Defence Legislation Amendment (Application of Criminal Code) Regulations 2001 (No. 2)

Statutory Rules 2001 No. 305 as amended

made under the

Air Force Act 1923, the Defence Act 1903, the Naval Defence Act 1910 and the Defence Force Discipline Act 1982

This compilation was prepared on 15 December 2001.

This Regulation was amended by the Defence Legislation Amendment Act 2003 (Act No. 135, 2003)

Amendment from Act No. 135, 2003
[Schedule 3 (item 2) repeals and substitutes r. 2]

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*Defence Legislation Amendment (Application of Criminal Code) Regulations 2001 (No. 2)*
1 Name of Regulations

These Regulations are the *Defence Legislation Amendment (Application of Criminal Code) Regulations 2001 (No. 2).*

2 Commencement

These Regulations commence on 15 December 2001.

3 Amendment of Control of Naval Waters Regulations

Schedule 1 amends the Control of Naval Waters Regulations.

4 Amendment of Defence (Areas Control) Regulations 1989

Schedule 2 amends the *Defence (Areas Control) Regulations 1989.*

5 Amendment of Defence (Certification of Deaths) Regulations

Schedule 3 amends the Defence (Certification of Deaths) Regulations.

6 Amendment of Defence (Prohibited Wharves and Buildings) Regulations

Schedule 4 amends the Defence (Prohibited Wharves and Buildings) Regulations.
7 Amendment of Defence (Prohibited Words and Letters) Regulations 1957

Schedule 5 amends the Defence (Prohibited Words and Letters) Regulations 1957.

8 Amendment of Defence Force Regulations 1952

Schedule 6 amends the Defence Force Regulations 1952.
Schedule 1 Amendments of Control of Naval Waters Regulations
(regulation 3)

[1] Regulation 1
substitute

1 Name of Regulations
These Regulations are the Control of Naval Waters Regulations 1922.

[2] Subregulation 4 (4)
substitute

(4) A person is guilty of an offence if:
(a) a notice is given under this regulation; and
(b) the person engages in conduct; and
(c) the conduct is not in accordance with the notice; and
(d) the person is reckless as to the circumstance in paragraph (c).

Penalty: 5 penalty units.

(4A) Strict liability applies to paragraph (4) (a).

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

[3] Regulation 6
substitute

6 Vessels not to impede approaches
(1) The master of a vessel is guilty of an offence if the master causes or permits the vessel to lie, or to be moored or anchored,
in naval waters in a position that impedes the approach to an installation.

Penalty: 10 penalty units.

(2) An offence under this regulation is an offence of strict liability.

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

(3) It is a defence if the master had a reasonable excuse for the relevant conduct.

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

[4] Subregulation 7 (1)

substitute

(1) The master of a vessel is guilty of an offence if:

(a) the master causes or permits the vessel to be made fast to any fort, Commonwealth mooring, buoy, breakwater, jetty, pile, vessel, or exempt vessel in naval waters; and

(b) the master does not have permission from the superintendent of the naval waters to do so.

Penalty: 5 penalty units.

(1A) An offence under subregulation (1) is an offence of strict liability.

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

(1B) It is a defence to a charge under subregulation (1) if the master had a reasonable excuse for the relevant conduct.

Note A defendant bears an evidential burden in relation to the matter in subregulation (1B) (see section 13.3 of the Criminal Code).

[5] Subregulation 7 (4)

substitute

(4) The master of a vessel is guilty of an offence if:

(a) the master has been granted a permission under this regulation; and
(b) the master contravenes a term or condition of the permission.

Penalty: 5 penalty units.

(5) An offence under subregulation (4) is an offence of strict liability.

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

(6) It is a defence to a charge under subregulation (4) if the master had a reasonable excuse for the relevant conduct.

Note A defendant bears an evidential burden in relation to the matter in subregulation (6) (see section 13.3 of the Criminal Code).

[6] Regulation 9
substitute

9 Vessels not to anchor near Commonwealth moorings

(1) The master of a vessel is guilty of an offence if the master causes or permits the vessel to be anchored or moored:

(a) within 180 metres, or another distance specified by the relevant superintendent, from the centre of a mooring placed under regulation 8; or

(b) in such a position as to be liable to foul an exempt vessel at a mooring placed under regulation 8.

