



## Defence Legislation Amendment Bill (No. 1) 2005

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Law and Bills Digest Section

### Contents

Purpose.....	2
Background.....	2
Main Provisions .....	2
Schedule 1—Criminal laws of the Australian Capital Territory .....	2
Schedule 2—Inquiry officers.....	3
Schedule 3—Naval defence.....	4
Schedule 4—Military superannuation and benefits.....	4
Schedule 5—Technical amendments relating to legislative instruments .....	5
Endnotes.....	6

## Defence Legislation Amendment Bill (No. 1) 2005

**Date Introduced:** 17 August 2005

**House:** Senate

**Portfolio:** Defence

**Commencement:** Schedules 1–4 commenced on the day the Bill received Royal Assent (6 October 2005); Schedule 5 commenced retrospectively on 1 January 2005.

### Purpose

To update the criminal law applying to the defence forces, abolish the Retention Benefit available to eligible defence personnel, and make a number of other minor amendments to defence legislation.

### Background

**N.B. This digest was prepared after the passing of the Bill into law.**

The Defence Legislation Amendment Bill (No. 1) 2005 ('the Bill') was introduced into the Senate on 17 August 2005 and passed on 6 September 2005. It was introduced into the House of Representatives on the same day, was debated in the Main Committee, and was passed without amendment on 15 September 2005. The Bill received Royal Assent on 6 October 2005, becoming Act No. 121 of 2005.

The Bill attracted little media comment, and debate in the Parliament tended to focus on issues of military justice, recruitment and retention, rather than on the specific provisions of the Bill.<sup>1</sup>

### Main Provisions

#### Schedule 1—Criminal laws of the Australian Capital Territory

Schedule 1 amended the *Defence Force Discipline Act 1982* to update references to the criminal law of the Australian Capital Territory. These changes were necessitated by the repeal of the *Police Offences Act 1930* (ACT),<sup>2</sup> the renumbering of the *Crimes Act 1900* (ACT),<sup>3</sup> and the passing of the *Criminal Code 2002* (ACT). The need for these changes was outlined as follows when the Bill was introduced:

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The DFDA imports civil criminal offences into that Act as service offences, in order to extend the ambit of the Act to circumstances that might otherwise not be prosecuted, and to give greater efficacy to disciplinary law. The mechanism currently used to achieve this is the incorporation of the laws of the Commonwealth, the ACT Crimes Act 1900 and the ACT Police Offences Act 1930 as they apply in the Jervis Bay Territory.

Since the introduction of the Territory offence provisions, changes have occurred to the incorporated legislation such that some updating of the DFDA is essential. Most concerning is that the ACT in 2001 and 2002 enacted Criminal Code legislation based on the Commonwealth Model Criminal Code, and since 2002 it has repealed numerous offences from its Crimes Act in favour of the Criminal Code. The net effect of this is that offences such as computer theft, arson and blackmail can no longer be prosecuted by the ADF under the DFDA. Furthermore, it is anticipated that offences such as murder, manslaughter and assault will also move to the Criminal Code by the end of 2005. Also of concern is the fact that the Police Offences Act was repealed in 1996, and references to it are therefore ineffective. The proposed Bill will remove redundant legislation references and refer instead to the criminal law in force in the Jervis Bay Territory from time to time.<sup>4</sup>

**Item 4** replaced references to the Crimes Act and the Police Offences Act with a reference to ‘any other law in force in the Jervis Bay Territory’. (Under the Defence Force Discipline Act, offences by service personnel against civilian criminal law as in force in the Jervis Bay Territory may be tried by defence tribunals. The criminal law in force in the Jervis Bay Territory is for the most part the same as that in force in the Australian Capital Territory.)

In the Senate debate on the Bill, the Labor Party’s position on Schedule 1 was stated as follows:

The first amendment, for all intents and purposes, is simply intended to keep the Defence Force Discipline Act up to date. Because that act imports provisions from the Australian Capital Territory Criminal Code for disciplinary purposes, it necessarily needs to be constantly reviewed. At present, it has clearly fallen behind, meaning that it is inadequate in many areas and arguably ineffective. To the extent that this amendment brings the Defence Force Discipline Act into line and makes it consistent, we support the amendment.<sup>5</sup>

### **Schedule 2—Inquiry officers**

Schedule 2 replaced the term ‘investigating officers’ in the *Defence Act 1903* with the term ‘inquiry officers’, to make it clear that the administrative inquiries conducted under the Defence Act are different from the criminal investigations conducted by ‘investigating officers’ under the Defence Force Discipline Act.

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### Schedule 3—Naval defence

Schedule 3 amended the *Naval Defence Act 1910* to ‘align the position of Navy Cadets with that of their Army and Air Force counterparts’.<sup>6</sup> Previously, Navy Cadet recruits had to be aged 12½–17, and a person ceased to be a Navy Cadet on reaching the age of 19. Now, the *upper* age limit for joining the Army, Air Force or Navy Cadets is uniformly set at 20, and a person ceases to be a cadet at age 21.

Senator Bishop, in commenting on this Schedule for the Labor Party, stated:

The second amendment—consistency of age provisions for cadets across Army, Navy and Air Force—is sensible. In our view, this is simple housekeeping.<sup>7</sup>

### Schedule 4—Military superannuation and benefits

Schedule 4 repealed Part 8 of the *Military Superannuation and Benefits Act 1991*, by which eligible members of the Australian Defence Force who had served for 15 years received a bonus (‘Retention Benefit’), equivalent to one year’s salary, if they re-enlisted for another five years. Existing members of the Military Superannuation and Benefits Scheme, however, will continue to be eligible for the Retention Benefit.

