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The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

Defence Legislation Amendment (Aid to Civilian Authorities) Bill 2005

No. , 2005

(Defence)

A Bill for an Act to amend the *Defence Act 1903*, and for related purposes

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A Bill for an Act to amend the *Defence Act 1903*, and for related purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Defence Legislation Amendment (Aid to Civilian Authorities) Act 2005*.

2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Incidents in the Australian offshore area

Defence Act 1903

1 Subsection 51(1)

Insert:

Australian offshore area means:

(a) Australian waters; or

(b) the exclusive economic zone of Australia (including its external Territories); or

(c) the sea over the continental shelf of Australia (including its external Territories); or

(d) an area prescribed by the regulations;

and includes the airspace over an area covered by paragraph (a), (b), (c) or (d).

2 Subsection 51(1)

Insert:

Australian waters means:

(a) the territorial sea of Australia; and

(b) the waters of the sea on the landward side of the territorial sea of Australia; and

(c) the territorial sea of each external Territory; and

(d) the waters of the sea on the landward side of the territorial sea of each external Territory;

but does not include the internal waters of a State or self-governing Territory.

3 Subsection 51(1)

Insert:

continental shelf has the same meaning as in the *Seas and Submerged Lands Act 1973*.

4 Subsection 51(1)

Insert:

exclusive economic zone has the same meaning as in the *Seas and Submerged Lands Act 1973*.

5 Subsection 51(1)

Insert:

internal waters, in relation to a State or self-governing Territory, means the waters of the sea within the limits of the State or Territory and includes the airspace over those waters.

6 Subsection 51(1)

Insert:

offshore designated area means an area in relation to which a declaration is in force under section 51SL.

7 Subsection 51(1)

Insert:

offshore general security area means an area in relation to which a declaration is in force under section 51SF.

8 Subsection 51(1)

Insert:

offshore member in charge, in relation to an offshore search authorisation, has the meaning given by paragraph 51SG(2)(c).

9 Subsection 51(1)

Insert:

offshore search authorisation means an authorisation under section 51SG.

10 Subsection 51(1)

Insert:

offshore search members, in relation to a search authorisation, has the meaning given by paragraph 51SG(2)(d).

11 Subsection 51(1)

Insert:

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973*.

12 After section 51A

Insert:

51AA Order about utilising Defence Force in the offshore area etc. to protect Commonwealth interests

Conditions for making of order utilising the Defence Force in the offshore area

(1) Subsection (2) applies if the authorising Ministers are satisfied that:

(a) there is a threat in the Australian offshore area to Commonwealth interests (whether in that area or elsewhere); and

(b) the Defence Force should be called out and the Chief of the Defence Force should be directed to utilise the Defence Force in the Australian offshore area to protect the Commonwealth interests against the threat; and

(c) either Division 2A or 3A, or both, and Division 4 should apply in relation to the order.

Power of Governor-General to make order utilising the Defence Force in the Australian offshore area

(2) If this subsection applies, the Governor-General may, by written order, call out the Defence Force and direct the Chief of the Defence Force to utilise the Defence Force in the Australian offshore area to protect the Commonwealth interests against the threat concerned.

(3) However, the Reserves must not be called out or utilised in connection with an industrial dispute.

Conditions for also utilising the Defence Force in the internal waters

(4) Subsection (5) applies if the authorising Ministers are satisfied that:

(a) in relation to the threat mentioned in paragraph (1)(a), domestic violence is occurring or is likely to occur in the internal waters of a State or self-governing Territory; and

(b) the State or Territory is not, or is unlikely to be, able to protect the Commonwealth interests against the domestic violence; and

(c) the Chief of the Defence Force should be directed to utilise the Defence Force in the internal waters of the State or Territory to protect the Commonwealth interests against the domestic violence.

Power of Governor-General to direct utilising the Defence Force in the internal waters

(5) If this subsection applies, the Governor-General may, in the order under subsection (2), also direct the Chief of the Defence Force to utilise the Defence Force in the internal waters of the State or Territory to protect the Commonwealth interests against the domestic violence.

Involvement of State or Territory

(6) If subsection (5) applies:

(a) the Governor-General may make the direction referred to in subsection (5) whether or not the Government of the State or the self-governing Territory requests the making of the direction; and

(b) if the Government of the State or the self-governing Territory does not request the making of the direction referred to in subsection (5), an authorising Minister must, subject to subsection (7), consult that Government about the making of the direction.

Exception to paragraph (6)(b)

(7) However, paragraph (6)(b) does not apply if the authorising Ministers are satisfied that, for reasons of urgency, it is impracticable to comply with the requirements of that paragraph.

Content of the order

(8) The order:

(a) must state that it is made under this section; and

(b) must specify:

(i) the threat to which the order relates; and

(ii) the Commonwealth interests; and

(iii) if the order includes a direction mentioned in subsection (5)—the State or Territory to which the direction relates and the domestic violence; and

(c) must state that Division 2A or 3A, or both, and Division 4 apply in relation to the order; and

(d) must state that the order comes into force when it is made and that, unless it is revoked earlier, it ceases to be in force after a specified period (which must not be more than 20 days).

When order is in force

(9) The order is in force as stated in accordance with paragraph (8)(d).

Revocation of order

(10) If the authorising Ministers cease to be satisfied as mentioned in subsection (1), the Governor-General must revoke the order.

Advice to Governor-General

(11) In making or revoking the order, the Governor-General is to act with the advice of:

(a) except where paragraph (b) applies—the Executive Council; or

(b) if an authorising Minister is satisfied that, for reasons of urgency, the Governor-General should, for the purposes of this subsection, act with the advice of the authorising Minister—the authorising Minister.

Effect of revocation of order etc.

(12) To avoid doubt, if the order is revoked or ceases to be in force, the call out of the Defence Force under the order ends and the Chief of the Defence Force must cease utilising the Defence Force as mentioned in subsection (2) or (5).

Notice to State or self-governing Territory

(13) If the order includes a direction mentioned in subsection (5), then as soon as is reasonably practicable after the order is made or revoked, an authorising Minister must arrange for the Government of the State or the self-governing Territory specified in the order to be notified of the making or revocation of the order. However, if this is not done, the validity of the making or revocation of the order is not affected.

Further orders

(14) The fact that the order has been made does not prevent further orders being made in relation to the same matter.

13 Subsection 51F(1)

Omit “subsection (2)”, substitute “subsections (2) and (3)”.

14 At the end of section 51F

Add:

(3) This section does not apply in relation to an order under section 51AA to the extent that the Defence Force is being utilised in the Australian offshore area.

