

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

(As read a first time)

DEFENCE FORCE (MISCELLANEOUS PROVISIONS) BILL 1982

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SCHEDULE

AMENDMENTS OF THE COURTS-MARTIAL APPEALS ACT 1955
RELATING TO PENALTIES

1980-81-82

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 29 April 1982

(Minister for Defence)

A BILL

FOR

An Act to amend certain Acts, and to enact transitional provisions, consequent upon the enactment of the *Defence Force Discipline Act 1982*, and for other purposes

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Defence Force (Miscellaneous Provisions) Act 1982*.

Commencement

- 2.** This Act shall come into operation on the date fixed for the purposes of sub-section 2 (2) of the *Defence Force Discipline Act 1982*.

PART II—CONSEQUENTIAL AMENDMENTS

Division 1—Amendments of the Administrative Decisions (Judicial Review) Act 1977

Principal Act

3. The *Administrative Decisions (Judicial Review) Act 1977*¹ is in this Division referred to as the Principal Act. 5

Interpretation

4. Section 3 of the Principal Act is amended by omitting from sub-section (9) the definitions of “air force law”, “military law” and “naval law”.

Schedule 1

5. Schedule 1 to the Principal Act is amended by omitting paragraph (o) and substituting the following paragraph: 10

“(o) decisions under the *Defence Force Discipline Act 1982* (including decisions under the *Criminal Investigation Act 1982* as it applies under Part VI of the first-mentioned Act to the investigation of service offences).” 15

Division 2—Amendments of the Air Force Act 1923

Principal Act

6. The *Air Force Act 1923*² is in this Division referred to as the Principal Act. 20

Interpretation

7. Section 2 of the Principal Act is amended by omitting the definition of “the Air Force Act”.

Application of Defence Act

8. Section 3 of the Principal Act is repealed. 25

Application of Air Force Act

9. Section 5 of the Principal Act is repealed.

Regulations

10. Section 9 of the Principal Act is amended by omitting “discipline and”.

Division 3—Amendments of the Courts-Martial Appeals Act 1955

Principal Act

11. The *Courts-Martial Appeals Act 1955*³ is in this Division referred to as the Principal Act.

5 **Title**

12. The title of the Principal Act is amended by omitting “Appeals from Courts-Martial to a Courts-Martial Appeal Tribunal” and substituting “appeals from courts martial and Defence Force magistrates to a Defence Force Discipline Appeal Tribunal”.

10 **Short title**

13. Section 1 of the Principal Act is amended by omitting “*Courts-Martial*” and substituting “*Defence Force Discipline*”.

Interpretation

14. Section 4 of the Principal Act is amended—

- 15 (a) by omitting from sub-section (1) the definitions of “air force court-martial” and “air force law”;
- (b) by omitting from sub-section (1) the definition of “appellant” and substituting the following definition:
- 20 “ ‘appellant’ means a person who appeals, or applies for leave to appeal, under this Act to the Tribunal;”;
- (c) by inserting after the definition of “Australia” in sub-section (1) the following definitions:
- 25 “ ‘charge’ means a charge of a service offence;
- “ ‘conviction’ means a conviction by a court martial or a Defence Force magistrate;
- “ ‘convicted person’ means a person who has been convicted by a court martial or a Defence Force magistrate;”;
- (d) by omitting from sub-section (1) the definition of “court-martial” and substituting the following definitions:
- 30 “ ‘court martial’ means a court martial convened under the *Defence Force Discipline Act 1982*;
- “ ‘Defence Force magistrate’ means a Defence Force magistrate appointed under section 127 of the *Defence Force Discipline Act 1982*;”;
- 35 (e) by omitting from sub-section (1) the definitions of “military court-martial”, “military law”, “naval court-martial” and “naval law” and substituting the following definitions:
- 40 “ ‘prescribed acquittal’ means an acquittal of a service offence by a court martial or a Defence Force magistrate on the ground of unsoundness of mind;

“‘prescribed acquitted person’ means a person who has been acquitted of a service offence by a court martial or a Defence Force magistrate on the ground of unsoundness of mind;

“‘review’ and ‘reviewing authority’ have the same respective meanings as they have in the *Defence Force Discipline Act* 1982;

“‘service offence’ has the same meaning as it has in the *Defence Force Discipline Act* 1982;”;

(f) by omitting from sub-section (1) the definition of “the Naval Discipline Act”;

(g) by omitting “Courts-Martial” from the definition of “the Tribunal” in sub-section (1) and substituting “Defence Force Discipline”; and

(h) by omitting sub-section (2) and substituting the following sub-section:

“(2) For the purposes of this Act, where, in a review under Part IX of the *Defence Force Discipline Act* 1982 of the proceedings before a court martial or a Defence Force magistrate, the reviewing authority—

(a) substitutes for the conviction of a service offence a prescribed acquittal of that service offence or a conviction of another service offence; or

(b) takes such action in relation to the convicted person as could have been taken under Part IV of that Act by the court martial or the Defence Force magistrate,

the conviction or prescribed acquittal so substituted or the action so taken, as the case may be, shall be deemed to have been made or taken, as the case may be, by the court martial or the Defence Force magistrate.”.

Defence Force Discipline Appeal Tribunal

15. Section 6 of the Principal Act is amended by omitting “Courts-Martial” and substituting “Defence Force Discipline”.

Constitution of Tribunal

16. Section 7 of the Principal Act is amended by inserting after sub-section (3) the following sub-section:

“(3A) A person who has attained the age of 70 years shall not be appointed as a member of the Tribunal and a person shall not be appointed as a member of the Tribunal for a period that extends beyond the day on which he will attain the age of 70 years.”.

Qualification of members

17. (1) Section 8 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:

“(1) A person is not qualified to be appointed as President or Deputy President unless he is a Justice or Judge of a federal court or of the Supreme Court of a State or Territory.”; and

- (b) by omitting paragraphs (2) (b) and (c) and substituting the following word and paragraph:

“or (b) he is a Judge of a District Court of a State or of a County Court of a State.”; and

- (c) by adding at the end thereof the following sub-sections:

“(3) The President or the Deputy President ceases to hold office if he no longer holds office as a Justice or Judge of a federal court or of a Supreme Court of a State or Territory.