The [Review of Australian Defence Force Remuneration 2001](#) (the ‘Nunn Review’) found that the Retention Benefit had

the potential to interfere with the operation of other targeted measures, send conflicting messages to ADF members, cause friction within the remuneration system and complicate effective delivery of measures to address retention.<sup>8</sup>

In introducing the Bill, Senator Ellison stated in relation to this Schedule:

The Military Superannuation and Benefits Act 1991 (the Benefits Act) is to be amended to repeal Part 8 so as to remove the retention benefit currently available for certain Australian Defence Force (ADF) members of the benefits scheme.

Part 8 of the Benefits Act currently provides a bonus of one year’s salary to eligible members of the Military Superannuation and Benefits scheme who, on reaching 15 years of continuous effective service, agree to complete a further 5 years’ service. The Review of Australian Defence Force Remuneration 2001 (the Nunn review) considered that issues of attraction to and retention in the Services would be better suited for determination by the Navy, Army and Air Force Service Chiefs based on priority needs and linked to capability. An automatic retention bonus rigidly tied up to a number of years of service, at a fixed rate, is no longer regarded as appropriate.

Despite the repeal of Part 8 of the Benefits Act, it is proposed that access to the retention benefit would continue for current members for as long as they remain eligible but would not be available to new members joining the ADF after the date of the commencement of the proposed amendments.

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These amendments are required to ensure that ADF pay arrangements provide an effective, efficient and flexible remuneration framework consistent with reforms in the wider public and private sectors.<sup>9</sup>

Senator Bishop gave the Opposition view of these superannuation changes as follows:

The particular provision, though historical, has proven problematic for the reasons identified in Mr Nunn's report some years ago. That is not to say that, in the future, retention bonuses might not be a relevant tool in retaining skill, going back to the original root cause of dissatisfaction. This, however, should never again be a general policy and it should be highly targeted at areas of need. Perhaps it should also be determined in advance that such bonuses might have, if necessary, ad hoc application. Perhaps they should be more related to the labour market circumstances of the time and not categorised and treated as an ongoing condition of service. More flexibility in this respect is clearly needed. This was openly discussed and conceded by officials at the last round of estimates in May.

As mentioned in the minister's speech, these circumstances will vary considerably between the services. Accordingly, we support the amendment, but at the same time we encourage continued attention to employment and retention incentives where there are serious shortfalls which affect the effectiveness of the ADF. I add that this is not a new problem, as some increasingly seek to argue. Recruitment and retention in the ADF has long been a problem. As a proper examination of the statistics shows, in the last nine years there has been little change achieved in recruitment targets. The excuse of a tight labour market, whilst convenient, particularly in the last two or three years, does not fit a proper trend analysis of the statistics in this area.

In a nutshell, we believe it is appropriate for the government to make careers in the ADF more attractive. ...<sup>10</sup>

### **Schedule 5—Technical amendments relating to legislative instruments**

Schedule 5 updated ten Acts administered by the Minister for Defence to reflect the passage of the *Legislative Instruments Act 2003*. The Acts were: *Defence Act 1903*, *Defence Force Discipline Act 1982*, *Defence Force (Home Loans Assistance) Act 1990*, *Defence Force Retirement and Death Benefits Act 1973*, *Defence Forces Retirement Benefits Act 1948*, *Defence (Special Undertakings) Act 1952*, *Explosives Act 1961*, *Military Rehabilitation and Compensation Act 2004*, *Military Superannuation and Benefits Act 1991*, *Naval Defence Act 1910*.

The Legislative Instruments Act established 'a comprehensive regime for the registration, tabling, scrutiny and sunseting of Commonwealth legislative instruments',<sup>11</sup> such as regulations, determinations, order and rules. Schedule 5 of the Bill amended these Acts to change references to 'instrument in writing' to 'legislative instrument' and to delete redundant references to the *Acts Interpretation Act 1901* and the *Statutory Rules Publication Act 1903*, thus bringing the amended Acts within the ambit of the Legislative Instruments Act.

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The commencement of Schedule 5 was backdated to 1 January 2005, the date on which the Legislative Instruments Act came into force.

## Endnotes

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- 1 Senate, [Debates](#), 6 September 2005; House of Representatives, [Debates](#), 15 September 2005.
- 2 Repealed by the *Law Reform (Abolitions and Repeals) Act 1996* (ACT).
- 3 Renumbered by the *Crimes Legislation Amendment Act 2001* (ACT).
- 4 Sen. C. Ellison, '[Second reading debate: Defence Legislation Amendment Bill \(No. 1\) 2005](#)', [Senate, Debates](#), 17 August 2005, p. 1.
- 5 Sen. M. Bishop, '[Second reading debate: Defence Legislation Amendment Bill \(No. 1\) 2005](#)', [Senate, Debates](#), 6 September 2005, p. 2.
- 6 Defence Legislation Amendment Bill (No. 1) 2005, [Explanatory Memorandum](#), p. 5.
- 7 Sen. Mark Bishop, [ibid.](#), p. 3.
- 8 Dept. of Defence, [Review of Australian Defence Force Remuneration 2001](#), p. 106.
- 9 Sen. C. Ellison, [ibid.](#), p. 2.
- 10 Sen. Mark Bishop, [ibid.](#), p. 4–5.
- 11 [Explanatory Memorandum](#), p. 6.

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