Penalty: 10 penalty units.

(2) An offence under this regulation is an offence of strict liability.

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

(3) It is a defence if the master had a reasonable excuse for the relevant conduct.

Note A defendant bears an evidential burden in relation to the matter in subregulation (3) (see section 13.3 of the Criminal Code).
[7] Regulation 10

substitute

10 Vessels not to anchor near navigable channels in naval waters

(1) The master of a vessel is guilty of an offence if:
   (a) the vessel is more than 10 metres in overall length; and
   (b) the master causes or permits the vessel:
       (i) to be anchored; or
       (ii) to be left at any time without a ship-keeper;
       in or near any of the navigable channels of naval waters.

   Penalty: 10 penalty units.

(2) An offence under this regulation is an offence of strict liability.
   Note For strict liability, see section 6.1 of the Criminal Code.

(3) It is a defence if the master had a reasonable excuse for the relevant conduct.
   Note A defendant bears an evidential burden in relation to the matter in subregulation (3) (see section 13.3 of the Criminal Code).

[8] Regulation 11

substitute

11 Vessels not to be near installations etc

(1) The master of a vessel is guilty of an offence if:
   (a) the master causes or permits the vessel to dredge, loiter, or anchor in naval waters within 100 metres of an installation, exempt vessel or any other vessel; and
   (b) the master does not have written permission from the superintendent of the naval waters to do so.

   Penalty: 10 penalty units.
(2) The master of a vessel is guilty of an offence if:
   (a) the master causes or permits the vessel or a person under his or her control to interfere with an installation in naval waters; and
   (b) the master does not have written permission from the superintendent of the naval waters to do so.

Penalty: 10 penalty units.

(3) An offence under subregulation (1) or (2) is an offence of strict liability.

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

(4) It is a defence to a charge under subregulation (1) or (2) if the master had a reasonable excuse for the relevant conduct.

Note A defendant bears an evidential burden in relation to the matter in subregulation (4) (see section 13.3 of the Criminal Code).

11A Persons not to be near installations etc

(1) A person is guilty of an offence if the person:
   (a) enters or remains in:
      (i) naval waters within 100 metres of:
         (A) an installation; or
         (B) an exempt vessel; or
         (C) any other vessel;
      in the waters or on the foreshore of the waters; or
      (ii) the foreshore of such waters; and
   (b) the person does not have written permission from the superintendent of the relevant naval waters to do so.

Penalty: 5 penalty units.

(2) A person is guilty of an offence if:
   (a) the person engages in conduct that interferes with an installation in naval waters or on the foreshore of naval waters; and
   (b) the person does not have written permission from the superintendent of the naval waters to do so.
Penalty: 10 penalty units.

(3) An offence under subregulation (1) or (2) is an offence of strict liability.

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

(4) It is a defence to a charge under subregulation (1) or (2) if the person had a reasonable excuse for the relevant conduct.

Note A defendant bears an evidential burden in relation to the matter in subregulation (4) (see section 13.3 of the Criminal Code).

[9] Regulation 12

substitute

12 Vessel not to approach installations

(1) The master of a vessel is guilty of an offence if:

(a) the master causes or permits the vessel to approach, in naval waters, within 30 metres of an installation, exempt vessel or any other vessel; and

(b) the vessel is not proceeding on Commonwealth business to or from the installation, exempt vessel or other vessel; and

(c) the master does not have written permission from the superintendent of the naval waters to do so.

Penalty: 5 penalty units.

(2) An offence under this regulation is an offence of strict liability.

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

(3) It is a defence if the master had a reasonable excuse for the relevant conduct.

Note A defendant bears an evidential burden in relation to the matter in subregulation (3) (see section 13.3 of the Criminal Code).
[10] **Subregulation 13 (1)**

*substitute*

(1) A person is guilty of an offence if:
   
   (a) the person lays a mooring in a position in naval waters; and
   
   (b) the person does not have written permission from the superintendent of the naval waters to lay the mooring in that position.

Penalty: 10 penalty units.

(1A) An offence under this regulation is an offence of strict liability.

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

(1B) It is a defence if the person had a reasonable excuse for the relevant conduct.

*Note* A defendant bears an evidential burden in relation to the matter in subregulation (1B) (see section 13.3 of the *Criminal Code*).


