

Defence (Visiting Forces) Regulations (Amendment) 1994 No. 407

EXPLANATORY STATEMENT

Statutory Rules 1994 No. 407

Issued by the Authority of the Attorney-General

Defence (Visiting Forces) Act 1963

Defence (Visiting Forces) Regulations (Amendment)

Section 30 of the *Defence (Visiting Forces) Act 1963* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. Paragraph 6(1)(a) of the Act provides that regulations may declare that the Act applies to a Commonwealth country. Paragraph 6(1)(b) of the Act provides that non-Commonwealth countries may be declared a country to which the Act applies.

The Act governs the legal status of foreign military forces whilst in Australia. The Act allows the military authorities of visiting foreign forces to apply their military law to their personnel whilst in Australia and provides for a corresponding suspension of Australian jurisdiction over such personnel in certain circumstances. The Act, applied to foreign countries by way of the Defence (Visiting Forces) Regulations (the Principal Regulations), is the enabling mechanism for the domestic implementation of Status of Forces Agreements ('SOFAs') between Australia and various countries.

Prior to the commencement of the Defence (Visiting Forces) Regulations (Amendment), (the amending Regulations) the Act, under paragraph 6(1)(a), applied to Canada, Fiji, Malaysia, New Zealand, Papua New Guinea, the Republic of Singapore, Tonga and the United Kingdom while under paragraph 6(1)(b), the Act applied to the United States of America.

In view of Australia's present defence relationships, the Principal Regulations were amended to apply the Act, in addition to the countries listed above, to Brunei Darussalam, the Kingdom of Cambodia, the Republic of Indonesia, the Republic of the Philippines, and the Kingdom of Thailand. Accordingly, the amending Regulations applied the Act under paragraph 6(1)(a) to Brunei Darussalam, the only additional Commonwealth country, while the Act was applied to the Kingdom of Cambodia, the Republic of Indonesia, the Republic of the Philippines, and the Kingdom of Thailand by virtue of paragraph 6(1)(b).

As Fiji is no longer in the Commonwealth, Fiji has been moved from the Commonwealth Countries regulations to the non-Commonwealth regulations and has been referred to as the 'Republic of Fiji'.

Details of the Regulations are as follows:

Regulation 1 provides that the Principal Regulations are amended as set out in the amending Regulations.

Regulation 2 amends Regulation 4 of the Principal Regulations by including Brunei Darussalam and omitting Fiji.

Regulation 3 omits and substitutes a new Regulation 5 in the Principal Regulations. New Regulation 5 provides that the Act applies to each of the following non-Commonwealth countries: Kingdom of Cambodia, Republic of Fiji, Republic of Indonesia, Republic of the Philippines, Kingdom of Thailand, and United States of America.

