





# **Defence Legislation Amendment (First Principles) Act 2015**

**No. 164, 2015**

**An Act to amend legislation relating to defence, and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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# Defence Legislation Amendment (First Principles) Act 2015

No. 164, 2015

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## **An Act to amend legislation relating to defence, and for related purposes**

[Assented to 2 December 2015]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Defence Legislation Amendment (First Principles) Act 2015*.

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## 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.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 4 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	2 December 2015
2. Schedules 1 to 3	Immediately after the commencement of Schedule 2 of the <i>Defence Legislation Amendment (Superannuation and ADF Cover) Act 2015</i> .	1 July 2016

Note: This table relates only to the provisions of this Act as originally enacted.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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## 4 Regulations

The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing saving or application provisions) relating to the amendments or repeals made by this Act.

## **Schedule 1—Amendment of the Defence Act 1903**

### **Part 1—Amendments**

#### *Defence Act 1903*

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

Insert:

*administration of the Defence Force*: see subsection 10(2).

*Air Force* means the Royal Australian Air Force.

*Air Force Reserve*: see subsection 20(3).

*Army* means the Australian Army.

*Army Reserve*: see subsection 19(3).

*Australian Air Force Cadets*: see subsection 62(4).

*Australian Army*: see subsection 19(1).

*Australian Army Cadets*: see subsection 62(3).

*Australian Defence Force* or *ADF*: see section 17.

*Australian Defence Force Cadets* or *ADF Cadets* or *Cadets*: see subsection 62(1).

*Australian Navy Cadets*: see subsection 62(2).

*cadet* means an officer, instructor or cadet in the Cadets.

*call out order*: see subsection 28(1).

*Chief of the Defence Force* means the Chief of the Defence Force appointed under subsection 12(1).

*CSC* has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

*Defence Force* means the Australian Defence Force.

*Defence Instructions*: see subsection 11(1).

*flexible service determination*: see subsection 23(2).

*Naval Reserve*: see subsection 18(3).

*Navy* means the Royal Australian Navy.

## 2 Subsection 4(1) (definition of *Non-commissioned Officer*)

Repeal the definition.

## 3 Subsection 4(1) (definition of *Officer*)

Repeal the definition, substitute:

*officer* means:

- (a) a person appointed as an officer of the Navy, Army or Air Force and who holds a rank specified in items 1 to 12 of the table in subclause 1(1) of Schedule 1; or
- (b) a chaplain in the Defence Force.

## 4 Subsection 4(1)

Insert:

*Permanent Air Force*: see subsection 20(2).

*Permanent Navy*: see subsection 18(2).

*public resources* has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

*Regular Army*: see subsection 19(2).

*Royal Australian Air Force* or *RAAF*: see subsection 20(1).

*Royal Australian Navy* or *RAN*: see subsection 18(1).

*service chief* means:

- (a) the Chief of Navy; or
- (b) the Chief of Army; or
- (c) the Chief of Air Force.

*Vice Chief of the Defence Force* means the Vice Chief of the Defence Force appointed under subsection 12(2).

## **5 Subsection 4(2)**

Repeal the subsection.

## **6 Section 5**

Omit “Navy, Army and Air Force, and to all members of the Navy, Army and Air Force”, substitute “Defence Force, and to all members of the Defence Force”.

## **7 Parts II and III**

Repeal the Parts, substitute:

# **Part II—Control and administration**

## **8 The Minister**

- (1) The Minister has general control and administration of the Defence Force.

Note: Command in chief of the Defence Force is vested in the Governor-General: see section 68 of the Constitution.

- (2) In performing and exercising functions and powers under this Part, the Chief of the Defence Force and the Secretary must comply with any directions of the Minister.

## **9 Command of the Defence Force**

- (1) The Chief of the Defence Force has command of the Defence Force.
- (2) The Chief of the Defence Force must advise the Minister on matters relating to the command of the Defence Force.
- (3) The Vice Chief of the Defence Force is to assist the Chief of the Defence Force in the command of the Defence Force.
- (4) In so assisting, the Vice Chief of the Defence Force must comply with any directions of the Chief of the Defence Force.

## 10 Administration of the Defence Force

- (1) The Secretary and the Chief of the Defence Force have joint administration of the Defence Force.
- (2) The *administration of the Defence Force* does not include any matter:
  - (a) falling within the command of the Defence Force; or
  - (b) specified by the Minister.
- (3) The Vice Chief of the Defence Force is to assist with the administration of the Defence Force as directed by the Chief of the Defence Force.
- (4) An instrument made under paragraph (2)(b) is not a legislative instrument.

## 11 Defence Instructions

- (1) For the purposes of the administration of the Defence Force, the Secretary and the Chief of the Defence Force together may issue instructions known as *Defence Instructions*.
- (2) A document purporting to be a Defence Instruction, or a copy of a Defence Instruction, is taken to be a Defence Instruction unless the contrary is established.
- (3) Despite section 46AA of the *Acts Interpretation Act 1901*, a Defence Instruction may make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

## 12 Appointments

- (1) The Governor-General may, by writing, appoint an officer of an arm of the Defence Force to be Chief of the Defence Force.
  - (2) The Governor-General may, by writing, appoint an officer of an arm of the Defence Force to be Vice Chief of the Defence Force.
  - (3) The Chief of the Defence Force and the Vice Chief of the Defence Force hold office for the periods specified in their instruments of appointment.
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- (4) A person appointed as Chief of the Defence Force or Vice Chief of the Defence Force ceases to hold office if he or she ceases to be an officer of an arm of the Defence Force.

