

1993-94-95

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

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Presented and read a first time

*(Defence)*

**DEFENCE LEGISLATION AMENDMENT BILL 1995**

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## **A BILL**

FOR

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

The Parliament of Australia enacts:

#### **Short title**

1. This Act may be cited as the *Defence Legislation Amendment Act 1995*.

#### **5 Commencement**

2.(1) Except as indicated in subsections (2), (3) and (4), this Act commences on the day on which it receives the Royal Assent.

(2) Schedule 1 (except items 3 and 11.3), items 29 and 30 of Schedule 2, and Schedule 5 commence on a day to be fixed by Proclamation.

(3) If the provisions referred to in subsection (2) do not commence under that subsection within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.

(4) Schedule 3 is taken to have commenced immediately before 5  
1 September 1994.

### **Schedules of amendments**

3.(1) The Acts specified in Schedules 1 to 5 are amended in accordance with the applicable items in those Schedules.

(2) Item 11 of Schedule 1 has effect according to its terms. 10

(3) The provision of the *Defence Force Discipline Act 1982* specified in Column 1 of an item in Schedule 6 is amended by omitting the word or words indicated in Column 2 of the item and substituting the word or words set out in Column 3 of the item

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**SCHEDULE 1**

Section 3

**AMENDMENTS OF THE DEFENCE ACT 1903**

**1. Immediately before section 8:**

Insert in Part II:

*“Division 1—Command and administration of Defence Force”.*

**2. After section 9B:**

Insert:

**Tenure of office**

“9BA.(1) Subject to subsection (2) and Division 3, a person appointed under subsection 9(1) or 9AA(1) holds office for the period specified in the document of appointment, but is eligible for re-appointment.

“(2) If a person appointed under subsection 9(1) or 9AA(1) ceases to be an officer of an arm of the Defence Force, the person ceases to hold office under subsection 9(1) or 9AA(1).”.

**3. Subsection 9C(1):**

Omit “Governor-General”, substitute “Minister”.

**4. After section 9C:**

Insert:

*“Division 2—Appointment, promotion and resignation of officers of the Army”.*

**5. Subsection 10A(2):**

Omit the subsection.

**6. After section 10A:**

Insert:

**Limited-tenure promotions**

“10B.(1) The Governor-General may promote an officer of the Army to a rank of Colonel or a higher rank for a specified period (the ‘**term**’ of the promotion).

“(2) The Governor-General may extend the term of a promotion under this section.

“(3) Subject to subsection (4), at the end of the term of a promotion under this section, the officer concerned is retired from the Army by force of this subsection.

### SCHEDULE 1—continued

“(4) At any time before the end of the term of a promotion under this section, the Chief of the General Staff may give written permission for the officer concerned, at the end of the term of the promotion, to revert to the rank he or she held immediately before promotion.

“(5) If permission is given under subsection (4), then, at the end of the term of the promotion:

- (a) the officer is not retired from the Army by force of subsection (3); and
- (b) the officer reverts to the rank he or she held immediately before promotion.

“(6) An officer may decline promotion under this section.”.

#### 7. Subsection 16(1):

Omit the subsection.

Note: The heading to section 16 is replaced by the heading “**Termination of probationary appointments**”.

#### 8. After section 18:

Insert:

*“Division 3—Retirement and termination of appointment of officers of the Army*

#### Definitions

“19. In this Division:

‘**relevant authority**’ means:

- (a) in relation to an officer of the Army who holds the rank of Brigadier or a higher rank—the Minister; or
- (b) in relation to any other officer of the Army—the Chief of the General Staff;

‘**senior officer**’ means an officer of the Army who holds the rank of Major-General or a higher rank.

#### Retirement of senior officers on expiry of appointment etc.

“20.(1) When the term of an appointment of an officer under section 9 or 9AA ends, the Governor-General must retire the officer from the Army as soon as is reasonably practicable.

“(2) Subsection (1) does not apply if, before the term of the appointment ended, the officer concerned was appointed or re-appointed to an office under section 9 or 9AA, whether or not the appointment or re-appointment took effect immediately after the end of the term of the first-mentioned appointment.

**SCHEDULE 1—continued**

“(3) When a senior officer completes the period of service that, under section 10A, represents the term of his or her appointment as an officer of the Army or that term as extended, the Governor-General must retire the officer from the Army as soon as is reasonably practicable.

“(4) Until an officer referred to in subsection (3) is retired, he or she remains an officer of the part of the Army in which he or she is serving.

**Retirement of other officers on expiry of appointment**

“21.(1) This section applies to an officer of the Army, other than a senior officer.

“(2) When an officer completes the period of service that, under section 10A, represents the term of his or her appointment as an officer of the Army or that term as extended, the relevant authority must retire the officer from the Army as soon as is reasonably practicable.

“(3) Until an officer referred to in subsection (2) is retired, he or she remains an officer of the part of the Army in which he or she is serving.

**Retirement of officers for incapacity etc.**

“22.(1) The relevant authority may give an officer of the Army a retirement notice.

“(2) A retirement notice is a written notice that:

- (a) states that it is proposed that the officer be retired; and
- (b) states the ground on which the officer is to be retired; and
- (c) invites the officer to give the relevant authority a written statement of reasons why the officer should not be retired; and
- (d) specifies a period ending not less than 28 days after the giving of the notice as the period within which a statement of reasons must be given to the relevant authority; and
- (e) sets out particulars of the facts and circumstances constituting the ground specified in the notice sufficient to enable the officer to prepare a statement referred to in paragraph (c).

“(3) The following are the grounds on which an officer of the Army may be retired under this section:

- (a) that, as a result of physical or mental incapacity that it is not within the officer’s power to control, the officer is incapable of rendering effective service;
- (b) that the officer is inefficient or incompetent through causes not within his or her control.

“(4) If:

- (a) the relevant authority gives a senior officer a retirement notice; and

**SCHEDULE 1—continued**

(b) either:

- (i) the officer does not give the relevant authority, within the period specified in the retirement notice, a statement of reasons why the officer should not be retired; or
- (ii) having considered such a statement given by the officer, the Governor-General is of the opinion that the ground of retirement specified in the retirement notice has been established;

the Governor-General must retire the officer.

“(5) If:

(a) the relevant authority gives an officer of the Army (other than a senior officer) a retirement notice; and

(b) either:

- (i) the officer does not give the relevant authority, within the period specified in the retirement notice, a statement of reasons why the officer should not be retired; or
- (ii) having considered such a statement given by the officer, the relevant authority is of the opinion that the ground of retirement specified in the retirement notice has been established;

the relevant authority must retire the officer.

**Form and date of effect of retirement**

“23.(1) The retirement of an officer under section 20, 21 or 22 must be in writing.

“(2) The document of retirement must specify the day on which the retirement is to take effect.

“(3) The day to be specified for the purpose of subsection (2) is a day:

- (a) not earlier than the day on which the officer is given a copy of the document of retirement; and
- (b) not later than 3 months after the day referred to in paragraph (a).

“(4) The retirement of an officer from the Army takes effect on the day specified in the document of retirement for the purpose of subsection (2).

**Termination of appointment of officer for absence without leave**

“24. The relevant authority may terminate the appointment of an officer of the Army who has been absent without leave for a continuous period of at least 3 months.



**SCHEDULE 1—continued**

**Termination of appointment on other grounds**

“25.(1) The relevant authority may give an officer of the Army a termination notice.

“(2) A termination notice is a written notice that:

- (a) states that it is proposed that the appointment of the officer be terminated; and
- (b) states the ground on which the officer’s appointment is to be terminated; and
- (c) invites the officer to give the relevant authority a written statement of reasons why the officer’s appointment should not be terminated; and
- (d) specifies a period ending not less than 28 days after the giving of the notice as the period within which a statement of reasons must be given to the relevant authority; and
- (e) sets out particulars of the facts and circumstances constituting the ground specified in the notice sufficient to enable the officer to prepare a statement referred to in paragraph (c).

“(3) The following are the grounds on which the appointment of an officer of the Army may be terminated under this section:

- (a) that:
  - (i) the officer has been convicted of an offence or a service offence; and
  - (ii) the Chief of the General Staff has certified in writing that, having regard to the nature and seriousness of the offence, the retention of the officer is not in the interests of the Defence Force;
- (b) that the officer is inefficient or incompetent for reasons or causes within his or her own control;
- (c) that the officer’s behaviour has been such that the retention of the officer is not in the interests of the Defence Force;
- (d) that, for reasons or causes within the officer’s control, the officer’s performance is such that the retention of the officer is not in the interests of the Defence Force.

