

2019-2020

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Defence Legislation Amendment
(Enhancement of Defence Force
Response to Emergencies) Bill 2020**

No. , 2020

(Defence)

**A Bill for an Act to amend the law relating to the
Australian Defence Force, and for related purposes**

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1 **A Bill for an Act to amend the law relating to the**
2 **Australian Defence Force, and for related purposes**

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act is the *Defence Legislation Amendment (Enhancement of*
6 *Defence Force Response to Emergencies) Act 2020.*

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details

1. The whole of this Act	The day after this Act receives the Royal Assent.	
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1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

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

7 **3 Schedules**

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9 repealed as set out in the applicable items in the Schedule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

1 **Schedule 1—Calling out the Reserves**

2 **Part 1—Amendments**

3 *Defence Act 1903*

4 **1 Paragraph 24(c)**

5 Repeal the paragraph, substitute:

- 6 (c) is called out under Division 3 of this Part for a period of
7 service that is specified by the Chief of the Defence Force to
8 be continuous full time service; or
9 (d) is called upon under Division 1 of Part IV.

10 **2 Subsections 28(1) and (2)**

11 Repeal the subsections, substitute:

- 12 (1) The Governor-General may, by notifiable instrument, make an
13 order (a *call out order*) calling out some or all of the Reserves for
14 service.

15 **3 Subsection 28(4)**

16 Repeal the subsection (not including the heading), substitute:

- 17 (4) In making or revoking a call out order, the Governor-General is to
18 act with the advice of the Minister.
19 (4A) Before giving advice to the Governor-General in relation to the
20 making or revoking of a call out order, the Minister must consult
21 the Prime Minister.

22 **4 Subsections 28(5), (6) and (7)**

23 Repeal the subsections.

24 **5 Section 29 (heading)**

25 Omit “during call out”, substitute “while covered by call out order”.

1 **6 Subsection 29(1)**

2 Omit “continuous full time service for the period”, substitute “service
3 for the period or periods”.

4 **7 Subsections 29(2), (3), (4) and (5)**

5 Repeal the subsections, substitute:

6 (2) Unless it ends earlier, and despite any specification by the Chief of
7 the Defence Force, a period ends on the day on which the
8 revocation of the call out order takes effect.

9 *Other service not affected*

10 (3) This section does not limit a requirement to render service
11 otherwise than under this section.

12 **8 Paragraph 120A(3D)(b)**

13 Omit “continuous full time”.

14 *Defence Reserve Service (Protection) Act 2001*

15 **9 Section 7 (definition of start day)**

16 Omit “continuous full time”.

17 **10 Subsection 9(1) (definition of dependant)**

18 Omit “continuous full time”.

19 **11 Section 11 (table items 5 and 6, column headed “applies
20 to these kinds of defence service...”, paragraph (a))**

21 Omit “continuous full time”, substitute “any”.

22 **12 Section 11 (table item 7)**

23 Omit “Continuous full time”, substitute “Any”.

24 **13 Subsection 13(1)**

25 Omit “continuous full time”.

1 **14 Paragraph 40(1)(a)**

2 Omit “continuous full time”, substitute “any”.

3 **15 Paragraph 62(1)(a)**

4 Omit “continuous full time”, substitute “any”.

5 **16 Subsection 65(1)**

6 Omit “continuous full time”.

7 **17 Paragraph 70(2)(a)**

8 Omit “continuous full-time defence”.

1 **Part 2—Application provisions**

2 **18 Application of amendments**

3 The amendments made by this Schedule apply in relation to a call out
4 order made under section 28 of the *Defence Act 1903* on or after the
5 commencement of this Schedule.

Schedule 2—Immunity

Defence Act 1903

1 Subsection 4(1)

Insert:

protected person: see subsection 123AA(3).

2 After paragraph 120A(3D)(e)

Insert:

(ea) the power under subsection 123AA(4) to authorise persons to perform duties in respect of the provision of assistance mentioned in subsection 123AA(1)—to:

- (i) an officer of the Navy who holds a rank not below the rank of Commodore; or
- (ii) an officer of the Army who holds a rank not below the rank of Brigadier; or
- (iii) an officer of the Air Force who holds a rank not below the rank of Air Commodore;

3 After subsection 120A(3D)

Insert:

Delegation by Secretary

- (4) The Secretary may, by instrument in writing, delegate the Secretary's power under subsection 123AA(4) to authorise persons to perform duties in respect of the provision of assistance mentioned in subsection 123AA(1) to an SES employee in the Department.