### **13 Acting appointments**

*Vice Chief must act as Chief of the Defence Force*

- (1) The Vice Chief of the Defence Force must act as the Chief of the Defence Force:
- (a) during a vacancy in the office of the Chief of the Defence Force; or
  - (b) during any period, or during all periods, when the Chief of the Defence Force:
    - (i) is absent from duty; or
    - (ii) is, for any reason, unable to perform the duties of the office.

*Acting Vice Chief of the Defence Force*

- (2) The Governor-General may, by writing, appoint an officer of an arm of the Defence Force to act as the Vice Chief of the Defence Force:
- (a) during a vacancy in the office of the Vice Chief of the Defence Force; or
  - (b) during any period, or during all periods, when the Vice Chief of the Defence Force:
    - (i) is absent from duty or from Australia; or
    - (ii) is, for any reason, unable to perform the duties of the office.

### **14 Resignation**

- (1) The Chief of the Defence Force or the Vice Chief of the Defence Force may resign his or her appointment by giving the Governor-General a written resignation.
- (2) However, the resignation does not have effect unless and until it is accepted by the Governor-General.

## 15 Termination of appointment

- (1) The Governor-General may, on the recommendation of the Prime Minister and by notice in writing, terminate the appointment of the Chief of the Defence Force or the Vice Chief of the Defence Force.
- (2) Before recommending to the Governor-General that the appointment be terminated, the Prime Minister must have received a report about the proposed termination from the Minister.

## 16 Remuneration and allowances

- (1) The Chief of the Defence Force and the Vice Chief of the Defence Force are to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, they are to be paid the remuneration that is prescribed by the regulations.
- (2) The Chief of the Defence Force and the Vice Chief of the Defence Force are to be paid the allowances determined under Part IIIA.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Note: The remuneration of the Chief of Navy, the Chief of Army and the Chief of Air Force is also determined by the Remuneration Tribunal. For appointment etc. of service chiefs, see the regulations.

# Part III—The Australian Defence Force

## Division 1—Constitution of the Australian Defence Force

### 17 The Australian Defence Force

The *Australian Defence Force* (or *ADF*) consists of the following arms:

- (a) the Royal Australian Navy;
- (b) the Australian Army;
- (c) the Royal Australian Air Force.

### 18 Royal Australian Navy

- (1) The *Royal Australian Navy* (or *RAN*) consists of:
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- (a) the Chief of Navy; and
  - (b) the Permanent Navy; and
  - (c) the Naval Reserve.
- (2) The ***Permanent Navy*** consists of:
- (a) officers appointed to, and sailors enlisted in, the Permanent Navy; and
  - (b) members of the Defence Force transferred to the Permanent Navy.
- (3) The ***Naval Reserve*** consists of:
- (a) officers appointed to, and sailors enlisted in, the Naval Reserve; and
  - (b) members of the Defence Force transferred to the Naval Reserve.

## **19 Australian Army**

- (1) The ***Australian Army*** consists of:
- (a) the Chief of Army; and
  - (b) the Regular Army; and
  - (c) the Army Reserve.
- (2) The ***Regular Army*** consists of:
- (a) officers appointed to, and soldiers enlisted in, the Regular Army; and
  - (b) members of the Defence Force transferred to the Regular Army.
- (3) The ***Army Reserve*** consists of:
- (a) officers appointed to, and soldiers enlisted in, the Army Reserve; and
  - (b) members of the Defence Force transferred to the Army Reserve.

## **20 Royal Australian Air Force**

- (1) The ***Royal Australian Air Force*** (or ***RAAF***) consists of:
- (a) the Chief of Air Force; and
  - (b) the Permanent Air Force; and

- (c) the Air Force Reserve.
- (2) The ***Permanent Air Force*** consists of:
  - (a) officers appointed to, and airmen enlisted in, the Permanent Air Force; and
  - (b) members of the Defence Force transferred to the Permanent Air Force.
- (3) The ***Air Force Reserve*** consists of:
  - (a) officers appointed to, and airmen enlisted in, the Air Force Reserve; and
  - (b) members of the Defence Force transferred to the Air Force Reserve.

## 21 Ranks and corresponding ranks

The ranks and corresponding ranks of members of the Defence Force (other than chaplains) are set out in Schedule 1.

## Division 2—Service in the Defence Force

### 22 Voluntary entry

- (1) Members of the Defence Force must be persons who volunteer and are accepted for service in the Defence Force.
- (2) Subsection (1) has effect subject to Part IV and any other Act.

### 23 Service in the Permanent Forces

- (1) Members of the Permanent Forces are bound to render continuous full time service.

Note: ***Permanent Forces*** means the Permanent Navy, the Regular Army and the Permanent Air Force: see subsection 4(1).

#### *Flexible service determinations*

- (2) The requirement to render continuous full time service does not prevent the Chief of the Defence Force determining hours of duty or periods of duty for a member of the Permanent Forces under a ***flexible service determination***.