“(4) For the purpose of paragraph (3)(a), an officer is to be taken to have been convicted of an offence if a court or service tribunal, in proceedings relating to the offence, has made a finding that the officer committed the offence, whether or not the court or tribunal entered a conviction.

“(5) If:

- (a) the relevant authority gives a senior officer a termination notice; and

**SCHEDULE 1—continued**

(b) either:

- (i) the officer does not give the relevant authority, within the period specified in the termination notice, a statement of reasons why the officer's appointment should not be terminated; or
- (ii) having considered such a statement given by the officer, the Governor-General is of the opinion that the ground specified in the notice as the ground of termination of the officer's appointment has been established;

the Governor-General must terminate the appointment of the officer.

“(6) If:

(a) the relevant authority gives an officer of the Army (other than a senior officer) a termination notice; and

(b) either:

- (i) the officer does not give the relevant authority, within the period specified in the termination notice, a statement of reasons why the officer's appointment should not be terminated; or
- (ii) having considered such a statement given by the officer, the relevant authority is of the opinion that the ground specified in the termination notice has been established;

the relevant authority must terminate the appointment of the officer.

**Form and date of effect of termination**

“25A.(1) The termination of the appointment of an officer of the Army must be in writing.

“(2) The document of termination must specify the day on which the termination is to take effect.

“(3) Subject to subsection (4), the day to be specified for the purpose of subsection (2) is a day:

- (a) not earlier than the day on which the officer is given a copy of the document of termination; and
- (b) not later than 3 months after the day referred to in paragraph (a).

“(4) In the case of termination of an appointment under section 24, the day to be specified for the purpose of subsection (2) is a day not earlier than the day on which the document of termination is signed by the relevant authority.

“(5) The termination of the appointment of an officer takes effect on the day specified in the document of termination for the purpose of subsection (2).

**SCHEDULE 1—continued**

**Offer of special benefit to officer**

“25B.(1) The Chief of the General Staff may give an officer of the Army a written notice stating that if the officer retires from the Army within a specified period, the officer will be entitled to a special benefit in accordance with a determination under section 58B or 58H.

“(2) The period to be specified in a notice is a period of one month commencing not earlier than the day on which the notice is given to the officer.

“(3) If a notice is given to an officer under subsection (1):

- (a) the officer may retire from the Army within the period specified in the notice even though he or she would not otherwise be entitled to retire; and
- (b) the officer is to be taken for all purposes to have been compulsorily retired from the Army.

**Notice of intention to begin retirement procedures**

“25C.(1) The Chief of the General Staff may not give an officer a notice under subsection 25B(1) unless:

- (a) the officer has been given written notice:
  - (i) informing him or her that the Chief of the General Staff is considering the giving of a notice to the officer under subsection 25B(1); and
  - (ii) stating the reasons why the Chief of the General Staff is considering the giving of such a notice; and
  - (iii) inviting the officer, within a specified period, to give the Chief of the General Staff a written statement of reasons why the officer should not be retired from the Army; and
- (b) either:
  - (i) the officer has not given the Chief of the General Staff a statement in accordance with subparagraph (a)(iii); or
  - (ii) the officer has given such a statement and the Chief of the General Staff has considered the reasons given in the statement.

“(2) The period specified for the purpose of subparagraph (1)(a)(iii) must be not less than 14 days and must commence no earlier than the day on which the notice is given to the officer.

**SCHEDULE 1—continued****Retirement of officer without special benefit**

“25D.(1) If an officer to whom a notice has been given under subsection 25B(1) does not retire within the period specified in the notice, the Chief of the General Staff may retire the officer if the Chief of the General Staff considers it necessary to do so in the interests of the organisational effectiveness of the Army.

“(2) The Chief of the General Staff retires an officer under subsection (1) by giving the officer a notice stating that the officer is retired from the Army at the end of the period specified in the notice.

“(3) The period specified under subsection (2) must be a period not less than 13 months commencing on the day on which the notice is given to the officer.

“(4) An officer of the Army to whom a notice is given under subsection (1) is retired from the Army, by force of this section, on the day specified in the notice.

“(5) An officer who is retired under this section is to be taken for all purposes to have been compulsorily retired from the Army.

**Time not to run during certain periods**

“25E.(1) For the purpose of ascertaining when a period referred to in this Division ends in relation to an officer, any period during which a complaint made by the officer is being investigated is not to be taken into account.

“(2) Subsection (1) only applies to a complaint that:

(a) is made by the officer concerned:

(i) under the regulations; or

(ii) to the Defence Force Ombudsman under the *Ombudsman Act 1976*; and

(b) concerns action taken under section 25B, 25C or 25D in relation to the officer.”.

**9. Section 27:**

Add at the end:

“(2) When a member of the Army reaches the prescribed age of retirement of the member, he or she is retired from the Army by force of this section.”.

Note: The heading to section 27 is altered by omitting “— discretion to extend” and substituting “on reaching prescribed age”.

**10. After section 27:**

Insert:

**SCHEDULE 1**—continued

***“Division 4—Miscellaneous***

**Notional ranks of chaplains**

“27A. For the purposes of Divisions 2 and 3, a person who is a chaplain is taken to have the rank ascertained in accordance with the regulations.”.

**11. Savings**

1. An appointment in force under section 9 or 9AA of the *Defence Act 1903* immediately before the commencement of item 2 of this Schedule has the same effect after that commencement as it would have had if this Act had not been enacted.

2. Part II of the *Defence Act 1903*, as in force immediately before the commencement of item 2 of this Schedule continues to have effect, in relation to an appointment referred to in item 11.1, as if this Act had not been enacted.

3. An appointment in force under subsection 9C(1) of the *Defence Act 1903* immediately before the commencement of item 3 of this Schedule has the same effect after that commencement as it would have had if:

- (a) item 3 had been in force when the appointment was made; and
  - (b) the appointment had been made under the *Defence Act 1903* as amended by item 3.
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## SCHEDULE 2

Section 3

## AMENDMENTS OF THE DEFENCE FORCE DISCIPLINE ACT 1982

**1. Subsection 3(1) (definition of “service policeman”):**

Omit the definition.

**2. Subsection 3(1):**

Insert the following definition:

“ ‘**police member**’ means:

- (a) a service police officer; or
- (b) a sailor, soldier or airman who is a member of a police corps or service;”.

**3. Subsection 23(1):**

Omit “3 months”, substitute “12 months”.

**4. Section 34:**

Add at the end:

“(2) It is a defence to a prosecution for an offence against subsection (1) that the accused neither knew, nor could reasonably be expected to have known, that the person against whom the offence is alleged to have been committed was of inferior rank to the accused.”.

**5. After section 36:**

Insert:

**Unauthorised or negligent discharge of weapon**

“36A.(1) A person, being a defence member or a defence civilian, who intentionally discharges a weapon in circumstances in which the person is not authorised to discharge the weapon is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

“(2) A person, being a defence member or a defence civilian, who, by a negligent act or omission, causes or contributes to the discharge of a weapon is guilty of an offence for which the maximum punishment is imprisonment for 6 months.”.

**6. Paragraph 59(2)(b):**

Omit, substitute:

“(b) if the convicted person is a member of the Defence Force and the offence is committed in relation to a quantity of cannabis not exceeding 25 grams in mass:

- (i) in the case of a first offence—a fine of the amount of the member’s pay for 14 days; or
- (ii) in the case of a second or subsequent offence—dismissal from the Defence Force; or”.

**SCHEDULE 2—continued**

**7. Paragraph 59(4)(a):**

Omit, substitute:

“(a) if the convicted person is a member of the Defence Force:

- (i) in the case of a first offence—a fine of the amount of the member’s pay for 14 days; or
- (ii) in the case of a second or subsequent offence—dismissal from the Defence Force; or”.

**8. Paragraph 59(5)(a):**

Omit, substitute:

“(a) if the convicted person is a member of the Defence Force:

- (i) in the case of a first offence—a fine of the amount of the member’s pay for 14 days; or
- (ii) in the case of a second or subsequent offence—dismissal from the Defence Force; or”.

**9. Subparagraph 63(1)(a)(ia):**

Omit “Australian Capital Territory”, substitute “Jervis Bay Territory”.

**10. Paragraph 68(1)(n):**

Omit “3 days”, substitute “7 days”.

**11. After paragraph 68(1)(n):**

Insert:

“(na) extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days;”.

**12. Subsection 68(2):**

Add at the end:

“; (g) extra drill for a period.”.

**13. After subsection 71(1):**

Insert:

“(1A) A service tribunal must not impose on a non-commissioned officer whom it has convicted of a service offence a punishment of detention unless the tribunal also imposes the punishment of reduction in rank to a rank below non-commissioned rank.”.