Note: This section will still apply in relation to an order under section 51AA to the extent that the Defence Force is being utilised in the internal waters of a State or self-governing Territory.

15 After Division 3 of Part IIIAAA

Insert:

Division 3A—Powers in the Australian offshore area etc.

Subdivision A—Preliminary

51SA Application of this Division and Division 4

If an order states in accordance with paragraph 51AA(8)(c) that this Division and Division 4 apply in relation to the order, the following provisions of this Division, and the provisions of Division 4, apply.

51SB Geographic application

This Division and Division 4 (in its operation in relation to this Division) apply only in:

(a) the Australian offshore area; and

(b) if the order under section 51AA includes a direction mentioned in subsection 51AA(5)—the internal waters of the State or self-governing Territory specified in the order.

51SC International obligations

The authorising Ministers or an authorising Minister must, in giving an authorisation or making a declaration under this Division, have regard to Australia's international obligations.

51SD Definitions

In this Division:

facility includes a fixed or floating structure or installation of any kind.

vessel means:

(a) a ship, boat, raft, pontoon or submersible craft; or

(b) any other thing capable of carrying persons or goods through or on water;

and includes a hovercraft (or other non-displacement craft) and a floating structure or installation.

Subdivision B—Special powers of members of the Defence Force

51SE Special powers of members of the Defence Force

Special powers

(1) Subject to this section, a member of the Defence Force who is being utilised in accordance with section 51D may, under the command of the Chief of the Defence Force, do any one or more of the following:

(a) take any one or more of the following actions:

(i) take measures (including the use of force) against a vessel or an aircraft, up to and including destroying the vessel or aircraft;

(ii) give an order relating to the taking of such measures;

(iii) capture a vessel or aircraft;

(iv) board a facility, vessel or aircraft;

(v) recapture a facility, vessel or aircraft;

(vi) prevent, or put an end to, acts of violence;

(vii) protect persons from acts of violence;

(b) in connection with taking any such action, do any one or more of the following:

(i) free any hostage from a facility, vessel or aircraft;

(ii) if the member finds a person whom the member believes on reasonable grounds to have committed an offence against a law of the Commonwealth, a State or Territory—detain the person for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time;

(iii) control the movement of persons, vessels or aircraft;

(iv) evacuate persons to a place of safety;

(v) search persons, facilities, vessels or aircraft for dangerous things or other things related to the threat concerned;

(vi) seize any dangerous thing or other thing related to the threat concerned found in such a search;

(c) do anything incidental to anything in paragraph (a) or (b).

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this subsection.

(2) Subparagraph (1)(a)(i) does not apply to the taking of measures unless:

(a) the member of the Defence Force takes the measures under, or under the authority of, an order of a superior; and

(b) the member was under a legal obligation to obey the order; and

(c) the order was not manifestly unlawful; and

(d) the member has no reason to believe that circumstances have changed in a material way since the order was given; and

(e) the member has no reason to believe that the order was based on a mistake as to a material fact; and

(f) taking the measures was reasonable and necessary to give effect to the order.

(3) Subparagraph (1)(a)(ii) does not apply to giving an order unless:

(a) the member of the Defence Force gives the order under, or under the authority of, an order (a ***superior order***) of a superior; and

(b) the member was under a legal obligation to obey the superior order; and

(c) the superior order was not manifestly unlawful; and

(d) the member has no reason to believe that circumstances have changed in a material way since the superior order was given; and

(e) the member has no reason to believe that the superior order was based on a mistake as to a material fact; and

(f) giving the order was reasonable and necessary to give effect to the superior order.

Ministerial authorisation

(4) However, the member must not:

(a) take any action mentioned in paragraph (1)(a); or

(b) do any of the things mentioned in paragraph (1)(b) or (c) in connection with taking that action;

unless an authorising Minister has in writing authorised taking that action.

Exception

(5) Subsection (4) does not apply if the member believes on reasonable grounds that there is insufficient time to obtain the authorisation because a sudden and extraordinary emergency exists.

Subdivision C—Powers that may be exercised anywhere in an offshore area

51SF Declaration of offshore general security area

(1) The authorising Ministers may, in writing, declare that a specified area is an offshore general security area for the purposes of the application of this Division and Division 4 in relation to members of the Defence Force who are being utilised in accordance with section 51D.

(2) The area:

(a) may be specified by reference to an area surrounding one or more vessels or aircraft, or surrounding a class of vessels or aircraft, being an area the boundaries of which change as the location of the vessels or aircraft changes; and

(b) may include areas within the internal waters of a State or Territory if the order under section 51AA includes the internal waters of the State or Territory.

Statement to be made available

(3) If the authorising Ministers make a declaration under subsection (1), they must arrange for a statement that:

(a) summarises the content of the order under section 51AA; and

(b) states that the declaration has been made; and

(c) describes the offshore general security area and its boundaries;

to be:

(d) notified to persons in the offshore general security area to the extent that this is practicable; and

(e) published in the *Gazette*; and

(f) forwarded, within 24 hours after the declaration is made, to the Presiding Officer of each House of the Parliament for tabling in that House.

(4) However, subsection (3) does not apply if the authorising Ministers declare, in writing, that they are satisfied that the application of subsection (3) would prejudice the exercise of powers under Subdivision B by members of the Defence Force who are being utilised in accordance with section 51D.

Houses to sit within 6 days

(5) Each House of the Parliament must sit within 6 days after its Presiding Officer receives the statement that is forwarded in accordance with paragraph (3)(f).

Effect of failure to publish

(6) A failure to comply with subsection (3) does not make the declaration ineffective to any extent.

51SG Authorisation to search facilities in the offshore general security area for dangerous and other things

(1) If, while the Defence Force is being utilised in accordance with section 51D:

(a) the Chief of the Defence Force; or

(b) an officer of the Defence Force, or an officer of the Defence Force included in a class of officers, authorised by the Chief of the Defence Force for the purposes of this section;

believes on reasonable grounds that:

(c) there is a dangerous thing on a facility in the offshore general security area and it is necessary as a matter of urgency to make the dangerous thing safe or prevent it from being used; or

(d) there is another thing on a facility in the offshore general security area that is related to the threat concerned and it is necessary as a matter of urgency to seize the thing;

he or she may give an authorisation under this section.

