

# **Defence (Public Areas) Amendment By-laws 2001 (No. 1) 2001 No. 331**

## **EXPLANATORY STATEMENT**

### **Statutory Rules 2001 No. 331**

Issued by the authority of the Minister for Veterans' Affairs

*Defence Act 1903*

Defence (Public Areas) Amendment By-laws 2001 (No. 1)

The *Defence Act 1903* section 116ZD empowers the Minister to make by-laws for and in relation to the control and management of public areas.

The purpose of the Defence (Public Areas) Amendment By-laws (the By-laws) is to harmonise the offence-creating and related provisions within these By-laws with the general principles of criminal responsibility as codified in Chapter 2 of the *Criminal Code Act 1995* (the *Criminal Code*) whilst at the same time ensuring that the offences continue to operate as intended by Parliament.

Chapter 2 of the *Criminal Code* will take effect on 15 December 2001. The purpose of Chapter 2 is to codify principles of criminal responsibility applicable to offences created by Commonwealth legislation and regulations, including these By-laws. The effect of Chapter 2 may be summarised as follows:

- Chapter 2 of the *Criminal Code* will replace common law notions of a criminal act and a guilty mind with physical and fault elements respectively.
- One key effect of Chapter 2 is that offences of strict liability, that is offences in respect of which a fault element need not be proven at present, will gain fault elements by force of Chapter 2 after 15 December 2001. On the other hand, the *Criminal Code* permits the By-laws to specify certain offences to be offences of strict liability, to maintain their current operation.
- Chapter 2 of the *Criminal Code* requires proof of defences at an 'evidential' standard unless the law creating the offence expressly imposes proof at the higher, 'legal', standard. An evidential burden means the burden of adducing or pointing to evidence that suggests a reasonable possibility that a matter exists or does not exist. By contrast, a legal burden is more onerous than an evidential burden and is defined in the *Criminal Code* to mean the burden of (positively) proving the existence of a matter.

Details of the By-laws are set out in the Attachment. The By-laws are amended as in compliance with the scheme set out in Chapter 2 of the *Criminal Code* with regard to physical and fault elements. Strict liability has been applied to a number of By-laws to preserve their current operation. The By-laws also make defences subject to proof at the evidential standard. In addition, the By-laws update pecuniary penalties by converting them into penalty units rather than dollar amounts.

The By-laws commence on 15 December 2001.

Authority: *Defence Act 1903*

Defence Act 1903 section 116ZD

**Defence Act 1903 section 116ZD**

## **ATTACHMENT**

**Regulation 1** contains the name of the by-laws

**Regulation 2** states that the by-laws commence on 15 December 2001.

Defence Act 1903 section 116ZD

**Regulation 3** refers to Schedule 1 of the by-laws that lists the various amendments to the Principal By-laws.

**Schedule 1: Amendments to Defence (Public Areas) By-laws**

**Authority.** *Defence Act 1903* section 116ZD

**Item 1** repeals by-law 1 of the Principal By-laws and substitutes the name of the by-laws, being the *Defence (Public Areas) By-laws*.

**Item 2** repeals by-law 6 and the penalty of the Principal By-laws dealing with bringing of vehicles into public areas and using vehicles in public areas and substitutes a new by-law 6. New by-law 6(1) updates the existing by-law in terms of drafting style and legal concepts. For example, the reference to a fine in by-law 6(1) is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

New by-law 6(2) is added that applies strict liability to the offence created by by-law 6(1), thus preserving its current operation. By-law 6(3) restates the existing defence of consent. In order to avoid the possibility that these words might be unintentionally interpreted as an element of the offence, they have been removed from the offence provision and redrafted as a stand-alone defence. A note is added to the effect that a defendant seeking to rely on this defence bears an evidential burden.

**Item 2** repeals by-law 7 and the penalty of the Principal By-laws prohibiting the lighting maintaining or use of fires in public areas in certain circumstances. New by-law 7 is substituted that updates the existing by-laws in terms of drafting style and legal concepts. For example, the reference to a fine in by-law 7 is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

New by-law 7(2) is added and applies strict liability to the offence created by by-law 7(1). The application of strict liability to by-law 7(1) maintains the current operation of by-law 7(1) after Chapter 2 of the *Criminal Code* takes effect.