**14. Subsection 79(1):**

Omit “of an amount not less than the amount of the member’s pay for 7 days”.

## SCHEDULE 2—continued

### 15. Subsections 100(2) and (3):

Omit, substitute:

“(2) Subject to subsection (3), a member of the Defence Force who is suspended from duty under subsection 98(1) or section 99 is not entitled to remuneration in respect of the period of suspension.

“(3) If a member of the Defence Force is suspended from duty under subsection 98(1) or section 99, the relevant authority may, at any time, on application by the member or otherwise, direct that the member receive remuneration during the whole, or a specified part, of the period of suspension.

“(4) A direction may only be given under subsection (3) if the relevant authority is satisfied that the member is suffering, or has suffered, hardship as a result of the suspension.

“(5) For the purposes of subsection (3), the relevant authority is:

- (a) in the case of a suspension under subsection 98(1) or 99(2)—an authorised officer; or
- (b) in the case of a suspension under subsection 99(1)—the service tribunal by which the suspension was imposed or a reviewing authority.

“(6) A member of the Defence Force who is suspended from duty under subsection 98(1) or section 99 is entitled to engage in employment outside the Defence Force during any period of suspension in respect of which the member is not receiving remuneration.

“(7) This section does not affect any requirement to perform a duty, or any remuneration entitlement, of a member of the Defence Force who is undergoing a punishment of detention.

“(8) In this section, ‘**remuneration**’ has the same meaning as in Division 1 of Part IIIA of the *Defence Act 1903*.”.

### 16. Subsection 101(1):

Insert the following definition:

“ ‘**tape recording**’ includes sound recording and video recording;”.

### 17. Sections 101D and 101E:

Repeal the sections, substitute:

#### **Cautioning of person charged or summoned**

“101D.(1) After an investigating officer has decided to charge a person with a service offence, to seek the issue of a summons against a person for a service offence or to recommend that a person be so charged or that a summons be so sought:



**SCHEDULE 2—continued**

- (a) an investigating officer must not ask the person any question, or request the person to do anything, for a purpose connected with the investigation of the service offence unless the investigating officer or another investigating officer has cautioned the person that he or she does not have to say or do anything, but that anything the person does say or do may be used in evidence; and
- (b) the investigating officer who made the decision must take reasonable steps to ensure that paragraph (a) is not contravened.

“(2) A caution for the purpose of paragraph (1)(a) must be given in, or translated into, a language in which the person being cautioned is able to communicate with reasonable fluency, but need not be given in writing.

“(3) An investigating officer who is required by subsection (1) to caution a person must, if practicable, tape record the giving of the caution and the person’s response (if any).

“(4) If:

- (a) an investigating officer cautions a person; and
- (b) the giving of the caution and the person’s response (if any) to the caution are not tape recorded;

then in any proceedings before a service tribunal, the prosecution has the burden of proving that it was not practicable to tape record the giving of the caution or the person’s response (if any) to the caution.

“(5) Subsection (1) does not apply in relation to asking a person to take part in an identification parade.

**Access to friend, relative and legal practitioner**

“101E.(1) Subject to section 101G, if a person is in custody in respect of a service offence, an investigating officer concerned in the investigation of the offence must, before starting to question the person, inform the person that he or she may:

- (a) communicate, or attempt to communicate, with a friend or relative to inform that person of his or her whereabouts; and
- (b) communicate, or attempt to communicate, with a legal practitioner of the person’s choice and arrange, or attempt to arrange, for a legal practitioner of the person’s choice to be present during the questioning;

and the investigating officer must defer the questioning for a reasonable time to allow the person to make, or attempt to make, the communication and, if the person has arranged for a legal practitioner to be present, to allow the legal practitioner to attend the questioning.

**SCHEDULE 2**—continued

“(2) Subject to section 101G, if a person in custody in respect of a service offence wishes to communicate with a friend, relative or legal practitioner, the investigating officer holding the person in custody must:

- (a) as soon as practicable, give the person reasonable facilities to enable the person to do so; and
- (b) in the case of a communication with a legal practitioner—allow the legal practitioner or a clerk of the legal practitioner to communicate with the person in circumstances in which, as far as practicable, the communication will not be overheard.

“(3) Subject to section 101G, if a person in custody in respect of a service offence arranges for a legal practitioner to be present during the questioning, the investigating officer holding the person in custody must:

- (a) allow the person to consult with the legal practitioner in private and provide reasonable facilities for that consultation; and
- (b) allow the legal practitioner to be present during the questioning and to give advice to the person, but only while the legal practitioner does not unreasonably interfere with the questioning.”.

**18. Section 101G:**

Repeal the section, substitute:

**Exceptions to requirements of section 101E**

“101G.(1) Subject to subsections (2), (3) and (4), if a requirement imposed on an investigating officer by section 101E is expressed to be subject to this section, the requirement does not apply if, and so long as, the investigating officer has reasonable grounds for believing that:

- (a) compliance with the requirement is likely to result in:
  - (i) an accomplice of the person taking steps to avoid apprehension; or
  - (ii) the concealment, fabrication or destruction of evidence or the intimidation of a witness; or
- (b) if the requirement relates to the deferral of questioning—the questioning is so urgent, having regard to the safety of other people, that it should not be delayed by compliance with that requirement.

“(2) If the application of subsection (1) results in:

- (a) preventing or delaying the person communicating with a legal practitioner of his or her choice; or
- (b) preventing or delaying a legal practitioner of the person’s choice attending at any questioning;

the investigating officer must offer the services of another legal practitioner and, if the person accepts the offer, make the necessary arrangements.

**SCHEDULE 2**—continued

“(3) If a requirement referred to in subsection (1) relates to things done by or in relation to a legal practitioner:

- (a) subsection (1) applies only in exceptional circumstances; and
- (b) if subsection (1) applies, the investigating officer must comply with the requirement as soon as possible after subsection (1) ceases to apply.

“(4) If a requirement referred to in subsection (1) relates to things done by or in relation to a legal practitioner, subsection (1) only applies if an appropriate officer has authorised the application of subsection (1) and has made a record of the investigating officer’s grounds for belief.

“(5) An appropriate officer, for the purposes of subsection (4) is:

- (a) if the person in custody is a member of the Australian Navy—a member of the Australian Navy holding the rank of Commander or a higher rank; or
- (b) if the person in custody is a member of the Australian Army—a member of the Australian Army holding the rank of Lieutenant-Colonel or a higher rank; or
- (c) if the person in custody is a member of the Australian Air Force—a member of the Australian Air Force holding the rank of Wing Commander or a higher rank.”.

**19. After section 101J:**

Insert:

**Tape recording of confessions and admissions**

“101JA.(1) If a person who is being interviewed as a suspect (whether under arrest or not) makes a confession or admission to a police member, the confession or admission is inadmissible as evidence against the person in proceedings for a service offence unless:

- (a) if the confession or admission was made in circumstances where it was reasonably practicable to tape record the confession or admission—the questioning of the person and anything said by the person during that questioning was tape recorded; or
- (b) in any other case:
  - (i) at the time of the interview of the person or as soon as practicable afterwards, a record in writing was made, either in English or in another language used by the person in the interview, of the things said by or to the person in the course of the interview; and

**SCHEDULE 2—continued**

- (ii) as soon as practicable after the record was made, it was read to the person in the language used by him or her in the interview and a copy of the record was made available to the person; and
- (iii) the person was given the opportunity to interrupt the reading at any time for the purpose of drawing attention to any error or omission that he or she claimed had been made in or from the record and, at the end of the reading, the person was given the opportunity to state whether he or she claimed that there were any errors in or omissions from the record in addition to any to which he or she had drawn attention in the course of the reading; and
- (iv) a tape recording was made of the reading referred to in subparagraph (ii) and of everything said by or to the person as a result of compliance with subparagraph (iii), and the requirements of subsection (2) were observed in respect of that recording; and
- (v) before the reading referred to in subparagraph (ii), an explanation, in accordance with the form set out in subsection (6), was given to the person of the procedure that would be followed for the purposes of compliance with that subparagraph and subparagraphs (iii) and (iv).

“(2) If the questioning, confession or admission, or the confirmation of a confession or admission, of a person is recorded as required under this section, the police member concerned must, without charge:

- (a) if the recording is a sound recording only or a video recording only—make the recording or a copy of it available to the person or his or her legal representative within 7 days after the making of the recording; and
- (b) if both a sound recording and a video recording were made—make the sound recording or a copy of it available to the person or his or her legal representative within 7 days after the making of the recording, and notify the person or his or her legal representative that an opportunity will be provided, on request, for viewing the video recording; and
- (c) if a transcript of the tape recording is prepared—make a copy of the transcript available to the person or his or her legal representative within 7 days after the preparation of the transcript.

