The Parliament of the Commonwealth of Australia

HOUSE OF REPRESENTATIVES

As passed by both Houses

Defence Legislation Amendment (Security of Defence Premises) Bill 2011

No. , 2011

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 (Security of Defence Premises) Act 2011*.

2 **Commencement**

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
<table>
<thead>
<tr>
<th>Provision(s)</th>
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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
</tr>
<tr>
<td>2. Schedule 1</td>
<td>A single day to be fixed by Proclamation.</td>
</tr>
<tr>
<td></td>
<td>However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.</td>
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</tbody>
</table>

1. Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

2. Any information in Column 3 of the table is not part of this Act.

3. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### 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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendments relating to the security of defence premises

Part 1—Main amendments

Defence Act 1903

1 After Part VI

Insert:

Part VIA—Security of defence premises

Division 1—Preliminary

71 Simplified outline

(1) The following is a simplified outline of this Part.

(2) This Division sets out the meaning of expressions used in this Part.

(3) Division 2 provides for matters relating to defence security officials.

(4) Division 3 sets out the powers exercisable by defence security officials with consent at defence access control points and on defence premises. Subdivision B of Division 3 contains special provisions relating to declared explosive ordnance depots.

(5) Division 4 sets out the powers exercisable by special defence security officials without consent at defence access control points and on defence premises, and provides for related matters, including offences relating to non-compliance with requirements, hindering and obstructing.

(6) Division 5 relates to seizure of things.

(7) Division 6 sets out provisions that apply generally in relation to the exercise of powers under this Part, including the following:

   (a) the production of identity cards;

   (b) informing persons of offences;
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(c) the use of force;
(d) limits on the exercise of certain powers.

(8) Division 7 provides for other matters, including:
(a) an offence of unauthorised entry on, or being on, defence
premises or defence accommodation; and
(b) the provision of information obtained by certain surveillance
devices to law enforcement and other agencies.

71A  Definitions

(1) In this Part:

contracted defence security guard has the meaning given by
section 71B.
criminal offence means an offence against a law of the
Commonwealth, a State or a Territory.
declared explosive ordnance depot has the meaning given by
section 71L.
defence access control point means a point of entry to, or exit
from, defence premises or a part of defence premises, where entry
or exit is controlled or limited by any means, including but not
limited to control by means of:
(a) guarding by defence security officials; or
(b) physical barriers such as security screens, locked doors or
gates.
defence accommodation means any building or other structure, or
any place, that:
(a) is in Australia; and
(b) is used for, or in connection with, the accommodation of a
group of members of any part of the Defence Force.
defence premises means any of the following that is in Australia,
and is owned or occupied by the Commonwealth for use by the
Defence Force or the Department:
(a) an area of land or any other place (whether or not it is
   enclosed or built on);
(b) a building or other structure;

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(c) a vehicle, vessel or aircraft, including any fixed or moveable ramp, stairs or other means of access to, or exit from, the vehicle, vessel or aircraft;
(d) a prohibited area, within the meaning of the Defence (Special Undertakings) Act 1952.

defence security official means:
(a) a contracted defence security guard (see section 71B); or
(b) a security authorised member of the Defence Force (see section 71C); or
(c) a defence security screening employee (see section 71D).

defence security screening employee has the meaning given by section 71D.

intelligence or security agency means any of the following:
(a) the Australian Secret Intelligence Service;
(b) the Australian Security Intelligence Organisation;
(c) the Office of National Assessments.

limited search of a person means:
(a) a search of things in the possession of a person that may include:
   (i) requesting the person to remove his or her overcoat, coat or jacket and any gloves, shoes and hat; and
   (ii) an examination of any of those items that the person consents to remove; or
(b) a search of a person conducted by quickly running the hands over the person’s outer garments and an examination of anything worn or carried by the person that is conveniently and voluntarily removed by the person;
but does not include requesting the person to remove all of his or her garments.

optical surveillance device means any device capable of being used to record visually or observe an activity, but does not include spectacles, contact lenses or a similar device used by a person with impaired sight to overcome that impairment.

personal information has the same meaning as in the Privacy Act 1988.
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**person assisting** a defence security official has the meaning given by section 72N.

**protective service officer** has the same meaning as in the *Australian Federal Police Act 1979*.

**search:**

(a) of a person—has the same meaning as in section 51; and

(b) of a vehicle, vessel or aircraft—includes a search of a thing in the vehicle, vessel or aircraft.

**security authorised member of the Defence Force** has the meaning given by section 71C.

**special defence security official** means:

(a) a security authorised member of the Defence Force (see section 71C); or

(b) a defence security screening employee (see section 71D).