- (3) A flexible service determination:
  - (a) must be in writing; and
  - (b) may be revoked or varied by the Chief of the Defence Force at any time; and
  - (c) has effect subject to any terms and conditions (the *flexible service terms and conditions*) set out in the determination.
- (4) Flexible service terms and conditions may relate to remuneration, allowances, availability for duty outside the hours of duty or periods of duty set out in the determination or any other relevant matter.
- (5) A flexible service determination is not a legislative instrument.

## **24 Service in the Reserves**

A member of the Reserves is not bound to render continuous full time service unless the member:

- (a) is involved in a period of training that requires continuous full time service; or
- (b) is required to render continuous full time service after volunteering to do so (see section 26); or
- (c) is called out under Division 3 of this Part or Division 1 of Part IV.

Note: *Reserves* means the Naval Reserve, the Army Reserve and the Air Force Reserve: see subsection 4(1).

## **25 Training for Reserves**

Members of the Reserves must render service during training periods in accordance with the regulations.

## **26 Volunteer service by Reserves**

- (1) A member of the Reserves may volunteer to render the following for a period or periods specified by the member:
  - (a) continuous full time service;
  - (b) service other than continuous full time service.
- (2) The Chief of the Defence Force may accept some or all of the service.

- (3) The member is bound to render the service accepted by the Chief of the Defence Force.

## 27 Service is not a civil contract

No civil contract of any kind is created with the Crown or the Commonwealth in connection with a member's service in the Defence Force.

## Division 3—Calling out the Reserves

### 28 Governor-General may call out Reserves

- (1) The Governor-General may, by *call out order* published in the Gazette, call out some or all of the Reserves for continuous full time service.
- (2) A call out order is not a legislative instrument.

#### *Circumstances for call out order*

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

#### *Advice to Governor-General*

- (4) In making or revoking a call out order, the Governor-General is to act with the advice of:
-

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

*When call out order takes effect*

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

*When revocation takes effect*

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

*Effect of revocation*

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

*Further orders*

- (8) The making of a call out order in relation to particular circumstances does not prevent the making of further call out orders in relation to those circumstances.

## **29 Period of service during call out**

*Period specified by Chief of the Defence Force*

- (1) A member of the Reserves covered by a call out order is bound to render continuous full time service for the period specified in writing by the Chief of the Defence Force.

*Length of period*

- (2) The period of service:

- (a) must start on the day on which the call out order takes effect;  
and
  - (b) may be indefinite or limited.
- (3) Unless it ends earlier, and despite any specification by the Chief of the Defence Force, the period ends on the day on which the call out ends.

*Further periods*

- (4) The specification of a period under a call out order does not prevent the specification of further periods under the call out order.

*Other continuous full time service not affected*

- (5) This section does not limit a requirement to render continuous full time service otherwise than under this section.

**8 Subsections 51A(2), 51B(2) and 51C(2)**

Omit “Emergency Forces or the”.

**9 Paragraph 52(2)(a)**

Omit “, the *Naval Defence Act 1910* or the *Air Force Act 1923*”.

**10 Section 53**

Omit “(within the meaning of the *Governance of Australian Government Superannuation Schemes Act 2011*)”.

**11 Section 58A (definition of *cadet*)**

Repeal the definition.

**12 Section 58A (definition of *member of the family*)**

Repeal the definition, substitute:

*member of the family*, in relation to a member, includes a member of the household of the member and a dependant of the member.

**13 Subsection 58B(1)**

Omit “the *Naval Defence Act 1910* or the *Air Force Act 1923*”.

**14 Paragraphs 58B(1)(a), (b), (c) and (e)**

Omit “or cadets” (wherever occurring).

**15 Paragraph 58B(1)(g)**

Omit “or cadet”.

**16 Subsection 58B(1B)**

Omit “or cadet” (wherever occurring).

**17 Subsection 58B(3)**

Repeal the subsection.

**18 Section 58E**

Repeal the section, substitute:

**58E Delegation**

- (1) The Minister may delegate his or her powers to make determinations under subsection 58B(1) to one or more of the following:
  - (a) the Secretary;
  - (b) an SES employee performing duty in the Department;
  - (c) an APS employee who holds, or performs the duties of, a position not below an Executive Level 2 position, or equivalent, in the Department;
  - (d) an officer of the Navy who holds a rank not below the rank of Captain;
  - (e) an officer of the Army who holds a rank not below the rank of Colonel;
  - (f) an officer of the Air Force who holds a rank not below the rank of Group Captain.
- (2) However, the Minister must not delegate his or her power under paragraph 58B(1)(ga) to make determinations for and in relation to payments, by way of compensation, incentives or other benefits.

**19 Subsection 58G(2) (note)**

Repeal the note.

**20 Subsection 58H(14)**

Omit “the *Air Force Act 1923* or the *Naval Defence Act 1910*,”.

**21 Subsection 58L(2) (note)**

Repeal the note.

**22 Part V**

Repeal the Part, substitute:

**Part V—Australian Defence Force Cadets**

**62 Australian Defence Force Cadets**

- (1) The *Australia Defence Force Cadets* (or *ADF Cadets* or *Cadets*) consists of the following:
  - (a) the Australian Navy Cadets;
  - (b) the Australian Army Cadets;
  - (c) the Australian Air Force Cadets.
- (2) The *Australian Navy Cadets* consists of persons who have volunteered and been accepted by the Chief of the Defence Force as officers, instructors or cadets in the Australian Navy Cadets.
- (3) The *Australian Army Cadets* consists of persons who have volunteered and been accepted by the Chief of the Defence Force as officers, instructors or cadets in the Australian Army Cadets.
- (4) The *Australian Air Force Cadets* consists of persons who have volunteered and been accepted by the Chief of the Defence Force as officers, instructors or cadets in the Australian Air Force Cadets.