“(4) Subject to the last preceding sub-section, a member of the Tribunal ceases to hold office if he no longer holds office as—

- (a) a Justice or Judge of a federal court or of a Supreme Court of a State or Territory; or
(b) a Judge of a District Court of a State or of a County Court of a State.”.

(2) The amendments made by sub-section (1) do not apply to an appointment of a member of the Tribunal in effect immediately before the commencement of this section.

18. After section 8 of the Principal Act the following sections are inserted:

Appointment of Judge as member of Tribunal not to affect tenure, &c.

“8A. (1) The appointment of the holder of a judicial office as a member of the Tribunal, or service by the holder of a judicial office as a member of the Tribunal whether the appointment was or is made or the service occurred or occurs before or after the commencement of this section, does not affect, and shall be deemed never to have affected, his tenure of that judicial office or his rank, title, status, precedence, salary, annual or other allowances or other rights or privileges as the holder of that judicial office and, for all purposes, his service, whether before or after the commencement of that section, as a member of the Tribunal shall be taken to have been, or to be, service as the holder of that judicial office.

“(2) In this section, ‘judicial office’ means an office of Justice of the High Court or Judge of a court created by the Parliament.

Arrangement for appointment of the holder of a judicial office of a State or the Northern Territory

“8B. (1) The Governor-General may, for the purposes of appointing to an office of member of the Tribunal a person who is the holder of a judicial office of a State or of the Northern Territory, enter into such arrangement with the Governor of that State or the Administrator of that Territory, as the case may be, as is necessary to secure that person’s services.

“(2) An arrangement in sub-section (1) may provide for the Commonwealth to reimburse a State or the Northern Territory with respect to the services of the person to whom the arrangement relates.”.

Oath or affirmation of allegiance

19. Section 9 of the Principal Act is amended by inserting “before the Governor-General or a Justice or Judge of a federal court or of the Supreme Court of a State or Territory” after “take”.

20. After section 15 of the Principal Act the following section is inserted: 5

Reserved decision

“15A. (1) Where any proceeding, after being fully heard before the Tribunal, is ordered to stand for decision, it is not necessary for all the members before whom it was heard to be present together to declare their opinions thereon but the opinion of any one of them may be reduced to writing and may be made public by any other of them at any subsequent sitting of the Tribunal. 10

“(2) In any such case the question shall be decided in the same manner, and the decision of the Tribunal shall have the same force and effect, as if the member whose opinion is so made public had been present at the sitting of the Tribunal and declared his opinion in person.”. 15

Single member may determine certain matters

21. Section 17 of the Principal Act is amended—

- (a) by omitting from paragraph (1) (a) “by a court-martial” and substituting “or a prescribed acquittal”; and
- (b) by inserting in paragraph (1) (b) “an appeal or” after “under this Act,”. 20

22. (1) Section 19 of the Principal Act is repealed and the following section is substituted:

The Registrar

“19. (1) There shall be a Registrar of the Tribunal, who shall be appointed by the Attorney-General. 25

“(2) The Attorney-General may appoint such Deputy Registrars as are necessary.

“(3) The Registrar and a Deputy Registrar shall have respectively such powers, duties and functions as are prescribed. 30

“(4) The Registrar and any Deputy Registrar shall be persons appointed or employed under the *Public Service Act 1922*.”.

(2) Notwithstanding the repeal of section 19 of the Principal Act by this Division, an appointment under sub-section (1) or (2) of that section and in effect immediately before the commencement of this section continues in effect as if it were an appointment under sub-section 19 (1) or (2), respectively, of the Principal Act as amended by this Division. 35

(3) Regulations in force for the purposes of sub-section 19 (3) of the Principal Act immediately before the commencement of this section continue in force as if made for the purposes of sub-section 19 (3) of the Principal Act as amended by this Division.

5 **23.** Divisions 1 and 2 of Part III of the Principal Act are repealed and the following Divisions are substituted:

“Division 1—Bringing of appeals

Appeals to Tribunal

10 “20. (1) Subject to this Act, a convicted person or a prescribed acquitted person may appeal to the Tribunal against his conviction or his prescribed acquittal but an appeal on a ground that is not a question of law may not be brought except by leave of the Tribunal.

15 “(2) An appeal does not lie to the Tribunal against a prescribed acquittal if, in the proceedings before the court martial or the Defence Force magistrate that resulted in the prescribed acquittal, evidence of the unsoundness of mind of the prescribed acquitted person was adduced by the defence.

Time for lodging appeals, &c.

20 “21. (1) An appeal, or an application for leave to appeal, to the Tribunal under this Act—

- 20 (a) shall specify the grounds on which the appeal is brought or the leave to appeal is sought; and
- 25 (b) shall be lodged with the Registrar, or with such other person as is prescribed, within the appropriate period, or within such further period as the Tribunal, either before or after the expiration of the appropriate period, allows.

“ (2) In sub-section (1), ‘appropriate period’, in relation to proceedings before a service tribunal that have resulted in a conviction or a prescribed acquittal, means the period of 30 days commencing immediately after—

- 30 (a) the day on which the results of a review under section 152 of the *Defence Force Discipline Act* 1982 of the proceedings are notified to the convicted person or the prescribed acquitted person; or
 - (b) the last day of the period of 30 days after the conviction or prescribed acquittal,
- whichever is the earlier.

35 **Frivolous or vexatious appeals**

“22. Where—

- (a) the Tribunal dismisses an appeal against a conviction or an application for leave to appeal against a conviction; and
- 40 (b) it appears to the Tribunal that the appeal or application was frivolous or vexatious,

the Tribunal may order that any punishment of imprisonment or detention imposed on the appellant or applicant in the proceedings in relation to which the appeal or application was brought shall be taken to commence on the day on which the Tribunal dismisses the appeal or application.