*substitute*

15 **Vessels not to anchor near electric cables in naval waters**

(1) The master of a vessel is guilty of an offence if the master causes or permits the vessel to be anchored within 180 metres of the line of an electric cable laid down in naval waters, and indicated by discernible marks erected on shore.

Penalty: 5 penalty units.

(2) An offence under this regulation is an offence of strict liability.

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

(3) It is a defence if the master had a reasonable excuse for the relevant conduct.

*Note* A defendant bears an evidential burden in relation to the matter in subregulation (3) (see section 13.3 of the *Criminal Code*).
[12] Regulation 25

substitute

Refuse etc not to be deposited in or near naval waters

(1) Subject to subregulation (6), the superintendent of naval waters may issue a notice permitting a person, or a class of persons, to place material of a specified kind in a position in the naval waters, or in a position from which the material is likely to be washed into the naval waters (a position nearby the naval waters).

(2) A permission under subregulation (1) may be subject to conditions.

(3) A person is guilty of an offence if:
   (a) the person causes or permits material to be placed in or nearby naval waters; and
   (b) the placement is not in accordance with a notice under this regulation.

Penalty: 10 penalty units.

(4) An offence under this regulation is an offence of strict liability.

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

(5) It is a defence if the master had a reasonable excuse for the relevant conduct.

Note A defendant bears an evidential burden in relation to the matter in subregulation (5) (see section 13.3 of the Criminal Code).

(6) Nothing in this regulation affects the operation of a law of a State or Territory.

(7) In this regulation:

material includes ballast, stones, sand, earth, clay, refuse, ashes, timber, carcasses, rubbish, dust, fuel, oil, or refuse from a quarry, mine or pit, and any other pollutant.
[13] Regulation 26

substitute

26 Vessels not to be cleaned without permission

(1) The superintendent of naval waters may permit a vessel to be cleaned in the naval waters.

(2) A permission may be subject to conditions, including conditions about the place or the manner of the cleaning of the vessel.

(3) A person is guilty of an offence if:
   (a) the person causes or permits a vessel to be cleaned in naval waters; and
   (b) the cleaning is not in accordance with a permission under this regulation.

Penalty: 10 penalty units.

(4) An offence under this regulation is an offence of strict liability.

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

(5) It is a defence if the person had a reasonable excuse for the relevant conduct.

   Note A defendant bears an evidential burden in relation to the matter in subregulation (5) (see section 13.3 of the Criminal Code).

(6) In this regulation:

   clean includes bream or careen.

[14] Subregulation 28 (4)

substitute

(4) A person is guilty of an offence if:
   (a) a notice is given under this regulation; and
   (b) the person engages in conduct; and
   (c) the conduct is not in accordance with the notice; and
(d) the person is reckless as to the circumstance in paragraph (c).

Penalty: 5 penalty units.

(5) Strict liability applies to paragraph (4) (a).

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

[15] Regulation 29

substitute

29 Guns not to be discharged

(1) A person is guilty of an offence if:
   (a) the person engages in conduct; and
   (b) the conduct results in a gun, firearm or air-gun being discharged over naval waters from a boat or vessel or from the shore; and
   (c) the person is reckless as to the result in paragraph (b).

Penalty: 5 penalty units.

(2) Subregulation (1) does not apply to a member of the Defence Force, the Australian Federal Police or a Police Force or Service of a State or Territory engaged within the limits of naval waters.

Note A defendant bears an evidential burden in relation to the matter in subregulation (2) (see section 13.3 of the Criminal Code).

[16] Regulation 30

substitute

30 Vessels with dangerous cargoes not to enter naval waters without permission

(1) The superintendent of naval waters may give written permission for a vessel carrying explosives or other dangerous goods to enter the naval waters.
(2) A permission may be subject to conditions, including conditions as to time, berthing and discharge of cargo.

(3) A permission may be cancelled, or its conditions varied, at any time.

(4) The master of a vessel is guilty of an offence if:
   (a) the vessel is carrying explosives or other dangerous goods; and
   (b) the master causes or permits the vessel to enter or remain in naval waters; and
   (c) the entry or stay is not in accordance with a permission under this regulation.

Penalty: 10 penalty units.