**62A Direction and administration of the Cadets**

- (1) The Chief of the Defence Force is to direct and administer the Cadets.
- (2) In directing and administering the Cadets, the Chief of the Defence Force must comply with any directions of the Minister.

- (3) The Chief of the Defence Force may direct the Vice Chief of the Defence Force, a service chief or any other member of the Defence Force to assist with the direction and administration of the Cadets.
- (4) The Chief of the Defence Force may use members of the Defence Force and the resources of the Defence Force for the purposes of administering, managing, supervising and training cadets.

Note: The use and management of public resources must comply with the requirements of the *Public Governance, Performance and Accountability Act 2013*.

### **62B Chief of the Defence Force may make determinations**

- (1) The Chief of the Defence Force may, by legislative instrument, make determinations providing for and in relation to the following:
  - (a) the payment of allowances or other pecuniary benefits to or for cadets;
  - (b) the payment of allowances or other pecuniary benefits to or in respect of members of the families of cadets;
  - (c) the provision of other benefits to or in respect of cadets, or to or in respect of members of the families of cadets.
- (2) A legislative instrument under subsection (1) may provide for an amount paid under a determination made under that subsection to be wholly or partly repaid to the Commonwealth if an event specified in the determination occurs.

### **62C Relationship to the Defence Force**

- (1) A cadet is not a member of the Defence Force.
- (2) A person with a role in administering, managing, supervising or training cadets does not become a member of the Defence Force because of that role.

### **62D Acceptance is not a civil contract**

No civil contract of any kind is created with the Crown or the Commonwealth in connection with the acceptance of a person as an officer, instructor or cadet in the Cadets.

**62E Annual report**

- (1) The Chief of the Defence Force must, as soon as practicable after the end of each financial year, prepare a report on the administration of the Cadets during that year.
- (2) The report must be included in the annual report prepared by the Secretary and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for the financial year.

**23 Section 93 (definition of *Defence Instructions*)**

Repeal the definition.

**24 Section 93 (paragraphs (b) and (c) of the definition of *relevant authority*)**

Omit “relevant service chief”, substitute “Chief of the Defence Force”.

**25 Section 93A**

Omit “or a service chief”.

**26 Subsections 103(2) and (3)**

Omit “relevant service chief”, substitute “Chief of the Defence Force”.

**27 Subsection 109(1)**

Omit “section 9A”, substitute “section 11”.

**28 Paragraph 110DA(2)(b)**

Repeal the paragraph.

**29 Paragraph 110O(1)(a)**

Omit “appropriate service chief”, substitute “Chief of the Defence Force”.

**30 Subsection 116B(1)**

Omit “Chief of Navy, the Chief of Army or the Chief of Air Force”, substitute “Chief of the Defence Force”.

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**31 Paragraphs 116B(1)(a) and (b)**

Omit “under his or her command”.

**32 Subsection 116B(3)**

Omit “Australian Navy, the Australian Army or the Australian Air Force, as the case may be,”, substitute “Defence Force”.

**33 Subsections 116C(3), 116E(1) and 116M(1)**

Omit “or a service chief”.

**34 Subsection 116M(1)**

Omit “, other than this power of delegation”.

**35 Subsection 116M(2)**

Omit “or a service chief”.

**36 Subsections 116M(3) and (4)**

Repeal the subsections.

**37 Subsections 116M(5) and (6)**

Omit “or a service chief” (wherever occurring).

**38 Subsection 116R(1)**

Repeal the subsection, substitute:

- (1) The Minister may by writing signed by him or her, delegate to an officer of the Defence Force or an officer of the Department all or any of his or her powers under this Part or the by-laws, other than his or her powers under section 116ZD to make by-laws.

**39 Subsections 116R(2) and (3)**

Repeal the subsections.

**40 Subsection 117(1) (definition of *Naval ship*)**

Omit “Australian Navy”, substitute “Defence Force”.

**41 Subsection 117(1) (definition of *officer*)**

Omit “Australian Navy”, substitute “Defence Force”.

**42 Subsection 117(2)**

Omit “Navy”, substitute “the Defence Force”.

**43 Paragraph 117(3)(b)**

Omit “Australian Navy”, substitute “Defence Force”.

**44 Paragraph 117A(2)(a)**

Omit “Navy”, substitute “the Defence Force”.

**45 Subsection 117A(3)**

Omit “Navy”, substitute “the Defence Force”.

**46 Section 119**

Before “The regulations”, insert “(1)”.

**47 At the end of section 119**

Add:

- (2) Subsection (1) does not prevent the Minister making a determination under section 58B that deals with matters covered by that subsection.

**48 Subsections 120A(3A) and (3B)**

Omit “subsections 9A(1) and (2) to issue the instructions known as Defence Instructions (General)”, substitute “section 11 to issue Defence Instructions”.

