EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT No. 131, 2015

Issued by the authority of the Minister for Defence

Defence Force Discipline Act 1982

Defence Force Discipline Amendment
(Prescribed Service Offences) Regulation 2015

Overview

Section 197 of the Defence Force Discipline Act 1982 (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

On 30 June 2015, the Defence Legislation (Enhancement of Military Justice) Act 2015 (the Amending Act) received Royal Assent. The Amending Act creates a new service offence at section 47Q of the Act of Unauthorised use of a Commonwealth credit card. This offence was prosecuted under section 60 of the Financial Management and Accountability Act 1997, however, that Act was repealed on 30 June 2014.

Section 47Q of the Act has a maximum punishment of five years imprisonment. Any service offence that has a maximum punishment of greater than two years imprisonment is a prescribed offence under regulation 44 of the Defence Force Discipline Regulations 1985 (the Principal Regulations). Prescribed offences cannot be heard at the summary level and instead must be tried by a court martial or defence force magistrate. However, as this is a common offence, which sometimes involves relatively small amounts of money, de-prescribing the offence will provide an option for the offence to be tried expeditiously at the summary level in appropriate cases.

The proposed Regulation would amend the Principal Regulations to remove the reference to section 60 of the Financial Management and Accountability Act 1997 and replace it with the section 47Q offence of the Act.

The Act does not specify any conditions that need to be met before the power to make the proposed Regulation may be exercised.

The proposed Regulation would be a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Consultation

After consulting the Office of Best Practice Regulation in respect of the need for, and preparation of, a Regulation Impact Statement, it advised that a Regulation Impact Statement was not required (OBPR reference 19295, 16 June 2015), as there were no regulatory impacts on business or the not-for-profit sector made by the Regulation.
Only internal Defence consultation was undertaken because the amendments do not have any potential implications relating to other government departments or agencies or non-government organisations. The amendments provide for the offence of unauthorised use of a Commonwealth credit card to be tried at the summary level and as such, consultation was considered unnecessary in accordance with section 18 of the *Legislative Instruments Act 2003*, as the Regulation relates to ‘the service of members of the Australian Defence Force’.

**Commencement**

The proposed Regulation provides for commencement on the day after the Regulation is registered.

**Statement of Compatibility with Human Rights**

This Regulation is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Regulation is mindful of, and consistent with, the right to a fair trial under Article 14 of the *International Covenant on Civil and Political Rights* (‘ICCPR’) and freedom from arbitrary detention under Article 9 of the ICCPR.

The purpose of Australia’s military discipline system is to support command in maintaining and enforcing service discipline in order to enhance operational effectiveness. The Regulation allows this commonly occurring offence to be prosecuted at the summary level and, thus, supports commanders to administer discipline quickly and effectively.

Accordingly, in the Department of Defence’s assessment, this Regulation is compatible with human rights.