“Division 2—Determination of appeals

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Quashing of conviction, &c.

“23. (1) Subject to sub-section (5), where in an appeal it appears to the Tribunal—

- (a) that the conviction or the prescribed acquittal is unreasonable, or cannot be supported, having regard to the evidence; 10
- (b) that, as a result of a wrong decision on a question of law, or of mixed law and fact, the conviction or the prescribed acquittal was wrong in law and that a substantial miscarriage of justice has occurred;
- (c) that there was a material irregularity in the course of the proceedings before the court martial or the Defence Force magistrate and that a substantial miscarriage of justice has occurred; or 15
- (d) that, in all the circumstances of the case, the conviction or the prescribed acquittal is unsafe or unsatisfactory,

it shall allow the appeal and quash the conviction or the prescribed acquittal.

“(2) Subject to sub-section (5), where in an appeal it appears to the Tribunal that there is evidence that— 20

- (a) was not reasonably available during the proceedings before the court martial or the Defence Force magistrate;
- (b) is likely to be credible; and
- (c) would have been admissible in the proceedings before the court martial or the Defence Force magistrate, 25

it shall receive and consider that evidence and, if it appears to the Tribunal that the conviction or the prescribed acquittal cannot be supported having regard to that evidence, it shall allow the appeal and quash the conviction or the prescribed acquittal. 30

“(3) Subject to sub-section (5), where in an appeal against a conviction it appears to the Tribunal that, at the time of the act or omission the subject of the charge, the appellant was suffering from such unsoundness of mind as not to be responsible, in accordance with law, for that act or omission, the Tribunal shall— 35

- (a) allow the appeal and quash the conviction;
- (b) substitute for the conviction so quashed an acquittal on the ground of unsoundness of mind; and
- (c) direct that the person be kept in strict custody until the pleasure of the Governor-General is known. 40

“(4) Where in an appeal it appears to the Tribunal that the court martial or the Defence Force magistrate should have found that the appellant, by

reason of unsoundness of mind, was not able to understand the proceedings against him and accordingly was unfit to stand trial, the Tribunal shall allow the appeal, quash the conviction or prescribed acquittal and direct that the appellant be kept in strict custody until the pleasure of the Governor-General is known.

“(5) The Tribunal shall not quash a conviction under sub-section (3) or (4) if there are grounds for quashing the conviction under sub-section (1) or (2).

“(6) Section 195 of the *Defence Force Discipline Act* 1982 applies to a direction under sub-section (3) or (4) of this section as if that direction were a direction to which that section applied.

New trial

“24. Where the Tribunal quashes a conviction, or a prescribed acquittal, of a person of a service offence, the Tribunal may, if it considers that in the interests of justice the person should be tried again, order a new trial of the person for the offence.

Custody of person pending new trial

“25. Where the Tribunal under section 24 makes an order for the new trial of a person, the Tribunal may make such further orders for the custody of the person pending the new trial as the Tribunal thinks appropriate.

Substitution of conviction for alternative offence

“26. (1) Where the Tribunal quashes the conviction of a person of a service offence (in this section referred to as ‘the original offence’) but considers—

(a) that the court martial or the Defence Force magistrate could in the proceedings have found the person guilty of another service offence, being—

(i) a service offence that is an alternative offence, within the meaning of section 142 of the *Defence Force Discipline Act* 1982, in relation to the original offence; or

(ii) a service offence with which the person was charged in the alternative and in respect of which the court martial or the Defence Force magistrate did not record a finding; and

(b) that the court martial or the Defence Force magistrate, by reason of its or his finding that the person was guilty of the original offence, must have been satisfied beyond reasonable doubt of facts that prove that the person was guilty of the other service offence,

the Tribunal may substitute for the conviction of the original offence a conviction of the other service offence.

“(2) Where under sub-section (1) the Tribunal substitutes for the conviction of the original offence a conviction of another service offence, the Tribunal may take such action in relation to the convicted person as could have

been taken under Part IV of the *Defence Force Discipline Act* 1982 by the court martial or the Defence Force magistrate that convicted the convicted person of the original offence if the court martial or Defence Force magistrate had convicted him of that other service offence, but the Tribunal—

- (a) shall not impose a punishment for that other service offence or make a reparation order with respect to that other service offence unless a punishment was imposed for the original offence or a reparation order was made with respect to the original offence, as the case may be; and 5
- (b) shall not impose a punishment for that other service offence that is more severe than the punishment that was imposed for the original offence and shall not make a reparation order with respect to that other service offence that is for an amount that exceeds the amount of the reparation order that was made with respect to the original offence. 10

“(3) Where, under sub-section (2), the Tribunal imposes a punishment of imprisonment or detention, that punishment shall, unless the Tribunal otherwise directs, be deemed to have commenced from the time from which it would have commenced if it had been imposed in the proceedings from which the appeal was brought.”. 15

Supplementary powers

24. Section 31 of the Principal Act is amended by omitting from paragraph (1) (b) “court-martial” and substituting “court martial or the Defence Force magistrate”. 20

25. Sections 35 and 36 of the Principal Act are repealed and the following sections are substituted:

Warrants

“35. (1) The Tribunal may, by writing under the hand of a member of the Tribunal, issue any warrant necessary for the enforcement of any action taken in relation to an appellant by the Tribunal. 25

“(2) Section 170 of the *Defence Force Discipline Act* 1982 applies in relation to a warrant issued under sub-section (1) of this section as if it were issued under sub-section 170 (1) of that Act. 30

Tribunal may obtain reports to assist in determination of appeals

“36. Where, upon the hearing of an appeal under this Act against a conviction or a prescribed acquittal by a court martial or a Defence Force magistrate, the Tribunal thinks it necessary or expedient in the interests of justice to do so, the Tribunal may direct such steps to be taken as are necessary to obtain from the person who was the judge advocate of the court martial or from the Defence Force magistrate, a report giving his opinion upon the case, or upon a point arising in the case, or containing a statement as to any facts the ascertainment of which appears to the Tribunal to be material for the purpose of the determination of the appeal.”. 35
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Costs

26. Section 37 of the Principal Act is amended by omitting “Australia” (wherever occurring) and substituting “the Commonwealth”.