**vessel** has the same meaning as in section 51SD.

(2) To avoid doubt, a thing includes a substance, a vehicle, vessel or aircraft and a thing in electronic or magnetic form.

### Division 2—Defence security officials

#### 71B  Contracted defence security guards

(1) A person is a **contracted defence security guard** if:

(a) the person is one of the following:

(i) a party to a contract with the Commonwealth or a Commonwealth entity;

(ii) a subcontractor for a contract with the Commonwealth or a Commonwealth entity;

(iii) an employee of a person referred to in subparagraph (i) or (ii); and

(b) the contract is for, or includes, the provision of security services at one or more defence premises; and

(c) either of the following applies:

(i) the person is authorised under subsection (2);
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(iii) the person is included in a class of persons authorised  
under subsection (2) (including a person who becomes a  
member of the class after the authorisation is given);  

(d) the person satisfies the training and qualification  
requirements determined under subsection (4).  

(2) The Minister may, in writing, authorise a person, or a class of  
persons, for the purposes of paragraph (1)(c).  

(3) An authorisation made under subsection (2) is not a legislative  
instrument.  

(4) The Minister must, by legislative instrument, determine the  
training and qualification requirements for contracted defence  
security guards.  

(5) Without limiting the training and qualification requirements that  
may be determined in a legislative instrument under subsection (4),  
different training and qualification requirements may apply to  
different kinds of contracted defence security guards.  

71C Security authorised members of the Defence Force  

(1) A person is a security authorised member of the Defence Force if  
the person:  

(a) is a member of the Defence Force; and  

(b) either of the following applies:  

(i) the person is authorised under subsection (2);  

(ii) the person is included in a class of persons authorised  
under subsection (2) (including a person who becomes a  
member of the class after the authorisation is given);  

and  

(c) the person satisfies the training and qualification  
requirements determined under subsection (4).  

(2) The Minister may, in writing, authorise a person, or a class of  
persons, for the purposes of paragraph (1)(b).  

(3) An authorisation made under subsection (2) is not a legislative  
instrument.
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(4) The Minister must, by legislative instrument, determine the training and qualification requirements for security authorised members of the Defence Force.

(5) Without limiting the training and qualification requirements that may be determined in a legislative instrument under subsection (4):

(a) different training and qualification requirements may apply to different kinds of security authorised members of the Defence Force; and

(b) the Minister must determine training and qualification requirements that apply to security authorised members of the Defence Force in relation to the use of dogs as referred to in section 72M.

71D Defence security screening employees

(1) A person is a defence security screening employee if the person:

(a) is an APS employee in the Department; and

(b) either of the following applies:

(i) the person is authorised under subsection (2);

(ii) the person is included in a class of persons authorised under subsection (2) (including a person who becomes a member of the class after the authorisation is given); and

(c) the person satisfies the training and qualification requirements determined under subsection (4).

(2) The Minister may, in writing, authorise a person, or a class of persons, for the purposes of paragraph (1)(b).

(3) An authorisation made under subsection (2) is not a legislative instrument.

(4) The Minister must, by legislative instrument, determine the training and qualification requirements for defence security screening employees.

(5) Without limiting the training and qualification requirements that may be determined in a legislative instrument under subsection (4), different training and qualification requirements may apply to different kinds of defence security screening employees.
71E Identity cards

(1) The Secretary must issue an identity card to each defence security official.

Form of identity card

(2) The identity card must:
(a) be in the form approved in writing by the Secretary; and
(b) contain a recent photograph of the defence security official.

Offence

(3) A person commits an offence if:
(a) the person has been issued with an identity card; and
(b) the person ceases to be a defence security official; and
(c) the person does not, within 7 days of so ceasing, return the person’s identity card to the Secretary.

Penalty: 5 penalty units.

(4) Subsection (3) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the Criminal Code.

Defence—card lost or destroyed

(5) Subsection (3) does not apply if the identity card was lost or destroyed.

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

Defence security official must carry card

(6) A defence security official must carry the identity card at all times when performing functions or exercising powers as a defence security official.
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71F Delegations relating to training and qualification requirements

(1) The Minister may, by writing, delegate the Minister’s power under subsection 71B(4) or 71D(4) (training and qualification requirements for contracted defence security guards and defence security screening employees) to:

(a) the Secretary; or

(b) an APS employee who holds or performs the duties of an SES Band 3 position, or an equivalent or higher position, in the Department.

