure declaration can be made under this Division by one or 2 authorising

Ministers, or other Ministers, instead of all authorising Ministers.

51U Making expedited orders and declarations

- (1) A person or persons (the *maker* or *makers*) referred to in subsection (2) may make a call out order, an infrastructure declaration or a specified area declaration if the maker or makers are satisfied that:
- (a) because a sudden and extraordinary emergency exists, it is not practicable for an order or declaration to be made under the section under which the order or declaration would otherwise be made; and
 - (b) for a call out order or an infrastructure declaration—the circumstances referred to in subsection 33(1), 34(1), 35(1), 36(1) or 51H(2) (as the case requires) exist.

Who may make the order or declaration

- (2) An order or declaration under this section may be made by:
- (a) the Prime Minister; or
 - (b) the other 2 authorising Ministers jointly, but only if those Ministers are satisfied that the Prime Minister is unable to be contacted for the purposes of considering whether to make, and making, an order or declaration under this section; or
 - (c) an authorising Minister (the *available authorising Minister*), jointly with any one of the following Ministers (the *alternative Minister*):
 - (i) the Deputy Prime Minister;
 - (ii) the Foreign Affairs Minister;
 - (iii) the Treasurer;
 - (iv) the Minister for Home Affairs;but only if the available authorising Minister and the alternative Minister are satisfied that the other authorising Ministers are unable to be contacted for the purposes of considering whether to make, and making, an order or declaration under this section.

Note 1: An order or declaration would not be required to be made under this section if an acting Prime Minister, or acting authorising Ministers,

were available to make the order or declaration (see subsection 19(4) of the *Acts Interpretation Act 1901*).

Note 2: For the effect of the order, see sections 51V and 51W.

Order or declaration not in writing

- (3) An order or declaration under this section need not be in writing. If it is not in writing, the maker or makers, and the Chief of the Defence Force, must each:
- (a) make a written record (which may be electronic) of the order or declaration; and
 - (b) sign (including by electronic signature) the record; and
 - (c) in the case of a Minister (including the Prime Minister)—as soon as practicable:
 - (i) cause the record to be given to the Chief of the Defence Force; and
 - (ii) cause a copy of the record to be given to the Governor-General; and
 - (iii) for a specified area declaration—cause a copy of the record to be given to each of the Presiding Officers; and
 - (d) in the case of the Chief of the Defence Force—as soon as practicable:
 - (i) cause the record to be given to the Prime Minister; or
 - (ii) cause the record to be given to one of the other 2 Ministers, and cause a copy of the record to be given to the other Minister;
- as the case requires.

However, a failure to comply with paragraph (c) or (d) does not affect the validity of the order or declaration.

References to certain circumstances

- (4) To avoid doubt, a reference in paragraph (1)(b) to the circumstances referred to in subsection 33(1), 34(1), 35(1), 36(1) or 51H(2):
- (a) does not include a reference to the authorising Ministers being satisfied as to particular matters; and
 - (b) in relation to a State protection order—includes a reference to a State Government or Government of a self-governing

Territory having made an application of a kind referred to in subsection 35(1) or 36(1).

51V Effect of expedited order or declaration

- (1) An expedited order or declaration has effect for all purposes as if it were:
 - (a) a call out order made by the Governor-General; or
 - (b) an infrastructure declaration or a specified area declaration made by the authorising Ministers;(as the case requires) except as provided by subsections (4) and (5) and for the purposes of section 51U.
- (2) In particular:
 - (a) for a call out order—subsection 33(5), 34(5), 35(5) or 36(5) (as the case requires) applies to the order; and
 - (b) for a call out order or infrastructure declaration—the order or declaration may be varied or revoked in the same way, and in the same circumstances, as the order or declaration may be varied or revoked under section 37 or subsection 51H(3) or (4).

However, a variation of an expedited order or declaration must not extend the period during which the order or declaration is in force.

Note: A new order or declaration would need to be made after the expedited order or declaration had ceased to be in force.

- (3) For the purposes of paragraph (2)(b) of this section:
 - (a) for a call out order—the reference in paragraph 37(1)(a) to the authorising Ministers still being satisfied is taken to be a reference to those Ministers being satisfied; and
 - (b) for a call out order or infrastructure declaration—the reference in paragraph 37(3)(a) or subsection 51H(3) to the authorising Ministers ceasing to be satisfied or to believe is taken to be a reference to those Ministers not being satisfied or believing.