(5) The master of a vessel in naval waters is guilty of an offence if:
   (a) the vessel is carrying explosives or other dangerous goods; and
   (b) the master causes or permits anything to be done in relation to the vessel or cargo that is not in accordance with a permission under this regulation.

Penalty: 10 penalty units.

(6) An offence under subregulation (4) or (5) is an offence of strict liability.

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

(7) It is a defence to a charge under subregulation (4) or (5) if the master had a reasonable excuse for the relevant conduct.

Note A defendant bears an evidential burden in relation to the matter in subregulation (7) (see section 13.3 of the Criminal Code).
[17] Regulation 31

substitute

31 Vessels carrying dangerous cargoes to display signals

(1) The master of a vessel in naval waters is guilty of an offence if:
   (a) the vessel is carrying, loading or unloading explosives or other dangerous goods; and
   (b) the master does not cause the vessel to display prominently:
      (i) between sunrise and sunset — a large red flag or burgee; and
      (ii) between sunset and sunrise — a red light, visible in clear weather for at least 3 kilometres.

Penalty: 5 penalty units.

(2) An offence under this regulation is an offence of strict liability.

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

(3) It is a defence if there was a reasonable excuse for the relevant conduct.

Note A defendant bears an evidential burden in relation to the matter in subregulation (3) (see section 13.3 of the Criminal Code).
Schedule 2  Amendments of *Defence (Areas Control) Regulations 1989* (regulation 4)

[1] Subregulation 3 (2)

*substitute*

(2) A person is guilty of an offence if:
   (a) the person constructs a building within an area; and
   (b) this regulation applies to the area; and
   (c) the building is not in accordance with an approval granted under these Regulations.

Penalty: 20 penalty units.

(3) Strict liability applies to paragraphs (2) (b) and (c).

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

[2] Subregulation 4 (2)

*substitute*

(2) A person is guilty of an offence if:
   (a) the person constructs a building within an area; and
   (b) this regulation applies to the area; and
   (c) the building is not in accordance with an approval granted under these Regulations; and
   (d) the building is more than 7.5 metres high.

Penalty: 20 penalty units.

(3) Strict liability applies to paragraphs (2) (b), (c) and (d).

*Note*  For *strict liability*, see section 6.1 of the *Criminal Code*. 
[3]  **Subregulation 5 (2)**

*substitute*

(2) A person is guilty of an offence if:
   (a) the person constructs a building within an area; and
   (b) this regulation applies to the area; and
   (c) the building is not in accordance with an approval granted under these Regulations; and
   (d) the building is more than 15 metres high.

Penalty: 20 penalty units.

(3) Strict liability applies to paragraphs (2) (b), (c) and (d).

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

[4]  **Subregulation 6 (2)**

*substitute*

(2) A person is guilty of an offence if:
   (a) the person constructs a building within an area; and
   (b) this regulation applies to the area; and
   (c) the building is not in accordance with an approval granted under these Regulations; and
   (d) the building is more than 45 metres high.

Penalty: 20 penalty units.

(3) Strict liability applies to paragraphs (2) (b), (c) and (d).

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

[5]  **Subregulation 7 (2)**

*substitute*

(2) A person is guilty of an offence if:
   (a) the person constructs a building within an area; and
   (b) this regulation applies to the area; and
(c) the building is not in accordance with an approval granted under these Regulations; and
(d) the building is more than 90 metres high.

Penalty: 20 penalty units.

(3) Strict liability applies to paragraphs (2) (b), (c) and (d).

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

[6] Regulation 9

omit

[7] Subregulation 11 (1)

substitute

(1) A person is guilty of an offence if:
(a) the person is granted approval under regulation 10; and
(b) the approval is subject to a condition; and
(c) the person does not comply with the condition.

Penalty: 20 penalty units.

(1A) An offence under this regulation is an offence of strict liability.

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

(1B) It is a defence if the person had a reasonable excuse for the relevant conduct.

Note A defendant bears an evidential burden in relation to the matter in subregulation (1B) (see section 13.3 of the Criminal Code).
[8] Regulation 12

substitute

12 Hazardous objects

(1) A person is guilty of an offence if:
   (a) the person brings on to, has on or constructs on affected land an object; and
   (b) the object is hazardous to aircraft or to communications.

Penalty: 20 penalty units.