(2) The Minister may, by writing, delegate the Minister’s power under subsection 71C(4) (training and qualification requirements for security authorised members of the Defence Force) to:

(a) an officer of the Army who holds the rank of Brigadier or a higher rank; or

(b) an officer of the Navy who holds the rank of Commodore or a higher rank; or

(c) an officer of the Air Force who holds the rank of Air Commodore or a higher rank.

71G Delegations relating to identity cards

(1) The Secretary may, by writing, delegate the Secretary’s power under subsection 71E(1) (issue of identity cards) to:

(a) an APS employee who holds or performs the duties of an Executive Level 2 position, or an equivalent or higher position, in the Department; or

(b) an officer of the Army who holds the rank of Colonel or a higher rank; or

(c) an officer of the Navy who holds the rank of Captain or a higher rank; or

(d) an officer of the Air Force who holds the rank of Group Captain or a higher rank.
Return of identity cards

(2) The Secretary may, by writing, delegate the Secretary’s function under paragraph 71E(3)(c) (return of identity cards) to:

(a) an APS employee who holds or performs the duties of an APS 5 position, or an equivalent or higher position, in the Department; or
(b) an officer of the Army who holds the rank of Captain or a higher rank; or
(c) an officer of the Navy who holds the rank of Lieutenant or a higher rank; or
(d) an officer of the Air Force who holds the rank of Flight Lieutenant or a higher rank.

Division 3—Powers exercisable with consent at defence access control points and on defence premises

Subdivision A—General provisions

71H Consensual identification and limited search—person about to pass a defence access control point

Power to request identification etc.

(1) A defence security official may request a person who is about to pass a defence access control point to provide evidence of the following:

(a) the person’s name;
(b) the person’s residential address;
(c) the person’s authority to pass the defence access control point.

Power to request limited search

(2) A defence security official may request a person who is about to pass a defence access control point to undergo a limited search.

Power to refuse access etc.

(3) A defence security official may refuse to allow a person to pass a defence access control point if:
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(a) the person refuses a request by a defence security official under subsection (1) or (2); or

(b) as a result of the person complying with such a request, a defence security official reasonably believes that the person:
   (i) is not authorised to pass the defence access control point; or
   (ii) constitutes a threat to the safety of persons on the defence premises; or
   (iii) has committed, or may commit, a criminal offence on, or in relation to, the defence premises.

Additional powers if person is on defence premises

(4) If a defence security official refuses to allow a person to pass a defence access control point under subsection (3), a defence security official may, if the person is on defence premises, restrain and detain the person.

71J  Consensual search—vehicle, vessel or aircraft about to pass a defence access control point

(1) A defence security official may request a person apparently in control of a vehicle, vessel or aircraft that is about to pass a defence access control point to permit a search of the vehicle, vessel or aircraft.

(2) A defence security official may refuse to allow a vehicle, vessel or aircraft to pass a defence access control point if:
   (a) a person refuses to permit a search of a vehicle, vessel or aircraft requested by a defence security official under subsection (1); or
   (b) as a result of the person complying with such a request, a defence security official reasonably believes that the vehicle, vessel or aircraft, or a thing in it:
      (i) is not authorised to pass the defence access control point; or
      (ii) constitutes a threat to the safety of persons on the defence premises; or
      (iii) relates to a criminal offence committed, or that may be committed, on or in relation to the defence premises.
Additional powers if vehicle, vessel or aircraft is on defence premises

(3) If a defence security official refuses to allow a vehicle, vessel or aircraft to pass a defence access control point under subsection (2), a defence security official may, if the vehicle, vessel or aircraft is on defence premises, restrain or detain any person in the vehicle, vessel or aircraft.

71K Consensual identification—person on defence premises

(1) This section applies if:
   (a) a person is on defence premises; and
   (b) a defence security official reasonably believes that the person is not authorised to be on the premises.

(2) The defence security official may request the person to provide evidence of the following:
   (a) the person’s name;
   (b) the person’s residential address;
   (c) the person’s authority to be on the defence premises.

(3) A defence security official may restrain and detain a person if:
   (a) the person refuses a request by a defence security official under subsection (2); or
   (b) as a result of the person complying with such a request, a defence security official reasonably believes that the person:
       (i) is not authorised to be on the defence premises; or
       (ii) constitutes a threat to the safety of persons on the defence premises; or
       (iii) has committed, or may commit, a criminal offence on, or in relation to, the defence premises.