**49 Subsection 120A(3D)**

Repeal the subsection, substitute:

*Delegations by the Chief of the Defence Force*

- (3D) The Chief of the Defence Force may, by instrument in writing, delegate his or her powers as follows:
- (a) the power under subsection 26(2) to accept volunteer service by members of the Reserves—to an officer of the Defence Force;
  - (b) the power under subsection 29(1) to specify periods of continuous full time service for members of the Reserves

- covered by a call out order—to an officer of the Defence Force;
- (c) powers in relation to flexible service determinations under subsections 23(2) and (3)—to an officer of the Defence Force;
- (d) the power under section 93A to determine authorised persons for the purposes of Part VIIIA (testing for prohibited substances)—to:
- (i) an officer of the Navy who holds a rank not below the rank of Commodore; or
  - (ii) an officer of the Army who holds a rank not below the rank of Brigadier; or
  - (iii) an officer of the Air Force who holds a rank not below the rank of Air Commodore;
- (e) powers under sections 100, 101, 103 and 104 relating to testing for prohibited substances—to:
- (i) an officer of the Navy who holds a rank not below the rank of Commander; or
  - (ii) an officer of the Army who holds a rank not below the rank of Lieutenant-Colonel; or
  - (iii) an officer of the Air Force who holds a rank not below the rank of Wing Commander; or
  - (iv) an APS employee who holds, or performs the duties of, a position not below an Executive Level 1 position, or equivalent, in the Department;
- (f) powers under section 123A—to an officer of the Defence Force.

**50 Subsections 120A(3DA) to (4D)**

Repeal the subsections.

**51 Subsection 120A(5)**

Repeal the subsection (not including the heading).

**52 Subsections 120A(6) and (7)**

Repeal the subsections.

**53 Section 122**

Omit “of the Australian Navy, the Australian Army or the Australian Air Force, the enlistment of a sailor, soldier or airman,”, substitute “or enlistment of a member of the Defence Force”.

**54 Section 123A**

Omit “or a service chief” (wherever occurring).

**55 Section 123AA**

Repeal the section.

**56 Paragraphs 123F(a) and (b)**

Omit “Chief of Navy, the Chief of Army or the Chief of Air Force, as the case requires”, substitute “Chief of the Defence Force”.

**57 After paragraph 124(1)(ac)**

Insert:

(ad) the appointment of the Chief of Navy, the Chief of Army and the Chief of Air Force; and

**58 Paragraphs 124(1)(b), (c), (e) and (i)**

Omit “or cadet” (wherever occurring).

**59 After paragraph 124(1)(i)**

Insert:

(ia) the administration, management, supervision and training of cadets; and

**60 Paragraph 124(1)(qd)**

Repeal the paragraph.

**61 Subsection 124(1B)**

Omit “*cadet*”.

**62 At the end of the Act**

Add:

## Schedule 1—Ranks and corresponding ranks

Note: See section 21.

### 1 Ranks and corresponding ranks

(1) The ranks of members of the Defence Force (other than chaplains) in the Navy, Army and Air Force are set out in the following table.

<b>Ranks and corresponding ranks</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Navy</b>	<b>Army</b>	<b>Air Force</b>
1	Admiral of the Fleet	Field Marshal	Marshal of the Royal Australian Air Force
2	Admiral	General	Air Chief Marshal
3	Vice Admiral	Lieutenant General	Air Marshal
4	Rear Admiral	Major General	Air Vice Marshal
5	Commodore	Brigadier	Air Commodore
6	Captain	Colonel	Group Captain
7	Commander	Lieutenant Colonel	Wing Commander
8	Lieutenant Commander	Major	Squadron Leader
9	Lieutenant	Captain	Flight Lieutenant
10	Sub Lieutenant	Lieutenant	Flying Officer
11	Acting Sub Lieutenant	Second Lieutenant	Pilot Officer
12	Midshipman	Staff Cadet or Officer Cadet	Officer Cadet
13	Warrant Officer of the Navy	Regimental Sergeant Major of the Army	Warrant Officer of the Air Force
14	Warrant Officer	Warrant Officer Class 1	Warrant Officer
15	Chief Petty Officer	Warrant Officer Class 2	Flight Sergeant
16		Staff Sergeant	
17	Petty Officer	Sergeant	Sergeant
18	Leading Seaman	Corporal	Corporal

**Schedule 1** Amendment of the Defence Act 1903

**Part 1** Amendments

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<b>Ranks and corresponding ranks</b>			
<b>Item</b>	<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
	<b>Navy</b>	<b>Army</b>	<b>Air Force</b>
19		Lance Corporal	
20	Able Seaman		Leading Aircraftman
21	Seaman	Private	Aircraftman

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- (2) A rank specified in an item in the table in subclause (1) is a corresponding rank in relation to any other rank specified in that item.
- (3) A reference in an item in the table in subclause (1) to a rank is taken to include a reference to any other rank, not specified in that table, that is equivalent to the rank specified in that item.

## **Part 2—Transitional provisions**

### **63 Appointments of service chiefs**

The appointment of a service chief, in force immediately before the commencement of this Schedule, has effect, immediately after that commencement, as if it had been made under the regulations.

### **64 Service obligations**

To avoid doubt, neither the amendments made by this Schedule nor the repeals made by Schedule 3 affect an obligation to render full time continuous service that was in force immediately before the commencement of this Schedule.

