

1996

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**DEFENCE LEGISLATION AMENDMENT
BILL (No.1) 1996**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the Minister for Defence,
the Hon. Ian McLachlan AO MP)



Defence Legislation Amendment Bill (No.1) 1996

OUTLINE

This Bill proposes to:

- a. close a loophole in the operation of the Defence Force Discipline Act 1982 which could prevent the prosecution of certain offences, including serious offences committed by Defence Force members serving overseas; and
- b. increase the maximum amount of a subsidised loan under the Defence Force (Home Loans Assistance) Act 1990 to \$80,000 (or \$160,000 where spouses have a joint entitlement), reduce the basic eligibility period that applies from 6 to 5 years and extend eligibility to certain members of the Reserves.

FINANCIAL IMPACT

The amendments to the Defence Force Discipline Act will not have any significant financial impact.

The amendments to the Defence Force (Home Loans Assistance) Act are estimated to cost \$5.9 million in the financial year 1996/97, rising to \$12 million and \$16 million in the financial years 1997/98 and 1998/1999, respectively. These costs are to be absorbed within Defence global budget allocations.

Defence Legislation Amendment Bill (No.1) 1996

NOTES ON CLAUSESClause 1 - Short title

1. Formal.

Clause 2 - Commencement

2. This clause provides for the commencement of the Act. The amendments to the Defence Force Discipline Act will commence on 28 May 1992. That is the date of commencement of the Australian Capital Territory's Crimes Legislation (Status and Citation) Act 1992 which changed the title and status of criminal law provisions adopted by the Defence Force Discipline Act. References in the Defence Force Discipline Act to that criminal law need to be corrected with effect from the same date. The amendments to the Defence Force (Home Loans Assistance) Act will commence on assent.

Clause 3 - Schedule(s)

3. This clause provides for Acts to be amended as specified in the Schedule(s). Schedule 1 is the only schedule to this Bill.

SCHEDULE 1 - AMENDMENT OF ACTS

4. Schedule 1 amends the Defence Force Discipline Act and Defence Force (Home Loans Assistance) Act.

Defence Force Discipline Act 1982

5. The Defence Force Discipline Act 1982 ("the DFDA") sets out the disciplinary provisions that apply to members of the Defence Force.
6. Schedule 1 makes amendments to the DFDA to close a loophole which could prevent the prosecution of certain offences, including serious offences committed by Defence Force members serving overseas.
7. The DFDA adopts criminal law offences, including sexual and other serious offences, that are contained in what was the "Crimes Act 1900 of the State of New South Wales in its application to the Jervis Bay Territory". These offences are particularly relevant where members of the Defence Force are on duty overseas.

8. Under section 4A of the Jervis Bay Territory Acceptance Act 1915, the laws in force in the Australian Capital Territory are in force in the Jervis Bay Territory (subject to Ordinances of the Jervis Bay Territory). These laws included certain New South Wales laws (among which was the Crimes Act 1900) as amended by laws of the Australian Capital Territory.

9. The Attorney-General's Department has advised that the Australian Capital Territory's Crimes Legislation (Status and Citation) Act 1992 has changed the status of the Crimes Act 1900 from an Act of New South Wales to an Act of the Australian Capital Territory.

10. The references to the "Crimes Act 1900 of the State of New South Wales in its application to the Jervis Bay Territory" that appear in the DFDA therefore need to be replaced by references to the "Crimes Act 1900 of the Australian Capital Territory in its application to the Jervis Bay Territory". Failure to make the change could put at risk prosecutions based on DFDA provisions adopting Crimes Act offences.

11. Items 1, 2 and 3 of Schedule 1 make the necessary amendments to the definition of "Territory offence" in subsection 3(1), subparagraph 63(1)(a)(ia) and subparagraph 104(a)(ii) of the DFDA.

12. Clause 2 of the Bill provides that the DFDA amendments should be taken to have commenced on 28 May 1992, the date of commencement of the Crimes Legislation (Status and Citation) Act 1992 (ACT).

13. Item 4 of Schedule 1 is an affirming provision designed to avoid any doubt about the validity of action taken under the DFDA since 28 May 1992 in reliance on the references in question.

Defence Force (Home Loans Assistance) Act 1990

14. The Defence Force (Home Loans Assistance) Act 1990 ("the Home Loans Act") establishes a scheme to provide for the payment of home loan subsidies to eligible persons who are serving or have served in the Defence Force.