Subdivision B—Special provisions for declared explosive ordnance depots

71L Declared explosive ordnance depots

(1) A specified area of land or any other place (whether or not it is enclosed or built on), or a building or other structure, is a declared explosive ordnance depot if:
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(a) the area of land or the place, building or structure is specified
in an instrument in force under subsection (2); and
(b) signs stating that it is a condition of entry to the area of land
or the place, building or structure that a person consent to
undergo searches as provided by this Subdivision are
prominently displayed:
   (i) at the entrance to the area of land or the place, building
   or structure; and
   (ii) at regular intervals around the perimeter of the area of
       land or the place, building or structure.

(2) The Minister may, by legislative instrument, specify an area of
land or any other place (whether or not it is enclosed or built on),
or a building or other structure if:
   (a) the area of land or the place, building or structure is defence
   premises used wholly or partly for the storage of explosive
   ordnance; and
   (b) members of the Defence Force are not normally present at
   the area of land or the place, building or structure.

(3) An instrument under subsection (2) may specify more than one
area of land, place, building or structure.

(4) Each area of land, place, building or structure specified in an
instrument under subsection (2) must be specified by reference to
one of the following:
   (a) its geographical location;
   (b) a unique code or number.

(5) If an area of land or a place, building or structure is specified by a
unique code or number as mentioned in paragraph (4)(b), the code
or number must correspond with a code or number that is held in
the records of the Department as a code or number applicable to
that area of land or that place, building or structure.

71M Consensual search—person on a declared explosive ordnance
depot

(1) A contracted defence security guard may request a person who is
on a declared explosive ordnance depot to undergo a limited
search.
(2) A contracted defence security guard may restrain and detain a
person if:
   (a) the person refuses a request by a contracted defence security
       guard under subsection (1); or
   (b) as a result of the person complying with such a request, a
       contracted defence security guard reasonably believes that
       the person:
           (i) is not authorised to be on the declared explosive
               ordnance depot; or
           (ii) constitutes a threat to the safety of persons on the
                defence explosive ordnance depot; or
           (iii) has committed, or may commit, a criminal offence on,
                or in relation to, the defence explosive ordnance depot.

71N Consensual search—vehicle, vessel or aircraft on a declared
explosive ordnance depot

(1) A contracted defence security guard may request a person
   apparently in control of a vehicle, vessel or aircraft that is on a
   declared explosive ordnance depot to permit a search of the
   vehicle, vessel or aircraft.

(2) A contracted defence security guard may restrain and detain any
   person in the vehicle, vessel or aircraft if:
   (a) a person refuses to permit a search of the vehicle, vessel or
       aircraft requested under subsection (1); or
   (b) as a result of a person complying with such a request, a
       contracted defence security guard reasonably believes that
       the vehicle, vessel or aircraft, or a thing in it:
           (i) is not authorised to be on the declared explosive
               ordnance depot; or
           (ii) constitutes a threat to the safety of persons on the
                declared explosive ordnance depot; or
           (iii) relates to a criminal offence committed, or that may be
                committed, on or in relation to the declared explosive
                ordnance depot.
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**71P Powers additional to other powers**

To avoid doubt, this Subdivision does not limit any other power of a contracted defence security guard under this Part.

Subdivision C—Offences

**71Q Offences—search powers exercised without consent**

(1) A defence security official commits an offence if:
   (a) the defence security official conducts a limited search of a person purportedly under this Division; and
   (b) the person did not consent to the search.

Penalty: 50 penalty units.

(2) A defence security official commits an offence if:
   (a) the defence security official conducts a search of a vehicle, vessel or aircraft purportedly under this Division; and
   (b) the person apparently in control of the vehicle, vessel or aircraft did not consent to the search.

Penalty: 30 penalty units.

Division 4—Powers exercisable without consent at defence access control points and on defence premises

**71R Non-consensual identification and search—person about to pass a defence access control point**

*Power to require identification etc.*

(1) A special defence security official may require a person who is about to pass a defence access control point to provide evidence of the following:
   (a) the person’s name;
   (b) the person’s residential address;
   (c) the person’s authority to pass the defence access control point.
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**Power to search at defence access control point on defence premises**

(2) A special defence security official may search a person who is about to pass a defence access control point on defence premises.

Note: If the defence access control point is not on defence premises, a defence security official may request the person to undergo a search under Division 3.

**Power to refuse access etc.**

(3) A special defence security official may refuse to allow a person to pass a defence access control point if:

(a) the person refuses to comply with a requirement imposed by a special defence security official under subsection (1); or

(b) the person hinders or obstructs a search of the person by a special defence security official under subsection (2); or

(c) as a result of the person complying with such a requirement or undergoing such a search, a special defence security official reasonably believes that the person:

(i) is not authorised to pass the defence access control point; or

(ii) constitutes a threat to the safety of persons on the defence premises; or

(iii) has committed, or may commit, a criminal offence on, or in relation to, the defence premises.