## SCHEDULE 2—continued

“(3) In proceedings for a service offence, evidence to which this section applies may be admitted even if the requirements of this section have not been complied with, or there is insufficient evidence of compliance with those requirements, if, having regard to the nature of and the reasons for the non-compliance or insufficiency of evidence and any other relevant matters, the service tribunal, or, in the case of a court martial, the judge advocate of the court martial, is satisfied that, in the special circumstances of the case, admission of the evidence would not be contrary to the interests of justice.

“(4) In proceedings for a service offence, evidence to which this section applies may be admitted even if a provision of subsection (2) has not been complied with if, having regard to the reasons for the non-compliance and any other relevant matters, the service tribunal, or, in the case of a court martial, the judge advocate of the court martial, is satisfied that it was not practicable to comply with that provision.

“(5) If the judge advocate of a court martial permits evidence to be given under subsection (3) or (4), the judge advocate must inform the members of the court martial of the non-compliance with the requirements of this section, or of the absence of sufficient evidence of compliance with those requirements, as the case may be, and give the members such warning about the evidence as he or she thinks appropriate in the circumstances.

“(6) The explanation referred to in subparagraph (1)(b)(v) is to be in accordance with the following form:

When you were interviewed by [*name of police member*], a written record was made of what you said, and what was said to you, in the interview. The record was made \*at the time of the interview \*as soon as practicable after the interview. It is in \*English \*the language you used at the interview. You will be given a copy.

I am now going to read it to you in [*language*], the language you used in the interview.

You have the right to interrupt the reading at any time if you think there is something wrong with the record. At the end of the reading, you have the right to tell me about anything else you think is wrong with the record, as well as the things you mentioned during the reading.

A tape recording will be made of the reading of the record and of everything you say, and everything said to you, during the reading and at the end. You will be given a copy of that tape recording and, if a transcript is made, a copy of that transcript.

\*Delete whichever is not applicable.”.

**SCHEDULE 2—continued**

**20. Subsection 101K(1):**

After “investigating officer” insert “who is not a police member”.

**21. After subsection 101Q(4):**

Insert:

“(4A) The authority conferred by subsection (4) on an authorised officer only extends to the giving of approval in respect of a medical examination of a kind, or the taking of a specimen, that is reasonably necessary for the purpose of obtaining evidence relating to the presence or absence of a narcotic substance in the blood or urine of a person.

“(4B) In subsection (4A), ‘**narcotic substance**’ has the same meaning as in the *Customs Act 1901*.

“(4C) In considering whether to give approval under subsection (4), an authorised officer may take into account the physical health of the person to whom the application for approval relates.”.

**22. After section 101Q:**

Insert:

**Offence of refusing to submit to medical examination etc.**

“101QA.(1) If:

- (a) a person is in lawful custody in respect of a service offence; and
- (b) an investigating officer has arranged for a medical practitioner to examine the person for the purpose of securing evidence of, or relating to, the service offence; and
- (c) either:
  - (i) the person has given his or her consent in writing to the examination; or
  - (ii) an authorised officer has, under subsection 101Q(4), approved the examination; and
- (d) the investigating officer has informed the person that refusal or failure by him or her to submit to the examination will constitute an offence; and
- (e) after having been so informed, the person, without reasonable excuse, refuses or fails to submit to the examination;

the person is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

“(2) If:

- (a) a person is in lawful custody in respect of a service offence; and

**SCHEDULE 2**—continued

- (b) an investigating officer has arranged for a medical practitioner to take a specimen from the person; and
- (c) the officer believes on reasonable grounds that analysis or other examination of the specimen is likely to provide evidence of, or relating to, the service offence; and
- (d) either:
  - (i) the person has given his or her consent in writing to the taking of the specimen; or
  - (ii) an authorised officer has, under subsection 101Q(4), approved the taking of the specimen; and
- (e) the investigating officer has informed the person that refusal or failure by him or her:
  - (i) to submit to the taking of the specimen; or
  - (ii) to do any act reasonably necessary to enable the specimen to be taken;will constitute an offence; and
- (f) after being so informed, the person, without reasonable excuse:
  - (i) refuses or fails to submit to the taking of the specimen; or
  - (ii) refuses or fails to do an act reasonably necessary to enable the specimen to be taken;

the person is guilty of an offence for which the maximum punishment is imprisonment for 6 months.

“(3) It is a reasonable excuse for the purposes of paragraph (1)(e) or (2)(f) that a person has a medical condition that may be aggravated by the conduct of the medical examination or the taking of the specimen, as the case requires.

“(4) Nothing in this section renders a person guilty of an offence for refusing to submit to a medical examination or the taking of a specimen to the extent that the examination or the taking of the specimen, as the case may be, is not reasonably necessary for the purpose of obtaining evidence relating to the presence or absence of a narcotic substance in the blood or urine of a person.

“(5) In subsection (4), ‘**narcotic substance**’ has the same meaning as in the *Customs Act 1901*.”.

**23. Subparagraph 104(a)(ii):**

Omit “Australian Capital Territory”, substitute “Jervis Bay Territory”.

**SCHEDULE 2—continued****24. Section 119:**

Add at the end:

“(2) At any time before a court martial assembles:

- (a) the convening authority may vary the order convening the court martial; or
- (b) revoke the order convening the court martial and make a new order under section 103.

“(3) An order convening a court martial made by virtue of paragraph (2)(b) must comply with subsection (1).”.

**25. Subsection 120(1):**

After “accused person” (first occurring) insert “(including an order made by virtue of subsection 119(2))”.

**26. Section 130:**

Add at the end:

“(5) A summary authority trying a charge may, at any stage of the trial, refer the charge to a convening authority if the summary authority considers that it is desirable, in the interests of justice, that the charge be so referred.

“(6) Subsection (5) does not affect the operation of any other provision of this Act.”.

**27. After subsection 141(4):**

Insert:

“(4A) For the purposes of this section, a summary authority is not to be regarded:

- (a) as biased; or
- (b) as likely to be biased;

in relation to the trial of an accused person merely because the summary authority is the commanding officer of the accused person.

“(4B) For the purposes of this section, the circumstance that a summary authority is the commanding officer of an accused person is not, without more, a reasonable ground for thinking that, in relation to the trial of the accused person, the summary authority is biased.”.

**28. Subsection 141A(1):**

Omit “that the charge is defective”, substitute “that, for any reason, the charge should be amended,”.



**SCHEDULE 2—continued**

**29. After subsection 144(3):**

Insert:

“(3A) If a defence member has been dealt with by a discipline officer under Part IXA in respect of an act or omission constituting a disciplinary infringement for the purposes of that Part, the member is not liable to be tried by a service tribunal for a service offence arising out of the same act or omission.

“(3B) For the purpose of subsection (3A), the exercise by a discipline officer of the power conferred by subsection 169F(3) does not constitute dealing with a defence member under Part IXA.”.

**30. After Part IX:**

Insert:

**“PART IXA—SPECIAL PROCEDURES RELATING TO CERTAIN  
MINOR DISCIPLINARY INFRINGEMENTS**

**Definitions**

“169A. In this Part:

**‘disciplinary infringement’** means an act or omission that constitutes:

- (a) an offence against section 23, 27 or 29, subsection 32(1), section 35 or section 60; or
- (b) an offence against section 24 in relation to an absence without leave for a period not exceeding 3 hours;

**‘relevant officer’** means a member of the Defence Force who holds a rank of non-commissioned officer or a higher rank.

**Appointment of discipline officers**

“169B. A commanding officer may, in writing, appoint officers or warrant officers to be discipline officers.

**Jurisdiction of discipline officer**

“169C. A discipline officer has jurisdiction to deal with a defence member holding a rank below non-commissioned rank in respect of a disciplinary infringement if:

- (a) the defence member has not been charged under this Act with a service offence arising out of the act or omission that constitutes the infringement; and
- (b) the member has elected to be dealt with by a discipline officer; and
- (c) the member has not withdrawn the election; and
- (d) the discipline officer holds his or her appointment from the commanding officer of the member.

**SCHEDULE 2**—continued**Issue of infringement notice**

“169D.(1) If a relevant officer has reasonable grounds for believing that a defence member holding a rank below non-commissioned rank has committed a disciplinary infringement, the relevant officer may give the defence member an infringement notice in relation to the infringement.