What the authorisation must say

(2) The authorisation must:

(a) authorise entry to, and search of, the facility; and

(b) describe the facility; and

(c) state the name, rank and service number of a member of the Defence Force (the ***offshore member in charge***) who is to be in charge of the search; and

(d) authorise the member in charge, and any other member of the Defence Force assisting the member, (the ***offshore search members***) to carry out the search; and

(e) authorise each offshore search member to seize any thing found on the facility in the course of the search that he or she believes on reasonable grounds to be a dangerous thing or a thing that is related to the threat concerned; and

(f) state that, if any offshore search member believes on reasonable grounds that a person who is on or near the facility while the search is being carried out has a dangerous thing or a thing that is related to the threat concerned in his or her possession, the member is authorised to:

(i) search the person; and

(ii) seize any dangerous thing or other thing related to the threat concerned found in the search; and

(g) state the time during which the authorisation remains in force, which must not be more than 24 hours.

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this subsection.

Effect of the authorisation

(3) The authorisation has effect according to its terms.

Further authorisations possible

(4) Paragraph (2)(g) does not prevent the issue of further authorisations in relation to the same facility.

51SH Copy of offshore search authorisation to be given to occupier etc.

Right of occupier to be given copy of offshore search authorisation etc.

(1) If the occupier of the facility specified in the offshore search authorisation, or another person who apparently represents the occupier, is present on the facility when the search is being carried out, the offshore member in charge must:

(a) identify himself or herself to that person; and

(b) give that person a copy of the offshore search authorisation.

Right of person searched to be shown copy of offshore search authorisation

(2) The offshore member in charge must, before any person (other than a person who has been given a copy of the offshore search authorisation under subsection (1)) is searched in accordance with the offshore search authorisation, show the person a copy of the offshore search authorisation.

51SI Occupier etc. entitled to be present during search

(1) If the occupier of the facility specified in the offshore search authorisation, or another person who apparently represents the occupier, is present on the facility when the search is being carried out, the person is entitled to observe the search being carried out.

Search not to be impeded

(2) The entitlement to observe the search being carried out ceases if the person impedes the search.

Multiple searches

(3) This section does not prevent 2 or more areas of the facility being searched at the same time.

51SJ Search of vessel or aircraft in the offshore general security area for dangerous or other things

(1) If a member of the Defence Force who is being utilised in accordance with section 51D believes on reasonable grounds that a dangerous thing, or another thing that is related to the threat concerned, is in or on a vessel or aircraft in the offshore general security area, the member may:

(a) erect barriers or other structures for the purpose of stopping the vessel or aircraft; and

(b) whether or not the member does so:

(i) stop and detain the vessel or aircraft; and

(ii) search the vessel or aircraft, and any thing found in or on the vessel or aircraft, for the dangerous thing or other thing that is related to the threat concerned; and

(iii) seize any dangerous thing or other thing that is related to the threat concerned that the member finds in the search.

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this subsection.

(2) If the member stops the vessel or aircraft, the member must not detain it for longer than is reasonable and necessary to search it and any thing found in or on it.

(3) The master of the vessel, or the captain of the aircraft, is entitled to observe the search being carried out.

(4) The entitlement to observe the search being carried out ceases if the master or captain impedes the search.

(5) This section does not prevent 2 or more areas of the vessel or aircraft being searched at the same time.

51SK Search of persons in the offshore general security area for dangerous and other things

If a member of the Defence Force who is being utilised in accordance with section 51D believes on reasonable grounds that a person in the offshore general security area has a dangerous thing, or a thing that is related to the threat concerned, in the person's possession, the member may:

(a) search the person for such a thing; and

(b) seize any such thing found in the search.

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this section.

Subdivision D—Powers that may be exercised only in relation to an offshore designated area in the offshore general security area

51SL Declaration of offshore designated area

(1) The authorising Ministers may, in writing, declare that a specified area, being the whole or a part of an offshore general security area, is an offshore designated area for the purposes of the application of this Division and Division 4 in relation to members of the Defence Force who are being utilised in accordance with section 51D.

(2) The area:

(a) may be specified by reference to an area surrounding one or more vessels or aircraft, or surrounding a class of vessels or aircraft, being an area the boundaries of which change as the location of the vessels or aircraft changes; and

(b) may include areas within the internal waters of a State or Territory if the order under section 51AA includes the internal waters of the State or Territory.

Where no longer an offshore general security area

(3) To avoid doubt, if the whole or part of the area later ceases to be within an offshore general security area, the whole or the part ceases to be an offshore designated area.

Declaration to be notified

(4) If the authorising Ministers make a declaration under subsection (1), they must arrange for a statement that:

(a) states that the declaration has been made; and

(b) describes the offshore designated area and its boundaries;

to be notified to persons in the offshore designated area to the extent that this is practicable.

(5) However, subsection (4) does not apply if the authorising Ministers declare, in writing, that they are satisfied that the application of subsection (4) would prejudice the exercise of powers under Subdivision B by members of the Defence Force who are being utilised in accordance with section 51D.

51SM Control of movement in relation to an offshore designated area in the offshore general security area

Powers in relation to persons in charge of vessels or aircraft

(1) A member of the Defence Force who is being utilised in accordance with section 51D may do any one or more of the following in relation to a person who is in charge of a vessel or aircraft:

(a) if the vessel or aircraft is in a part of the offshore general security area that is outside an offshore designated area—direct the person not to bring the vessel or aircraft into the offshore designated area;

(b) direct the person to take the vessel or aircraft out of an offshore designated area;

(c) direct the person to take the vessel or aircraft from a place in an offshore designated area to another place in the offshore designated area;

(d) direct the person not to take the vessel or aircraft from a place in an offshore designated area to any other place, or to a specified place, in the offshore designated area;

(e) compel the person to comply with a direction under any of the above paragraphs.

Erection of barriers etc.

(2) A member of the Defence Force may erect barriers or other structures at the boundary of, or in, an offshore designated area for the purpose of stopping persons from bringing a vessel or aircraft into the offshore designated area or to a place in the offshore designated area.

No person in charge of vessel

(3) If there is no person in charge of a vessel or aircraft that is in an offshore designated area, a member of the Defence Force may do such things as are reasonable and necessary for either of the following purposes:

(a) to take the vessel or aircraft to a place in the offshore general security area that is outside the offshore designated area;

(b) to take the vessel or aircraft to another place in the offshore designated area.

Powers in relation to persons generally

(4) A member of the Defence Force may do any one or more of the following in relation to a person (whether or not in charge of a vessel or aircraft):

(a) if the person is in the offshore general security area but outside an offshore designated area—direct the person not to enter the offshore designated area;

(b) direct the person to leave an offshore designated area;

(c) direct the person to move from a place in an offshore designated area to another place in the offshore designated area;

(d) compel the person to comply with a direction under any of the above paragraphs.

