Defence (Public Areas) By-laws 2018

I, Darren Chester, Minister for Defence Personnel, make the following by-laws.

Dated 16 March 2018

Darren Chester
Minister for Defence Personnel
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Defence (Public Areas) By-Laws 2018

OPC63042 - A

Authorised Version F2018L00349 registered 21/03/2018
Part 1—Preliminary

1 Name

This instrument is the *Defence (Public Areas) By-laws 2018*.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Provisions</th>
<th>Commencement</th>
<th>Date/Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. The whole of this instrument</td>
<td>26 March 2018</td>
<td>26 March 2018</td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under section 116ZD of the *Defence Act 1903*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

(a) Chief of the Defence Force;
(b) Defence Force.

In this instrument:

*Act* means the *Defence Act 1903*.

*authorised officer* means a member of the Defence Force, or an APS employee in the Department, appointed by the Chief of the Defence Force under section 6.
Section 6

**camping area** means an area at or near each entrance to which one or more signs have been erected or placed with the approval of an authorised officer under section 8 designating that area as a camping area.

**parking area** means an area at or near each entrance to which one or more signs have been erected or placed with the approval of an authorised officer under section 8 designating that area as a parking area.

**public area** has the meaning given by subsection 116P(1) of the Act.

**ranger** has the meaning given by subsection 116P(1) of the Act.

6 Appointment of authorised officers

(1) The Chief of the Defence Force may, in writing, appoint a member of the Defence Force or an APS employee in the Department to be an authorised officer for the purposes of this instrument.

(2) The Chief of the Defence Force must not appoint a member of the Defence Force or an APS employee in the Department under subsection (1) unless the Chief of the Defence Force is satisfied that the member or employee has suitable qualifications and experience to exercise the powers of an authorised officer under this instrument.

7 Authorised officers and rangers may issue permits

(1) An authorised officer may issue written permits for the purposes of this instrument.

(2) A ranger may issue written permits for the purposes of this instrument.

8 Erecting or placing of signs

An authorised officer may, by instrument in writing, approve the erecting or placing of signs at or near an entrance to a public area or a part of a public area for the purpose of:

(a) conveying:
   (i) directions to be followed by; or
   (ii) warnings for the guidance of; or
   (iii) requirements to be observed by;
   persons using a public area; or
(b) designating part of a public area as a parking area; or
(c) designating part of a public area, other than a public area that is on an island, as a camping area.

9 Concurrent operation of Part 11 of the Defence Regulation 2016

To avoid doubt, this instrument does not exclude or limit the operation of Part 11 of the Defence Regulation 2016.

Note: Part 11 of the Defence Regulation 2016 regulates the use of areas declared to be defence areas for use for defence purposes.
Part 2—Offences

10 Offences relating to vehicles

(1) A person commits an offence of strict liability if the person:
   (a) brings a vehicle into, or uses a vehicle in, a public area that is on an island; or
   (b) uses a vehicle in a public area that is not on an island, otherwise than on a road or in a parking area or camping area.

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

Penalty: 10 penalty units.

(2) Subsection (1) does not apply if the person has a written permit from an authorised officer or a ranger for the relevant conduct.

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

11 Offences relating to lighting etc. of fires

(1) A person commits an offence of strict liability if, in a public area:
   (a) the person lights, maintains or uses a fire; and
   (b) the fire is not in:
      (i) a portable barbecue or portable stove that uses liquefied petroleum gas; or
      (ii) a fireplace made available by the Commonwealth for use by persons in the public area.

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

Penalty: 10 penalty units.

(2) Subsection (1) does not apply if the person has a written permit from an authorised officer or a ranger for the relevant conduct.

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

12 Offence to take animals into public area

(1) A person commits an offence of strict liability if the person:
   (a) takes an animal into a public area; or
   (b) permits an animal that is not wildlife to enter a public area.

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

Penalty: 10 penalty units.

(2) Subsection (1) does not apply to the taking of an animal into a public area if:
   (a) the animal is a guide dog or other animal trained to assist a person to alleviate the effect of a visual, hearing or other disability; and
Part 2 Offences

Section 13

(b) the person taking the animal into the public area is a person who has a disability of the kind the animal is trained to alleviate.

(3) Subsection (1) does not apply if the person has a written permit from an authorised officer or a ranger for the relevant conduct.

Note: A defendant bears an evidential burden in relation to the matters in subsections (2) and (3) (see section 13.3 of the Criminal Code).

13 Offence relating to firearms in public area

(1) A person commits an offence of strict liability if the person possesses or uses a firearm in a public area.

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

Penalty: 10 penalty units.

