

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Veterans' Affairs

Defence Act 1903

Defence Force Amendment (Repatriation of Bodies from Malaysia) Regulation 2016

Paragraph 124(1)(qba) of the *Defence Act 1903* (the Act) empowers the Governor-General to make regulations that allow the Director of War Graves to deal with the disposal of bodies of members, or dependants of members, of the Australian Defence Force (ADF) who died while on service.

Under the Administrative Arrangements Order, the Minister for Veterans' Affairs has administrative responsibility for paragraph 124(1)(qba) of the Act.

Section 31 of the *Defence Force Regulations 1952* (the Principal Regulations) provides that the Director of War Graves has the power, under paragraphs 31(b) and (c) to repatriate the bodies of members of the Defence Force who have died as a result of service as members of the Defence Force.

The purpose of the *Defence Force Amendment (Repatriation of Bodies from Malaysia) Regulation 2016* (the proposed Regulation) is to amend section 31 of the Principal Regulations to enable the Director of War Graves to deal with the bodies of persons who, at the time of death, were dependants of ADF members who died while on service, where those bodies are interred in the Terendak Military Cemetery in Malaysia.

Without this proposed Regulation, the Director's powers are limited to dealing with the bodies of persons who were serving members of the ADF at the time of death. This amendment would expand section 31 of the Principal Regulations to provide a legislative basis for the Director to extend similar repatriation services in respect of the bodies of persons who were dependants of those deceased serving members where the dependants' graves are located at Terendak Military Cemetery.

Details of the Regulation are set out in the [Attachment](#).

Consultation

Yes. The proposal implemented by the attached regulation was the subject of appropriate consultation within government and externally, with affected parties and veterans' representative bodies.

The proposal originated from an offer made on 25 May 2015 by the then Prime Minister, the Hon Tony Abbott MP, to the families of the Australian service personnel and dependants interred in the Terendak Military Cemetery in Malaysia.

Consultation was undertaken with the Director of the Office of Australian War Graves, the families of all eight dependants, the principal Ex-Service Organisations and the Chief of the Defence Force.

The nature of the consultation included formal correspondence and face to face meetings.

All parties consulted strongly supported the repatriation measure.

Retrospectivity

None.

Documents Incorporated-by-Reference

No.

Human Rights Statement

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The attached Regulation does not engage a human right or freedom recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The Regulation will expand the powers in section 31 of the *Defence Force Regulations 1952* to include graves of service dependants buried in Terendak Military Cemetery in Malaysia.

Conclusion

The Regulation does not engage human rights or freedoms.

Rule-Maker

The Minister for Veterans' Affairs

ATTACHMENT**Details of the Defence Force Amendment (Repatriation of Bodies from Malaysia) Regulation 2016****Section 1 – Name**

This section provides that the name of the Regulation is the *Defence Force Amendment (Repatriation of Bodies from Malaysia) Regulation 2016*.

Section 2 – Commencement

This section provides for the Regulation to commence on the day after it is registered.

Section 3 – Authority

This section provides that the *Defence Force Amendment (Repatriation of Bodies from Malaysia) Regulation 2016* is made under the *Defence Act 1903*.

Section 4 – Schedules

This is the operative provision of the Regulation. It provides that the amendment to the *Defence Force Regulations 1952*, outlined in Schedule 1 to the Regulation, has effect.

Schedule 1 – Amendments

This Schedule sets out the amendment to paragraph 31(b) of the *Defence Force Regulations 1952*. It amends that paragraph by adding the words “*a person who, immediately before his or her death, was a dependant of a member of the Defence Force on service and whose grave is located in the Terendak Military Cemetery in Malaysia; and*”

The effect of the amendment is to extend the power of the Director of War Graves in relation to the “exhumation and the reinterment, cremation or other disposal of bodies”, as provided for in paragraph 31(b), to the bodies of persons who were *dependants* of members who died while on service, and where the dependants’ graves are located in the Terendak Military Cemetery in Malaysia.