Powers to carry out consent searches

(5) The power of a member under paragraph (1)(a) or (4)(a) to direct a person:

(a) not to bring a vessel or aircraft into an offshore designated area; or

(b) not to enter an offshore designated area;

includes:

(c) the power to direct a person not to do either of those things unless the person agrees to a member searching:

(i) in either case—the person; and

(ii) in a paragraph (a) case—the vessel or aircraft and any thing on the vessel or aircraft;

for dangerous things or other things related to the threat concerned; and

(d) if the person agrees, the power to conduct such a search and to seize any such thing that the member finds in the search.

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this subsection.

Powers to board vessel or aircraft to give directions

(6) A member of the Defence Force may board any vessel or aircraft for the purpose of giving a direction under any provision of this section.

51SN Members to wear uniforms and identification when exercising powers

(1) While any member of the Defence Force is exercising powers under this Division, or under Division 4 in its operation in relation to this Division, he or she must at all times:

(a) wear his or her uniform; and

(b) for the purposes of identification, have:

(i) his or her surname; or

(ii) his or her numbers or a combination of numbers and letters of the alphabet;

on or attached to the front of his or her uniform.

Penalty: 30 penalty units.

Situation where no offence committed

(2) A member who contravenes paragraph (1)(b) is not guilty of an offence if the contravention occurs because of an act of another person (not being a member) done without the consent of the member.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

Members to be given means to comply with obligations

(3) The Chief of the Defence Force must take such steps as are reasonable and necessary to ensure that members do not contravene subsection (1).

Geographical application

(4) Section 15.1 of the *Criminal Code* (extended geographical jurisdiction—category B) applies to an offence against subsection (1).

Subdivision E—Other powers

51SO Power to require person to answer questions or produce documents

(1) A member of the Defence Force who is being utilised in accordance with section 51D may, in connection with the exercise of any power under this Division, require a person to answer a question put by the member or to produce a particular document to the member.

(2) However, the member may do so only if the member believes on reasonable grounds that it is necessary for the purpose of preserving the life or safety of other persons or to protect Commonwealth interests against the threat concerned.

(3) A person commits an offence if:

(a) the person is required to answer a question or produce a document under this section; and

(b) the person fails to comply with the requirement.

Penalty: 30 penalty units.

Self-incrimination

(4) A person is not excused from answering a question or producing a document under this section on the ground that the answer to the question, or the production of the document, may tend to incriminate the person or make the person liable to a penalty.

(5) However:

(a) the answer given or document produced; or

(b) answering the question or producing the document; or

(c) any information, document or thing obtained as a direct or indirect consequence of the answering of the question or the production of the document;

is not admissible in evidence against the person in criminal proceedings other than:

(d) proceedings for an offence against subsection (3); or

(e) proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* (about false or misleading information or documents) that relates to this section.

51SP Power to require person to operate facility, vessel or aircraft or machinery or equipment

(1) A member of the Defence Force who is being utilised in accordance with section 51D may, in connection with the exercise of any power under this Division, require a person to operate a facility, vessel or aircraft, or machinery or equipment on a facility, vessel or aircraft, in a particular manner.

(2) However, the member may do so only if the member believes on reasonable grounds that it is necessary for the purpose of preserving the life or safety of other persons or to protect Commonwealth interests against the threat concerned.

(3) A person commits an offence if:

(a) the person is required to operate a facility, vessel or aircraft, or machinery or equipment on a facility, vessel or aircraft, in a particular manner under this section; and

(b) the person fails to comply with the requirement.

Penalty for contravention of this subsection: 30 penalty units.

51SQ Geographical jurisdiction for offences

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to an offence against section 51SO or 51SP.

16 After subsection 51T(1)

Insert:

(1A) However, subsection (1) does not apply to the powers under Subdivision E of Division 3A.

17 Subdivision B of Division 4 of Part IIIAAA (heading)

Repeal the heading, substitute:

Subdivision B—Action to be taken if things are seized

18 Section 51V

Omit “dangerous”.

Note: The heading to section 51V is altered by omitting “**dangerous**”.

19 Subparagraph 51X(1)(c)(ii)

Repeal the subparagraph, substitute:

(ii) any declarations of general security areas or designated areas, or of offshore general security areas or offshore designated areas, under the order; and

20 Subparagraph 51X(2)(a)(ii)

Repeal the subparagraph, substitute:

(ii) any declarations of general security areas or designated areas, or of offshore general security areas or offshore designated areas, under the orders; and

Schedule 2—Incidents involving designated critical infrastructure

Defence Act 1903

1 Subsection 51(1)

Insert:

designated critical infrastructure means infrastructure, or a part of infrastructure, that is declared under section 51CB.

2 Subsection 51(1)

Insert:

infrastructure includes physical facilities, supply chains, information technologies and communication networks or systems.

3 Before section 51D

Insert:

51CB Declaration of designated critical infrastructure

(1) The authorising Ministers may, in writing, declare that particular infrastructure, or a part of particular infrastructure, in Australia or in the Australian offshore area is designated critical infrastructure.

(2) However, the authorising Ministers may do so only if they believe on reasonable grounds that:

(a) there is a threat of damage or disruption to the operation of the infrastructure or the part of the infrastructure; and

(b) the damage or disruption would directly or indirectly endanger the life of, or cause serious injury to, other persons.

(3) If the authorising Ministers no longer believe those matters, they must revoke the declaration.

(4) To avoid doubt, the authorising Ministers may make a declaration under this section whether or not an order is in force under this Division.

4 After Division 2 of Part IIIAAA

Insert:

Division 2A—Powers to protect designated critical infrastructure

51IA Application of this Division and Division 4

(1) If an order states in accordance with paragraph 51A(4)(c), 51AA(8)(c), 51B(3)(c) or 51C(3)(c) that this Division and Division 4 apply in relation to the order, the following provisions of this Division, and the provisions of Division 4, apply.

(2) In relation to an order under section 51AA, this Division and Division 4 (in its operation in relation to this Division) apply only in:

(a) the Australian offshore area; and

(b) if the order includes a direction mentioned in subsection 51AA(5)—the internal waters of the State or self-governing Territory specified in the order.