(2) An offence under this regulation is an offence of strict liability.

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

(3) It is a defence if the person had a reasonable excuse for the relevant conduct.

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

[9] Subregulation 13 (5)

substitute

(5) A person is guilty of an offence if:
   (a) a notice is served on the person under this regulation; and
   (b) the person does not comply with a direction in the notice.

Penalty: 20 penalty units.

(5A) An offence under subregulation (5) is an offence of strict liability.

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

(5B) It is a defence to a charge under subregulation (5) if the person had a reasonable excuse for the relevant conduct.

Note A defendant bears an evidential burden in relation to the matter in subregulation (5B) (see section 13.3 of the Criminal Code).
[10] **Subregulations 15 (4) and (5)**

*substitute*

(4) A person is guilty of an offence if:
   (a) another person (the **officer**) is authorised under subregulation (1), (2) or 14 (1); and
   (b) the officer has done, or is about to do, something under these Regulations; and
   (c) the person obstructs or threatens the officer in connection with what the officer has done or is about to do.

Penalty: 10 penalty units.

(5) Strict liability applies to paragraphs (4) (a) and (b).

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

(6) A person is guilty of an offence if:
   (a) another person (the **officer**) is authorised under subregulation (1), (2) or 14 (1); and
   (b) the officer has done, or is about to do, something under these Regulations; and
   (c) the person interferes with what the officer has done or is about to do.

Penalty: 10 penalty units.

(7) Strict liability applies to paragraphs (6) (a) and (b).

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


*renumber as subregulation (8)*
Schedule 3 Amendments of Defence (Certification of Deaths) Regulations
(regulation 5)

[1] Regulation 1
substitute

1 Name of Regulations
These Regulations are the Defence (Certification of Deaths) Regulations 1953.

[2] Subregulation 11 (1)
omit, and that person shall forthwith comply with the requirement

[3] Subregulation 11 (1), penalty
omit

[4] After subregulation 11 (1)
insert

(1A) A person is guilty of an offence if:
(a) the person is served with a notice under subregulation (1) requiring the person to forward a certificate; and
(b) the person is in possession of the certificate; and
(c) the person does not comply with the requirement as soon as practicable.
Penalty: 1 penalty unit or imprisonment for 3 months.

(1B) In paragraph (1A) (a), strict liability applies to the physical element that the notice is made under subregulation (1).

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

[5] Regulation 12

*substitute*

12 Certificate of death not to be used if competent authority requires it

(1) A person is guilty of an offence if:

(a) the person knows that a competent authority has demanded, or wishes to secure, a certificate of death to which these Regulations apply; and

(b) the person presents the certificate to another person or otherwise makes use of, or acts in reliance upon, the certificate.

Penalty: 1 penalty unit or imprisonment for 3 months.

(2) In paragraph (1) (a), strict liability applies to the physical element that these Regulations apply to the certificate of death.

*Note*  For *strict liability*, see section 6.1 of the *Criminal Code*. 
Schedule 4  Amendments of Defence (Prohibited Wharves and Buildings) Regulations
(regulation 6)

[1] Regulation 1
substitute

1 Name of Regulations
These Regulations are the Defence (Prohibited Wharves and Buildings) Regulations 1950.

[2] Regulation 5
substitute

5 Entry, etc, of prohibited wharves and buildings forbidden

(1) A person is guilty of an offence if:
(a) the person is not a member of the Defence Force engaged on duties in connection with the transportation of members of that Force or the transport, storage or other handling of service munitions; and
(b) the person either:
(i) enters, inspects, or is on or in a prohibited wharf or prohibited building; or
(ii) approaches in a boat within 15 metres of a prohibited wharf.

Penalty: 1 penalty unit or imprisonment for 3 months.
(2) In subparagraphs (1) (b) (i) and (ii), strict liability applies to the physical element that the building or wharf is a prohibited building or wharf.

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

(3) It is a defence if the person had a permit under regulation 6 for the relevant conduct.

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

### [3] Subregulation 6 (3)

*substitute*

(3) A person who holds a permit issued under this regulation is guilty of an offence if:

(a) the person does not comply with a condition or restriction in the permit; or

(b) if the permit is revoked or suspended — the person does not deliver it to a person specified by the Minister as soon as practicable.

Penalty: 1 penalty unit or imprisonment for 3 months.