**Additional powers if person is on defence premises**

(4) If a special defence security official refuses to allow a person to pass a defence access control point under subsection (3), a special defence security official may, if the person is on defence premises:

(a) restrain and detain the person; or

(b) request the person to leave the defence premises and, if he or she refuses, remove the person from the defence premises.
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71S Non-consensual search—vehicle, vessel or aircraft about to pass a defence access control point

Power to search vehicles, vessels or aircraft

(1) A special defence security official may search a vehicle, vessel or aircraft that is about to pass a defence access control point on defence premises.

Note: If the defence access control point is not on defence premises, a defence security official may request a search under Division 3.

(2) A special defence security official may refuse to allow a vehicle, vessel or aircraft to pass a defence access control point if:
(a) a person hinders or obstructs a search of the vehicle, vessel or aircraft conducted by a special defence security official under subsection (1); or
(b) as a result of a search conducted under subsection (1), the official reasonably believes that the vehicle, vessel or aircraft, or a thing in it:
   (i) is not authorised to pass the defence access control point; or
   (ii) constitutes a threat to the safety of persons on the defence premises; or
   (iii) relates to a criminal offence committed, or that may be committed, on or in relation to the defence premises.

Additional powers if vehicle, vessel or aircraft is on defence premises

(3) If a special defence security official refuses to allow a vehicle, vessel or aircraft to pass a defence access control point under subsection (2), a special defence security official may, if the vehicle, vessel or aircraft is on defence premises, restrain and detain any person in the vehicle, vessel or aircraft.

Note: For other powers in relation to persons in a vehicle, vessel or aircraft see section 71R.
71T Non-consensual identification and search—person on defence premises

When section applies

(1) This section applies if:
   (a) a person is on defence premises; and
   (b) a special defence security official reasonably believes that the person:
       (i) is not authorised to be on the premises; or
       (ii) constitutes a threat to the safety of persons on the defence premises; or
       (iii) has committed, or may commit, a criminal offence on, or in relation to, the premises.

Power to require identification etc.

(2) A special defence security official may require the person to provide evidence of the following:
   (a) the person’s name;
   (b) the person’s residential address;
   (c) the person’s authority to be on the defence premises.

Power to search

(3) A special defence security official may search the person.

Power to restrain and detain, remove etc.

(4) A special defence security official may:
   (a) restrain and detain the person; or
   (b) request the person to leave the defence premises and if he or she refuses, remove the person from the defence premises.

71U Non-consensual search—vehicle, vessel or aircraft on defence premises

When section applies

(1) This section applies if:
   (a) a vehicle, vessel or aircraft is on defence premises; and
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(b) a special defence security official reasonably believes that the vehicle, vessel or aircraft:
   (i) is not authorised to be on the premises; or
   (ii) constitutes a threat to the safety of persons on the defence premises; or
   (iii) relates to a criminal offence committed, or that may be committed, on or in relation to the defence premises.

Power to search

(2) A special defence security official may search the vehicle, vessel or aircraft.

Power to restrain and detain

(3) A special defence security official may restrain and detain any person in the vehicle, vessel or aircraft.

71V  Offence—refusing to provide evidence etc. required under this Division

A person commits an offence if:
   (a) a special defence security official requires the person to provide evidence under this Division; and
   (b) section 72B (which deals with the production of identity cards, etc.) was complied with in relation to the requirement; and
   (c) the person refuses or fails to provide the evidence, or gives a name or address that is false in a material particular; and
   (d) the person is on defence premises.

Penalty: 20 penalty units.

Note: An offence under this section is a protective service offence for the purposes of the Australian Federal Police Act 1979.

71W  Offence—hindering or obstructing a search under this Division

A person commits an offence if the person hinders or obstructs a search under this Division, and:
   (a) if paragraphs 72B(3)(a) and (b) apply in relation to the search—at the time the person hindered or obstructed the

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search, the special defence security official who conducted
the search had done the things referred to in subparagraphs
72B(3)(c)(i) and (ii); or
(b) otherwise—subsection 72B(2) was complied with in relation
to the search.

Penalty: 50 penalty units.

Note 1: An offence under this section is a protective service offence for the

Note 2: Subsections 72B(2) and (3) deal with the production of identity cards
before conducting a search.

71X Security authorised members of the Defence Force may
respond to attack

(1) This section applies if:
(a) an attack on defence premises is occurring or is imminent;
and
(b) the attack is likely to, or is intended to, result in the death of
or serious injury to one or more persons on the defence
premises.