5 27. Section 38 of the Principal Act is repealed and the following section is substituted:

Restitution orders and reparation orders

10 “38. The Tribunal may, by order, on an appeal against a conviction upon which a restitution order or reparation order within the meaning of the *Defence Force Discipline Act 1982* was made, annul or vary that order notwithstanding that the conviction is not quashed and—

- (a) if the order is annulled—it does not take effect; or
- (b) if the order is varied—it takes effect as varied.”.

28. Sections 41 and 42 of the Principal Act are repealed and the following sections are substituted:

15 **Person deemed to have been acquitted**

“41. For the purposes of the *Defence Force Discipline Act 1982*—

- 20 (a) where the Tribunal quashes a conviction of a service offence and does not order a new trial of the person for the offence, the person shall be deemed to have been acquitted of the offence; and
- (b) where the Tribunal quashes a prescribed acquittal of a person of a service offence and does not give a direction with respect to the person under sub-section 23 (4) or order a new trial of the person for the offence, the person shall be deemed to have been acquitted of the offence without qualification.

25 **Defence of appeals**

“42. A chief of staff shall arrange the undertaking of the defence of an appeal under this Act.”.

Punishment of members of Defence Force for offences against this Part

29. Section 49 of the Principal Act is repealed.

30 30. Part V of the Principal Act is repealed and the following Part is substituted:

“PART V—REFERENCES AND APPEALS FROM THE TRIBUNAL TO THE FEDERAL COURT OF AUSTRALIA

Reference of questions of law to Federal Court of Australia

35 “51. (1) The Tribunal may, of its own motion or at the request of the appellant or a chief of staff, refer a question of law arising in a proceeding before the Tribunal, not being a proceeding before a single member exercising the powers of the Tribunal, to the Federal Court of Australia for decision.

“(2) The Federal Court of Australia has jurisdiction to hear and determine a question of law referred to it under this section, and that jurisdiction shall be exercised by that Court constituted as a Full Court.

“(3) Where a question of law involved in a decision in respect of a proceeding before the Tribunal has been referred to the Federal Court of Australia under this section, the tribunal shall not, in that proceeding— 5

- (a) give a decision to which the question is relevant while the reference is pending; or
- (b) proceed in a manner, or make a decision, that is inconsistent with the opinion of the Federal Court of Australia on the question. 10

Appeal to Federal Court of Australia from decisions of the Tribunal

“52. (1) An appellant or a chief of staff may appeal to the Federal Court of Australia on a question of law involved in a decision of the Tribunal in respect of an appeal under this Act, not being a decision given by a single member exercising the powers of the Tribunal. 15

“(2) An appeal under sub-section (1) shall be instituted not later than the twenty-eighth day after the day on which a copy of a document setting out the terms of the decision of the Tribunal is furnished to the person or within such further time as the Federal Court of Australia (whether before or after the expiration of that day) allows. 20

“(3) The Federal Court of Australia has jurisdiction to hear and determine matters arising under this section with respect to which appeals are instituted in that Court in accordance with this section and that jurisdiction shall be exercised by that Court constituted as a Full Court.

“(4) The Federal Court of Australia shall hear and determine the appeal and may make such order as it thinks appropriate by reason of its decision. 25

“(5) Without limiting by implication the generality of sub-section (4), the orders that may be made by the Federal Court of Australia on an appeal include—

- (a) an order affirming or setting aside the decision of the Tribunal; 30
- (b) an order remitting the case to be heard and decided again by the Tribunal in accordance with the directions of the Court;
- (c) an order granting a new trial by a court martial or a Defence Force magistrate; and
- (d) where the Court sets aside a decision of the Tribunal quashing a conviction or quashing a prescribed acquittal—an order reinstating the conviction or the prescribed acquittal, as the case may be. 35

Custody orders and sending of documents to the Federal Court of Australia

“53. Where a question of law is referred to the Federal Court of Australia in accordance with section 51 or an appeal is instituted in that Court in accordance with section 52—

- 5 (a) the Tribunal may make such orders for the custody of the person to whose conviction or prescribed acquittal that reference or appeal relates as the Tribunal thinks appropriate pending the decision of the Court on the reference or appeal, as the case may be;
- 10 (b) the Tribunal shall cause to be sent to that Court all documents and other records relating to the proceeding before the Tribunal to which the reference or appeal relates; and
- (c) at the conclusion of the proceeding before the Federal Court of Australia in relation to the reference or appeal, that Court shall cause the documents to be returned to the Tribunal.

15 **Record of proceedings of Tribunal to be kept**

“54. A record of proceedings before the Tribunal shall be kept for the purposes of this Part.”.

Effect of this Act on Royal prerogative of mercy

31. Section 58 of the Principal Act is amended by omitting sub-section (2).

20 **Regulations**

32. Section 60 of the Principal Act is amended—

- (a) by omitting paragraph (e); and
- (b) by omitting paragraph (g) and substituting the following paragraph:
 - 25 “(g) for making provision for or in relation to the furnishing to the Tribunal, for the purposes of an appeal, or an application for leave to appeal, under this Act against a conviction or a prescribed acquittal by a court martial or a Defence Force magistrate, of—
 - 30 (i) a record of the proceedings of the court martial or Defence Force magistrate;
 - (ii) a record of any review with respect to the proceedings of the court martial or Defence Force magistrate; and
 - 35 (iii) documents that were before the court martial, Defence Force magistrate or reviewing authority in connection with the proceedings, or the review of the proceedings, as the case may be;”.

Schedule

33. The Schedule to the Principal Act is amended by omitting “Courts-Martial” (wherever occurring) and substituting “Defence Force Discipline”.

