

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Defence Industry

Defence Act 1903

Defence (RAAF Base Point Cook Defence Aviation Area) Declaration 2021

GENERAL SUMMARY

Defence airfields, air weapons ranges and low flying training areas play a significant role in the Defence strategy for Australia. They are essential for maintaining Defence's high training standards, operational capability and ability to respond in emergencies. Safe aircraft operations at military and joint-user airfields are not only concerned with defence aviation, but are also essential for the safety of the local community.

Part IXD of the *Defence Act 1903* (the Act) provides for the declaration and regulation of Defence aviation areas, in order to support the safe operation of Defence aviation. Defence aviation areas are regulated areas in which activities dangerous to aviation are controlled. Within these areas, proposals to construct permanent and temporary structures above specified heights, as well as gas plumes from exhaust stacks and other objects hazardous to aircraft or aviation-related communications, navigation or surveillance must be referred to Defence for approval before construction commences.

The purpose of this instrument is to declare a Defence aviation area in the vicinity of RAAF Base Point Cook, in Victoria (the RAAF Base Point Cook Defence Aviation Area).

Authority

This instrument is made under section 117AC of the Act. Under section 117AC, the Minister may, by legislative instrument, declare an area of land, sea or airspace in or adjacent to Australia to be a defence aviation area. The Minister must not declare an area unless the Minister is satisfied that it is necessary for the defence of Australia for any of the matters mentioned in paragraphs 117AD (a) to (c) to apply in relation to the area, and in particular, the matters are necessary for the purpose of preventing or reducing hazards to aircraft or aviation-related communication, navigation or surveillance. The matters include:

- The regulation or prohibition of the construction or use of buildings, structures or objects within defence aviation areas;
- The regulation or prohibition of the bringing of hazardous objects into, or having objects within, defence aviation areas; or
- The removal (in whole or in part), marking, lighting, screening, modification or relocation of buildings, structures or objects (including trees or other natural obstacles) within defence aviation areas.

Section 117AD of the Act provides that the regulations may prescribe certain matters in relation to defence aviation areas. Part 11A – Defence aviation areas in the *Defence Regulation 2016* (the Defence Regulation) outlines the requirements in relation to defence aviation areas.

This instrument is a declaration of a defence aviation area made under section 117AD of the Act.

Purpose of the *Defence (RAAF Base Point Cook Defence Aviation Area) Declaration 2021*

This instrument declares an area in the vicinity of RAAF Base Point Cook, in Victoria, to be a defence aviation area. The area is depicted in the map in Schedule 1, and includes height restrictions that apply throughout the area.

The new RAAF Base Point Cook Defence Aviation Area declaration will provide clear guidance to developers, landowners, occupiers and other interested parties about the height restrictions that apply to new buildings, structures and objects, requiring Defence approval before construction.

Communication of information about defence aviation areas to the public

Defence's website provides detailed information about declared defence aviation areas, the processes for applying for relevant approvals under Part 11A of the Defence Regulation, and information about hazardous objects:

<https://defence.gov.au/id/AviationAreas/Default.asp>

An accessible version of the map at Schedule 1 will be made available on Defence's website.

Defence also works with local councils and other relevant planning authorities to provide information about defence aviation areas and approval requirements under the Defence Regulation.

Operation of the *Defence (RAAF Base Point Cook Defence Aviation Area)*

Attachment A provides a provision-by-provision description of the operation of this instrument.

Legislative instrument

This declaration is a legislative instrument for the purposes of the *Legislation Act 2003* (LA).

Consultation

Defence undertook widespread consultation about establishing the RAAF Base Point Cook Defence Aviation Area, including a program of public consultation during 2020.

Stakeholders were grouped into the following categories to enable a targeted engagement process: local government stakeholders, airspace stakeholders, institutional stakeholders and the general public and public interest groups. Due to Victoria-wide Covid-19 restrictions at the time of engagement, no face-to-face engagement was possible during the engagement period. Engagement was facilitated through the use of web-based technologies, including the Department of Defence website, interactive GIS viewer, Microsoft Teams, social media and email, as well as traditional postal mail, newspaper advertisements and a dedicated telephone message service. Submissions closed on 11 December 2020: 17 formal submissions were received, 13 from members of the public.

Commencement

This instrument commences the day after it is registered on the Federal Register of Legislation.

Attachment

A: Provisions in the *Defence (RAAF Base Point Cook Defence Aviation Area) Declaration 2021*.

STATEMENT OF COMPATABILITY WITH HUMAN RIGHTS

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

Defence (RAAF Base Point Cook Defence Aviation Area) Declaration 2021

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 (RAAF Base Point Cook Defence Aviation Area) Declaration 2021* sets out an area in the vicinity of RAAF Base Point Cook to be a defence aviation area, and specifies height restrictions that apply to buildings, structures and objects within that area. The declaration means that the provisions of Part IXD of the *Defence Act 1903* and Part 11A of the *Defence Regulation 2016* apply within the area.

Human rights implications

This legislative instrument does not engage any of the applicable rights or freedoms.

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Attachment A – Provisions in the *Defence (RAAF Base Point Cook Defence Aviation Area) Declaration 2021*

Section 1 – Name

Section 1 provides for the instrument's name: *Defence (RAAF Base Point Cook Defence Aviation Area) Declaration 2021*.

Section 2 – Commencement

This instrument commences on the day after this instrument is registered.

Section 3 – Authority

Section 3 provides that the declaration is made under subsection 117AC(1) of the Act.

Section 4 – Definition

This section includes a note that a number of expressions used in this instrument are defined in section 4 of the Act, including 'defence aviation area'.

In the declaration 'Act' means the *Defence Act 1903*.

Section 5 – Declaration of RAAF Base Point Cook Defence Aviation Area

Subsection 5(1) provides that for the purposes of subsection 117AC(1) of the Act, the RAAF Base Point Cook Defence Aviation Area is declared to be a defence aviation area.

Subsection 5(2) provides that the 'RAAF Base Point Cook Defence Aviation Area' is the areas of land in the vicinity of RAAF Base Point Cook in Victoria that are depicted on the map set out in Schedule 1 to the instrument.

Subsection 5(3) makes it clear that areas depicted by white space on the map set out in Schedule 1 are not included in the RAAF Base Point Cook Defence Aviation Area.

Section 6 – Specification of height restrictions that apply within the area

Subsection 6(1) provides that for the purposes of subsection 117AC(3), height restrictions apply in relation to buildings, structures and objects (including trees and other natural obstacles) within the RAAF Base Point Cook Defence Aviation Area.

Subsection 6(2) provides that the height restrictions described in the legend to the map set out in Schedule 1 apply in the corresponding area depicted on the map.

Schedule 1 – Map

Schedule 1 contains the map depicting the RAAF Base Point Cook Defence Aviation Area. It also includes various height restrictions that apply within the area, as described in the legend.