(2) Subject to sections 72G and 72H, a security authorised member of
the Defence Force may take action on defence premises to protect
persons from the attack.

Note: Section 72G provides that defence security officials may use
reasonable and necessary force in exercising powers under this Part.
Section 72H provides that security authorised members of the Defence
Force may, in limited circumstances involving an attack, do a thing
that is likely to cause the death of, or grievous bodily harm to, another
person. Other defence security officials are not so authorised (see
subsection 72G(2)).

71Y Power to stop and detain

A special defence security official may stop and detain a person, or
a vehicle, vessel or aircraft, for the purposes of exercising a power
under this Division:
(a) to require the person to provide evidence of particular
matters; or
(b) to search the person or the vehicle, vessel or aircraft.
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71Z Powers are in addition to powers under this Part

To avoid doubt, a power conferred upon a special defence security official under this Division may be exercised in addition to a power conferred on the special defence security official under another Division of this Part.

Division 5—Seizure

72 Power to seize things on defence premises

(1) A special defence security official may seize a thing (including a vehicle, vessel or aircraft or an unattended thing) on defence premises, or a thing found as a result of a search (including a limited search) under this Part, if the official believes on reasonable grounds that the thing may:
   (a) constitute a threat to the safety of a person on the defence premises; or
   (b) relate to a criminal offence committed, or that may be committed, on or in relation to the defence premises.

(2) If a special defence security official seizes a thing under subsection (1):
   (a) a security authorised member of the Defence Force may take such action as is reasonable and necessary to make the thing safe or prevent the thing being used; and
   (b) if the official seized the thing from a person—a special defence security official must, if it is practicable to do so, give the person a receipt for the thing; and
   (c) if the official believes on reasonable grounds that the thing has been used or otherwise involved in the commission of a criminal offence—a special defence security official must give the thing to a member or special member of the Australian Federal Police or a member of the police force of a State or Territory at the earliest practicable time; and
   (d) if paragraph (c) does not apply:
      (i) if the official seized the thing from a person and it is practicable to do so—a special defence security official must return the thing to the person within 7 days; or
      (ii) otherwise—a special defence security official must give it to a member or special member of the Australian
Federal Police or a member of the police force of a State
or Territory at the earliest practicable time.

Division 6—Matters relating to exercise of powers under
Part

72A Certain powers to be exercised only by security authorised
members of the Defence Force unless not reasonably
practicable

A power conferred upon a special defence security official under
Division 4 (powers exercisable without consent) or Division 5
(seizure powers) may be exercised by a defence security screening
employee only if it is not reasonably practicable in all the
circumstances for the power to be exercised by a security
authorised member of the Defence Force.

72B Defence security officials must produce identity cards, etc.

Production of identity card before making request or requirement

(1) A defence security official is not entitled to make a request or
requirement of a person under this Part unless, before making the
request or requirement:

(a) the defence security official produces his or her identity card
for inspection by the person; and

(b) the person is informed of the effect of refusal by the person
to comply with the request or requirement.

Production of identity card before search

(2) Subject to subsection (3), a defence security official is not entitled
to conduct a search (including a limited search) of a person, or a
vehicle, vessel or aircraft apparently under the control of a person,
under this Part unless, before conducting the search:

(a) the defence security official produces his or her identity card
for inspection by the person; and

(b) if the search is under Division 4 (powers exercisable without
consent)—the person is informed of the effect of hindering or
obstructing the search.
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(3) A defence security official is not required to comply with subsection (2) before conducting a search of a person, or of a vehicle, vessel or aircraft apparently under the control of a person, if:

(a) the search is conducted under subsection 71R(2), 71S(1), 71T(3) or 71U(2); and

(b) a defence security official reasonably believes that the person, or the vehicle, vessel or aircraft, constitutes a threat to the safety of persons on the defence premises concerned; and

(c) as soon as practicable while conducting, or after conducting, the search:
   (i) the defence security official who is conducting, or has conducted, the search produces his or her identity card for inspection by the person; and
   (ii) the person is informed of the effect of hindering or obstructing the search.

Production of identity card before removal of a person

(4) A defence security official is not entitled to exercise powers under this Part to remove a person from defence premises unless, before exercising the power, the official produces his or her identity card for inspection by the person.

Production of identity card as soon as practicable after detaining a person

(5) A defence security official is not entitled to restrain and detain, or stop and detain, a person under this Part unless, as soon as practicable after restraining and detaining, or stopping and detaining, the person, the official produces his or her identity card for inspection by the person.