Amendments relating to penalties

34. The Principal Act is amended as set out in the Schedule.

Transitional

35. The Defence Force Discipline Appeal Tribunal is, for all purposes, a continuation, under that name, of the Tribunal, known as the Courts-Martial Appeal Tribunal established by the Principal Act, and a reference in any law of the Commonwealth other than this Act to the Courts-Martial Appeal Tribunal shall, after the commencement of this section, be construed as a reference to the Defence Force Discipline Appeal Tribunal. 5

Appeal rights of persons convicted before commencement of this Act and of certain other persons 10

36. In relation to a person convicted of an offence—

(a) before the date of commencement of this Act; or

(b) on or after that date by a court-martial that was convened before that date, 15

the *Defence Force Discipline Appeals Act 1955* applies as if the amendments made by sections 23 to 28 (inclusive), 30, 31 and 32 of this Act had not been made.

Division 4—Amendment of the Crimes Act 1914**Principal Act** 20

37. The *Crimes Act 1914*⁴ is in this Division referred to as the Principal Act.

Aiders and abettors

38. Section 5 of the Principal Act is amended by adding at the end thereof the following sub-section: 25

“(2) Any act or omission that constitutes an offence against section 73 of the *Defence Act 1903* does not constitute an offence by virtue of sub-section (1) of this section.”.

Division 5—Amendments of the Defence Act 1903**Principal Act** 30

39. The *Defence Act 1903*⁵ is in this Division referred to as the Principal Act.

Interpretation

40. Section 4 of the Principal Act is amended—

(a) by omitting from sub-section (1) the definitions of “Active Service” and “Air Force Act”; 35

(b) by omitting from sub-section (1) the definition of “Army Act”;

- (c) by omitting from sub-section (1) the definition of “Naval, Military or Air Force Offence”;
- (d) by omitting from sub-section (1) the definition of “Officer” and substituting the following definition:

5 “ ‘Officer’ means—

 (a) in relation to the Australian Navy—a person appointed or in pay as an officer of the Australian Navy, including a person who holds the rank in the Australian Navy of Acting Sub-Lieutenant or of Midshipman; or

10 (b) in relation to the Australian Army or the Australian Air Force—a person appointed or in pay as an officer of the Australian Army or the Australian Air Force;”;

- (e) by inserting after the definition of “Service Decoration” in sub-section (1) the following definition:

15 “ ‘Service tribunal’ has the same meaning as in the *Defence Force Discipline Act 1982*;”;

- (f) by omitting from sub-section (1) the definition of “The Naval Discipline Act”; and

- (g) by omitting from sub-section (1) the definitions of “War Service” and “War Substantive Rank”.

Application of Act

41. Section 5 of the Principal Act is amended by omitting “, subject to the *Naval Defence Act 1910* and the *Air Force Act 1923*,”.

State Acts to cease to apply

25 42. Section 6 of the Principal Act is repealed.

Administration of Defence Force

30 43. Section 9A of the Principal Act is amended by omitting from sub-section (5) “a Court-Martial, the Courts-Martial Appeal Tribunal” and substituting “a service tribunal, the Defence Force Discipline Appeal Tribunal”.

Promotion for distinguished service

44. Section 10B of the Principal Act is repealed.

Delegation of power to make appointments and promotions

35 45. Section 10C of the Principal Act is amended by omitting from sub-section (1) “sections 10 and 10B” and substituting “section 10”.

Preference to be given to persons who have served in the ranks

46. Section 11 of the Principal Act is repealed.

Appointments do not create civil contract

47. Section 13 of the Principal Act is amended by inserting “, the *Naval Defence Act* 1910 or the *Air Force Act* 1923” after “this Act”.

Adjustment of ranks after war service

48. Section 16A of the Principal Act is repealed. 5

Promotion of returned officers

49. Section 20A of the Principal Act is repealed.

Application of certain regulations

50. Section 49 of the Principal Act is repealed.

Repeal of Division 4 of Part III

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51. Division 4 of Part III of the Principal Act is repealed.

52. Section 73 of the Principal Act is repealed and the following section is substituted:

Aiding or abetting commission of service offence within the meaning of the *Defence Force Discipline Act* 1982

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“73. A person (other than a defence member or a defence civilian within the meaning of the *Defence Force Discipline Act* 1982) who aids, abets, counsels or procures, or by act or omission is in any way directly or indirectly knowingly concerned in, or party to, the commission of a service offence within the meaning of the *Defence Force Discipline Act* 1982 is guilty of an offence punishable on conviction— 20

(a) where the service offence is punishable by a fixed punishment—

(i) if the fixed punishment is imprisonment for life—by imprisonment for life;

(ii) if the fixed punishment is imprisonment or detention for a period—by imprisonment for that period; 25

(iii) if the fixed punishment is a fine of an amount exceeding \$500—by a fine not exceeding the first-mentioned amount; or

(iv) in the case of any other fixed punishment—by a fine not exceeding \$500; or 30

(b) in a case to which paragraph (a) does not apply—

(i) if the maximum punishment for the service offence is imprisonment for life—by imprisonment for life or for any period;

(ii) if the maximum punishment for the service offence is imprisonment or detention for a period—by imprisonment for a period not exceeding the first-mentioned period; 35

(iii) if the maximum punishment for the service offence is a fine of an amount exceeding \$500—by a fine of an amount not exceeding the first-mentioned amount; or 40

(iv) in any other case—by a fine not exceeding \$500.”.

53. Section 73B of the Principal Act is repealed and the following section is substituted:

Forging or uttering warrants or orders

5 “73B. A person who forges or utters, knowing it to be forged, any warrant or order under this Act or the *Defence Force Discipline Act* 1982 is guilty of an offence.”.

Penalty

10 54. Section 73F of the Principal Act is amended by omitting “73,” (wherever occurring).

Repeal of sections 74 and 75

55. Sections 74 and 75 of the Principal Act are repealed.

Offences relating to desertion

56. Section 77 of the Principal Act is repealed.

15 **Absence for more than 7 days deemed to be desertion**

57. Section 78 of the Principal Act is repealed.

58. Part VIII of the Principal Act is repealed and the following Part is substituted:

20 **“PART VIII—OFFENCES IN RELATION TO SERVICE
TRIBUNALS**

Failure of witness to appear

“86. A person served with a summons under the *Defence Force Discipline Act* 1982 to appear as a witness before a service tribunal shall not, without reasonable excuse—

- 25 (a) fail to appear as required by the summons; or
(b) fail to appear and report himself from day to day unless excused, or released from further attendance, by the service tribunal.

