EXPLANATORY STATEMENT

Issued by the authority of the Minister for Defence Personnel

Defence Act 1903

Navy (Canteen) Regulation 2016

The Defence Act 1903 (the Act) prescribes the control, administration, constitution and service of the Australian Defence Force.

Subsection 124(1) of the Act, provides that the Governor-General may make regulations not inconsistent with the Act, prescribing all matters which by the Acts are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for securing the good government of the Defence Force, or for carrying out or giving effect to the Act. Specifically subparagraph 124(1) (o) of the Act provides that the Governor-General may make regulations for the establishment, maintenance, operation and control of canteens.

The purpose of the Navy (Canteen) Regulation 2016 (the Regulation) is to repeal the Navy (Canteens) Regulations 1954 which are due to sunset on 1 October 2016. The regulation will replace the existing regulation and be similar in substance with modern language consistent with current drafting practice also take into account the new governance arrangements for the ADF as the result of the Defence Legislation Amendment (First Principles) Act 2015 which amended the Defence Act 1903 on 1 July 2016. There are no substantial changes which will affect the management or operation of the canteen services currently provided as the Regulation continues the operation of the Royal Australian Navy Central Canteens Board and Royal Australian Navy Central Canteens Service in their current format.

The Navy (Canteens) Regulations 1954 were made under the Naval Defence Act 1910 which was repealed under the Defence Legislation Amendment (First Principles) Act 2015 on the 1 July 2016. However that Act provides that the Navy (Canteens) Regulations 1954 will continue to have effect as if they had been made under the Defence Act 1903.

Consultation and Other Issues

The Department of Finance, the Australian Government Solicitor, the Navy, and the Navy Canteen Board have been consulted during the remake of this Instrument.

The Regulation will have a minor regulatory impact. Therefore no Regulation Impact Statement is not required (Office of Best Practice Regulation reference number is 21040).

The Regulation is a legislative instrument for the purposes of the Legislation Act 2003. The Regulation commences on 1 October 2016.
Details of the Regulation are set out in the Attachment.

Statement of Compatibility with Human Rights

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

Navy (Canteen) Regulation 2016

This legislative instrument 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.

Overview of the Legislative Instrument

The purpose of this Instrument is to repeal the Navy (Canteens) Regulations 1954 which are due to sunset on 1 October 2016 and remake similar in substance with a modern language consistent with current drafting practice and also take into account the new governance arrangements for the ADF which came into effect on 1 July 2016. There are no substantial changes which will affect the management or operation of the canteen services currently provided as the Regulation continues the operation of the Royal Australian Navy Central Canteens Board and Royal Australian Navy Central Canteens Service in their current format.

Human rights implications.

The Instrument does not engage any of the applicable rights or freedoms.

Conclusion

The Instrument is compatible with human rights as it does not raise any human rights issues.
Details of the Navy (Canteen) Regulation 2016

Section 1 – Name of Regulation

This section provides that the title of the Regulation is the Navy (Canteen) Regulation 2016

Section 2 – Commencement

This section provides for the Regulation to commence on the 1 October 2016

Section 3 – Authority

This Regulation is made under the Defence Act 1903.

Section 4 – Schedule(s)

This section provides for the repeal of the instrument specified in the schedule to the instrument which is the Navy (Canteens) Regulations 1954

Section 5 – Definitions

This section provides for a number of definitions used within the instrument.

Part 2 – Royal Australian Central Canteens Board

Division 1 – Establishment and constitution

Section 6 – Establishment

This section provides that the Royal Australian Central Canteens Board established by subregulation 6(1) of the Navy (Canteens) Regulations 1954, as in force immediately before 1 October 2016, is continued in existence by force of this section.

Section 7 – Constitution

This section provides that the Constitution of the Board is remade the same in substance.

Subsection (1) sets out that the Board is a body corporate with perpetual succession, must have a common seal, may acquire, hold and dispose of real and personal property and may sue and be sued in its corporate name. A note provides that the Public Governance, Performance and Accountability Act 2013 (PGPA) applies to the Board and that the Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.
Subsections (2) and (3) provide the requirements for the use and custody of the Board’s seal including courts and the judiciary.

Section 8 – Functions and powers

This section provides for the functions and powers of the board. This section has been remade the same in substance.

Section 9 – Chief of Defence Force (CDF) may give orders and instructions to the Board

This section has been updated with references to the CDF to take account of the new governance arrangements for the ADF which came into effect on 1 July 2016.

Section 10 – Membership

This section provides for the membership of the Board. The section has been updated with references to the CDF to take account of the new governance arrangements for the ADF which came into effect on 1 July 2016.

Division 2 – Terms and conditions of the Board members

Sections 11 to 16

These provisions relate to the appointment, term of appointment, remuneration, leave of absence and termination of appointment of board members. These sections have been updated with references to the CDF to take account of the new governance arrangements for the ADF which came into effect on 1 July 2016.

