

2008

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

DEFENCE LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2008

EXPLANATORY MEMORANDUM

**(Circulated by the authority of the
Minister for Defence the Hon Joel Fitzgibbon MP)**

DEFENCE LEGISLATION (MISCELLANEOUS AMENDMENTS) BILL 2008

GENERAL OUTLINE

The purpose of this bill is to address three separate policy measures in relation to:

- a. the *Geneva Conventions Act 1957* to incorporate the Third Additional Protocol to the Geneva Conventions which establishes a third universal and distinctive emblem called a “Red Crystal” for the Red Cross/Red Crescent Movement. The Red Crystal emblem has no religious, ethnic, racial, regional, or political connotations and the amendment ensures that the new emblem is used only with the consent of the Minister for Defence. The proposal also amends the *Criminal Code Act 1995* to ensure that the new Geneva emblem is covered by the existing offences relating to the improper use of the emblems of the Geneva Conventions.
- b. the *Defence Act 1903* to explicitly enable the making of regulations to cover the provision of medical and dental treatment (including pharmaceuticals) to an ADF member or cadet or a member of the family of an ADF member.
- c. the *Defence (Special Undertakings) Act 1952* to explicitly provide that the Joint Defence Facility Pine Gap is a special Defence undertaking and a prohibited area, and insert a purposive clause to make it clear that the Defence power is not the only constitutional basis relied upon to support the Act.

Financial Impact statement

The amendments in the Bill will have no impact on Commonwealth expenditure or revenue.

NOTES ON CLAUSES

Clause 1: Short title

1. This clause provides for the short title of the Act to be the *Defence Legislation (Miscellaneous Amendments) Act 2008*.

Clause 2: Commencement

2. This clause provides for the commencement provision for the Act. The commencement dates for specific provisions are included in the commencement information table.

Item 1 of the commencement table

3. This item provides that Sections 1 to 3 (and anything in the Act not elsewhere covered by the table) commence on the day on which the Act receives the Royal Assent.

Item 2 of the commencement table

4. This item provides that Schedule 1 commences on a single day to be fixed by Proclamation.

However:

- (a) the Proclamation must not specify a day that occurs before the day on which Protocol III to the Geneva Conventions enters into force for Australia; and
- (b) if any of the provision(s) do not commence within the period of one month beginning on the day on which Protocol III to the Geneva Conventions enters into force for Australia, they commence on the first day after the end of that period.

If a provision commences as a result of paragraph (b) above, the Minister must announce by notice in the *Gazette* the day on which the provision commenced.

The commencement for Schedule 1 (the amendments to the Criminal Code and Geneva Conventions Acts) is in line with previous practice where legislation implements the provisions of a treaty, for example subsection 2(3) of the *International Criminal Court Act 2002*.

Item 3 of the commencement table

5. This item provides that Schedule 2 commences on a single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of the period.

Item 4 of the commencement table

6. This item provides that Schedule 3 commences the day after this Act receives the Royal Assent.

Item 5 of the commencement table

7. This item provides that Schedule 4 commences on the day on which this Act receives the Royal Assent.

SCHEDULE 1 – The third additional protocol to the Geneva Conventions

8. **Schedule 1** contains amendments to the *Geneva Conventions Act 1957* to incorporate the Third Additional Protocol to the Geneva Conventions which establishes a third universal and distinctive emblem called a “Red Crystal” for the Red Cross/Red Crescent Movement. The Red Crystal emblem has no religious, ethnic, racial, regional, or political connotations and the amendment ensures that the new emblem is used only with the consent of the Minister for Defence. The Act also amends the *Criminal Code Act 1995* to ensure that the new Geneva emblem is covered by the existing offences relating to the improper use of the emblems of the Geneva Conventions.

Criminal Code Act 1995

Item 1 of Schedule 1 – Dictionary in the *Criminal Code*

9. This item inserts Protocol III of the Geneva Conventions of 12 August 1949, done at Geneva on 8 December 2005, into the Dictionary of the *Criminal Code Act 1995*.

Item 2 of Schedule 1 – Dictionary in the Criminal Code (definition of Protocols to the Geneva Conventions)

10. This item ensures that Protocol III to the Geneva Conventions of 12 August 1949 is added to the definition of Protocols to the Geneva Conventions in the Dictionary to the *Criminal Code Act 1995*.

Geneva Conventions Act 1957

Item 3 of Schedule 1

11. This item ensures that Protocol III is added to the Interpretations section of the *Geneva Conventions Act 1957*.

Item 4 of Schedule 1

12. These items ensure consistency across the Interpretation section.

Item 5 of Schedule 1

13. This item inserts a description of the new emblem in the operative part of the legislation to ensure that it is one of the emblems protected under the *Geneva Conventions Act 1957*.

Items 6 and 7 of Schedule 1

14. These items provide for the incorporation of the description of Protocol III within the operative section of the *Geneva Conventions Act 1957*.

Item 8 and 10 of Schedule 1

15. These items reflect the commencement date of the legislation, where the commencement for Schedule 1 (the amendments to the Criminal Code and Geneva Conventions Acts) is in line with previous practice where legislation implements the provisions of a treaty, for example subsection 2(3) of the *International Criminal Court Act 2002*. This means that the commencement date would be a date to be fixed by Proclamation, and that date would not be before the date on which Additional Protocol III enters into force for Australia.