New by-laws 7(3) and (4) restate existing defences of consent and emergency. In order to avoid the possibility that these words might be unintentionally interpreted as elements of the offence, they have been removed from the offence provision and redrafted as stand-alone defences. Notes have been added to the effect that a defendant seeking to rely on these defences bears an evidential burden.

**Item 2** repeals by-law 8 and the penalty of the Principal By-laws regarding the presence of animals in a public area. Item 2 substitutes a new by-law 8 that updates the existing by-law in terms of drafting style and legal concepts. For example, the reference to a fine in by-law 8 has been replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

New by-law 8(3) restates the existing defence of consent. In order to avoid the possibility that these words might be unintentionally interpreted as an element of the offence, they have been removed from the offence provision and redrafted as a stand-alone defence. A note is added to the effect that a defendant seeking to rely on this defence bears an evidential burden.

**Item 2** repeals by-law 9 and the penalty of the Principal By-laws prohibiting the use or possession of a firearm in a public area. Item 2 substitutes a new by-law 9 that updates the existing by-law in terms of drafting style and legal concepts. For example, the reference to a fine in by-law 9 is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

Item 2 also adds a new by-law 9(2) that applies strict liability to the offence created by by-law 9(1). The application of strict liability to by-law 9(1) maintains the current operation of by-law 9(1) after Chapter 2 of the *Criminal Code* takes effect.

New by-law 9(3) restates the existing defence of consent. In order to avoid the possibility that these words might be unintentionally interpreted as an element of the offence, they have been removed from the offence provision and redrafted as a stand-alone defence. A note is added to the effect that a defendant seeking to rely on this defence bears an evidential burden.

**Item 2** repeals by-law 10 and the penalty of the Principal By-laws regarding entry into or stay in a public area that is or is part of an island. Item 2 substitutes a new by-law 10(1) that updates the existing by-law in terms of drafting style and legal concepts. For example, the reference to a fine in by-law 10(1) is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

New by-law 10(2) restates the existing defence of consent. In order to avoid the possibility that these words might be unintentionally interpreted as an element of the offence, they have been removed from the offence provision and redrafted as a stand-alone defence. A note is added to the effect that a defendant seeking to rely on this defence bears an evidential burden.

**Item 2** repeals by-law 11 and the penalty of the Principal By-laws regarding additional activities prohibited without consent of a commanding officer or ranger and substitutes a new by-law 11(1) that updates the existing by-law in terms of drafting style and legal concepts. For example, the reference to a fine in by-law 11(1) is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

Item 2 also adds new by-law 11(2) that applies strict liability to the physical elements in paragraphs 11(1)(d) and (e) that the sign was erected or placed with the approval of a commanding officer under by-law 4. The application of strict liability to paragraphs 11(1)(d) and (e) reflects subsection 9.3(1) of the *Criminal Code* (and the common law position) that ignorance of the law is no excuse. The inclusion of by-law 11(2) maintains the current operation of by-law 11(1) after Chapter 2 of the *Criminal Code* takes effect.

New by-law 11(3) restates the existing defence of consent. In order to avoid the possibility that these words might be unintentionally interpreted as an element of the offence, they have been removed from the offence provision and redrafted as a stand-alone defence. A note is added to the effect that a defendant seeking to rely on this defence bears an evidential burden.

**Item 2** repeals by-law 12 and the penalty of the Principal By-laws regarding additional activities prohibited without consent of a commanding officer and substitutes a new by-law 12(1) that updates the existing by-law in terms of drafting style and legal concepts. For example, the reference to a fine in by-law 12(1) is replaced by a reference to penalty units. One penalty unit is equivalent to \$110.

New by-law 12(2) restates the existing defence of consent. In order to avoid the possibility that these words might be unintentionally interpreted as an element of the offence, they have been removed from the offence provision and redrafted as a stand-alone defence. A note is added to the effect that a defendant seeking to rely on this defence bears an evidential burden.

Item 2 also adds new by-law 12(3) that applies strict liability to the physical element in paragraph 12(1)(a) that the sign was not erected or placed with the approval of a commanding officer under by-law 4. The application of strict liability to paragraph 12(1)(a) reflects subsection 9.3(1) of the *Criminal Code* (and the common law position) that ignorance of the law is no excuse. The inclusion of by-law 12(3) maintains the current operation of paragraph 12(1)(a) after Chapter 2 of the *Criminal Code* takes effect.