### **65 Defence Instructions**

- (1) Defence Instructions (General), as in force immediately before the commencement of this Schedule, have effect immediately after that commencement as if they had been issued by the Secretary and the Chief of the Defence Force under subsection 11(1) of the *Defence Act 1903*.
- (2) Defence Instructions (Navy), Defence Instructions (Army) and Defence Instructions (Air Force), as in force immediately before the commencement of this Schedule, have effect immediately after that commencement as if they had been issued by the Secretary and the Chief of the Defence Force under subsection 11(1) of the *Defence Act 1903*.

*Defence Instructions (Navy, Army and Air Force) cease to have effect after 18 months*

- (3) Defence Instructions (Navy), Defence Instructions (Army) and Defence Instructions (Air Force) continued in force under subclause (2), and as amended by the Secretary and the Chief of the Defence Force under subsection 11(1) of the *Defence Act 1903*, cease to have effect 18 months after the commencement of this Schedule.

## 66 Navy (Canteens) Regulations 1954

The *Navy (Canteens) Regulations 1954*, as in force immediately before the commencement of this Schedule, have effect, immediately after that commencement, as if they had been made under the *Defence Act 1903*.

## 67 Cadets

A person who, immediately before the commencement of this Schedule, is an officer, instructor or cadet in the Australian Navy Cadets, the Australian Army Cadets or the Australian Air Force Cadets is taken, immediately after that commencement, to have been accepted as such an officer, instructor or cadet under section 62 of the *Defence Act 1903*.

## 68 Cadet Forces Regulation 2013

- (1) The *Cadet Forces Regulation 2013*, as in force immediately before the commencement of this Schedule, has effect, immediately after that commencement, as if it had been made under paragraph 124(ia) of the *Defence Act 1903*.
- (2) A reference in the *Cadet Forces Regulation 2013*, immediately before the commencement of this Schedule, to a provision repealed by this Schedule or Schedule 3 is taken, after that commencement, to be a reference to paragraph 124(ia) of the *Defence Act 1903*.

## **Schedule 2—Amendment of other Acts**

### **Part 1—Amendments**

#### *Age Discrimination Act 2004*

**1 Section 5 (paragraph (d) of the definition of *Commonwealth employee*)**

Omit “, the *Commonwealth Electoral Act 1918* or the *Naval Defence Act 1910*”, substitute “or the *Commonwealth Electoral Act 1918*”.

**2 Schedule 1 (table item 7)**

Repeal the item.

**3 Schedule 1 (table item 23)**

Omit “(*General*), *Defence Instructions (Navy)*, *Defence Instructions (Army)* and *Defence Instructions (Air Force)* (within the meaning of section 9A”, substitute “(within the meaning”.

**4 Schedule 1 (table item 34)**

Repeal the item.

#### *Archives Act 1983*

**5 Paragraphs 3(3)(b) to (d)**

Repeal the paragraphs, substitute:  
and (b) the Australian Defence Force Cadets.

#### *Australian Citizenship Act 2007*

**6 Subsection 23(4) (note at the end of the definition of *service*)**

Omit “*Naval Defence Act 1910*, the *Defence Act 1903* and the *Air Force Act 1923*”, substitute “*Defence Act 1903*”.

### *Australian Defence Force Cover Act 2015*

#### **7 Section 4 (paragraph (a) of the definition of *continuous full-time Reservist*)**

Omit all the words after “accepted”, substitute “under subsection 26(2) of the *Defence Act 1903*”.

#### **8 Section 4 (definition of *Permanent Forces*)**

Repeal the definition, substitute:

*Permanent Forces* has the same meaning as in the *Defence Act 1903*.

#### **9 Section 4 (definition of *Reserves*)**

Repeal the definition, substitute:

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

### *Australian Defence Force Superannuation Act 2015*

#### **10 Section 4 (paragraph (a) of the definition of *continuous full-time Reservist*)**

Omit all the words after “accepted”, substitute “under subsection 26(2) of the *Defence Act 1903*”.

#### **11 Section 4 (definition of *Permanent Forces*)**

Repeal the definition, substitute:

*Permanent Forces* has the same meaning as in the *Defence Act 1903*.

#### **12 Section 4 (definition of *Reserves*)**

Repeal the definition, substitute:

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

### *Australian National Maritime Museum Act 1990*

#### **13 Subsection 3(1) (definition of *naval member*)**

Omit “Navy”, substitute “the Defence Force”.

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**14 Subsection 17(2A)**

Omit “Navy”, substitute “the Defence Force”.

**15 Subsection 17(5A)**

Omit “Navy”, substitute “the Defence Force”.

**16 Subsection 20(2)**

Omit “Navy”, substitute “the Defence Force”.

***Defence Force Discipline Act 1982***

**17 Subsection 3(1) (paragraph (a) of the definition of *general order*)**

Omit “(General), a Defence Instruction (Navy), a Defence Instruction (Army) or a Defence Instruction (Air Force)”.

**18 Paragraph 3(4)(a)**

Omit “, the *Naval Defence Act 1910* or the *Air Force Act 1923*”.

**19 Subparagraph 3(11)(a)(i)**

Omit “(Navy), a Defence Instruction (Army) or a Defence Instruction (Air Force)”.

**20 Subsection 190A(2)**

Omit “A service”, substitute “The Chief of the Defence Force, a service”.

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

**21 Subsection 19(3)**

Repeal the subsection, substitute:

- (3) If a member’s hours of duty or periods of duty are determined under a flexible service determination (within the meaning of the *Defence Act 1903*), the fortnightly rate of pay applicable to the member is the rate of pay that would have been applicable if the member’s hours of duty or periods of duty were not determined under the flexible service determination.