Item 9 and 11 of Schedule 1

16. These items incorporate changes so as to ensure consistency across the section. They relate to protections for current holders of trademarked emblems against the operation of the Act that would otherwise be illegal through the operation of the legislation.

Item 12 of Schedule 1

17. This item inserts a new Schedule 6 at the end of the Act for the purpose of incorporating Protocol III – Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem – in its entirety, incorporated into Australian law and annexed as a Schedule to the *Geneva Conventions Act 1957*. The Protocol includes a description of the new emblem, indicative and other uses of the emblem, and Annexed to the Protocol, a pictorial representation of the red crystal emblem.

Schedule 2 – Medical and Dental Treatment

Defence Act 1903

18. **Schedule 2 contains amendments to the *Defence Act 1903*** to explicitly enable the making of regulations to cover the provision of medical and dental treatment (including pharmaceuticals) to an ADF member or cadet or a member of the family of an ADF member.

Items 1of Schedule 2

19. This item makes minor editorial amendments by adding “and” at the end of paragraphs 124(1)(a) to (h).

Items 2 of Schedule 2

20. This item inserts a new paragraph after paragraph 124(1)(h) to explicitly enable the making of regulations to cover the provision of medical and dental treatment (including pharmaceuticals) to an ADF member or cadet or a member of the family of an ADF member.

Item 3 of Schedule 2

21. This item makes minor editorial amendments by adding “and” at the end of paragraphs 124(1)(j) to (u).

Item 4 of Schedule 2

22. This item makes minor editorial amendments by omitting (d) and (e) and substituting with (e) and (i) in subsection 124(1B).

Item 5 of Schedule 2

23. This item inserts a new paragraph 124(1C) after subsection 124(1B) for the purpose of describing what medical and dental treatment includes in paragraph 124(1)(i). ***Medical and dental treatment*** includes the provision of services or goods (including scheduled pharmaceuticals) related to medical and dental treatment for an ADF member or cadet or a member of the family of an ADF member.

Schedule 3 – Join Defence Facility Pine Gap

Defence (Special Undertakings) Act 1952

24. **Schedule 3 contains amendments to the *Defence (Special Undertakings) Act 1952*** to explicitly provide that the Joint Defence Facility Pine Gap is a special Defence undertaking and a prohibited area, and insert a purposive clause to make it clear that the Defence power is not the only constitutional basis relied upon to support the Act.

Item 1 of Schedule 3

25. This item inserts a new section 2A after section 2 to set out the purposes of the Act. This new section makes it clear that the purposes of the Act are to provide for the protection of works, undertakings and areas:

required for the defence of Australia or for the defence of Australia and another country; that require special security measures; or,
to enable Australia to fulfil its international obligations.

As well as clarifying the purposes of the Act this section makes it clear that there is a range of constitutional basis available to support the Act.

Item 2 of Schedule 3

26. This item inserts a definition of the term 'prohibited area' in section 4. An area is a 'prohibited area' if it is used or occupied for the purpose of a special defence undertaking (section 7), is declared a prohibited area (section 8) or if it falls within the area of land occupied by the Joint Defence Facility Pine Gap (section 8A). It is possible that an area may be a prohibited area under one or more of these sections.

Item 3 of Schedule 3

27. This item inserts a definition of the term 'restricted area' in section 4. A 'restricted area' is an area covered by a declaration made under section 14.

Item 4 of Schedule 3

28. This item inserts a definition of the term 'special defence undertaking' in section 4. A work or undertaking is a 'special defence undertaking' if it is declared a special defence undertaking (section 6) or if it is carried out at the Joint Defence Facility Pine Gap (section 8A). It is possible that the same work or undertaking may be a special defence undertaking under one or both of these provisions.

Item 5, 6 and 7 of Schedule 3

29. These items remove the phrase “for the purposes of this Act” from sections 6, 7(1) and 8. This amendment is incidental to the definitions being inserted by items 2 and 4 of Schedule 3.

Item 8 of Schedule 3

30. This item adds a new section 8A after section 8. New section 8A (1) has the effect of making the area occupied by the Joint Defence Facility Pine Gap to be a prohibited area. The prohibited area under the new section 8A(1) is defined by reference to the relevant certificate of title. New section 8A(2) makes any work or undertaking that is carried out at the Joint Defence Facility Pine Gap (as defined under 8A(1)) to be a special defence undertaking.

Item 9 of Schedule 3

31. This item removes the phrase “for the purposes of this Act” from sections 14(1) and (2). This amendment is incidental to definition being inserted by item 3 of Schedule 3.

SCHEDULE 4 – Technical amendments

Defence (Special Undertakings) Act 1952

32. **Schedule 4 contains technical amendments to the *Defence (Special Undertakings) Act 1952* to modernise the language in the legislation.**

Items 1 and 2 of Schedule 4

33. These items makes minor technical amendments to replace “by writing under his hand” with “in writing” in sections 10 and 11(1).

Items 3 to 11 of Schedule 4

34. These items make minor technical amendments to include references to females as well as males in all instances where a person is mentioned in relation to the Act.