(4) In subregulation (3), strict liability applies to the physical element that the permit was issued under this regulation.

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

### [4] Regulation 8

*substitute*

8 **Compliance with directions of officer or person in charge**

(1) A person is guilty of an offence if:

(a) the person enters, inspects, or is on or in a prohibited wharf or prohibited building; and
(b) the person is given a direction by the officer or other person in charge regulating his or her conduct while on or in the wharf or building; and

(c) the person does not comply with the direction.

Penalty: 1 penalty unit or imprisonment for 3 months.

(2) In paragraph (1) (a), strict liability applies to the physical element that the building or wharf is a prohibited building or wharf.

Note For strict liability, see section 6.1 of the Criminal Code.
Schedule 5 Amendments of Defence (Prohibited Words and Letters) Regulations 1957 (regulation 7)

[1] Regulation 2

*omit*

The use

*insert*

(1) For this regulation, the use

[2] Regulation 2

*omit*

prohibited unless the consent in writing of the Minister to the use has been obtained.

*insert*

*a restricted use.*

[3] Regulation 2

*insert*

(2) A person is guilty of an offence if:

(a) the person makes use of a word or words, or group of letters; and

(b) the use is a restricted use; and

(c) the use is not in accordance with a consent obtained under these Regulations.

Penalty: 5 penalty units.
(3) In paragraph (2) (c), strict liability applies to physical element that the consent was obtained under these Regulations.

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

[4] Regulation 6

omit
Schedule 6 Amendments of *Defence Force Regulations 1952*  
(regulation 8)

[1] Regulation 21  
*substitute*

21 Penalty for false statements  

(1) A person is guilty of an offence if:  
(a) the person makes a false statement in an affidavit or declaration; and  
(b) the affidavit or declaration is sworn or made under this Part.  

Penalty: 1 penalty unit or imprisonment for 3 months.

(2) Strict liability applies to paragraph (1) (b).  

*Note* For strict liability, see section 6.2 of the *Criminal Code*.

(3) This regulation does not affect the liability of a person under any other law.

[2] Subregulations 35 (3), (4) and (5)  
*substitute*

(3) An authority or a person authorised by the Minister for this subregulation may give a person permission to enter or remain in a prohibited area.

(4) A permission under subregulation (3) may be subject to such conditions (including conditions as to the conduct in the prohibited area of the person to whom the permission is given) as the authority or person giving the permission considers necessary for the protection of persons and property in the area and of official secrets.
(5) A person is guilty of an offence if:
   (a) the person enters or remains in an area; and
   (b) the area is a prohibited area.

   Penalty: 1 penalty unit or imprisonment for 3 months, or both.

(6) Strict liability applies to paragraph (5) (b).

   Note For strict liability, see section 6.2 of the Criminal Code.

(7) It is a defence to a charge under subregulation (5) if the entry or stay is in accordance with a permission given under subregulation (3).

   Note A defendant bears an evidential burden in relation to the matter in subregulation (7) (see section 13.3 of the Criminal Code).

(8) A person who enters or remains in a prohibited area in contravention of subregulation (5) or who fails to comply with a condition which is applicable to him or her under subregulation (4) may, without prejudice to any proceedings which may be taken against him or her, be removed from the prohibited area by or under direction of a constable, an Australian Government officer or a person authorised by the Minister to do so.

[3] Regulation 37

substitute

37 Smoking etc in protected place

(1) A person is guilty of an offence if:
   (a) the person is in a place; and
   (b) the place is a protected place; and
   (c) the person:
      (i) smokes, strikes a match, lights a fire or in any way procures a naked light or flame; or
      (ii) is in possession of tobacco, matches, a flame lighter, a candle, a lamp or other material capable of being used for smoking or for procuring a naked light or flame.
Penalty: 1 penalty unit or imprisonment for 3 months, or both.

(2) Strict liability applies to paragraphs (1) (b) and (c).

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

(3) It is a defence if the person had the permission of the officer-in-charge to engage in the relevant conduct.

(4) In this regulation:

officer-in-charge means, in relation to an undertaking, the person appointed to be in charge of the undertaking.

protected place means an undertaking or part of an undertaking which is declared by the officer-in-charge, by notice in writing, to be a protected place for this regulation, and on which there is prominently displayed a notice to that effect.