**22 Subsection 23(4)**

Omit “Chief of Navy, the Chief of Army or the Chief of Air Force or a person authorized in writing by the Chief of Navy, the Chief of Army or the Chief of Air Force, as the case requires,”, substitute “Chief of the Defence Force or a person authorized in writing by the Chief of the Defence Force”.

**23 Section 37 (heading)**

Repeal the heading, substitute:

**37 Chief of the Defence Force may inform CSC of grounds of retirement**

**24 Section 37**

Omit “Chief of Navy, the Chief of Army or the Chief of Air Force or a person authorized in writing by the Chief of Navy, the Chief of Army or the Chief of Air Force, as the case requires,”, substitute “Chief of the Defence Force or a person authorized in writing by the Chief of the Defence Force”.

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

**25 Subsection 51(6)**

Omit “Chief of Navy, the Chief of Army or the Chief of Air Force or a person authorized in writing by the Chief of Navy, the Chief of Army or the Chief of Air Force, as the case requires,”, substitute “Chief of the Defence Force or a person authorized in writing by the Chief of the Defence Force”.

***Defence Housing Australia Act 1987***

**26 Subsection 3(1) (definition of *service chief*)**

Repeal the definition.

**27 Paragraphs 27(2)(c) to (e)**

Repeal the paragraphs, substitute:

(c) up to 3 persons appointed by the Chief of the Defence Force;

**28 Paragraph 57(1)(b)**

Omit “a service chief”, substitute “the Chief of the Defence Force”.

**29 Section 66**

Repeal the section, substitute:

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

- (1) The Chief of the Defence Force may, by writing, delegate to an officer of the Defence Force all or any of his or her powers under this Act.
- (2) An officer exercising a power delegated under this section is subject to the directions of the Chief of the Defence Force.

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

**30 Subsection 5(1) (definition of *appropriate service chief*)**

Repeal the definition.

**31 Sections 7, 8 and 9**

Omit “appropriate service chief” (wherever occurring), substitute “Chief of the Defence Force”.

**32 Subsections 10(1), 11(1) and 12(1)**

Omit “appropriate service chief” (wherever occurring), substitute “Chief of the Defence Force”.

**33 Sections 13, 14 and 16**

Omit “appropriate service chief” (wherever occurring), substitute “Chief of the Defence Force”.

**34 Section 18**

Omit “Navy, the Chief of Army or the Chief of Air”, substitute “the Defence”.

**35 Section 19**

Repeal the section, substitute:

## 19 Delegation

- (1) The Chief of the Defence Force may, by signed writing, delegate to a person any of his or her powers or functions under this Act.
- (2) A delegation under this section continues in force despite a change in the occupancy of, or a vacancy in, the office of Chief of the Defence Force.

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

### 36 Section 7 (definition of *call out day*)

Omit “50D”, substitute “28”.

### 37 Section 7 (definition of *service chief*)

Repeal the definition.

### 38 Subsection 9(1) (definition of *dependant*)

Omit “50D”, substitute “28”.

### 39 Subsection 12(1)

Omit “subsection 32A(3) of the *Naval Defence Act 1910*, subsection 50(3) of the *Defence Act 1903* or subsection 4J(3) of the *Air Force Act 1923*”, substitute “subsection 26(1) of the *Defence Act 1903*”.

### 40 Paragraph 12(1)(a)

Omit “a service chief”, substitute “the Chief of the Defence Force”.

### 41 Subsection 12(2)

Omit “a service chief”, substitute “the Chief of the Defence Force”.

### 42 Section 13

Omit “50D”, substitute “28”.

### 43 Section 79

Omit “A service chief”, substitute “The Chief of the Defence Force”.

### 44 Section 79

Omit “in that service”.

### ***Defence (Visiting Forces) Act 1963***

#### **45 Subsection 8(7)**

Omit “Navy, the Chief of Army or the Chief of Air”, substitute “the Defence”.

#### **46 Subsection 8(7)**

Omit “that part of the Defence Force under his or her command”, substitute “the Defence Force”.

#### **47 Subsection 28(3)**

Omit “or a service chief”.

#### **48 Subsection 28(3)**

Omit “, other than this power of delegation”.

#### **49 Subsection 28(4)**

Omit “or a service chief”.

#### **50 Subsection 28(6)**

Omit “or a service chief”.

#### **51 Subsection 28(7)**

Omit “, of Chief of the Defence Force or of service chief”, substitute “or Chief of the Defence Force”.

#### **52 Paragraph 28(8)(b)**

Omit “or a service chief” (wherever occurring).

#### **53 Paragraph 28(8)(b)**

Omit “or the service chief”.

### ***Disability Discrimination Act 1992***

#### **54 Subsection 4(1) (paragraph (e) of the definition of Commonwealth employee)**

Omit “, the *Commonwealth Electoral Act 1918* or the *Naval Defence Act 1910*”, substitute “or the *Commonwealth Electoral Act 1918*”.

***Freedom of Information Act 1982***

**55 Paragraphs 4(4)(b) to (d)**

Repeal the paragraphs, substitute:  
and (b) the Australian Defence Force Cadets.