15. Schedule 1 amends the Home Loans Act by increasing the maximum amount of subsidised loans, reducing the basic eligibility period that applies and extending eligibility to certain members of the Reserves.

Doubling of maximum amount of subsidised loans

16. Section 21 of the Home Loans Act provides that the maximum amount of a subsidised loan is \$40,000. Section 26 provides for a maximum of \$80,000 where spouses have a joint entitlement.

17. Items 25, 26, 27, 42 and 43 of Schedule 1 increase the maximum amounts of a subsidised loan under sections 21 and 26. The maximum amount of loans covered by section 21 will be increased to \$80,000, while the maximum amount of joint loans covered by section 26 will be increased to \$160,000.

18. Items 24 and 28 make consequential drafting amendments to sections 14 and 22 of the Home Loans Act.

19. It is intended that the new maximum subsidised loan limits should apply to both new and existing borrowers under the scheme.

Reduction in basic eligibility period

20. To be eligible for subsidies under the Home Loans Act a person must show that he or she is an “eligible person” as defined by section 3 of the Home Loans Act. Section 3 sets out various categories of eligible persons. Apart from members with operational and warlike service, eligibility depends on members completing a qualifying period.

- a. Persons covered by paragraph (a) of the definition of “eligible person” (ie members undertaking effective full-time service) must complete a period of 6 years of effective full-time service to be eligible.
- b. Persons covered by paragraph (b) of the definition of “eligible person” (ie members who re-engage within two years of being discharged because of a compensable disability) must complete a period of 6 years of effective full-time service less the number of years effective full-time service completed before the person’s discharge.
- c. Incapacitated persons covered by paragraph (c) of the definition of “eligible person” must have been engaged to complete at least 6 years of effective full-time service immediately before being discharged for a compensable disability.
- d. Persons covered by paragraph (d) of the definition of “eligible person” (ie a person who was an incapacitated person but who re-engages within two years of discharge) must complete a period of up to 6 years of

effective full-time service to be eligible with the actual period dependant on the length of effective full-time service completed before the discharge.

21. Items 5, 6, 9, 10, 12, 13 and 15 of Schedule 1 reduce the qualifying period that applies to the existing categories of eligible persons from 6 to 5 years of effective full-time service.

22. Item 44 ensures that the amendments covered in paragraph 21 above should only apply to new borrowers entering or re-entering the scheme after the amendments commence.

Application of scheme to certain members of the Reserve Forces and Emergency Forces

23. Item 14 of Schedule 1 amends section 3 of the Home Loans Act to create a new category of “eligible person”. This new category is to be made up of members of the Reserve Forces and Emergency Forces who have completed a defined qualifying training period and who are not covered by the Defence Service Homes Act 1918.

24. Item 22 provides that this qualifying training period must be a period of 5 years effective full-time service, 8 years of statutory training obligation (which is defined by item 19 to be the period of training a member is required to perform under Defence legislation) or 5 years of “composite service”. (Composite service is defined by item 18 to be a period of service made up of both effective full-time service and statutory training obligation, with one year of completed statutory training obligation being worth 0.625 years of effective full-time service.) Items 5, 6, 7, 8, 11, 16, 17 and 18 of Schedule 1 ensure that the qualifying period for all the existing categories of eligible persons may be made up of a period of composite service equal to the number of years effective full-time service that applies. Item 44 ensures that composite service can only apply to new borrowers entering or re-entering the Home Loans scheme.

25. Items 20 and 21 define the terms Reserve Forces and Emergency Forces for the purposes of this new category of eligible persons, and item 23 avoids a pre-requisite which could not apply.

26. Items 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39 and 40 of Schedule 1 amend section 23 of the Home Loans Act, which deals with the entitlement periods of eligible persons, to ensure that a year’s statutory training obligation is worth the same as a year’s effective full-time service so far as entitlement

periods are concerned. The items therefore replace the present references to “effective full-time service” in section 23 with references to “subsidy service” which is defined by item 40 to mean effective full-time service, statutory training obligation or a combination of the two. Item 44 ensures that, in relation to existing subsidised borrowers, these amendments will only apply in relation to statutory training obligations that commence after these items have come into operation.

27. Item 41 of Schedule 1 amends section 24 of the Home Loans Act to ensure that the widow or widower of a member of this new category of eligible persons is treated in the same way as other widows and widowers.

