Defence Force Regulations (Amendment)

I. THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the Defence Act 1903.

Dated 30 May 1985.

N. M. STEPHEN
Governor-General

By His Excellency's Command,

K. C. BEAZLEY
Minister of State for Defence

Commencement

1. These Regulations shall come into operation on 1 July 1985.

2. After Part X of the Defence Force Regulations the following Parts are inserted:

"PART XI—DEFENCE PRACTICE AREAS"

Interpretation of Part XI

"48. In this Part, unless the contrary intention appears—

‘Commonwealth land’ means land belonging to, or in the occupation of, the Commonwealth or a public authority under the Commonwealth but does not include land the subject of a lease from the Commonwealth unless that lease is subject to the condition that the land may be used by the Defence Force or an arm of the Defence Force for carrying out a defence operation or practice of a kind specified in a notice under sub-regulation 49 (1);

‘constable’ means a member of the police force of a State or Territory;

‘defence operation or practice’ means a naval or military, or an air force, operation or practice;"
"defence practice area" means any area of land, sea or air declared by the Minister under regulation 49;
private land" means land that is not Commonwealth land;
public authority under the Commonwealth" means a body, not being an incorporated company or association, constituted by or under a law of the Commonwealth or a Territory.

Declaration of defence practice area

"49. (1) The Minister may, by notice published in the Gazette, declare any area of land, sea or air in or adjacent to Australia to be a defence practice area for carrying out a defence operation or practice of a kind specified in the notice.

(2) The Minister shall not make a declaration under sub-regulation (1) in respect of private land unless—
(a) the consent in writing of the occupier of the land has first been obtained; or
(b) it is necessary or expedient in the interests of the safety or defence of the Commonwealth to carry out on that land a defence operation or practice of a kind specified in the notice without that consent.

(3) The Minister shall not, in a notice under sub-regulation (1), declare an area of sea or air to be a defence practice area unless it is an area of sea or air in which it is necessary or expedient in the interests of the safety or defence of the Commonwealth to carry out a defence operation or practice of the kind specified in the notice.

Tabling and disapproval of declarations

"50. (1) Where private land is the subject of a declaration made under sub-regulation 49 (1), the Minister shall cause a copy of the declaration to be laid before each House of the Parliament within 15 sitting days of that House after the date on which the declaration was made.

(2) If either House of the Parliament, within 15 sitting days of that House after a copy of a declaration referred to in sub-regulation (1) has been laid before that House, passes a resolution disapproving of the declaration, then—
(a) if the declaration has not come into operation—it shall not come into operation; or
(b) if the declaration has come into operation—the declaration shall cease to have effect on the day on which the resolution is passed.

Authorization to carry out a defence operation or practice

"51. (1) A chief of staff may, in writing, authorize the carrying out in a defence practice area, at a time specified in the instrument, of a defence operation or practice in which—
(a) members of the Defence Force;
(b) members of the armed forces of a country other than Australia; or
(c) members of the Defence Force and the armed forces of a country other than Australia,
are to take part.
“(2) A chief of staff may, in writing, delegate, either generally or otherwise as provided in the instrument of delegation, to—

(a) in the case of the Chief of Naval Staff—an officer who holds a rank in the Navy not below the rank of Lieutenant-Commander;

(b) in the case of the Chief of the General Staff—an officer who holds a rank in the Army not below the rank of Major; or

(c) in the case of the Chief of the Air Staff—an officer who holds a rank in the Air Force not below the rank of Squadron Leader,

the power of the chief of staff under this regulation in respect of an operation or practice in which members of the armed forces of a country other than Australia are not to take part.

“(3) A power delegated under this regulation, when exercised by the delegate, shall, for the purposes of this regulation, be deemed to have been exercised by the chief of staff who delegated the power.

“(4) A delegation under this regulation does not prevent the exercise of a power by a chief of staff.

Notice to public of operation or practice

“52. Where, under sub-regulation 51 (1), a person authorizes the carrying out of a defence operation or practice, that person shall cause such notice of the operation or practice to be given as is reasonably required for the protection of persons or property that may be affected by that operation or practice having regard to—

(a) the time and place of the carrying out of the operation or practice;

(b) the nature of the equipment and ammunition proposed to be used in the course of that operation or practice and the risk to those persons or that property or the injury or damage that is likely to arise from that use; and

(c) the forms of communication available to that person for the giving of that notice to the public.

Prohibition of being in a defence practice area

“53. (1) A person shall not, without reasonable excuse, be in a defence practice area at a time specified in an instrument under sub-regulation 51 (1) relating to the carrying out in that area of a defence operation or practice, except with the permission of—

(a) the chief of staff or other officer who authorized the operation or practice; or

(b) an officer participating in the operation or practice.

