

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 46

Defence Force Discipline Act 1982

Issued by the authority of the Minister for Veterans' Affairs

Defence Force Discipline Amendment Regulations 2005 (No. 1)

Subsection 197(1) of the *Defence Force Discipline Act 1982* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. The *Defence Force Discipline Regulations 1985* (the Principal Regulations) made under the Act prescribe various matters relating to the administration of the discipline system established by the Act.

Several offences under the Act relate to the misuse of service vehicles. In proving these offences, evidence of the speed at which the offender's vehicle was travelling will often be relevant. Currently, regulation 25A of the Principal Regulations permits the admission of evidence of speed, derived from the use of the "Kustom Falcon" speed measuring radar device in proceedings before service tribunals.

Since the making of the Principal Regulations, a laser speed detection device known as the "Kustom Prolaser II" has become available to military and service police. The Regulations allow the evidence obtained from the use of the "Kustom Prolaser II" laser speed device to be admitted in proceedings before service tribunals. Existing safeguards relating to the operation and testing of traditional radar devices are extended (or adapted as required) to the laser speed measuring devices. These are included in the amended regulation 25A.

Details of the Regulations are outlined in the Attachment.

The proposed Regulations would be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

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

Attachment

Details of the Defence Force Discipline Amendment Regulations 2005 (No. 1)

Regulation 1 identifies the Regulations as the *Defence Force Discipline Amendment Regulations 2005 (No. 1)*.

Regulation 2 provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 provides that the amendments to the *Defence Force Discipline Regulations 1985* (the Principal Regulations) are contained in Schedule 1.

Schedule 1 makes the substantive amendments to the Principal Regulations.

Item 1 amends the heading to regulation 25A by substituting a new heading, "Evidence of speed of vehicles- use of speed measuring devices" for the existing heading, to accommodate the new laser speed detection devices.

Item 2 inserts a reference to and definition of Australian Standard AS 4691.1-2003 before the definition of *authorised tester* in subregulation 25A(1). This Standard sets out the requirements for testing the accuracy of laser speed detection devices.

Item 3 inserts a definition of a laser-based device known as the "Kustom Prolaser II" as a prescribed device for measuring the speed of vehicles. This definition is inserted after the definition of *authorised tester* in subregulation 25A(1).

Item 4 inserts a definition in subregulation 25A(1) of a *speed measuring device* which means either a laser-based device or a radar device.

Item 5 inserts new subregulation 25A(5A) which sets out the requirements for the testing of a laser-based device. The requirements in proposed paragraph 25A(5A)(a) ensures that the device meets the following two criteria. Firstly, that the optical output power of the device is within the manufacturer's specifications or any modifications to the specifications approved by the manufacturer. Secondly, the device must also be properly calibrated so that a speed reading with an error limit of no more than plus or minus 2 kilometres per hour can be obtained. It must also be within a range of error of plus 0.3 metres or minus 0.4 metres for both short and long range tests, using either the simulator or physical method mentioned in the Australian Standard AS 4691.1 - 2003.

The note to the paragraph provides that the simulator method of testing laser-based speed detection devices is set out in Appendix A of the Standard AS 4691.1 -2003 while the physical method is in Appendix C of that Standard.

Item 5 also provides that the person conducting the test has to complete, title and date a report which is to contain the following information: a unique number, the date of the test, location of the laboratory that conducted the test, identification of the device tested together with any other results of the test, as well as any comments the operator wishes to make on the test or the results. It also provides that the person conducting the test must be authorised to do so.

These requirements are outlined in paragraphs 25A(5A)(b) and (c).

Item 6 inserts a new subregulation 25A(7A) after subregulation 25A(7), prescribing the requirements for operating a laser-based device: the operator of the device must be a police member, and at the beginning and end of each shift when the device is used, the operator must test the device by conducting an instrument confidence check, a calibration verification check and a scope alignment check, in accordance with the manufacturer's instructions.

Item 7 substitutes the existing heading to regulation 25B with the new heading, "Offence in relation to speed measuring devices".

Item 8 substitutes the existing heading to Form 7 of Schedule 2 with a new heading, "Form 7 Certificate of testing of speed measuring device (valid for 12 months) (subregulation 25A (9))".

Item 9 substitutes the existing heading to Form 8 of Schedule 2 with a new heading, "Certificate of having operated a speed measuring device (subregulation 25A (10))".

Item 10 makes the necessary consequential amendments to delete references to "radar" wherever occurring in regulations 25A and 25B and the Schedules relating to those regulations and substitutes the words "speed measuring". It also provides for the insertion of the relevant provisions relating to testing and operating the laser speed detection device and finally it substitutes "police member" for "service policeman" to reflect the definition in the Act.