Content of an order or declaration

- (4) An expedited order or declaration:
-

- (a) must state that it is made under this section, and that it has effect as if it were a call out order, infrastructure declaration or specified area declaration (as the case requires); and
- (b) despite paragraph 33(5)(d), 34(5)(d), 35(5)(d), 36(5)(d), 51(3)(b) or 51H(5)(b) (as the case requires), must state that it ceases to be in force at the end of a specified period (which must not end more than 5 days after it comes into force), unless it is revoked earlier.

Note: The period of an expedited order or declaration must not be extended (see subsection (2) of this section).

When order is in force

- (5) An expedited order or declaration:
 - (a) comes into force when it is made, or (if it is not in writing) when:
 - (i) the Prime Minister, or the other 2 Ministers; and
 - (ii) the Chief of the Defence Force;have complied with paragraph 51U(3)(b) (which is about signing the record); and
 - (b) ceases to be in force as stated in accordance with paragraph (4)(b) of this section.

Consultation with State or Territory not required

- (6) To avoid doubt, subsections 38(2) and 51H(7) do not apply to an expedited order or declaration that would have effect as if it were a Commonwealth interests order or infrastructure declaration.

51W Effect of expedited order on Ministerial authorisation

- (1) An authorisation made for the purposes of paragraph 46(1)(a) (special powers generally authorised by Minister) as a result of an expedited order need not be in writing.
- (2) If the authorisation is not in writing, the authorising Minister, and the Chief of the Defence Force, must each:
 - (a) make a written record (which may be electronic) of the authorisation; and
 - (b) sign (including by electronic signature) the record; and

- (c) in the case of the authorising Minister—cause the record to be given to the Chief of the Defence Force as soon as practicable; and
- (d) in the case of the Chief of the Defence Force—as soon as practicable:
 - (i) cause the record to be given to the Prime Minister; or
 - (ii) cause the record to be given to the authorising Minister who made the order, and cause a copy of the record to be given to the other Minister;as the case requires.

However, a failure to comply with paragraph (c) or (d) does not affect the validity of the authorisation.

- (3) If the authorisation is not in writing, it comes into force when the authorising Minister, and the Chief of the Defence Force, have complied with paragraph (2)(b).

Division 8—Miscellaneous

Subdivision A—Simplified outline of this Division

51X Simplified outline of this Division

The criminal law of the Jervis Bay Territory applies in relation to criminal acts of members of the Defence Force done, or purported to be done, under this Part.

It may be a defence to a criminal act done by a member of the Defence Force that the member was under a legal obligation to obey an order of a superior.

Call out orders that have ceased to be in force are tabled in each House of the Parliament, as are specified area declarations and any report on the utilisation of the Defence Force that occurred under the order.

An independent review of this Part is to be commenced at least every 5 years. The operation, effectiveness and implications of this Part can also be reviewed on the initiative of the Independent

National Security Legislation Monitor under the *Independent National Security Legislation Monitor Act 2010*.

This Part does not affect any utilisation of the Defence Force that would be permitted if this Part were disregarded.

Subdivision B—Applicable criminal law

51Y Applicable criminal law

Application of criminal law of the Jervis Bay Territory

- (1) In relation to a criminal act of a member of the Defence Force that is done, or purported to be done, under this Part:
 - (a) the substantive criminal law of the Jervis Bay Territory, as in force from time to time, applies; and
 - (b) the substantive criminal law of the States and the other Territories, as in force from time to time, does not apply.
- (2) To avoid doubt, Chapter 2 of the *Criminal Code* does not apply to an act done, or purported to be done, under this Part that is a criminal act (except to the extent that it constitutes an offence against the law of the Commonwealth).

Functions of the Director of Public Prosecutions

- (3) To avoid doubt, the functions of the Director of Public Prosecutions under section 6 of the *Director of Public Prosecutions Act 1983* in relation to the law of the Jervis Bay Territory as applied by subsection (1) of this section are exclusive of the corresponding functions of any officer of a State or Territory, in relation to the law of the Jervis Bay Territory as so applied, under a law corresponding to that Act.

Note: It is not intended that this section or Act restrict or limit the power of State or Territory police force to investigate any criminal acts done, or purported to be done, by Defence Force members when operating under this Part.