Penalty: \$1,000 or imprisonment for 6 months.

Refusal to be sworn or to answer questions

30 “87. A person appearing as a witness before a service tribunal shall not, without reasonable excuse—

- 35 (a) when lawfully required either to take an oath or to make an affirmation, refuse or fail to comply with the requirement;
(b) refuse or fail to answer a question that he is lawfully required to answer; or
(c) refuse or fail to produce a document that he is required to produce by a summons served on him under the *Defence Force Discipline Act* 1982.

Penalty: \$1,000 or imprisonment for 6 months.

False or misleading evidence

“88. A person appearing as a witness before a service tribunal shall not give evidence that, to his knowledge, is false or misleading.

Penalty: \$1,000 or imprisonment for 6 months.

Contempt of service tribunals, &c.

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“89. (1) A person shall not—

(a) insult a member of a court martial, a judge advocate, a Defence Force magistrate or a summary authority in or in relation to the exercise of his powers or functions as such a member, judge advocate, magistrate or authority, as the case may be;

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(b) interrupt the proceedings of a service tribunal;

(c) create a disturbance or take part in creating or continuing a disturbance in or near a place where a service tribunal is sitting; or

(d) do any other act or thing that would, if a service tribunal were a court of record, constitute a contempt of that court.

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Penalty: \$1,000 or imprisonment for 6 months.

“(2) In this section, ‘court martial’, ‘judge advocate’, ‘Defence Force magistrate’ and ‘summary authority’ have the same respective meanings as they have in the *Defence Force Discipline Act 1982*.

Failure to comply with order under section 140 of the *Defence Force Discipline Act 1982*

20

“90. A person shall not contravene or fail to comply with an order under section 140 of the *Defence Force Discipline Act 1982*.

Penalty: \$1,000 or imprisonment for 6 months.”.

Repeal of sections 101 to 110A (inclusive)

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59. Sections 101 to 110A (inclusive) of the Principal Act are repealed.

Repeal of sections 112 to 116 (inclusive)

60. Sections 112 to 116 (inclusive) of the Principal Act are repealed.

Repeal of sections 117 and 117A

61. Sections 117 and 117A of the Principal Act are repealed.

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Employer not to prevent employee from serving

62. Section 118A of the Principal Act is amended by omitting from sub-section (2) “for active service either within or without the limits of Australia” and substituting “under section 35”.

Proof of order

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63. Section 121 of the Principal Act is amended by omitting “, warrant” (wherever occurring).

Police to aid in arrest of deserters

64. Section 122 of the Principal Act is repealed.

Repeal of sections 123BB and 123BC

65. Sections 123BB and 123BC of the Principal Act are repealed.

5 **Regulations**

66. Section 124 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “discipline and”;
- (b) by omitting from paragraph (1) (a) “discharge, and dismissal” and substituting “reduction in rank and discharge”;
- 10 (c) by omitting paragraphs (1) (g), (ga) and (gb);
- (d) by omitting from paragraph (1) (qd) “discipline,”; and
- (e) by omitting paragraphs (2B) (b) and (c) and substituting the following word and paragraph:
“or (b) proceedings before a service tribunal,”.

15 **Admission of students, &c.**

67. Section 147A of the Principal Act is amended—

- (a) by omitting from paragraph (1) (c) “, discipline”; and
- (b) by omitting from sub-section (2) all the words after “institution” (first occurring).

20 **Repeal of Schedule 1**

68. Schedule 1 to the Principal Act is repealed.

Division 6—Amendments of the Defence (Re-establishment) Act 1965

Principal Act

25 69. The *Defence (Re-establishment) Act 1965*⁶ is in this Division referred to as the Principal Act.

Interpretation

70. Section 4 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “service tribunal” and substituting the following definition:
30 “ ‘service tribunal’ means—
 - (a) a court martial;
 - (b) a Defence Force magistrate; or
 - (c) an officer of the Defence Force exercising jurisdiction summarily in respect of offences committed by members of the Defence Force.”; and
- 35

(b) by adding at the end of sub-section (2) the following word and paragraph:

- “; and (c) a person who has ceased to be a member of the Defence Force by reason of the operation of a punishment of dismissal from the Defence Force that has been imposed on him by a service tribunal under the *Defence Force Discipline Act* 1982 shall be deemed to have been discharged from the Defence Force or from that part of the Defence Force to which he belonged and to have been so discharged by a dishonourable discharge.”

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Division 7—Amendments of the Defence (Visiting Forces) Act 1963

Principal Act

71. The *Defence (Visiting Forces) Act* 1963⁷ is in this Division referred to as the Principal Act.

Application to visiting forces of law relating to Defence Force

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72. Section 16 of the Principal Act is amended—

- (a) by omitting from paragraph (1)(a) “, service tribunals of a part of that Force”;
- (b) by inserting after paragraph (1)(a) the following paragraphs:
- “ (aa) service tribunals, within the meaning of the *Defence Force Discipline Act* 1982;
- “ (ab) a court of inquiry or a board of inquiry appointed under regulations under the *Defence Act* 1903;” and
- (c) by omitting from sub-section (8) the definition of “service tribunal”.

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Division 8—Amendments of the Geneva Conventions Act 1957

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Principal Act

73. The *Geneva Conventions Act* 1957⁸ is in this Division referred to as the Principal Act.

Interpretation

74. Section 5 of the Principal Act is amended by omitting from sub-section (2) the definition of “court” and substituting the following definition:

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“ ‘court’ does not include—

- (a) a service tribunal within the meaning of the *Defence Force Discipline Act* 1982; or
- (b) a military court;”.