Division 3 – Board meetings

Sections 17 to 21

These sections have been made the same in substance and provide for regulation of Board meetings and procedures.

Division 4 – Secretary to the Board

Sections 22 and 23

These provisions have been made the same in substance and provide for the appointment, functions and remuneration of the Secretary.

Division 5 – Delegation

Section 24 – Delegation

This section has been made the same in substance and provides that the Board may delegate any of its powers (other than this section) to the Chief Executive Officer.
Part 5 – Royal Australian Navy Central Canteens Service

Division 1 – Canteen Service

Section 25 – How the Canteen Service is to be conducted

This provision provides that the Canteen service is to be managed by the Chief Executive Officer in accordance with any directions by the Board and orders and instructions by the CDF. The provision is remade the same in substance updated with references to the CDF to take account of the new governance arrangements for the ADF which came into effect on 1 July 2016.

Section 26 – Board recommendation

This section provides for the Board to make recommendations to the CDF in relation to the opening, conducting and closing of canteens. The imposition and variation of levies in respect of canteens and the authorisation of persons to open, conduct and close clubs, cinemas, and other institutions and facilities for the welfare or entertainment of members of the Navy. The provision is remade the same in substance updated with references to the CDF to take account of the new governance arrangements for the ADF which came into effect on 1 July 2016.

Section 27 – Chief of Defence Force orders and instructions

This section provides that the CDF may make orders and give instructions in relation to the establishment, maintenance, supervision, management, inspection, conduct, control and closing of canteens and clubs for members of the Navy. The provision is remade the same in substance updated with references to the CDF to take account of the new governance arrangements for the ADF which came into effect on 1 July 2016.

Division 2 – Chief Executive Officer

Sections 28, 29, 30 and 31

These sections deal with the appointment, remuneration and terms and conditions of the Chief Executive Officer. The provision sets out that the Board will appoint a CEO following consultation with the CDF. The CEO may be paid remuneration set by the Remuneration Tribunal – however if there is no determination by the Tribunal the remuneration is determined by the Board. These provisions are remade the same in substance updated with references to the CDF to take account of the new governance arrangements for the ADF which came into effect on 1 July 2016.

Division 3 – Royal Australian Navy Central Canteen Fund

Section 32 – Establishment

This provision enables the existing fund established under the Navy (Canteens) Regulations 1954 to continue in existence by force of this section.
Section 33 – Administration

This provision provides that the Navy fund is to be administered by the Board. The fund consists of the proceeds of contributions, gifts and donations of money or property received by the Board for the purposes of the Navy Fund, money and investments vested in the Board and any other money or property lawfully available for the purposes of the Navy Fund.

The provision also allows that money and property forming part of the Navy Fund may be applied in making grants to the Navy Relief Trust Fund, making grants and loans to persons conducting canteens, clubs, cinemas or other institutions or facilities for the welfare or entertainment of members of the Navy and for the purposes of the Board’s performance of its functions or the exercise of its powers under this regulation.

These provisions have been remade the same in substance.

Part 4 – Miscellaneous

Section 34 – Licences

This provision allows the CDF to grant licences to provide services not catered for in a naval establishment by the canteen service. A licence may be granted on such terms and conditions as the CDF determines. The provision is remade the same in substance updated with references to the CDF to take account of the new governance arrangements for the ADF which came into effect on 1 July 2016.

Section 35 – Delegation – Chief of the Defence Force

The provision enable the CDF may delegate any the CDF’s powers (other than this section) to an officer in the Navy who holds the rank above the rank of Captain.

Part 5 – Application, savings and transitional provisions.

Section 36 – Definitions

The provision sets out that the old law means the Navy (Canteens) Regulations 1954, as in force immediately before 1 October 2016.

Section 37 – Savings- appointments

This saving provision ensures the continuity of appointments of Board members; the Chair and the Chief Executive Officer appointed under the old law remain in force under this instrument under the same terms and conditions for the balance of the person’s term of appointment.

Section 38 – orders and instructions

An order or instruction given by the Chief of Navy under the old law immediately before 1 October 2016 is taken to have been made on 1 October 2016 by the CDF under this instrument.
Section 39 – licences

The provision ensures that a licence granted under the old law and in force immediately before 1 October 2016 continues on after that day as if it had been made under this instrument on the same terms and conditions.

Section 40 – delegations

This provision ensures that any delegations made by the Board, the Minister and the Chief of Navy under the old law and were in force immediately before 1 October 2016 continues in force on and after that day as if they had been made by the CDF under this instrument.

Schedule 2 – Repeals

Section 1 – The whole of the regulation

This provision repeals the *Navy (Canteens) Regulations 1954* on 1 October 2016.