51IB Powers to protect designated critical infrastructure

A member of the Defence Force who is being utilised in accordance with section 51D may, under the command of the Chief of the Defence Force, do any one or more of the following for the purpose of protecting designated critical infrastructure:

(a) take one or both of the following actions:

(i) prevent, or put an end to, damage or disruption to the operation of the designated critical infrastructure;

(ii) prevent, or put an end to, acts of violence;

(b) in connection with taking any such action, do any one or more of the following:

(i) if the member finds a person whom the member believes on reasonable grounds to have committed an offence against a law of the Commonwealth, a State or Territory—detain the person for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time;

(ii) protect persons from acts of violence;

(iii) control the movement of persons or of means of transport;

(iv) evacuate persons to a place of safety;

(v) search persons or things for dangerous things or other things related to the threat concerned;

(vi) seize any dangerous thing or other thing related to the threat concerned found in such a search;

(c) do anything incidental to anything in paragraph (a) or (b).

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this section.

5 After subsection 51T(2)

Insert:

(2A) Despite subsection (1), in exercising powers under Division 2A, a member of the Defence Force must not, in using force against a person:

(a) do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the member believes on reasonable grounds that doing that thing is necessary to:

(i) protect the life of, or to prevent serious injury to, another person (including the member); or

(ii) protect, against the threat concerned, the designated critical infrastructure in respect of which the powers are being exercised; or

(b) subject the person to greater indignity than is reasonable and necessary in the circumstances.

Schedule 3—Aviation incidents

Defence Act 1903

1 Before section 51B

Insert:

51AB Order about utilising Defence Force to protect Commonwealth interests against violence if specified circumstances arise

Conditions for making of order

(1) Subsection (2) applies if the authorising Ministers are satisfied that:

(a) if specified circumstances were to arise:

(i) domestic violence would occur or would be likely to occur in Australia that would, or would be likely to, affect Commonwealth interests; or

(ii) there would be, or it is likely there would be, a threat in the Australian offshore area to Commonwealth interests (whether in that area or elsewhere);

and, for reasons of urgency, it would be impracticable for the Governor-General to make an order under section 51A; and

(b) if subparagraph (a)(i) applies—the domestic violence would occur or would be likely to occur in a State or self-governing Territory that would not be, or is unlikely to be, able to protect the Commonwealth interests against the domestic violence; and

(c) the Chief of the Defence Force should be directed to utilise the Defence Force to protect the Commonwealth interests against the violence, or the threat in the Australian offshore area, if the specified circumstances arise; and

(d) Divisions 3B and 4 should apply in relation to the order.

Power of Governor-General to make order

(2) If this subsection applies, the Governor-General may, by written order, direct the Chief of the Defence Force to utilise the Defence

Force to protect the Commonwealth interests against the domestic violence, or the threat in the Australian offshore area, if the specified circumstances arise.

Involvement of State or Territory

(3) If paragraph (1)(b) applies:

(a) the Governor-General may make the order whether or not the Government of the State or the self-governing Territory requests the making of the order; and

(b) if the Government of the State or the self-governing Territory does not request the making of the order, an authorising Minister must consult that Government about the making of the order before the Governor-General makes it.

Content of the order

(4) The order:

(a) must state that it is made under this section; and

(b) must specify:

(i) the circumstances to which the order relates; and

(ii) if paragraph (1)(b) applies—the State or Territory in which the domestic violence would occur or would be likely to occur; and

(iii) the Commonwealth interests; and

(iv) the domestic violence, or the threat in the Australian offshore area, as the case requires; and

(c) must state that Divisions 3B and 4 apply in relation to the order; and

(d) must state that the order comes into force when it is made and that, unless it is revoked earlier, it ceases to be in force at the end of the period specified in the order.

When order is in force

(5) The order is in force as stated in accordance with paragraph (4)(d).

Revocation of order

(6) If the authorising Ministers cease to be satisfied as mentioned in subsection (1), the Governor-General must revoke the order.

Advice to Governor-General

(7) In making or revoking the order the Governor-General is to act with the advice of the Executive Council.

Effect of revocation of order etc.

(8) To avoid doubt, if the order is revoked or ceases to be in force, the Chief of the Defence Force must cease utilising the Defence Force as mentioned in subsection (2).

Notice to State or self-governing Territory

(9) If the order specifies a State or Territory under subparagraph (4)(b)(ii), as soon as is reasonably practicable after the order is made or revoked, an authorising Minister must arrange for the Government of the State or Territory to be notified of the making or revocation of the order. However, if this is not done, the validity of the making or revocation of the order is not affected.

Further orders

(10) The fact that the order has been made does not prevent further orders being made in relation to the same matter.

2 Before Division 4 of Part IIIAAA

Insert:

Division 3B—Powers relating to aircraft

51SR Application of this Division and Division 4

If an order states in accordance with paragraph 51A(4)(c), 51AB(4)(c), 51B(3)(c) or 51C(3)(c) that this Division and Division 4 apply in relation to the order, the following provisions of this Division, and the provisions of Division 4, apply.

51SS Geographical application

This Division and Division 4 (in its operation in relation to this Division) extend to the Australian offshore area.

51ST Special powers of members of the Defence Force

Taking measures against aircraft

(1) A member of the Defence Force who is being utilised in accordance with section 51D may, under the command of the Chief of the Defence Force:

(a) take measures (including the use of force) against an aircraft, up to and including destroying the aircraft; or

(b) give an order relating to the taking of such measures;

whether or not the aircraft is airborne.

(2) Paragraph (1)(a) does not apply to the taking of measures unless:

(a) the member of the Defence Force takes the measures under, or under the authority of, an order of a superior; and

(b) the member was under a legal obligation to obey the order; and

(c) the order was not manifestly unlawful; and

(d) the member has no reason to believe that circumstances have changed in a material way since the order was given; and

(e) the member has no reason to believe that the order was based on a mistake as to a material fact; and

(f) taking the measures was reasonable and necessary to give effect to the order.

(3) Paragraph (1)(b) does not apply to giving an order unless:

(a) the member of the Defence Force gives the order under, or under the authority of, an order (a ***superior order***) of a superior; and

(b) the member was under a legal obligation to obey the superior order; and

(c) the superior order was not manifestly unlawful; and

(d) the member has no reason to believe that circumstances have changed in a material way since the superior order was given; and

(e) the member has no reason to believe that the superior order was based on a mistake as to a material fact; and

(f) giving the order was reasonable and necessary to give effect to the superior order.

Ministerial authorisation

(4) However, the member must not take measures against an aircraft, or give an order of a kind mentioned in paragraph (1)(b) in connection with an aircraft, unless an authorising Minister has in writing authorised the taking of measures against the aircraft.

