

EXPLANATORY STATEMENT

Issued by authority of the Minister for Defence Personnel

Defence Act 1903

Defence Amendment (Oaths and Affirmations) Regulations 2018

The *Defence Act 1903* (the Act) prescribes the control, administration, constitution and service of the Australian Defence Force (ADF).

Subsection 124(1) of the Act 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. The *Defence Amendment (Oaths and Affirmations) Regulations 2018* (the Regulation) is made under the Act.

The purpose of the Regulation is to amend the oath and affirmation Schedule in the *Defence Regulation 2016* to extend the rank of persons before whom the oath or affirmation may be taken or made, to include Warrant Office Class 2 (or equivalent) and to simplify the provision.

A person must, before being appointed or enlisted (or as soon as practicable after appointment or enlistment) in the ADF, take an oath or make an affirmation before a person mentioned in the relevant Schedule. In some instances recruiting centres have a Warrant Officer Class 2 (or equivalent) as the Senior Military Recruiting Officer and an oath or affirmation is unable to be taken or made before this member under the current *Defence Regulation 2016*. Consequently, these recruiting centres and other centres with staff absences are unable to administer an oath or affirmation, and therefore appoint or enlist Defence members, without relying on external support. This Regulation will address the recruitment issue.

Consultation

Headquarters Defence Force Recruiting in the Department of Defence has been consulted and they support the proposed amendment.

The authorising Act specifies no conditions that need to be fulfilled before the Regulation can be made.

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

The Regulation would commence on the day after it is registered on the Federal Register of Legislation and the details of the Regulation are set out in the [Attachment](#).

Statement of Compatibility with Human Rights

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

Defence Amendment (Oaths and Affirmations) Regulations 2018

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 Legislative Instrument

The purpose of the *Defence Amendment (Oaths and Affirmations) Regulations 2018* is to amend the Oath and affirmation Schedule in the *Defence Regulation 2016* to extend the rank of persons before whom the oath or affirmation may be taken or made, to include Warrant Office Class 2 (or equivalent).

Human rights implications

The Regulation will make minor governance amendments to extend the rank of persons before whom the oath or affirmation may be taken or made. The amendments will have no impact on the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This Regulation is compatible with human rights as it does not raise any human rights issues.

Minister for Defence Personnel, the Honourable Darren Chester MP

Details of the Regulations are as follows:

Section 1 – Name

This section provides that the title of the instrument is the *Defence Amendment (Oaths and Affirmations) Regulations 2018*.

Section 2 – Commencement

This section provides for the Regulation to commence on the day after the instrument is registered.

Section 3 – Authority

The Regulation is made under the *Defence Act 1903*.

Section 4 – Schedules

This section provides that each instrument as set out in the Schedule is amended or repealed as specified.

Schedule 1- Amendments

Section 1 – This section amends the oath and affirmation provisions to simplify the provision by referring to equivalent ranks and to extend the rank of persons before whom an oath or affirmation may be taken or made to include an enlisted member not below the rank of Warrant Officer Class 2 (Army), Flight Sergeant (Air Force) or Chief Petty Officer (Navy).