“(2) An infringement notice is a notice that:

- (a) gives particulars of the infringement to which the notice relates; and
- (b) informs the member to whom it is given of:
  - (i) the member’s right to elect to be dealt with, in relation to the infringement, by a discipline officer if the member admits the infringement; and
  - (ii) the period within which an election must be made; and
  - (iii) the penalties that may be imposed by a discipline officer; and
  - (iv) the power of a relevant officer to refer a matter for action under section 87.

“(3) An infringement notice must be in accordance with a form approved by the Chief of the Defence Force.

“(4) A relevant officer does not have authority to give an infringement notice to a defence member unless the relevant officer is authorised in writing by the commanding officer of the member to give such notices.

“(5) A relevant officer does not have authority to give an infringement notice to a defence member in relation to a disciplinary infringement unless the notice is given as soon as is reasonably practicable after the relevant officer first has reasonable grounds for believing that the member has committed the infringement.

**Election to be dealt with by discipline officer**

“169E.(1) If a defence member has been given an infringement notice, the member may elect to be dealt with, in relation to the disciplinary infringement to which the notice relates, by a discipline officer.

“(2) If a defence member elects to be dealt with, in relation to a disciplinary infringement, by a discipline officer, the member is to be taken, for the purpose of being so dealt with but for no other purpose, to have admitted the infringement.

“(3) An election may only be made within the period specified in the infringement notice.

“(4) If:

- (a) a defence member has been given an infringement notice in relation to a disciplinary infringement; and

**SCHEDULE 2**—continued

- (b) the defence member has not made an election within the period specified in the notice;

a relevant officer may refer the matter to an authorised member of the Defence Force to be dealt with according to section 87.

“(5) A defence member may, at any time before a punishment is imposed, withdraw an election.

**Powers of discipline officer**

“169F.(1) A discipline officer may impose on a defence member, in respect of a disciplinary infringement, any one of the following punishments:

- (a) a fine not exceeding the amount of the member’s pay for one day;
- (b) restriction of privileges for a period not exceeding 2 days;
- (c) stoppage of leave for a period not exceeding 3 days;
- (d) extra duties for a period not exceeding 3 days;
- (e) extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days;
- (f) a reprimand.

“(2) A discipline officer may decide not to impose a penalty in respect of a disciplinary infringement that the discipline officer considers trivial.

“(3) If a discipline officer thinks a disciplinary infringement is too serious to be dealt with under this Part, the discipline officer may decline to deal with the defence member under this Part.

“(4) A discipline officer exercising jurisdiction under this section is not to be taken to be a service tribunal for the purposes of this Act.

“(5) A discipline officer must not impose a punishment except in accordance with this Part.

**Procedure before discipline officer**

“169G.(1) Subject to this section, the procedure followed by a discipline officer is to be in accordance with any requirements prescribed by the regulations.

“(2) A defence member who elects to be dealt with by a discipline officer is not to be represented before the discipline officer.

“(3) A defence member who elects to be dealt with by a discipline officer may, when he or she appears before the discipline officer, call witnesses and present evidence in relation to anything relevant to the exercise by the discipline officer of his or her powers under subsection 169F(1), (2) or (3).

**SCHEDULE 2**—continued**Destruction of records**

“169H.(1) In this section, **‘relevant record’** means any part of a record that is kept by any means under a law of the Commonwealth and relates to a person’s service as a member of the Defence Force.

“(2) Any part of a relevant record that relates, in any way, to:

(a) the making by a defence member of an election; or

(b) anything done by a discipline officer under subsection 169F(1) or (2) as a result of the making of an election;

must be destroyed at the end of a period of 12 months beginning on the day on which the election was made or, if anything was done by a discipline officer under subsection 169F(1) or (2) as a result of the making of the election, the day on which the thing was so done.

**This Part not a bar to action under other provisions**

“169J. A defence member is not prevented from being dealt with under any other Part in respect of a service offence merely because the offence arises out of an act or omission that constitutes a disciplinary infringement for the purposes of this Part.”.

**31. After subsection 171(1):**

Insert:

“(1A) A summary authority who imposes a punishment for a specific period may impose the punishment for a period beginning on a specified day no later than 14 days after the day on which the punishment is imposed.”.

**32. Schedule 3:**

Omit from Column 2 of Table B “Reduction in rank by not more than one rank” (second occurring), substitute “Reduction in rank by not more than one rank or, in the case of a corporal of the Australian Army, reduction in rank by one or 2 ranks”.

**33. Schedule 3, Tables B and C:**

Omit “Extra duties for a period not exceeding 3 days” (wherever occurring), substitute:

“Extra duties for a period not exceeding 7 days

Extra drill for not more than 2 sessions of 30 minutes each per day for a period not exceeding 3 days”.

**34. Schedule 6:**

After item 6 insert:

“6A. Offence against section 23

Offence against section 24”.

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**SCHEDULE 3**

Section 3

**AMENDMENT OF THE DEFENCE FORCE (HOME LOANS  
ASSISTANCE) ACT 1990**

**1. Paragraph 4(1)(b):**

Omit the paragraph, substitute:

“(b) if he or she is such an incapacitated person—on 1 December 1994.”.

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## SCHEDULE 4

Section 3

AMENDMENTS OF THE MILITARY SUPERANNUATION AND  
BENEFITS ACT 1991**1. After subsection 5(1):**

Insert:

“(1A) The Minister may not amend the Trust Deed unless:

- (a) the Board has consented to the amendment; or
- (b) the amendment:
  - (i) relates to a payment of an employer contribution that will, after the making of the amendment, be required or permitted to be made under this Act; or
  - (ii) relates solely to the termination of the Scheme; or
  - (iii) is made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.

“(1B) For the purposes of subparagraph (1A)(b)(i), a payment under the Trust Deed is taken to be a payment of an employer contribution.”.

**2. Paragraph 26(1)(b):**

Add at the end:

“and by the Board”.

**3. Subsection 26(5):**

After “Minister” (second occurring) insert “and the Board”.

**4. Subsection 26(7):**

Omit the subsection.

**5. Section 50:**

Repeal the section.

**6. Section 52:**

Add at the end:

“(2) Regulations may not be made after the commencement of this subsection unless:

- (a) the Board has consented to the making of the regulations; or
- (b) the regulations:
  - (i) relate to a payment of an employer contribution that will, after the making of the regulations, be required or permitted to be made under this Act; or

**SCHEDULE 4**—continued

- (ii) relate solely to the termination of the Scheme; or
- (iii) are made in circumstances covered by regulations made for the purposes of subparagraph 60(1)(b)(iii) of the *Superannuation Industry (Supervision) Act 1993*.

“(3) For the purposes of subparagraph (2)(b)(i), a payment under the Trust Deed is taken to be a payment of an employer contribution.

“(4) Subsection (2) does not apply to regulations made for the purposes of a provision of Part 8 of this Act.”.

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## SCHEDULE 5

Section 3

## AMENDMENTS OF THE NAVAL DEFENCE ACT 1910

**1. Immediately before section 8:**

Insert in Part II:

*“Division 1—Appointment, promotion and resignation of officers”.***2. Subsection 9(2):**

Omit the subsection.

**3. Section 12:**

Omit subsections (1) and (2).

Note: The heading to section 12 is replaced by the heading **“Termination of probationary appointments”**.**4. After section 13:**

Insert:

**Limited-tenure promotions**

“13A.(1) The Governor-General may promote an officer of the Navy to a rank of Captain or a higher rank for a specified period (the **‘term’** of the promotion).

“(2) The Governor-General may extend the term of a promotion under this section.

“(3) Subject to subsection (4), at the end of the term of a promotion under this section, the officer concerned is retired from the Navy by force of this subsection.

“(4) At any time before the end of the term of a promotion under this section the Chief of Naval Staff may give written permission for the officer concerned, at the end of the term of the promotion, to revert to the rank he or she held immediately before promotion.

“(5) If permission is given under subsection (4), then, at the end of the term of the promotion:

- (a) the officer is not retired from the Navy by force of subsection (3); and
- (b) the officer reverts to the rank he or she held immediately before promotion.

“(6) An officer may decline promotion under this section.”.

**5. After section 13A:**

Insert:

*“Division 2—Retirement and termination of appointment of officers***Definitions**

“13B. In this Division:



**SCHEDULE 5—continued**

**‘relevant authority’** means:

- (a) in relation to an officer who holds the rank of Commodore or a higher rank—the Minister; or
- (b) in relation to any other officer—the Chief of Naval Staff;

**‘senior officer’** means an officer who holds the rank of Rear-Admiral or a higher rank.

**Retirement of senior officers on expiry of appointment etc.**

“13C.(1) When the term of an appointment of an officer under section 9 or 9AA of the *Defence Act 1903* ends, the Governor-General must retire the officer from the Navy as soon as is reasonably practicable.