(2) Subsection (1) does not apply if the person has a written permit from an authorised officer or a ranger for the relevant conduct.

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

14 Offence to enter or stay in public area that is on island

(1) A person commits an offence of strict liability if the person, between sunset and sunrise, enters or stays in a public area that is on an island.

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

Penalty: 10 penalty units.

(2) Subsection (1) does not apply if the person has a written permit from an authorised officer or a ranger for the relevant conduct.

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

15 Offence to enter into public area if signs prohibit entry

(1) An authorised officer may arrange for signs to be erected or placed prohibiting entry into a public area if the authorised officer is reasonably satisfied that it is necessary to do so having regard to:
   (a) the need to protect persons and property that might be affected by activities in the public area; and
   (b) the nature of the activities to be undertaken in the area; and
   (c) the equipment to be used in those activities, and the risk to persons or property that is likely to arise from that use.

(2) A person commits an offence of strict liability if:
   (a) the person is in a public area; and
   (b) at the time the person is in the area, entry into the area is prohibited by a sign erected or placed in accordance with subsection (1).

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

Penalty: 10 penalty units.
(3) Subsection (2) does not apply if the person has a written permit from an authorised officer for the relevant conduct.

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

16 Offence to undertake particular activities without permit from authorised officer or ranger

(1) A person commits an offence of strict liability if the person does any of the following in a public area:
   (a) leaves any rubbish or litter in a place that is not a receptacle made available by the Commonwealth for use for that purpose by persons in the public area;
   (b) parks a vehicle in an area that is not a parking area;
   (c) camps in an area that is not a camping area;
   (d) contravenes a direction, warning or requirement on a sign erected or placed with the approval of an authorised officer under section 8;
   (e) removes or interferes with a sign:
      (i) erected or placed with the approval of an authorised officer under section 8; or
      (ii) erected or placed in accordance with subsection 15(1);
   (f) erects or places a sign whose erection or placement is not:
      (i) approved by an authorised officer under section 8; or
      (ii) arranged by an authorised officer under subsection 15(1);
   (g) erects a building, booth, stall, post or other structure;
   (h) supplies goods or services;
   (i) engages in conduct that damages, destroys or removes a natural or artificial structure or feature;
   (j) takes, or engages in conduct that damages, injures or destroys an animal or plant or the nest or dwelling of an animal.

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

Penalty: 10 penalty units.

(2) Subsection (1) does not apply if the person has a written permit from an authorised officer or a ranger for the relevant conduct.

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

17 Offences that are subject to infringement notices

For the purposes of subsection 116ZCA(1) of the Act, the following strict liability offences against this instrument are specified:
   (a) subsection 10(1);
   (b) subsection 11(1);
   (c) subsection 12(1);
   (d) subsection 13(1);
   (e) subsection 14(1);
Part 2 Offences

Section 18

(f) subsection 15(2);
(g) subsection 16(1).

18 Rangers, Defence Force members and police performing duties do not commit offence

(1) A person who is a ranger, or a member of:
   (a) the Defence Force; or
   (b) the Australian Federal Police; or
   (c) the police force of a State or Territory;
does not commit an offence against this instrument if the act that would otherwise give rise to the offence occurs in the performance of his or her duties as a ranger or member.

Note: A defendant bears an evidential burden in relation to the matters in subsection (1) (see section 13.3 of the Criminal Code).

(2) A reference in subsection (1) to a member of the Australian Federal Police includes a reference to a special member of the Australian Federal Police.
Part 3—Transitional provisions

19 Definitions

In this Part:

old instrument means the Defence (Public Areas) By-laws 1987, as in force immediately before the commencement of this section.

20 Authorised officers

A designation of a person as a commanding officer:

(a) under by-law 3 of the old instrument; and
(b) in force immediately before the commencement of this section;

has effect, from that commencement, as if it were an appointment of the person as an authorised officer under section 6 of this instrument.

21 Approvals to erect or place signs

An approval:

(a) given under by-law 4 of the old instrument; and
(b) in force immediately before the commencement of this section;

has effect, from that commencement, as if it were an approval given under section 8 of this instrument.

22 Signs

A sign:

(a) erected or placed in accordance with the old instrument; and
(b) that remains so erected or so placed immediately before the commencement of this section;

is, from that commencement, taken to have been erected or placed in accordance with this instrument.

23 Consents

A consent:

(a) issued by a commanding officer or a ranger under the old instrument; and
(b) in force immediately before the commencement of this section;

has effect, from that commencement, as if it were a permit issued by an authorised officer or a ranger, as the case requires, under this instrument.
Schedule 1—Repeals

Defence (Public Areas) By-laws 1987

1 The whole of the instrument
   Repeal the instrument.