51Z Defence of superior orders in certain circumstances

- (1) The fact that a criminal act was done, or purported to be done, by a member of the Defence Force under this Part under an order of a superior does not (subject to subsection (2)) relieve the member of criminal responsibility.
- (2) It is a defence to a criminal act done, or purported to be done, by a member of the Defence Force under this Part that:
 - (a) the criminal act was done by the member under an order of a superior; and
 - (b) the member was under a legal obligation to obey the order; and
 - (c) the order was not manifestly unlawful; and
 - (d) the member had no reason to believe that circumstances had changed in a material respect since the order was given; and
 - (e) the member had no reason to believe that the order was based on a mistake as to a material fact; and
 - (f) the action taken was reasonable and necessary to give effect to the order.
- (3) Subsection (2) does not limit the defences that may be available to the person.

Subdivision C—Other provisions

51ZA Publication of order and report

- (1) The Minister must arrange for presentation to each House of the Parliament in accordance with subsection (2) of a copy of:
 - (a) any call out order that has ceased to be in force; and
 - (b) any specified area declarations that relate to the order; and
 - (c) a report on any utilisation of the Defence Force that occurred under the order, including the number of premises searched under Subdivision C of Division 4 (powers to search premises in specified area).

Reporting to Parliament

- (2) The copy of the call out order and report must be forwarded to the Presiding Officer of each House of the Parliament, before the end of 7 days after the order ceases to be in force:
 - (a) if that House sits before those 7 days—for tabling in that House before the end of those 7 days; or
 - (b) otherwise—for distribution to all Senators or Members of the House of Representatives before the end of those 7 days.

Multiple call out orders

- (3) For the purposes of this section, if more than one call out order is made in relation to the same or related circumstances, without any intervening period when a call out order relating to those circumstances is not in force:
 - (a) each of the orders is taken to be a single call out order; and
 - (b) the order is taken to cease to be in force when the last of the orders ceases to be in force.

Effect of revocation

- (4) To avoid doubt, a reference to an order ceasing to be in force includes a reference to an order ceasing to be in force because it is revoked.

51ZB Independent review of this Part

- (1) The Minister may, at any time, cause an independent review of this Part to be conducted by one or more persons who, in the Minister's opinion, possess appropriate qualifications to carry out the review.
- (2) The Minister must ensure that, at least every 5 years, an independent review of this Part is commenced by one or more persons who, in the Minister's opinion, possess appropriate qualifications to carry out the review.

Note: The independent review may be a review that was conducted under subsection (1).

- (3) The review may be completed after the end of the 5-year period.

- (4) The persons who undertake a review under this section must give the Minister a written report of the review.
- (5) The Minister must cause a copy of the report to be tabled in each House of the Parliament within 15 sitting days of receiving it.

51ZC Instruments that are not legislative instruments

An order, authorisation or declaration made under this Part is not a legislative instrument.

51ZD Effect on other Defence Force utilisation and powers

This Part does not affect any utilisation of the Defence Force that would be permitted or required, or any powers that the Defence Force would have, if this Part were disregarded.

3 Subsection 71A(1) (paragraph (a) of the definition of search)

Omit “51”, substitute “31”.

4 Subsection 71A(1) (definition of vessel)

Omit “51SD”, substitute “31”.

Defence Reserve Service (Protection) Act 2001

5 Section 7 (definition of call out)

Omit “51A, 51AA, 51AB, 51B, 51C or 51CA”, substitute “33, 34, 35 or 36”.

Part 2—Application of amendments

6 Application of amendments

- (1) Part IIIAAA of the *Defence Act 1903*, and the definition of ***call out*** in the *Defence Reserve Service (Protection) Act 2001*, as in force immediately after the commencement of this item, applies in relation to:
 - (a) any call out order made after the commencement of this item; and
 - (b) any authorisation, declaration or other instrument relating to any such order made after that commencement.
- (2) Despite the repeal of Part IIIAAA of the *Defence Act 1903* by this Schedule, that Part, and the definition of ***call out*** in the *Defence Reserve Service (Protection) Act 2001*, as in force immediately before the commencement of this item, continues in force in relation to:
 - (a) any call out order that is in force immediately before the commencement of this item; and
 - (b) any authorisation, declaration or other instrument relating to any such order that is in force immediately before that commencement.
- (3) Subsection 51ZB(2) (independent review of Part IIIAAA) of the *Defence Act 1903*, as in force immediately after the commencement of this item, applies in relation to the period of 5 years that begins at that commencement and each later 5 year period.