

# Defence Force Amendment Regulations 2002 (No. 1) 2002 No. 311

## EXPLANATORY STATEMENT

### Statutory Rules 2002 No. 311

*Defence Act 1903*

Defence Force Amendment Regulations 2002 (No. 1)

Issued by the authority of the Minister for Defence

Paragraph 124(1)(nb) of the *Defence Act 1903* provides (amongst other things) that the Governor-General may make Regulations in relation to the declaration as a prohibited area of a place, used or intended to be used for a purpose of defence, the prohibition of a person entering, being in or remaining in the prohibited area without permission and the removal of any such person from the area.

Paragraph 124(1)(w) of the *Defence Act 1903* provides that the Governor-General may make Regulations providing for penalties, not exceeding a fine of \$2,000 or imprisonment for a period not exceeding 12 months, or both, for offences against the Regulations.

The purpose of the proposed regulations is to enable more efficient management of defence practice areas, as well as to complete the exercise of amending regulations contained in the *Defence Force Regulations 1952* (the Principal Regulations) which contain criminal provisions, so that they comply with the style compatible with the *Criminal Code*.

Regulation 35 of the *Defence Force Regulations 1952* (the Principal Regulations) allows the Minister for Defence to declare prohibited areas for the purposes of the Principal Regulations.

Subregulation 35(3) of the Principal Regulations provides that a person shall not enter, be in or remain in a prohibited area except with the permission of an authority or person authorised by the Minister to give such permission. Previously, the penalty under subregulation 35(3) was \$100 or imprisonment for 3 months, or both.

Subregulation 35(4) of the Principal Regulations provides that permission under subregulation 35(3) may be given subject to conditions and the person to whom the permission is given shall comply with and observe every such condition. Previously, the penalty under subregulation 35(4) for failure to comply with the conditions as to conduct if allowed entry was \$100 or imprisonment for 3 months, or both.

The Regulations increase the maximum penalty contained in subregulations 35(3) and 35(4) of the Principal Regulations to 20 penalty units or six months imprisonment, or both, so as to provide more significant deterrence.

The current value of penalty units is provided for under section 4AA of the *Crimes Act 1914*. Section 4AB of the *Crimes Act 1914* provides for the conversion of pecuniary penalties expressed in dollar amounts to penalty units. Under the formula provided, the \$2000 penalty prescribed in paragraph 124(1)(w) of the Act is equivalent to 20 penalty units.

The Regulations also amend regulations 21 (which deals with making a false statement in an affidavit or declaration sworn for the purposes of Part IV of the Principal Regulations), 37 (smoking in a protected place), 53 (offences relating to a defence practice area), 56 (obstructing or hindering a member of the Defence Force or member or special member of the Australian Federal Police), 58 (moving or interfering with a survey mark) and 80 (offences relating to

complaints), so that they are drafted in a manner compatible with the *Criminal Code*. The elements of each offence, and the maximum penalties that can be imposed, do not change.

The Regulations also give the Chief of the Defence Force and the Secretary for the Department of Defence the same powers in relation to the management of defence practice areas created by Part XI of the *Defence Force Regulations 1952* as the Chiefs of the Navy, Army and Air Force.

The Regulations also clarify which level of officer has a delegation to exercise particular powers in relation to defence practice areas.

Military officers with the rank of Commodore (Navy), Brigadier (Army) or Air Commodore (Air Force), and Australian Public Service employees who are members of the Senior Executive Service may be delegated to authorise defence practices involving both members of foreign military forces and members of the Australian Defence Forces.

Military officers not below the rank of Lieutenant Commander (Navy), Major (Army) or Squadron Leader (Air Force) and Australian Public Service employees not below the level of Executive Level 1 may be delegated to authorise defence practices when foreign forces are not involved.

The Regulations will commence on gazettal.

**Regulation 1** identifies the Regulations.

**Regulation 2** provides that the Regulations commence on gazettal.

**Regulation 3** provides that the Regulations are amended in the form set out in the Schedule.

**Item 1** of the Schedule redrafts regulation 21 of the Regulations (which deals with making a false statement in an affidavit or declaration sworn for the purposes of Part IV of the Principal Regulations) so that it conforms to the style required by the *Criminal Code*.

**Item 2** of the Schedule redrafts regulation 35 of the Regulations, which sets out when the Minister can declare an area to be a prohibited area, and the consequences for people in a prohibited area without permission. The only substantive change to the current regulation is to increase the penalty for being in a prohibited area without a permission from a \$200 fine, or 3 months imprisonment (or both) to 20 penalty units or six months imprisonment, or both.

**Item 3** of the Schedule redrafts regulation 37 of the Regulations (which deals with smoking in protected places) so that it conforms to the style required by the *Criminal Code*.

**Item 4** of the Schedule permits the Chief of the Defence Force, the Secretary for the Department of Defence or a Chief of one of the three Armed Services to approve the carrying out of defence operations or practices in a defence practice area by members of the Australian Defence Force, members of armed forces of a country other than Australia, or combined operations.

**Item 5** of the Schedule redrafts regulation 53 of the Regulations, (which deals with offences relating to defence practice areas), so that it conforms to the style required by the *Criminal Code*.

**Item 6** of the Schedule redrafts regulation 56 of the Regulations (which deals with obstructing or hindering members of the Defence Forces or the Australian Federal Police exercising powers conferred by Part XI of the Principal Regulations), so that it conforms to the style required by the *Criminal Code*.

**Item 7** of the Schedule substitutes the existing regulation 57B, and adds new Regulations 57BA, 57BB and 57BC so as to permit the Secretary of the Department of Defence, the Chief of the Defence Force and a Service Chief to delegate the ability to approve operations or practices in defence practice areas to:

- where only Australian Defence Force members are involved - to the military rank of Lieutenant Commander (Navy), Major (Army) and Squadron Leader (Air Force), or to Australian Public Service employees who hold, or act, at least at the level of APS Executive Level 1; or
- where Australian and foreign forces are involved - to the military rank of Commodore (Navy), Brigadier (Army) or Air Commodore (Air Force), or to Australian Public Service employees who hold, or act as an officer of the Senior Executive Service; or
- where conduct may disturb or interfere with the operation of equipment authorised to be in a defence practice area - to the military rank of Lieutenant Commander (Navy), Major (Army) and Squadron Leader (Air Force), or to Australian Public Service employees who hold, or act, at least at the level of APS Executive Level 1.

**Item 8** of the Schedule redrafts regulation 58 of the Regulations (which deals removing or interfering with survey marks) so that it conforms to the style required by the *Criminal Code*.

**Item 9** of the Schedule redrafts regulation 80 of the Regulations (which deals with offences relating to complaints) so that it conforms to the style required by the *Criminal Code*.