72C Persons to be informed of offence

(1) A defence security official who, in accordance with this Part, exercises a power on the basis that the official reasonably believes that a person has committed, or may commit, a criminal offence must inform the person of the offence.
(2) It is sufficient if the person is informed of the substance of the offence, and it is not necessary that this be done in language of a precise or technical nature.

(3) Subsection (1) does not apply if:
(a) the person should, in the circumstances, know the substance of the offence; or
(b) the person’s actions make it impracticable for the defence security official to inform the person of the offence.

72D Conduct of searches and limited searches

A search or a limited search of a person under this Part must, if practicable, be conducted by a person of the same sex as the person being searched.

72E Use of equipment to examine things etc.

For the purposes of conducting a search or a limited search of a person, or a search of a thing, under this Part or determining whether a thing may be seized under this Part, a defence security official may do one or more of the following:
(a) use any equipment, including electronic equipment, reasonably necessary for the search or the limited search, or the examination or processing of the thing;
(b) in the case of a thing that is on defence premises, and that a defence security official suspects on reasonable grounds:
   (i) constitutes a threat to the safety of persons on the defence premises; or
   (ii) relates to a criminal offence committed, or that may be committed, on or in relation to the defence premises;
move the thing to another part of the defence premises for immediate examination or processing;
(c) use any equipment, including electronic equipment, to gain access to data stored on the thing;
(d) obtain expert assistance to do a thing referred to in paragraph (a), (b) or (c).
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72F Power to move certain unattended things on defence premises

If a thing is left unattended on defence premises as a result of, or in connection with, the exercise of a power under this Part, a defence security official may move the thing to another place if the defence security official reasonably believes that it is necessary or desirable to do so.

72G Use of reasonable and necessary force, etc. by defence security officials

Use of force—general rule

(1) A defence security official may, subject to this section and section 72H, use such force against persons and things as is reasonable and necessary in the circumstances in exercising powers under this Part.

Limit on use of force—defence security guards and defence security screening employees

(2) Despite subsection (1), a contracted defence security guard or a defence security screening employee must not, in using force against a person in exercising powers under this Part, do anything that is likely to cause the death of, or grievous bodily harm to, the person.

Note 1:  For security authorised members of the Defence Force, see section 72H.

Note 2:  This provision does not affect a person’s rights under other laws: see section 72S.

Indignity

(3) A defence security official must not, in exercising powers under this Part, subject the person to greater indignity than is reasonable and necessary in the circumstances.
72H Use of force involving death or grievous bodily harm by security authorised members of the Defence Force in responding to an attack

(1) Despite subsection 72G(1), a security authorised member of the Defence Force must not, in using force against a person in exercising powers under this Part, 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 prevent the death of, or serious injury to, another person (including the official); and

(b) the threat of death or injury is caused by an attack on defence premises, or on people on defence premises, that is occurring or is imminent.

(2) In addition to the limitations in paragraphs (1)(a) and (b), if a person is attempting to escape being detained by fleeing, a security authorised member of the Defence Force must not, in exercising powers under this Part, do anything that is likely to cause the death of, or grievous bodily harm to, the person unless:

(a) the person has, if practicable, been called on to surrender; and

(b) the official believes on reasonable grounds that the person cannot be apprehended in any other manner.

72J Limit on power to restrain and detain

A provision of this Part that confers a power on a defence security official to restrain and detain a person is limited to a power to restrain and detain the person for the purpose of placing the person, at the earliest practicable time, in the custody of:

(a) a member or special member of the Australian Federal Police; or

(b) a member of the police force of a State or Territory; or

(c) a protective service officer.

72K Limit on power to arrest

If a member of the Defence Force arrests a person under section 72P (which deals with trespass), he or she must, as soon as
practicable after the arrest, bring the person, or cause the person to be brought, before:

(a) a member or special member of the Australian Federal Police; or
(b) a member of the police force of a State or Territory.

Note 1: The Crimes Act 1914 provides for arrest powers of police officers and how arrested persons are to be dealt with.

Note 2: The Australian Federal Police Act 1979 provides for arrest powers of protective service officers and how arrested persons are to be dealt with.

72.1 Powers not to be used to stop protests etc.

In exercising powers under this Part, a defence security official must not stop or restrict any protest, dissent, assembly or industrial action, unless there is a reasonable likelihood of:

(a) death of, or serious injury to, persons; or
(b) the commission of a criminal offence.