Exception

(5) Subsection (4) does not apply if:

(a) the member believes on reasonable grounds that there is insufficient time to obtain the authorisation because a sudden and extraordinary emergency exists; or

(b) the measures are taken in specified circumstances that an authorising Minister has authorised under subsection (6).

(6) An authorising Minister may in writing authorise the taking of measures against an aircraft in specified circumstances if this Division applies because an order states in accordance with paragraph 51AB(4)(c) that this Division and Division 4 apply in relation to the order.

Authorising Minister must be satisfied of reasonableness and necessity

(7) An authorising Minister must not authorise the taking of measures against an aircraft unless the Minister is satisfied that:

(a) in the case of an authorisation under subsection (4)—taking action against the aircraft is reasonable and necessary; or

(b) in the case of an authorisation under subsection (6)—taking action against the aircraft would be reasonable and necessary if the specified circumstances in question were to arise.

International obligations

(8) An authorising Minister must, in giving an authorisation under this section, have regard to Australia's international obligations.

3 Before subsection 51T(3)

Insert:

(2B) Despite subsection (1), in exercising powers under subparagraph 51SE(1)(a)(i) or (ii) or Division 3B, a member of the Defence

Force must not, in using force against a person or thing, do anything that is likely to cause the death of, or grievous bodily harm to, the person unless the member believes on reasonable grounds that:

(a) doing that thing is necessary to protect the life of, or to prevent serious injury to, another person (including the member); or

(b) doing that thing is necessary to protect designated critical infrastructure against a threat of damage or disruption to its operation; or

(c) doing that thing is necessary and reasonable to give effect to the order under which, or under the authority of which, the member is acting.

Schedule 4—Expedited call out

Defence Act 1903

1 After section 51C

Insert:

51CA Expedited call out

Expedited call out by the Prime Minister

(1) The Prime Minister may make an order of a kind that the Governor-General is empowered to make under section 51A, 51AA, 51AB, 51B or 51C if the Prime Minister is satisfied that:

(a) because a sudden and extraordinary emergency exists, it is not practicable for an order to be made under that section; and

(b) the circumstances referred to in subsection 51A(1), 51AA(1), 51AB(1), 51B(1) or 51C(1) (as the case requires) exist.

Expedited call out by the other 2 authorising Ministers

(2) The other 2 authorising Ministers may jointly make an order of a kind that the Governor-General is empowered to make under section 51A, 51AA, 51AB, 51B or 51C if those authorising Ministers are satisfied that:

(a) because a sudden and extraordinary emergency exists, it is not practicable for an order to be made under that section; and

(b) the Prime Minister is unable to be contacted for the purposes of considering whether to make, and making, an order under subsection (1) of this section; and

(c) the circumstances referred to in subsection 51A(1), 51AA(1), 51AB(1), 51B(1) or 51C(1) (as the case requires) exist.

Orders applying in internal waters

(3) If the order is an order of a kind that Governor-General is empowered to make under section 51AA, the order must not direct

the Chief of the Defence Force to utilise the Defence Force in the internal waters of the State or self-governing Territory unless:

(a) if the order is made under subsection (1) of this section—the Prime Minister is satisfied that the circumstances referred to in subsection 51AA(4) exist in relation to that State or Territory; or

(b) if the order is made under subsection (2) of this section—the other 2 authorising Ministers are satisfied that the circumstances referred to in subsection 51AA(4) exist in relation to that State or Territory.

Order not in writing

(4) An order under this section need not be in writing. If it is not in writing, the Prime Minister or the other 2 authorising Ministers (as the case requires), and the Chief of the Defence Force, must each:

(a) make a written record of the order; and

(b) sign the record; and

(c) cause the signing of the record to be witnessed; and

(d) in the case of the Prime Minister or another authorising Minister—as soon as practicable:

(i) cause the record to be given to the Chief of the Defence Force; and

(ii) cause a copy of the record to be given to the Governor-General; and

(e) in the case of the Chief of the Defence Force—as soon as practicable:

(i) cause the record to be given to the Prime Minister; or

(ii) cause the record to be given to one of the other 2 authorising Ministers, and cause a copy of the record to be given to the other authorising Minister;

as the case requires.

However, a failure to comply with paragraph (d) or (e) does not affect the validity of the order.

The effect of the order

(5) Subject to subsections (7) and (8) of this section, an order made under this section has effect, for all purposes (other than this section), as if it were an order made by the Governor-General

under section 51A, 51AA, 51AB, 51B or 51C (as the case requires). In particular:

(a) subsection 51A(4), 51AA(8), 51AB(4), 51B(3) or 51C(3) (as the case requires) applies to the order; and

(b) the Governor-General may revoke the order in the same way, and in the same circumstances, as he or she may revoke an order under section 51A, 51AA, 51AB, 51B or 51C (as the case requires).

(6) For the purposes of paragraph (5)(b), the reference in subsection 51A(6), 51AA(10) or 51AB(6) or paragraph 51B(5)(b) or 51C(5)(b) (as the case requires) to the authorising Ministers ceasing to be satisfied is taken to be a reference to them not being satisfied.

Content of the order

(7) An order made under this section:

(a) must state that it is made under this section, and that it has effect as if it were an order made by the Governor-General under section 51A, 51AA, 51AB, 51B or 51C (as the case requires); and

(b) despite paragraph 51A(4)(d), 51AA(8)(d), 51AB(4)(d), 51B(3)(d) or 51C(3)(d) (as the case requires), must state that, unless it is revoked earlier, it ceases to be in force after a specified period (which must not be more than 5 days).

When order is in force

(8) The order:

(a) comes into force when it is made, or (if it is not in writing) when:

(i) the Prime Minister, or the other 2 authorising Ministers; and

(ii) the Chief of the Defence Force;

have complied with paragraph (4)(c); and

(b) ceases to be in force as stated in accordance with paragraph (7)(b).

Authorisations and declarations during an expedited call out

(9) If:

(a) one or more authorising Ministers have the power to give an authorisation or make a declaration under a provision of Division 2, 3, 3A or 3B; and

(b) that Division applies because of an order made under this section;

the authorisation or declaration need not be in writing, despite any requirement of the provision to the contrary.

(10) If the authorisation or declaration is not in writing, the authorising Minister or authorising Ministers, and the Chief of the Defence Force, must each:

(a) make a written record of the authorisation or declaration; and

(b) sign the record; and

(c) cause the signing of the record to be witnessed; and

(d) in the case of an authorising Minister—as soon as practicable cause the record to be given to the Chief of the Defence Force; and

(e) in the case of the Chief of the Defence Force—as soon as practicable:

(i) cause the record to be given to the authorising Minister; or

(ii) cause the record to be given to one of the authorising Ministers, and cause a copy of the record to be given to the other authorising Minister;

as the case requires.