[4] Regulation 53

substitute

53 Prohibition of being in a defence practice area

(1) A person is guilty of an offence if the person is in a defence practice area at a time specified in an instrument under subregulation 51 (1) relating to the carrying out in that area of a defence operation or practice.

Penalty: 5 penalty units or imprisonment for 3 months, or both.
(2) A person is guilty of an offence if the person permits a vehicle, vessel or aircraft to be in a defence practice area at a time specified in an instrument under subregulation 51 (1) relating to the carrying out in that area of a defence operation or practice.

Penalty: 5 penalty units or imprisonment for 3 months, or both.

(3) A person is guilty of an offence if:
   (a) the person engages in conduct that disturbs, or interferes with the operation of, equipment; and
   (b) the installation of the equipment is authorised under subregulation 49 (4).

Penalty: 5 penalty units or imprisonment for 3 months, or both.

(4) A person is guilty of an offence if:
   (a) the person has been given a permission under subregulation (6); and
   (b) the person engages in conduct that contravenes a condition of the permission.

Penalty: 5 penalty units or imprisonment for 3 months, or both.

(5) A person is guilty of an offence under subregulation (1), (2) or (3) (the primary subregulation) if:
   (a) a vehicle, vessel or aircraft is in a defence practice area; and
   (b) the person is:
      (i) in the case of a vehicle — the driver, owner or hirer of the vehicle; or
      (ii) in the case of a vessel — the master, owner or charterer of the vessel, or the agent for the vessel; or
      (iii) in the case of an aircraft — the pilot, owner or charterer of the aircraft, or the agent for the aircraft; and
   (c) another person is guilty of an offence under the primary subregulation (otherwise than because of this...
subregulation) in connection with the presence of the vehicle, or the conduct of the vehicle, in the practice area.

(6) The following persons may give permission for a person to engage in conduct that would otherwise constitute a contravention of subregulation (1), (2) or (3):
(a) the service chief or other officer who authorised the operation or practice;
(b) an officer participating in the operation or practice.

(7) Permission under subregulation (6):
(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; and
(b) must be in writing; and
(c) is effective for the period that 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.

(8) Without limiting subregulation (7), the service chief or other officer giving permission under subregulation (6) 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.

(9) An offence under subregulation (1), (2), (4) or (5) is an offence of strict liability.

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

(10) Strict liability applies to paragraph (3) (b).

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

(11) It is a defence to a charge under subregulation (1), (2) or (3) if the person had permission for the relevant conduct, or for the relevant result of conduct, given under subregulation (6).

Note A defendant bears an evidential burden in relation to the matter in subregulation (11) (see section 13.3 of the Criminal Code).
(12) It is a defence to a charge under subregulation (1), (2) or (4) if the person had a reasonable excuse for the relevant conduct.

Note A defendant bears an evidential burden in relation to the matter in subregulation (12) (see section 13.3 of the Criminal Code).

(13) It is a defence to a charge under subregulation (1), (2) or (3) that is brought because of subregulation (5) if the person did not know of, or did not approve, the conduct that resulted in the commission of the offence mentioned in paragraph (5) (c).

Note A defendant bears an evidential burden in relation to the matter in subregulation (13) (see section 13.3 of the Criminal Code).
Notes

1. These Regulations amend (in Schedule 1) Statutory Rules 1922 No. 74, as amended by 1927 No. 147; 1931 No. 7; 1935 No. 92; 1937 No. 12; 1938 No. 43; 1941 No. 145; 1943 Nos. 71, 216 and 310; 1947 Nos. 45 and 117; 1948 No. 148; 1953 No. 60; 1955 No. 22; 1959 No. 32; 1969 No. 171; 1975 No. 178; 1976 No. 25; 1990 Nos. 206 and 407.
These Regulations also amend (in Schedule 3) Statutory Rules 1953 No. 61, as amended by 1976 No. 24; 1981 No. 229.
These Regulations also amend (in Schedule 4) Statutory Rules 1950 No. 57, as amended by 1976 No. 34; 1981 No. 152.
These Regulations also amend (in Schedule 5) Statutory Rules 1957 No. 16, as amended by 1976 No. 51; 1981 No. 102; 1990 No. 378; 2000 No. 41.