72M Security authorised members of the Defence Force may use dogs

A security authorised member of the Defence Force may, if the security authorised member considers it is reasonably necessary to do so, use a dog:

(a) to assist a defence security official to conduct a search (including a limited search) under this Part; or
(b) to assist a defence security official to restrain or detain, or remove, a person under this Part; or
(c) to assist a member of the Defence Force to arrest a person under section 72P (which deals with trespass); or
(d) to assist a defence security official to perform a function or exercise a power under this Part.

72N Persons assisting defence security officials

(1) A defence security official may, in exercising powers under any of the following provisions, be assisted by other persons if that assistance is necessary and reasonable:

(a) subsection 71J(1) (search of a vehicle, etc. with consent);
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(b) subsection 71N(1) (search of a vehicle, etc. on declared explosive ordnance depot);
(c) subsection 71S(1) (search of a vehicle, etc. without consent);
(d) subsection 71U(2) (search of a vehicle, etc. without consent);
(e) section 72E (use of equipment, etc.);
(f) section 72F (moving things, etc.).

(2) A person giving such assistance is a person assisting the defence security official.

(3) A person assisting the defence security official may exercise the powers of the defence security official, but only in accordance with a direction given to the person by the defence security official.

(4) A power exercised by a person assisting the defence security official as mentioned in subsection (3) is taken for all purposes to have been exercised by a defence security official.

(5) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

Division 7—Other matters

72P Unauthorised entry etc. on defence premises or defence accommodation

(1) A person commits an offence if:
   (a) the person enters or is on:
      (i) defence premises; or
      (ii) defence accommodation; and
   (b) the person is not authorised to be on the premises or accommodation.

Penalty: 50 penalty units.

Note: An offence under this section is a protective service offence for the purposes of the Australian Federal Police Act 1979.

(2) A member of the Defence Force, a member or special member of the Australian Federal Police, a protective service officer or a member of the police force of a State or Territory may, without warrant, arrest any person if the member reasonably believes that the person has committed an offence against subsection (1).
(3) Nothing in this section prevents the arrest of a person in accordance with any other law.

72Q  Certain information may be collected and provided to law enforcement agencies etc.

(1) The Department, the Defence Force or a contracted security guard may, on defence premises, collect information, including personal information, by means of an optical surveillance device.

(2) The Department or the Defence Force may disclose information collected under subsection (1) to one or more of the following persons or bodies, for the purposes of the performance of the functions of the person or body:

(a) an intelligence or security agency;
(b) the Australian Federal Police or the police force of a State or Territory;
(c) the Director of Public Prosecutions of the Commonwealth or a State or Territory.

(3) A disclosure of personal information under subsection (2) is taken to be authorised by law for the purposes of Information Privacy Principle 11 in section 14 of the Privacy Act 1988.

Note: Paragraph 3 of Information Privacy Principle 11 in section 14 of the Privacy Act 1988 applies to further disclosures of the personal information.

(4) This provision has effect despite any law of the Commonwealth or of a State or Territory.

72R  Compensation for acquisition of property

(1) If, apart from this section, the operation of this Part would result in the acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay reasonable compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may apply to the Federal Court to determine a reasonable amount of compensation.

(3) The jurisdiction of the Federal Court is exclusive of the jurisdiction of all other courts except that of the High Court.
(4) In this section:

acquisition of property and just terms have the same meaning as in paragraph 51(xxxi) of the Constitution.

72S Other powers not affected

(1) This Part does not, by implication, limit the exercise of the powers, or the rights, of a defence security official, a member of the Defence Force or any other person:

(a) under this Act; or
(b) under any other law (including the common law); or
(c) otherwise in the performance of his or her duties as a defence security official, a member of the Defence Force or otherwise.

(2) Without limiting subsection (1), this Part does not affect any right of an owner or occupier of premises to refuse to allow a person to enter, or remain on, the premises.

(3) Without limiting subsection (1), this Part does not affect any right of a person to defend himself or herself or another person.

2 Subsection 82(3)

Repeal the subsection.

3 Subsection 82(4)

After “State”, insert “or Territory”.

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Defence Legislation Amendment (Security of Defence Premises) Bill 2011 No. 31, 2011
Part 2—Associated amendments

Australian Federal Police Act 1979

4 Subsection 4(1) (after subparagraph (a)(iii) of the definition of protective service offence)

Insert:

(iii) a offence against section 71V, 71W or 72P of the Defence Act 1903; or

Defence Act 1903

5 Subsection 51T(3)

After “addition”, insert “to the relevant limitation in paragraph (2)(a), subparagraph (2A)(a)(i) or (ii) or paragraph (2B)(a), (b) or (c)”.