35

Punishment of grave breaches of Conventions

75. Section 7 of the Principal Act is amended—

- (a) by omitting from paragraph (4)(a) “death or”; and

- (b) by omitting sub-section (5).

Offences in Australia not triable by court-martial

76. Section 9 of the Principal Act is repealed.

Appeals by protected prisoners of war and internees

5 **77.** Section 13 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “to death or”;
(b) by omitting from sub-section (2) “a sentence of death, or remains”;
and
(c) by omitting sub-section (4).

10 ***Division 9—Amendments of the Naval Defence Act 1910***

Principal Act

78. The *Naval Defence Act 1910*⁹ is in this Division referred to as the Principal Act.

Interpretation

15 **79.** Section 3 of the Principal Act is amended—

- (a) by omitting the definition of “active service”;
(b) by omitting “or made under any other power” from the definition of “regulations”; and
(c) by omitting the definition of “the Naval Discipline Act”.

20 **Application of Defence Act**

80. Section 5 of the Principal Act is repealed.

Promotion for distinguished service

81. Section 10 of the Principal Act is repealed.

Delegation of power to make appointments and promotions

25 **82.** Section 11 of the Principal Act is amended by omitting from sub-section (1) “sections 8 and 10” and substituting “section 8”.

Application of Naval Discipline Act and Queen’s Regulations

83. Section 34 of the Principal Act is repealed.

Repeal of sections 44 and 44A

30 **84.** Sections 44 and 44A of the Principal Act are repealed.

Regulations

85. Section 45 of the Principal Act is amended—

- (a) by omitting from sub-section (1) “discipline and”; and
(b) by omitting from paragraph (1) (b) “receiving instruction or training in or” and substituting “(not being defence members or defence
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civilians within the meaning of the *Defence Force Discipline Act 1982*”.

PART III—TRANSITIONAL PROVISIONS

Interpretation

86. (1) A reference in this Part to proceedings before a service tribunal under previous service law is a reference to— 5

- (a) proceedings before a court-martial—
 - (i) under Part VIII of the Defence Act; or
 - (ii) under the Naval Discipline Act, the Army Act or the Air Force Act; or 10
- (b) proceedings before an officer—
 - (i) under regulations in force for the purposes of section 108 of the Defence Act; or
 - (ii) under the Naval Discipline Act, the Army Act or the Air Force Act. 15

(2) In this section—

“Air Force Act”, “Army Act” and “Naval Discipline Act” have the same respective meanings as they had in the Defence Act; and

“Defence Act” means the *Defence Act 1903* as amended and in force immediately before the commencement of this Act. 20

Part to be incorporated with *Defence Force Discipline Act 1982*

87. This Part is incorporated, and shall be read as one, with the *Defence Force Discipline Act 1982*.

Pending proceedings before service tribunals on the trial of a charge

88. (1) Any proceedings before a service tribunal (other than a court martial) on the trial of a charge of an offence that have not been completed before the proclaimed date shall lapse on the proclaimed date but, if the offence to which the proceedings relate is an old system offence, the accused person may be charged with, and tried for, that offence under the *Defence Force Discipline Act 1982*. 25 30

(2) Where the proceedings of a court-martial convened under previous service law have not been completed before the proclaimed date, those proceedings shall continue under that law and, for that purpose, that law continues in force.

Proceedings (other than trial proceedings) before commanding officer under previous service law 35

89. (1) Where—

- (a) under previous service law, a commanding officer, after the completion of proceedings before him with respect to an old system

offence, had referred the charge to a convening authority for the convening of a court martial to try the charge; and

- (b) a court martial to try the charge had not been convened before the proclaimed date,

5 the *Defence Force Discipline Act* 1982 applies in relation to the convening of that court martial and, for that purpose, the proceedings of the commanding officer shall be deemed to have been conducted under that Act.

10 (2) Any proceedings before a commanding officer with respect to an old system offence (not being proceedings for the trial of the offence) that have not been completed before the proclaimed date may be continued on and after the proclaimed date as if they were proceedings under the *Defence Force Discipline Act* 1982 and, if they are so continued, they shall be deemed, for the purposes of that Act, to have been wholly conducted under that Act.

Review under previous service law

15 **90. (1)** Previous service law shall be deemed to have continued in force on and after the proclaimed date for the purpose of a review by a chief of staff, in accordance with that law, of—

- (a) any proceedings before a service tribunal on the trial of a charge of an offence that have been completed before the proclaimed date; or
- 20 (b) any proceedings of a court-martial that are continued under sub-section 88 (2).

25 (2) Where a review under previous service law of the proceedings before a service tribunal on the trial of the charge of an offence has not been completed before the proclaimed date, that review shall continue under that law and, for that purpose, that law shall be deemed to have continued in force.

Punishments or orders under previous service law

30 **91. (1)** The execution or enforcement of a punishment or order imposed or made by a service tribunal or a reviewing authority under previous service law may be executed or enforced under Part X of the *Defence Force Discipline Act* 1982 as if the punishment or order had been imposed or made under that Act.

(2) Previous service law continues in force on and after the proclaimed date for each of the following purposes:

- 35 (a) the continuation in force, in accordance with its terms, on and after the proclaimed date, of a suspension under previous service law of a punishment or order imposed or made by a service tribunal or a reviewing authority;
- (b) the suspension, on or after the proclaimed date, of a punishment or order imposed or made by a service tribunal or a reviewing authority under the previous law;
- 40 (c) the revocation, on or after the proclaimed date, of a suspension referred to in paragraph (a) or (b);

- (d) the promulgation, on or after the proclaimed date, of a punishment or order imposed or made by a service tribunal or a reviewing authority that was, in accordance with previous service law, required to be promulgated before it took effect and that has not been so promulgated; 5
- (e) the confirmation, on or after the proclaimed date, of a punishment or order imposed or made by a service tribunal or a reviewing authority that was, in accordance with previous service law, required to be confirmed before it took effect and that has not been so confirmed.