4 After section 123

Insert:

1 **123AA Immunity in relation to certain assistance**

- 2 (1) A protected person (see subsection (3)) is not subject to any
3 liability (whether civil or criminal) in respect of anything the
4 protected person does or omits to do, in good faith, in the
5 performance or purported performance of the protected person's
6 duties, if:
7 (a) the duties are in respect of the provision of assistance, by or
8 on behalf of the ADF or the Department, to:
9 (i) the Commonwealth or a State or Territory, or a
10 Commonwealth, State or Territory authority or agency;
11 or
12 (ii) members of the community; and
13 (b) the assistance is provided to prepare for a natural disaster or
14 other emergency that is imminent, or to respond to one that is
15 occurring or recover from one that occurred recently; and
16 (c) the assistance is provided at the direction of the Minister
17 under subsection (2).
- 18 (2) The Minister may, in writing, direct the provision of assistance in
19 relation to a natural disaster or other emergency if the Minister is
20 satisfied of either or both of the following:
21 (a) the nature or scale of the natural disaster or other emergency
22 makes it necessary, for the benefit of the nation, for the
23 Commonwealth, through use of the ADF's or Department's
24 special capabilities or available resources, to provide the
25 assistance;
26 (b) the assistance is necessary for the protection of
27 Commonwealth agencies, Commonwealth personnel or
28 Commonwealth property.
- 29 (3) Each of the following is a *protected person*:
30 (a) a member of the Defence Force;
31 (b) an APS employee in the Department;
32 (c) a person authorised under subsection (4) to perform duties in
33 respect of the provision of assistance mentioned in
34 subsection (1).
- 35 (4) The Chief of the Defence Force, or the Secretary, may, in writing,
36 authorise a person, or each person in a class of persons, to perform

1 duties in respect of the provision of assistance mentioned in
2 subsection (1), if the person, or each person in the class of persons,
3 is any of the following:

4 (a) an APS employee or other employee of the Commonwealth
5 or a Commonwealth authority or agency;

6 (b) a member of the naval, military or air force of a foreign
7 country, or a member of a foreign police force (however
8 described).

9 (5) The Minister may, in writing, delegate the Minister's power to
10 make a direction under subsection (2) to the Chief of the Defence
11 Force or the Secretary.

12 Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain
13 provisions relating to delegations.

14 (6) In performing a delegated function or exercising a delegated
15 power, the delegate must comply with any written directions of the
16 Minister.

17 (7) A direction made under subsection (2) is not a legislative
18 instrument.

19 (8) This section does not prevent assistance being provided by or on
20 behalf of the ADF or the Department in circumstances where a
21 direction has not been made under subsection (2).

1 **Schedule 3—Superannuation and related**
2 **benefits**

3 **Part 1—Amendments**

4 *Australian Defence Force Cover Act 2015*

5 **1 Section 4 (definition of *continuous full-time Reservist*)**

6 Repeal the definition, substitute:

7 *continuous full-time Reservist* means a member of the Reserves
8 who is rendering a period of continuous full-time service.

9 **2 Section 4 (definition of *defence service*)**

10 Repeal the definition.

11 *Australian Defence Force Superannuation Act 2015*

12 **3 Section 4 (definition of *continuous full-time Reservist*)**

13 Repeal the definition, substitute:

14 *continuous full-time Reservist* means a member of the Reserves
15 who is rendering a period of continuous full-time service.

16 **4 Section 4 (definition of *defence service*)**

17 Repeal the definition.

18 **5 Paragraph 13(b)**

19 After “accepted”, insert “under subsection 26(2) of the *Defence Act*
20 *1903*”.

21 *Military Superannuation and Benefits Act 1991*

22 **6 Paragraph 6(1)(b)**

23 Repeal the paragraph, substitute:

24 (b) a member of the Reserves who is rendering a period of
25 continuous full-time service.

- 1 **7 Subparagraph 7(2)(b)(ii)**
2 Omit “under an undertaking that has been accepted”.

1 **Part 2—Application provisions**

2 **8 Application of amendments—definition of *continuous***
3 ***full-time Reservist***

4 The amendments made by this Schedule to the definition of *continuous*
5 *full-time Reservist* in section 4 of the *Australian Defence Force Cover*
6 *Act 2015* and section 4 of the *Australian Defence Force Superannuation*
7 *Act 2015* apply, in the case of a period of continuous full-time service
8 rendered by a member of the Reserves under a call out order made
9 under section 28 of the *Defence Act 1903*, to a call out order made on or
10 after 28 November 2019.

11 **9 Application of amendments—membership of**
12 **Superannuation Scheme**

13 The amendments made by this Schedule to sections 6 and 7 of the
14 *Military Superannuation and Benefits Act 1991* apply, in the case of a
15 period of continuous full-time service rendered by a member of the
16 Reserves under a call out order made under section 28 of the *Defence*
17 *Act 1903*, to a call out order made on or after 28 November 2019.