However, a failure to comply with paragraph (d) or (e) does not affect the validity of the authorisation or declaration.

(11) If the authorisation or declaration is not in writing, it comes into force when the authorising Minister or authorising Ministers, and the Chief of the Defence Force, have complied with paragraph (10)(c).

References to certain circumstances

(12) To avoid doubt, a reference in this section to the circumstances referred to in subsection 51A(1), 51AA(1), 51AB(1), 51B(1) or 51C(1):

(a) does not include a reference to the authorising Ministers being satisfied as to particular matters; and

(b) in relation to section 51B, includes a reference to a State Government having made an application of a kind referred to in subsection 51B(1); and

(c) in relation to section 51C, includes a reference to a State Government having made an application of a kind referred to in subsection 51C(1).

Involvement of State or Territory under subsection 51A(3) not required

(13) To avoid doubt, paragraph 51A(3)(b) does not apply to an order under this section that would have effect as if it were an order made by the Governor-General under section 51A.

Schedule 5—Amendments consequential on Schedules 1 to 4

Air Force Act 1923

1 Paragraph 4J(1)(b)

Omit "51A, 51B or 51C", substitute "51A, 51AA, 51AB, 51B, 51C or 51CA".

Defence Act 1903

2 Paragraph 50(1)(b)

Omit "51A, 51B or 51C", substitute "51A, 51AA, 51AB, 51B, 51C or 51CA".

3 Part IIIAAA (heading)

Repeal the heading, substitute:

Part IIIAAA—Utilisation of Defence Force to protect Commonwealth interests and States and self-governing Territories

4 Subsection 51(1) (definition of *order*)

Repeal the definition.

5 Subsection 51(1)

Insert:

threat concerned means:

(a) for the purposes of the application of section 51IB or subsection 51T(2A)—the threat of damage or disruption in relation to which the authorising Ministers make a declaration under section 51CB; or

(b) for the purposes of the application of one or more of the provisions of Division 3A—the threat to Commonwealth

interests in relation to which an order under section 51AA is made that causes Division 3A to apply.

6 Paragraph 51A(1)(d)

Repeal the paragraph, substitute:

(d) one or more of Divisions 2, 2A, 3 and 3B, and Division 4, should apply in relation to the order.

7 Paragraph 51A(4)(c)

Repeal the paragraph, substitute:

(c) must state that one or more of Divisions 2, 2A, 3 and 3B, and Division 4, apply in relation to the order; and

8 Paragraph 51B(1)(c)

Repeal the paragraph, substitute:

(c) one or more of Divisions 2, 2A, 3 and 3B, and Division 4, should apply in relation to the order.

9 Paragraph 51B(3)(c)

Repeal the paragraph, substitute:

(c) must state that one or more of Divisions 2, 2A, 3 and 3B, and Division 4, apply in relation to the order; and

10 Paragraph 51C(1)(c)

Repeal the paragraph, substitute:

(c) one or more of Divisions 2, 2A, 3 and 3B, and Division 4, should apply in relation to the order.

11 Paragraph 51C(3)(c)

Repeal the paragraph, substitute:

(c) must state that one or more of Divisions 2, 2A, 3 and 3B, and Division 4, apply in relation to the order; and

12 After subsection 51D(1)

Insert:

Order under section 51AA

(1A) If the Governor-General makes an order under section 51AA, the Chief of the Defence Force must, subject to sections 51E, 51F and 51G, utilise the Defence Force, in such manner as is reasonable and necessary:

(a) in the Australian offshore area, for the purpose of protecting the Commonwealth interests specified in the order against the threat concerned; and

(b) if the order includes a direction mentioned in subsection 51AA(5)—in the internal waters of the State or Territory to which the direction relates, for the purpose of protecting the Commonwealth interests specified in the order against the domestic violence specified in the order.

Order under section 51AB

(1B) If:

(a) the Governor-General makes an order under section 51AB; and

(b) the circumstances specified in the order arise;

the Chief of the Defence Force must, subject to sections 51E, 51F and 51G, utilise the Defence Force, in such manner as is reasonable and necessary:

(c) for the purpose of protecting the State or Territory specified in the order against the domestic violence specified in the order; or

(d) for the purpose of protecting the Commonwealth interests specified in the order against the threat specified in the order;

as the case requires.

13 Division 4 of Part IIIAAA (heading)

Repeal the heading, substitute:

Division 4—Provisions common to Divisions 2 to 3B

14 Subsection 51T(1)

Omit “Division 2 or 3”, substitute “Division 2, 2A, 3, 3A or 3B”.

15 Before subsection 51T(2)

Insert:

(1B) To avoid doubt, any use of force by a member of the Defence Force under this Part must be in accordance with this section.

16 Subsection 51T(2)

Omit "However", substitute "Despite subsection (1), in exercising powers under Division 2, 3 or 3A (other than subparagraph 51SE(1)(a)(i) or (ii)) or this Division".

17 Subsection 51U(1)

After "subparagraph 51I(1)(b)(ii)", insert ", 51IB(b)(i) or 51SE(1)(b)(ii)".

18 Section 51V

Omit "Division 2 or 3", substitute "Division 2, 2A, 3 or 3A".

19 Section 51W

Omit "Division 2 or 3", substitute "Division 2, 2A, 3, 3A or 3B".

20 Paragraph 51X(1)(a)

Omit "order under this Part", substitute "order under Division 1".

21 Subsection 51X(2)

Omit "orders under this Part", substitute "orders under Division 1".

22 Subparagraph 51XA(1)(a)(i)

Omit "order under this Part", substitute "order under Division 1".

23 Subparagraph 51XA(1)(a)(ii)

Omit "orders under this Part", substitute "orders under Division 1".

24 Paragraph 51XA(1)(b)

Omit "order under this Part", substitute "order under Division 1".

25 Subsection 51XA(3)

Omit "order under this Part", substitute "order under Division 1".

Defence Reserve Service (Protection) Act 2001

26 Section 7 (definition of *call out day*)

Omit "51A, 51B or 51C", substitute "51A, 51AA, 51AB, 51B, 51C or 51CA".

27 Subsection 9(1) (definition of *dependant*)

Omit "51A, 51B or 51C", substitute "51A, 51AA, 51AB, 51B, 51C or 51CA".

