

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 92

Issued by the authority of the Minister for Defence Science and Personnel

Defence Act 1903

Air Force Act 1923

Defence Force Legislation Amendment Regulation 2013(No. 1)

Subsection 124(1) of the *Defence Act 1903* (the Act) provides, in part, 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 Australian Defence Force (ADF), or for carrying out or giving effect to the Act.

Section 9 of the *Air Force Act 1923* provides that the Governor-General may make regulations, not inconsistent with the *Air Force Act 1923*, in respect of the Air Force.

The *Defence Force Regulations 1952* (the Principal Regulations) made under the Act prescribe such matters as the command of the Defence Force, defence areas, defence practice areas, handling of remains, provision of certain goods and services and redress of grievances.

A recent review of pre-2008 Commonwealth subordinate legislation recommended the repeal of a number of out dated instruments including the *Defence (Certification of Deaths) Regulation 1953*. The proposed Regulation would repeal this Regulation. A number of its provisions have been consolidated into the proposed Regulation.

The proposed Regulation would also make amendments relating to medical treatment. There is no explicit Commonwealth legislative coverage regarding the supply, carriage, issue and administration of scheduled therapeutic substances by ADF personnel not normally authorised to do so (primarily medics and nurses) in accordance with state or territory law. This has resulted in difficulty for allied health professionals other than medical practitioners to carry out their routine duties which might be inconsistent with relevant state or territory law.

The effect of the proposed Regulation would be to ensure that the ADF and those members required to carry and administer medical materiel who are not medical practitioners are not hindered in the uniform application of their duties, here and overseas, by competing state or territory laws.

Specifically in relation to pharmaceuticals, it is intended that the proposed Regulation would allow the possession, storage, supply, dispensing and administration of scheduled pharmaceuticals by ADF pharmacists, ADF medics and ADF nurses, and civilian health professionals engaged by the ADF.

The proposed Regulation would enable the supply of scheduled pharmaceuticals and the provision of medical and dental treatment in accordance with Defence Instructions (including Defence Health Instructions and Departmental Manuals) and procedures

when that supply of scheduled pharmaceuticals and provision of medical and dental treatment is not in accordance with relevant state or territory law.

Details of the Regulation are outlined in the Attachment.

The Act specifies no condition that must be met before the power to make the Regulation may be exercised.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Authority: This Regulation is made under the *Defence Act 1903* and the *Air Force Act 1923*.

Consultation- In developing these amendments, consultation was undertaken within Defence and included:

- Defence Legal Division,
- The three Service Groups legal advisers,
- Joint Health Command and
- Defence Community Organisation.

Externally consultation was undertaken with:

- Office of Parliamentary Counsel,
- Prime Minister and Cabinet (Executive Council Secretariat) and
- Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (14530 refers).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Defence Force Legislation Amendment Regulation 2013 (No. 1)

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Instrument

The *Defence Force Regulations 1952* prescribe such matters as the command of the Defence Force when acting together, defence areas, defence practice areas, handling of remains, provision of certain goods and services and redress of grievances.

A recent review of pre-2008 Commonwealth subordinate legislation recommended the repeal of a number of out dated instruments including the *Defence (Certification of Deaths) Regulation 1953*. The proposed Regulation would repeal this Regulation. A number of its provisions have been consolidated into the proposed Regulation.

The proposed Regulation would also make amendments relating to medical treatment. There is no explicit Commonwealth legislative coverage regarding the supply, carriage, issue and administration of scheduled therapeutic substances by ADF personnel not normally authorised to do so (primarily medics and nurses) in accordance with state or territory law. This has resulted in difficulty for allied health professionals other than medical practitioners to carry out their routine duties which might be inconsistent with relevant state or territory law.

The effect of the proposed Regulation would be to ensure that the ADF and those members required to carry and administer medical materiel who are not medical practitioners are not hindered in the uniform application of their duties, here and overseas, by competing state or territory laws.

Specifically in relation to pharmaceuticals, it is intended that the proposed Regulation would allow the possession, storage, supply, dispensing and administration of scheduled pharmaceuticals by ADF pharmacists, ADF medics and ADF nurses, and civilian health professionals engaged by the ADF.

The proposed Regulation would enable the supply of scheduled pharmaceuticals and the provision of medical and dental treatment in accordance with Defence Instructions (including Defence Health Instructions and Departmental Manuals) and procedures when that supply of scheduled pharmaceuticals and provision of medical and dental treatment is not in accordance with relevant state or territory law.

Human rights implications

The Legislative Instrument relating to the provision of medical treatment engages the following human rights:

Right to the enjoyment of the highest attainable standard of physical and mental health

This right is protected in Article 12(1) of the International Covenant of Economic, Social and Cultural Rights.

Defence provides a range of health services to permanent force members to maximise the health of its workforce, and to ensure the preparedness of members for operations. This amendment clarifies the range of services and articulates the provision of pharmaceutical and medical supplies.

Conclusion

This Legislative Instrument is compatible with human rights because it advances the protection of human rights.

Details of the *Defence Force Legislation Amendment Regulation 2013 (No. 1)*

Section 1 – Name of Regulation

The section provides that the title of the Regulation is the *Defence Force Legislation Amendment Regulation 2013 (No 1)*

Section 2 – Commencement

This section provides for the Regulation to commence on the day after it is registered on the Federal Register of Legislative Instruments.

Section 3 – Authority

This Regulation is made under the *Defence Act 1903* and the *Air Force Act 1923*.

Section 4 – Schedules

This section provides that each instrument that is specified in the Schedules below be amended or repealed as set out in the applicable items.

Schedule 1 – Amendments

Item [1] inserts a new provision Part 5A- Certification of Deaths-regulation 25A-25H, incorporating relevant aspects from the *Defence (Certification of Deaths) Regulations 1953* (which is to be repealed).

Item [2] repeals Regulations 58E and 58F and inserts a new Regulation 58E. This new Regulation outlines the provision of medical and dental treatment for ADF members including the supply of pharmaceuticals is not required to be in accordance with a State or Territory law if the supply complies with a Defence Instruction.

Item [3] makes a minor amendment to paragraph 58G (1) (a) by omitting 58F and substituting 58E.

Schedule 2- Repeals

Item [1] repeals Part 11 of the *Air Force Regulations 1927*.

Item [2] repeals the *Defence (Certification of Deaths) Regulations 1953*