

# **Defence Force Amendment Regulations 2003 (No. 1) 2003 No. 245**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 2003 No. 245**

#### **Defence Force Amendment Regulations 2003 (No. 1)**

Issued by the authority of the Minister for Veterans' Affairs

#### *Defence Force Amendment Regulations 2003 (No. 1)*

Subsection 124(1) of the *Defence Act 1903* provides that the Governor-General may make regulations not inconsistent with the Act, prescribing all matters which by the Act 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; and, amongst other things, 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.

The *Defence Force Amendment Regulations 2002 (No. 1)* amended a number of measures in the *Defence Force Regulations 1952* (the Principal Regulations). Some of the amendments completed the exercise of harmonising criminal offence provisions contained in the Principal Regulations so that they were consistent with the Criminal Code.

One of the measures amended was regulation 53 (offences relating to a defence practice area), and particularly subregulation 53(8) (as it is now numbered), which lists the people who can be found guilty of an offence when a vehicle, vessel or aircraft is found in a defence practice area either at a time specified in an authorisation under subregulation 51(1), or in breach of a condition or permission given to that person to be in the area.

Subregulation 51(1) provides that the Chief of the Defence Force, the Secretary of the Department of Defence or a Service Chief may authorise the carrying out of a defence operation or practice in a defence practice area. Subregulation 51(2) provides that such authority must be in writing and must specify when the defence operation or practice will take place.

Under subregulation 53(8), as previously formulated (then numbered as subregulation 53(6)), the final sentence concluded "but an offender is not liable to be punished more than once in respect of the same offence". The amended subregulation 53(8) omitted this sentence.

The Senate Standing Committee on Regulations and Ordinances queried the Minister for Veterans' Affairs (the Minister), in her capacity as the Minister Assisting the Minister for Defence, as to whether this omission might render someone liable to be punished twice for the same behaviour.

Advice from the Criminal Law Division of the Attorney-General's Department suggested that, notwithstanding section 4C of the *Crimes Act 1914*, there was a possibility someone could be punished twice.

To remove any doubt about the matter, the Minister undertook to amend regulation 53 of the Principal Regulations.

The Act specifies no conditions that need to be met before the power to make the proposed regulations may be exercised.

**Regulation 1** identifies these Regulations as the *Defence Force Amendment Regulations 2003 (No. 1)*

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

**Regulation 3** identifies the Regulations amended by Schedule 1 as the *Defence Force Regulations 1952*.

**Schedule 1** makes the substantive amendments to the Regulations.

**Item 1** inserts a new subregulation 53(8A), making clear that a person is not liable to be punished more than once in respect of the same offence.

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