“(2) Subsection (1) does not apply if, before the term of the appointment ended, the officer concerned was appointed or re-appointed to an office under section 9 or 9AA of the *Defence Act 1903*, whether or not the appointment or re-appointment took effect immediately after the end of the term of the first-mentioned appointment.

“(3) When a senior officer completes the period of service that, under section 9, represents the term of his or her appointment as an officer or that term as extended, the Governor-General must retire the officer from the Navy as soon as is reasonably practicable.

“(4) Until an officer referred to in subsection (3) is retired, he or she remains an officer of the part of the Navy in which he or she is serving.

**Retirement of other officers on expiry of appointment**

“13D.(1) This section applies to an officer other than a senior officer.

“(2) When an officer completes the period of service that, under section 9, represents the term of his or her appointment as an officer or that term as extended, the relevant authority must retire the officer from the Navy as soon as is reasonably practicable.

“(3) Until an officer referred to in subsection (2) is retired, he or she remains an officer of the part of the Navy in which he or she is serving.

**Retirement of officers for incapacity etc.**

“13E.(1) The relevant authority may give an officer a retirement notice.

“(2) A retirement notice is a written notice that:

- (a) states that it is proposed that the officer be retired; and
- (b) states the ground on which the officer is to be retired; and
- (c) invites the officer to give the relevant authority a written statement of reasons why the officer should not be retired; and

**SCHEDULE 5—continued**

- (d) specifies a period ending not less than 28 days after the giving of the notice as the period within which a statement of reasons must be given to the relevant authority; and
- (e) sets out particulars of the facts and circumstances constituting the ground specified in the notice sufficient to enable the officer to prepare a statement referred to in paragraph (c).

“(3) The following are the grounds on which an officer may be retired under this section:

- (a) that, as a result of physical or mental incapacity that it is not within the officer’s power to control, the officer is incapable of rendering effective service;
- (b) that the officer is inefficient or incompetent through causes not within his or her control.

“(4) If:

- (a) the relevant authority gives a senior officer a retirement notice; and
- (b) either:
  - (i) the officer does not give the relevant authority, within the period specified in the retirement notice, a statement of reasons why the officer should not be retired; or
  - (ii) having considered such a statement given by the officer, the Governor-General is of the opinion that the ground of retirement specified in the retirement notice has been established;

the Governor-General must retire the officer.

“(5) If:

- (a) the relevant authority gives an officer (other than a senior officer) a retirement notice; and
- (b) either:
  - (i) the officer does not give the relevant authority, within the period specified in the retirement notice, a statement of reasons why the officer should not be retired; or
  - (ii) having considered such a statement given by the officer, the relevant authority is of the opinion that the ground of retirement specified in the retirement notice has been established;

the relevant authority must retire the officer.

**Form and date of effect of retirement**

“13F.(1) The retirement of an officer under section 13C, 13D or 13E must be in writing.

**SCHEDULE 5—continued**

“(2) The document of retirement must specify the day on which the retirement is to take effect.

“(3) The day to be specified for the purpose of subsection (2) is a day:

- (a) not earlier than the day on which the officer is given a copy of the document of retirement; and
- (b) not later than 3 months after the day referred to in paragraph (a).

“(4) The retirement of an officer takes effect on the day specified in the document of retirement for the purpose of subsection (2).

**Termination of appointment of officer for absence without leave**

“13G. The relevant authority may terminate the appointment of an officer who has been absent without leave for a continuous period of at least 3 months.

**Termination of appointment on other grounds**

“13H.(1) The relevant authority may give an officer a termination notice.

“(2) A termination notice is a written notice that:

- (a) states that it is proposed that the appointment of the officer be terminated; and
- (b) states the ground on which the officer’s appointment is to be terminated; and
- (c) invites the officer to give the relevant authority a written statement of reasons why the officer’s appointment should not be terminated; and
- (d) specifies a period ending not less than 28 days after the giving of the notice as the period within which a statement of reasons must be given to the relevant authority; and
- (e) sets out particulars of the facts and circumstances constituting the ground specified in the notice sufficient to enable the officer to prepare a statement referred to in paragraph (c).

“(3) The following are the grounds on which the appointment of an officer may be terminated under this section:

(a) that:

- (i) the officer has been convicted of an offence or a service offence; and
- (ii) the Chief of Naval Staff has certified in writing that, having regard to the nature and seriousness of the offence, the retention of the officer is not in the interests of the Defence Force;

**SCHEDULE 5**—continued

- (b) that the officer is inefficient or incompetent for reasons or causes within his or her own control;
- (c) that the officer's behaviour has been such that the retention of the officer is not in the interests of the Defence Force;
- (d) that, for reasons or causes within the officer's control, the officer's performance is such that the retention of the officer is not in the interests of the Defence Force.

“(4) For the purpose of paragraph (3)(a), an officer is to be taken to have been convicted of an offence if a court or service tribunal, in proceedings relating to the offence, has made a finding that the officer committed the offence, whether or not the court or tribunal entered a conviction.

“(5) If:

- (a) the relevant authority gives a senior officer a termination notice; and
- (b) either:
  - (i) the officer does not give the relevant authority, within the period specified in the termination notice, a statement of reasons why the officer's appointment should not be terminated; or
  - (ii) having considered such a statement given by the officer, the Governor-General is of the opinion that the ground specified in the notice as the ground of termination of the officer's appointment has been established;

the Governor-General must terminate the appointment of the officer.

“(6) If:

- (a) the relevant authority gives an officer (other than a senior officer) a termination notice; and
- (b) either:
  - (i) the officer does not give the relevant authority, within the period specified in the termination notice, a statement of reasons why the officer's appointment should not be terminated; or
  - (ii) having considered such a statement given by the officer, the relevant authority is of the opinion that the ground specified in the termination notice has been established;

the relevant authority must terminate the appointment of the officer.

**Form and date of effect of termination**

“13J.(1) The termination of the appointment of an officer must be in writing.

**SCHEDULE 5—continued**

“(2) The document of termination must specify the day on which the termination is to take effect.

“(3) Subject to subsection (4), the day to be specified for the purpose of subsection (2) is a day:

- (a) not earlier than the day on which the officer is given a copy of the document of termination; and
- (b) not later than 3 months after the day referred to in paragraph (a).

“(4) In the case of termination of an appointment under section 13G, the day to be specified for the purpose of subsection (2) is a day not earlier than the day on which the document of termination is signed by the relevant authority.

“(5) The termination of the appointment of an officer takes effect on the day specified in the document of termination for the purpose of subsection (2).

**Offer of special benefit to officer**

“13K.(1) The Chief of Naval Staff may give an officer a written notice stating that if the officer retires from the Navy within a specified period, the officer will be entitled to a special benefit in accordance with a determination under section 58B or 58H of the *Defence Act 1903*.

“(2) The period to be specified in a notice is a period of one month commencing not earlier than the day on which the notice is given to the officer.

- “(3) If a notice is given to an officer under subsection (1):
- (a) the officer may retire from the Navy within the period specified in the notice even though he or she would not otherwise be entitled to retire; and
  - (b) the officer is to be taken for all purposes to have been compulsorily retired from the Navy.

**Notice of intention to begin retirement procedures**

“13L.(1) The Chief of Naval Staff may not give an officer a notice under subsection 13K(1) unless:

- (a) the officer has been given written notice:
  - (i) informing him or her that the Chief of Naval Staff is considering the giving of a notice to the officer under subsection 13K(1); and
  - (ii) stating the reasons why the Chief of Naval Staff is considering the giving of such a notice; and

**SCHEDULE 5**—continued

(iii) inviting the officer, within a specified period, to give the Chief of Naval Staff a written statement of reasons why the officer should not be retired from the Navy; and

(b) either:

- (i) the officer has not given the Chief of Naval Staff a statement in accordance with subparagraph (a)(iii); or
- (ii) the officer has given such a statement and the Chief of Naval Staff has considered the reasons given in the statement.

“(2) The period specified for the purpose of subparagraph (1)(a)(iii) must be not less than 14 days and must commence no earlier than the day on which the notice is given to the officer.

**Retirement of officer without special benefit**

“13M.(1) If an officer to whom a notice has been given under subsection 13K(1) does not retire within the period specified in the notice, the Chief of Naval Staff may retire the officer from the Navy if the Chief of Naval Staff considers it necessary to do so in the interests of the organisational effectiveness of the Navy.

“(2) The Chief of Naval Staff retires an officer under subsection (1) by giving the officer a notice stating that the officer is retired from the Navy at the end of the period specified in the notice.