***Income Tax Assessment Act 1936***

**56 Subsection 79B(1B)**

Omit “or a service chief” (wherever occurring).

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

**57 Paragraph 12(10)(b)**

Omit “, the *Naval Defence Act 1910* or the *Air Force Act 1923*”.

***Maritime Powers Act 2013***

**58 Subsection 114(3)**

Omit “*Naval Defence Act 1910*”, substitute “*Defence Act 1903*”.

**59 Paragraph 121(1)(a)**

Omit “, the Chief of Navy, the Chief of Army or the Chief of Air Force”.

***Military Rehabilitation and Compensation Act 2004***

**60 Subsection 5(1) (definition of *Australian Defence Force cadets*)**

Repeal the definition, substitute:

*Australian Defence Force Cadets* has the meaning given by the  
*Defence Act 1903*.

**61 Subsection 5(1) (definition of *Permanent Forces*)**

Repeal the definition, substitute:

*Permanent Forces* has the same meaning as in the *Defence Act 1903*.

**62 Subsection 5(1) (definition of *Reserves*)**

Repeal the definition, substitute:

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

**63 Subparagraph 362(1)(e)(v)**

Omit “and”.

**64 Subparagraph 362(1)(e)(vi)**

Repeal the subparagraph.

**65 Section 438**

Repeal the section, substitute:

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

The Chief of the Defence Force may, in writing, delegate any of his or her functions or powers under a provision of this Act to:

(a) a person:

(i) who is engaged under the *Public Service Act 1999* and performing duties in the Department administered by the Defence Minister or the Veterans’ Affairs Minister; and

(ii) whose duties relate to matters to which the provision relates; or

(b) a member of the Defence Force whose duties relate to matters to which the provision relates.

***Navigation Act 2012***

**66 Subsection 14(1) (definition of *Australian Navy*)**

Repeal the definition.

**67 Subsection 223(1)**

Omit “Australian Navy”, substitute “Department of Defence”.

***Office of National Assessments Act 1977***

**68 Section 3 (paragraph (c) of the definition of *prescribed Commonwealth officer*)**

Repeal the paragraph.

***Privacy Act 1988***

**69 Subsection 6(1) (definition of *Defence Force*)**

Omit “Australian Navy Cadets, the Australian Army Cadets and the Australian Air Force Cadets”, substitute “Australian Defence Force Cadets”.

***Public Interest Disclosure Act 2013***

**70 Section 8 (paragraphs (b) to (d) of the definition of *Defence Department*)**

Repeal the paragraphs, substitute:

(b) the Australian Defence Force Cadets.

***Safety, Rehabilitation and Compensation Act 1988***

**71 Paragraphs 6A(1)(b) to (d)**

Repeal the paragraphs, substitute:

(b) members of the Australian Defence Force Cadets;

**72 Paragraph 33(2)(b)**

Omit “*Naval Defence Act 1910*, the *Defence Act 1903* or the *Air Force Act 1923*”, substitute “*Defence Act 1903*”.

**73 Section 141 (definition of *service chief*)**

Repeal the definition.

**74 Paragraph 151(1)(ba)**

Omit “or”.

**75 Paragraph 151(1)(c)**

Repeal the paragraph.

**76 Subsections 152(2) to (4)**

Repeal the subsections, substitute:

- (2) The Chief of the Defence Force may, in writing, delegate any of his or her functions or powers under a provision of this Act to a person to whom the Chief of the Defence Force can delegate functions or powers under section 438 of the MRCA.

***Sex Discrimination Act 1984***

**77 Paragraph 4(1) (paragraph (e) of the definition of Commonwealth employee)**

Omit “, the *Commonwealth Electoral Act 1918* or the *Naval Defence Act 1910*”, substitute “or the *Commonwealth Electoral Act 1918*”.

***Sydney Harbour Federation Trust Act 2001***

**78 Subsection 21(1)**

Omit “*Naval Defence Act 1910*”, substitute “*Defence Act 1903*”.

***Work Health and Safety Act 2011***

**79 Subsection 232(3) (paragraph (d) of the definition of official inquiry)**

Omit “, the *Naval Defence Act 1910* or the *Air Force Act 1923*”.

## Part 2—Transitional provisions

### 80 Saving

- (1) Despite the amendment of paragraph 12(10)(b) of the *Long Service Leave (Commonwealth Employees) Act 1976* by item 57, that paragraph, as in force immediately before the amendment, continues in effect in relation to a period of defence service being rendered at the time of the amendment.
- (2) Despite the amendment of paragraph 33(2)(b) of the *Safety, Rehabilitation and Compensation Act 1988* by item 72, that paragraph, as in force immediately before the amendment, continues in effect in relation to an amount paid or payable in respect of a period of leave of absence granted, or in lieu of the grant of a period of leave of absence before the time of the amendment.
- (3) Despite the amendment of subsection 232(3) of the *Work Health and Safety Act 2011* by item 79, that subsection, as in force immediately before the amendment, continues in effect in relation to a proceeding or inquiry begun before the time of the amendment.

## **Schedule 3—Repeals**

### *Air Force Act 1923*

#### **1 The whole of the Act**

Repeal the Act.

### *Naval Defence Act 1910*

#### **2 The whole of the Act**

Repeal the Act.

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*[Minister's second reading speech made in—  
Senate on 14 October 2015  
House of Representatives on 25 November 2015]*

(182/15)

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