Warrants issued before proclaimed date for old system offences to continue in force 10

92. Where a warrant was issued before the proclaimed date for the arrest of a person with respect to an old system offence, then, on and after the proclaimed date, the warrant may be executed as if it had been issued under the *Defence Force Discipline Act 1982*. 15

Person in custody under previous service law immediately before proclaimed date

93. (1) Where, immediately before the proclaimed date, a person is in custody under previous service law, then, for the purposes of the *Defence Force Discipline Act 1982*— 20

- (a) that custody shall be deemed to be custody under that Act;
- (b) that custody shall be deemed to have commenced on the proclaimed date; and
- (c) if, during that custody, the person had been charged with an old system offence—the charging of that person with that offence shall be deemed to have occurred on the proclaimed date. 25

(2) In this section, “custody” does not include imprisonment or detention.

Dissolution of court martial under previous service law

94. Where—

- (a) a court-martial was dissolved in accordance with previous service law and another court-martial for the trial of the offence concerned had not been convened before the proclaimed date; or 30
- (b) after the proceedings of a court-martial have been continued under previous service law under sub-section 88 (2), the court-martial is dissolved in accordance with that previous service law, 35

the *Defence Force Discipline Act 1982* applies in relation to the convening of a court martial for the trial of the offence concerned as if that dissolution had been effected under that Act.

Operation of Administrative Decisions (Judicial Review) Act

95. (1) Notwithstanding the amendments made by Division 1 of Part II, the Judicial Review Act continues in force in relation to—

- (a) decisions under air force law, military law or naval law made before the commencement of this Act; or
- (b) decisions under previous service law as continued in force by this Part.

(2) In this section—

“Judicial Review Act” means the *Administrative Decisions (Judicial Review) Act 1977* as amended and in force immediately before the commencement of this Act;

“air force law”, “military law” and “naval law” have the same respective meanings as they had in the Judicial Review Act.

Operation of Acts Interpretation Act

96. Nothing in this Act limits the application of section 8 of the *Acts Interpretation Act 1901*.

Regulations

97. The Governor-General may make regulations, not inconsistent with this Part, prescribing matters necessary or convenient to be prescribed for carrying out or giving effect to this Part.

SCHEDULE

Section 34

AMENDMENTS OF THE COURTS-MARTIAL APPEALS ACT 1955 RELATING TO PENALTIES

Provision amended	Omit—	Substitute—
Section 43 . . .	Two hundred dollars or imprisonment for three months	\$1,000 or imprisonment for 6 months
Section 44 . . .	Two hundred dollars or imprisonment for three months	\$1,000 or imprisonment for 6 months
Section 45 . . .	Two hundred dollars or imprisonment for three months	\$1,000 or imprisonment for 6 months
Section 46 . . .	Two hundred dollars or imprisonment for three months	\$1,000 or imprisonment for 6 months
Section 47 . . .	Two hundred dollars or imprisonment for three months	\$1,000 or imprisonment for 6 months
Paragraph 60 (h) .	One hundred dollars or imprisonment for three months	\$500 or imprisonment for 3 months

NOTES

1. No. 59, 1977, as amended. For previous amendments, see No. 66, 1978; and No. 111, 1980.
2. No. 33, 1923, as amended. For previous amendments, see No. 74, 1939; No. 12, 1941; No. 80, 1950; No. 15, 1952; No. 75, 1956; No. 94, 1964; No. 50, 1965; No. 216, 1973 (as amended by No. 20, 1974); No. 96, 1975; No. 138, 1976; No. 134, 1979; and No. 61, 1981.
3. No. 16, 1955, as amended. For previous amendments, see No. 93, 1966; No. 216, 1973; No. 96, 1975; No. 36, 1978; Nos. 19 and 155, 1979; No. 70, 1980; and No. 61, 1981.
4. No. 12, 1914, as amended. For previous amendments, see No. 6, 1915; No. 54, 1920; No. 9, 1926; No. 13, 1928; No. 30, 1932; No. 5, 1937; No. 6, 1941; No. 77, 1946; No. 80, 1950; No. 10, 1955; No. 11, 1959; No. 84, 1960; No. 93, 1966; No. 33, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 56, 1975; No. 19, 1979; and No. 155, 1979.
5. No. 20, 1903, as amended. For previous amendments, see No. 12, 1904; No. 15, 1909; Nos. 30 and 37, 1910; No. 15, 1911; No. 5, 1912; No. 36, 1914; No. 3, 1915; No. 36, 1917; Nos. 16 and 47, 1918; No. 1, 1927; No. 50, 1932; No. 45, 1934; Nos. 13, 38, 70 and 74, 1939; No. 4, 1941; No. 11, 1945; No. 78, 1947; No. 35, 1948; No. 71, 1949; No. 80, 1950; Nos. 19 and 59, 1951; No. 98, 1952; No. 20, 1953; No. 72, 1956; No. 92, 1964; No. 51, 1965; No. 93, 1966; No. 33, 1970; No. 216, 1973 (as amended by No. 20, 1974); No. 96, 1975; Nos. 4 and 20, 1977; Nos. 19, 132 and 155, 1979; No. 70, 1980; and Nos. 61 and 178, 1981.
6. No. 54, 1965, as amended. For previous amendments, see No. 93, 1966; No. 89, 1967; No. 10, 1968; No. 101, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 96, 1975; No. 155, 1979; and No. 70, 1980.
7. No. 81, 1963, as amended. For previous amendments, see No. 216, 1973; No. 96, 1975; No. 155, 1979; No. 70, 1980; and No. 178, 1981.
8. No. 103, 1957, as amended. For previous amendments, see No. 93, 1966; and No. 216, 1973.
9. No. 30, 1910, as amended. For previous amendments, see No. 16, 1911; No. 21, 1912; No. 45, 1918; No. 45, 1934; No. 35, 1948, No. 72, 1949, No. 14, 1952; No. 93, 1964; No. 53, 1965; No. 93, 1966; No. 24, 1968; No. 14, 1971; No. 216, 1973 (as amended by No. 20, 1974); No. 96, 1975; No. 133, 1979; and No. 61, 1981.