“(3) The period specified under subsection (2) must be a period not less than 13 months commencing on the day on which the notice is given to the officer.

“(4) An officer to whom a notice is given under subsection (1) is retired from the Navy, by force of this section, on the day specified in the notice.

“(5) An officer who is retired under this section is to be taken for all purposes to have been compulsorily retired from the Navy.

**Time not to run during certain periods**

“13N.(1) For the purpose of ascertaining when a period referred to in this Division ends, any period during which a complaint made by an officer is being investigated is not to be taken into account.

“(2) Subsection (1) only applies to a complaint that:

(a) is made by the officer concerned:

- (i) under regulations made under the *Defence Act 1903*; or
- (ii) to the Defence Force Ombudsman under the *Ombudsman Act 1976*; and

**SCHEDULE 5**—continued

(b) concerns action taken under section 13K, 13L or 13M in relation to the officer.”.

**6. Section 17:**

Add at the end:

“(2) When a member of the Navy reaches the prescribed age of retirement of the member, he or she is retired from the Navy by force of this section.”.

Note: The heading to section 17 is replaced by the heading “**Compulsory retirement on reaching prescribed age**”.

**7. After section 17A:**

Insert in Part II:

*“Division 3—Miscellaneous*

**Notional ranks of chaplains**

“18. For the purposes of Divisions 1 and 2, a person who is a chaplain is taken to have the rank ascertained in accordance with the regulations.”.

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**SCHEDULE 6**

Section 3

**AMENDMENTS OF THE DEFENCE FORCE DISCIPLINE ACT 1982  
TO REMOVE GENDER-SPECIFIC LANGUAGE**

NOTE: The reference in Column 1 of an item in this Schedule is to the section, subsection, paragraph, subparagraph or sub-subparagraph, Schedule or definition in a subsection of the *Defence Force Discipline Act 1982*.

Column 1	Column 2 Omit —	Column 3 Substitute —
3(1) (definition of “custodial offence”)	he	the person
3(1) (definition of “defence civilian”)	himself	himself or herself
3(1) (definition of “service offence”)	he	the person
3(1) (definition of “superior officer”)	his	his or her
3(4)(a)	him	him or her
3(4)(a)	he (wherever occurring)	he or she
3(4)(b)	his	his or her
3(5)	he	the member
3(7)	his	the person’s
3(9)	he	he or she
3(11)(b)	him	the officer
4(1)	his	his or her
4(2)	his	his or her
11(1)	his (wherever occurring)	the member’s
11(2)	his (wherever occurring)	the member’s
13(1)	his (wherever occurring)	the person’s



**SCHEDULE 6**—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
13(1)	he (wherever occurring)	he or she
15(1)(a)	his	the person's
15(1)(e)	him	him or her
15(1)(g)	his (wherever occurring)	his or her
16(1)(b)	him	the person
16(1)(b)	he	the person
17(1)(a)	his	the member's
17(1)(b)	his	the member's
17(1)(c)	his	the member's
19(1)	him	the member
19(1)	he	the member
19(2)(a)	himself	the member
22(a)	his	the member's
22(b)	his	his or her
23(1)	he	the member
24(2)	his	the person's
26(1)(b)	him	the officer
27(1)	him	the member
28(1)	him	the person
29(1)	him	the person
31(1)(a)(i)	service policeman	police member
31(1)(a)(i)	his	his or her
31(1)(b)(i)	service policeman	police member
31(1)(b)(i)	his	his or her

## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
31(2)	service policeman	police member
32(1)(a)	his	the member's
32(1)(b)	his	the member's
32(1)(b)	him	the member
32(1)(d)	his (wherever occurring)	the member's
32(1)(d)	he	the member
32(1)(d)	himself	himself or herself
32(3)	his (first occurring)	the person's
32(3)	his (second occurring)	the person
32(3)	his (last occurring)	the person's
32(3)	he (wherever occurring)	the person
35	he	the member
35	his	the member's
36(4)	his	the person's
37(1)(b)	he	the member
37(2)	his (first occurring)	the person's
37(2)	his (second occurring)	the person
37(2)	he (wherever occurring)	the person
37(2)	his (last occurring)	the person's
38(1)	himself (wherever occurring)	himself or herself
38(1)(b)	he	the member
38(2)	himself	himself or herself
40(1)	he	the person

**SCHEDULE 6**—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
40(2)	he	the person
41(1)	he	the member
44(1)	his (wherever occurring)	the person's
45(2)(a)	he	he or she
45(2)(c)	his	his or her
46(2)(a)	he	he or she
46(2)(c)	his	his or her
47(1)	his	the person's
47(2)	his	the person's
47(3)(a)(iv)	he	that person
47(3)(c)(ii)	he	that person
47(3)(g)	him	that person
47(3)(g)	he	the person
47(3)(g)	himself to have acquired by virtue	he or she has acquired because
47(4)(a)	he	the person
47(4)(b)	he	the person
47(4)(c)	him	the person
49(1)(a)	him	the person
49(1)(b)(i)	him (wherever occurring)	him or her
49(1)(b)(ii)	his	his or her
49(1)(b)(iii)	him	him or her
49(1)(b)(iv)	him	him or her
50(1)	him	the member

## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
50(2)	him	the member
50(3)	him	the person
52(1)	he	the person
53(1)(b)	himself	himself or herself
53(2)(b)	he	the person
53(2)(c)	he	the person
53(2)(c)	him	the person
53(3)(a)	his	his or her
53(4)	he	the person
54(1)	his (wherever occurring)	the member's
54A(1)(f)	his	his or her
54A(1)(g)	his	his or her
55(1)	himself	the person
55(1)(d)	his	the person's
55(1)(e)	his	the person's
56	himself	the person
56	his	his or her
57(1)(a)	his	the person's
57(1)(a)(i)	his	the person's
57(1)(a)(ii)	his	the person's
57(2)(a)	his	the person's
57(2)(b)	his	the person's
59(2)	he	he or she
59(3)	himself	himself or herself
59(5)	he	he or she

**SCHEDULE 6**—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
61(1)(a)	he	the person
61(1)(b)	he	the person
61(1)(c)	he	the person
68(1)(h)(i)	his	his or her
68(4)	he	he or she
68C(2)(b)	he	the person
70(2)(a)	his	the person's
70(2)(b)	his	the person's
70(2)(c)	his	the person's
70(2)(d)	his	the person's
70(2)(e)	his	the person's
70(2)(f)	his	the person's
70(2)(g)	his	the person's
74(6)(a)	him	the person
74(6)(b)	him	the person
74(6)	he	the person
75(2)	he	he or she
76(1)(a)	he	he or she
76(1)	his	the person's
76(1)	him	the person
77(1)(a)	he	the person
77(1)(c)	he	the person
83(2)(b)(ii)	him	the other person
83(2)	him (last occurring)	the other person
87(1)	he	the authorized member

## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
87(4)	him	the person
87(5)	him	the person
88(1)(a)	him	the person
88(1)(b)(i)	him (wherever occurring)	the person
89(1)	he (wherever occurring)	the member
89(2)(a)(ii)	he	he or she
89(2)(b)	he	he or she
89(5)	he (first occurring)	the constable
89(5)	he (last occurring)	the person
90(3)	he (wherever occurring)	the officer
90(3)	his	the officer's
92(1)	he	the other person
93(1)	he	the other person
93(2)	he (first occurring)	the person
93(2)	he (last occurring)	the other person
93(2)	him	the person
93(3)(a)	he (wherever occurring)	the person
93(3)(b)	his	his or her
93(3)(b)	him	him or her
93(3)(b)	he	the person
94(1)	himself	himself or herself
95(1)(b)	his	his or her
95(1)	his (last occurring)	the member's

## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
95(2)	him	the person
95(4)	his	his or her
95(5)	him	the person
95(5)	his	his or her
95(7)	he	he or she
95(8)	him	the person
95(9)	he	he or she
95A(1)(b)	his	the accused person's
95A(1)(b)(i)(B)	him	him or her
96(5)	he	the person
96(6)(a)	he	the person
97(1)	he	he or she
97(4)(a)	he	the person
97(4)(a)	him	the person
97(4)(b)	he	the person
99(2)	his	the member's
100(1)	his	the member's
100(1)	him	the member
101(1) (definition of "investigating officer")	service policeman (wherever occurring)	police member
101(2)	he	the person
101(3)(c)	he	the person
101(3)(d)	he (wherever occurring)	the person
101(6)(a)	his (wherever occurring)	his or her

## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
101(6)(b)	him	the officer
101B(1)	his (wherever occurring)	his or her
101C(1)	him (wherever occurring)	the person
101C(1)	his	his or her
101C(2)(a)	him (wherever occurring)	the person
101C(2)(b)	him (wherever occurring)	the person
101F(3)(a)	his	the person's
101F(3)(b)	he	the person
101H(3)(a)	he	the person
101H(5)	he	the person
101H(6)(b)	he (wherever occurring)	the investigating officer
101H(6)(c)	he	the investigating officer
101K(1)	his	his or her
101K(3)(a)	him	him or her
101K(3)(b)	him	the accused
101K(3)(b)	he	he or she
101K(4)(b)	him (wherever occurring)	the accused
101K(4)(c)	he (wherever occurring)	the accused
101K(4)(d)(ii)(B)	his	his or her
101K(5)(c)	him	him or her



## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
101K(5)(c)	his	his or her
101K(6)	his	the accused's
101K(9)	him	the accused
101K(11)	he (wherever occurring)	he or she
101L(3)	him	the investigating officer
101L(4)	he	he or she
101L(4)	his	his or her
101M(6)	him	the person
101N(1)	he (first occurring)	the suspect
101N(1)(a)	he	the suspect
101N(1)(b)	he	the suspect
101N(1)(b)	him (wherever occurring)	the suspect
101N(1)(c)	he	the suspect
101N(1)(d)	he	the suspect
101N(1)(d)	his	his or her
101N(2)	he (wherever occurring)	the suspect
101N(4)(b)	he	the investigating officer
101P(1)	he	the person
101P(1)	his (first occurring)	his or her
101P(1)(a)	his	his or her
101P(1)(a)	him	the person

## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
101P(3)(b)	he	the investigating officer
101Q(1)(a)	his	his or her
101Q(2)(a)	his	his or her
101Q(3)(b)	him	the investigating officer
101Q(4)	he	he or she
101Q(4)	his	his or her
101Q(6)	his (first occurring)	the person's
101Q(6)	he	the person
101Q(6)(a)	his	the person's
101Q(12)	his	his or her
101Q(12)	him	him or her
101S	him (wherever occurring)	the person
101S	he (wherever occurring)	the person
101T(1)(a)	him	the person
101T(1)(a)	he (wherever occurring)	the person
101T(1)(b)	he	the person
101T(2)	he	the person
101T(4)	he (wherever occurring)	the person
101U(3)	he (wherever occurring)	the person
101X(1)	he (first occurring)	he or she
101X(1)(c)	he	he or she

## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
101X(2)	he (first occurring)	he or she
101X(2)(c)	he	he or she
101X(5)(a)(i)	he	he or she
101X(5)(a)(ii)	he	he or she
101X(5)	him	the investigating officer
101Y(3)(b)	him	him or her
101Y(3)(b)	he	he or she
101Y(3)	he (last occurring)	he or she
101Y(4)(a)(ii)	his	his or her
101Y(4)(b)(i)	him	him or her
101Y(5)	him	him or her
101Z(1)(a)	he	the investigating officer
101Z(1)(b)	he	the investigating officer
101ZA(1)	he	the person
101ZA(1)	his	his or her
101ZA(2)(a)	he (wherever occurring)	the person
101ZA(2)(a)	his	his or her
101ZA(2)(b)	he	the person
101ZA(2)(b)	his	his or her
101ZA(2)(c)	he	the person
106(a)	him	him or her
107(2)	him	him or her
108(1)	him	him or her

## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
108(1A)	him	him or her
108(2)	him	him or her
108(3)	him	him or her
110(1)(a)	his	his or her
110(1)(b)	his	his or her
110(1)(b)	he	he or she
110(2)	his	his or her
111(2)(a)	his	his or her
111(2)(b)	his	his or her
111(2)(b)	he	he or she
111(2)(c)	his	his or her
111A(1)	he (wherever occurring)	he or she
11A(1)	him	him or her
116(1)(a)	he	the person
116(1)(b)	he	the person
116(1)(c)	he	the person
116(2)	he	the officer
117	he	the person
118	he	he or she
120(1)	he	he or she
122	himself	himself or herself
124(3)	himself	himself or herself
124(3)	he	he or she
124(3)	his	his or her
125(1)	he	he or she

## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
125(8)	his	his or her
127(2)	he	the officer
128(1)	his	his or her
129(2)	him	the magistrate
130(1)(a)	he	he or she
130(3)	his	his or her
131(1)(b)	his	his or her
131(1)(b)	he	he or she
131(5)	his	his or her
131A(b)	his	his or her
131A(b)	he (wherever occurring)	he or she
132(1)(a)	he	he or she
132(3)(a)	he	he or she
132(4)	his	his or her
134(2)	him	the judge advocate
134(5)	his	his or her
135(1)(a)	he	he or she
135(3)(a)	he	he or she
135(4)	his	his or her
136	he	the person
137(2)	him	the accused person
138(5)	him	the person
139(2)	his	his or her
139(3)	he	the President
140(2)	he	the President

## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
140(3)	he	the President
141(1)(a)(i)	he	he or she
141(1)(a)(i)	his	his or her
141(1)(a)(i)	him	the accused person
141(1)(a)(ii)	his	his or her
141(1)(a)(iii)	he	he or she
141(1)(a)(iv)	he (wherever occurring)	he or she
141(1)(a)(iv)	his	his or her
141(1)(a)(v)	he	he or she
141(1)(b)(i)	he (wherever occurring)	he or she
141(1)(b)(iii)	he (wherever occurring)	he or she
141(6)(b)	his	his or her
141A(1)(b)	him	him or her
141A(1)	he	he or she
145(1)	him	him or her
145(2)	him	him or her
145A(2)	him	him or her
145A(2)	he (wherever occurring)	he or she
145(3)(a)	he	he or she
145A(3)(a)	his	his or her
145A(3)(d)	his	his or her
145A(6)	he	the accused person

**SCHEDULE 6**—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
151(2)	he	the commanding officer
151(5)	he	the legal officer
153(5)	his (wherever occurring)	his or her
154(4)	he (wherever occurring)	he or she
154(4)	his	his or her
155(1)	him	the chief of staff
155(2)	he	the chief of staff
156(1)	his	his or her
156(2)	his (wherever occurring)	his or her
158(1)	he	the reviewing authority
158(2)	he (wherever occurring)	the reviewing authority
158(4)	him	him or her
160(b)	he	the person
161(2)	him	him or her
162(5)	he	he or she
162(8)	he	he or she
164(1)	he	the reviewing authority
164(2)	he (wherever occurring)	the reviewing authority
164(3)	him	him or her
166(1)(b)	he	the person

## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
169(2)	he	he or she
170(3)	service policemen	police members
170(3)	service policeman (wherever occurring)	police member
170(3)	him	him or her
170(4)	his	his or her
172(2)(d)	his	his or her
176(b)	he	he or she
177	his	his or her
177	he	the convicted person
178A(1)	his (wherever occurring)	his or her
178C(1)	he	he or she
178C(2)	his	the detainee's
179(1)	his	his or her
179(3)	him	the Judge Advocate General
180(1)	he	the person
180(2)(a)	he	the person
180(2)(b)	he	the person
181(1)	his (wherever occurring)	his or her
183(1)	his	the Judge Advocate General's
183(2)	he	the person
184(1)	his	his or her
185(1)	he	he or she



**SCHEDULE 6**—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
185(4)	he (wherever occurring)	he or she
185(5)	he (wherever occurring)	he or she
185(5)	his	his or her
186(2)	his (wherever occurring)	his or her
186(3)	he	he or she
186(4)	he	he or she
187	his	his or her
187	him	him or her
188(1)(b)	his	his or her
188(5)	he	the person
188(5)	his	his or her
188(5)	him	the person
188(6)	he	the person
188(7)	his	the person's
188(8)	his (wherever occurring)	the person's
188(8)	him	the person
190(4)(b)	he	the person
191(1)	he	the authorised officer
193(1)	his	his or her
194(1)	him	him or her
194(2)	him	him or her
194(2)	he	the person
194(3)	him	him or her

## SCHEDULE 6—continued

Column 1	Column 2 Omit —	Column 3 Substitute —
194(3)	he	he or she
194(4)	him	him or her
194(7)	he	he or she
194(7)	him	him or her
195(2)	his	his or her
196(2)	him	the chief of staff
196(3)	he	the officer
196A(2)	him	the Minister
196A(2)	he	the Minister
196B(1)	he	the Minister
196B(8)	him	the Attorney-General
Schedule 3	he (wherever occurring)	he or she

Note: The heading to section 31 is altered by omitting “**service policeman**” and substituting “**police member**”.













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