28 Section 13

Omit "51A, 51B or 51C", substitute "51A, 51AA, 51AB, 51B, 51C or 51CA".

Naval Defence Act 1910

29 Paragraph 32A(1)(b)

Omit "51A, 51B or 51C", substitute "51A, 51AA, 51AB, 51B, 51C or 51CA".

Schedule 6—Other amendments

Defence Act 1903

1 Subsection 51(1)

Insert:

criminal act means an act or omission that would, if done or omitted to be done in the Jervis Bay Territory, contravene the substantive criminal law of the Jervis Bay Territory.

2 Subsection 51(1)

Insert:

substantive criminal law means law (including unwritten law):

(a) creating offences or imposing criminal liability for offences; or

(b) dealing with capacity to incur criminal liability; or

(c) providing a defence or providing for the reduction of the degree of criminal liability; or

(d) providing for the confiscation of property used in, or derived from, the commission of an offence; or

(e) dealing with other subjects declared by regulation to be within the ambit of the substantive criminal law of the Jervis Bay Territory; or

(f) providing for the interpretation of laws of the kinds mentioned above.

3 After paragraph 51A(1)(a)

Insert:

(aa) the domestic violence would, or would be likely to, affect Commonwealth interests; and

4 Subsection 51A(3A)

Omit “Governor-General is”, substitute “authorising Ministers are”.

5 Subsection 51A(7)

Omit "or in deciding whether he or she is satisfied as mentioned in subsection (3A),".

6 Section 51G

Repeal the section, substitute:

51G Restriction on certain utilisation of Defence Force

In utilising the Defence Force in accordance with section 51D, the Chief of the Defence Force must not stop or restrict any protest, dissent, assembly or industrial action, except where there is a reasonable likelihood of the death of, or serious injury to, persons or serious damage to property.

7 Division 2 of Part IIIAAA (heading)

Repeal the heading, substitute:

Division 2—Powers to recapture locations or things, prevent or end acts of violence and protect persons from acts of violence

8 Subsections 51I(1) and (2)

Repeal the subsections, substitute:

Special powers

(1) Subject to this section, a member of the Defence Force who is being utilised in accordance with section 51D may, under the command of the Chief of the Defence Force do any one or more of the following:

(a) take any one or more of the following actions:

(i) recapture a location or thing;

(ii) prevent, or put an end to, acts of violence;

(iii) protect persons from acts of violence;

(b) in connection with taking any such action, do any one or more of the following:

(i) free any hostage from a location or thing;

(ii) if the member finds a person whom the member believes on reasonable grounds to have committed an offence against a law of the Commonwealth, a State or

Territory—detain the person for the purpose of placing the person in the custody of a member of a police force at the earliest practicable time;

(iii) control the movement of persons or of means of transport;

(iv) evacuate persons to a place of safety;

(v) search persons or locations or things for dangerous things or other things related to the domestic violence that is occurring or is likely to occur;

(vi) seize any dangerous thing, or other thing related to the domestic violence that is occurring or is likely to occur, found in such a search; and

(c) do anything incidental to anything in paragraph (a) or (b).

Note: Subdivision B of Division 4 sets out what is to happen if a thing is seized under this subsection.

Ministerial authorisation

(2) However, the member must not:

(a) take any action mentioned in paragraph (1)(a); or

(b) do any of the things mentioned in paragraph (1)(b) or (c) in connection with taking that action;

unless an authorising Minister has in writing authorised taking that action.

9 At the end of section 51I

Add:

Definitions

(4) In this section:

location includes any premises or place.

thing includes any means of transport, but does not include an aircraft that is airborne.

10 After subsection 51K(2)

Insert:

(2AA) However, subsection (2) does not apply if:

(a) the order mentioned in section 51J also states, in accordance with paragraph 51A(4)(c), 51B(3)(c) or 51C(3)(c), that Division 2 applies in relation to the order; and

(b) the authorising Ministers declare, in writing, that they are satisfied that the application of subsection (2) would prejudice the exercise of powers under Division 2 by members of the Defence Force who are being utilised in accordance with section 51D.

11 At the end of section 51Q

Add:

(4) However, subsection (3) does not apply if the authorising Ministers declare, in writing, that they are satisfied that the application of subsection (3) would prejudice the exercise of powers under Division 2 by members of the Defence Force who are being utilised in accordance with section 51D.

12 Paragraph 51S(1)(b)

Repeal the paragraph, substitute:

(b) for the purposes of identification, have:

(i) his or her surname; or

(ii) his or her numbers or a combination of numbers and letters of the alphabet;

on or attached to the front of his or her uniform.

13 After Division 4 of Part IIIAAA

Insert:

Division 4A—Applicable criminal law

51WA Applicable criminal law

(1) The substantive criminal law of the Jervis Bay Territory, as in force from time to time, applies in relation to a criminal act of a member of the Defence Force that is done, or purported to be done, under this Part.

(2) The substantive criminal law of the States and the other Territories, as in force from time to time, does not apply in relation to a

criminal act of a member of the Defence Force that is done, or purported to be done, under this Part.

(3) To avoid doubt, Chapter 2 of the *Criminal Code* does not apply to an act done, or purported to be done, under this Part that is a criminal act (except to the extent that it constitutes an offence against the law of the Commonwealth).

(4) To avoid doubt, the functions of the Director of Public Prosecutions under section 6 of the *Director of Public Prosecutions Act 1983* in relation to the law of the Jervis Bay Territory as applied by subsection (1) are exclusive of the corresponding functions of any officer of a State or Territory, in relation to the law of the Jervis Bay Territory as so applied, under a law corresponding to that Act.

51WB Defence of superior orders in certain circumstances

(1) Subject to subsection (2), the fact that a criminal act was done, or purported to be done, by a member of the Defence Force under this Part under an order of a superior does not relieve the member of criminal responsibility.

(2) It is a defence to a criminal act done, or purported to be done, by a member of the Defence Force under this Part that:

(a) the criminal act was done by the member under an order of a superior; and

(b) the member was under a legal obligation to obey the order; and

(c) the order was not manifestly unlawful; and

(d) the member had no reason to believe that circumstances had changed in a material respect since the order was given; and

(e) the member had no reason to believe that the order was based on a mistake as to a material fact; and

(f) the action taken was reasonable and necessary to give effect to the order.

(3) Subsection (2) does not limit the defences that may be available to the person.

14 After section 51XA

Insert:

51XB Instruments that are not legislative instruments

An order, authorisation or declaration made under this Part is not a legislative instrument.