Penalty: $500 or imprisonment for 3 months, or both.

“(2) A person shall not, without reasonable excuse, permit any vehicle, vessel or aircraft to be in a defence practice area at a time specified in an instrument under sub-regulation 51 (1) relating to the carrying out of a defence operation or practice, except with the permission of—
(a) the chief of staff or other officer who authorized the operation or practice; or
(b) an officer participating in the operation or practice.
Penalty: $500 or imprisonment for 3 months, or both.

“(3) Permission under sub-regulation (1) or (2)—
(a) may be given if it is reasonably required for the protection of persons and property in the defence practice area or for the safety or defence of the Commonwealth;
(b) shall be in writing;
(c) is effective for such period as is specified in the instrument; and
(d) is subject to such conditions (if any) specified in the instrument as are reasonably required for the protection of persons and property in the defence practice area or for the safety or defence of the Commonwealth.

“(4) Without limiting the generality of sub-regulation (3), the chief of staff or other officer giving permission under sub-regulation (1) or (2) may impose conditions in relation to the conduct of persons in a defence practice area or in relation to a vehicle, vessel or aircraft in that area.

“(5) A person shall not, without reasonable excuse, fail to comply with a condition specified in an instrument of permission given to the person under this regulation.
Penalty: $500 or imprisonment for 3 months, or both.

“(6) Where a vehicle, vessel or aircraft is in a defence practice area in contravention of sub-regulation (2) or (5) each of—
(a) in the case of a vehicle—the driver, owner and the hirer (if any) of the vehicle;
(b) in the case of a vessel—the master, owner and the charterer (if any) of the vessel, and the agent (if any) for the vessel; or
(c) in the case of an aircraft—the pilot, owner and the charterer (if any) of the aircraft, and the agent (if any) for the aircraft,
is guilty of an offence against sub-regulation (2) or (5), as the case may be, but an offender is not liable to be punished more than once in respect of the same offence.

“(7) In any proceedings under sub-regulation (6) against a person in respect of an act or omission it is a defence if the act or omission charged took place without the fault or privity of that person.

Removal from defence practice area

“54. (1) A person—
(a) who, in contravention of regulation 53, is, or permits a vehicle, vessel or aircraft to be, in a defence practice area at a time specified in an instrument under sub-regulation 51 (1); or
(b) who fails to comply with a condition specified in an instrument of permission given to that person under regulation 53,
may, without affecting any other proceedings that may be taken against the person, be removed from the area by, or under the direction of, a member of the Defence Force, a member or special member of the Australian Federal Police or a constable.

“(2) Any vehicle, vessel or aircraft in a defence practice area in contravention of regulation 53 may be removed from the area by, or under the direction of, a member of the Defence Force, a member or special member of the Australian Federal Police or a constable.

Duties, &c., of authorized officers

“55. Where a member of the Defence Force gives a direction to a person under regulation 54, the member shall, if requested by that person, produce evidence that he or she is a member of the Defence Force for inspection by that person and, if the member fails to do so, that person is not obliged to comply with that direction.

Obstruction, &c., of member of Defence Force, &c.

“56. A person shall not, without reasonable excuse, obstruct or hinder a member of the Defence Force, a member or special member of the Australian Federal Police or a constable in the exercise by that member, special member or constable of a power conferred by this Part or obstruct or hinder a person acting under a direction referred to in regulation 54.

Penalty: $500 or imprisonment for 3 months, or both.

Compensation for loss, injury or damage

“57. The Commonwealth shall pay reasonable compensation to a person who—

(a) sustains loss or damage by reason of entry upon, and survey of, land in accordance with regulation 58;

(b) sustains loss or damage by reason that an area is declared to be a defence practice area under sub-regulation 49 (1);

(c) sustains loss or damage by reason of the use of land for the purposes of a defence operation or practice authorized under regulation 51; or

(d) sustains loss or damage otherwise caused by the operation of this Part.

PART XII—SURVEYS

Authority to enter land

“58. (1) Subject to sub-regulation (2), the Minister may, with the consent in writing of the occupier of land, by instrument, authorize the Defence Force or an arm of the Defence Force, either generally or as otherwise provided in the instrument, to enter upon and survey land for the purposes of the Act or these Regulations.

“(2) Where it is necessary or expedient in the interests of the safety or defence of the Commonwealth, the Minister may, without the consent of the occupier of land, by instrument, authorize the Defence Force or an arm of the
Defence Force, either generally or as otherwise provided in the instrument, to enter upon and survey land for the purposes of the Act or these Regulations.

"(3) A person shall not remove or interfere with a survey mark placed upon land in the course of a survey carried out pursuant to this regulation.

Penalty: $100.".

NOTES
