

## EXPLANATORY STATEMENT

Issued by authority of Major General Christopher Smith, DSC, AM, CSC, Deputy Chief of Army,  
delegate of the Minister for Defence

*Defence Act 1903*

### ***Defence (Security authorised member of the Defence Force—Training and qualification requirements for Identification and Search Wardens) Determination 2025***

The instrument is made under subsection 71C(4) of the *Defence Act 1903* (the Act). The instrument commences on the day after the instrument is registered and is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

#### ***Purpose***

The Act prescribes the control, administration, constitution and service of the Australian Defence Force. Part VIA of the Act allows for certain powers to be exercised by defence security officials and special defence security officials to enhance the security of defence bases, facilities, assets, and personnel within Australia in response to the changing nature of security threats.

Division 3 of Part VIA of the Act sets out the powers exercisable by defence security officials with consent at defence access control points and on defence premises. The powers exercisable by defence security officials include, but are not limited to, actions such as being able to request a person to provide identification under subsection 71H(1) or requesting a person to permit a limited search of their vehicle, vessel or aircraft under subsection 71J(1). Under the Act, a defence security official is defined to mean a contracted defence security guard, a security authorised member of the Defence Force (SAMDF) or a defence security screening employee.

Division 4 of Part VIA of the Act sets out powers exercisable by a special defence security official at defence access control points and on defence premises. The powers exercisable by a special defence security official include, but are not limited to, things such as being able to respond to an attack on defence premises under subsection 71X and to stop and detain a person, vehicle, vessel or aircraft in order to exercise other powers under subsection 71Y. Under the Act, a special defence security official is defined to mean a SAMDF or a defence security screening employee.

Relevantly, for a person to be a SAMDF, the person must meet the requirements of subsection 71C(1) of the Act. These requirements include that a person:

- is a member of the Defence Force;
- is authorised, or part of a class of persons authorised, under subsection 71C(2) of the Act; and
- satisfies the training and qualification requirements determined under subsection 71C(4) of the Act.

Subsection 71C(4) of the Act sets out that the Minister must, by legislative instrument, determine the training and qualification requirements for a SAMDF. Additionally, subsection 71C(5) provides that different training and qualification requirements may apply to different kinds of SAMDF.

The purpose of the instrument is to determine the training and qualification requirements that a person must satisfy in order to be a SAMDF, specifically an Identification and Search Warden (ISW). An ISW is a kind of SAMDF for the purposes of subsection 71C(5).

Setting out training and qualification requirements that a person must satisfy prior to becoming an ISW ensures there are appropriate measures in place on the safe exercise of powers under Part VIA of the Act. The training and qualification requirements ensure that the ISW has the competence to exercise their powers appropriately and not trespass unduly on personal rights and liberties when required to perform security functions on defence premises.

The instrument also repeals the *Defence (Security Authorised Members—Identification and Search Wardens: Training and Qualification Requirements) Determination 2014*. Consistent with subsection 33(3) of the *Acts Interpretation Act 1901*, as the Act confers a power to make a legislative instrument under subsection 71C(4), this power is construed as including a power to repeal such instrument.

### ***Details of the instrument***

Details of the instrument are set out in **Attachment A**.

### ***Consultation***

Extensive consultation was undertaken with the relevant workforce areas and stakeholders within the Department of Defence, including the Provost Marshal Australian Defence Force and the Joint Military Police Unit. The Australian Federal Police were also consulted in relation to the training and qualification requirements under this instrument.

### ***Parliamentary scrutiny***

The instrument is subject to disallowance under section 42 of the Legislation Act.

A Statement of Compatibility with Human Rights has been prepared in accordance with subsection 9(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Statement provides that the instrument is compatible with human rights because it promotes the protection of human rights, and to the extent that it may limit human rights, those limitations are necessary, reasonable and proportionate for the purposes of defence and national security. The Statement is included at **Attachment B**.

The instrument is made by the Deputy Chief of Army as a delegate of the Minister for Defence in accordance with the requirements of subsection 71C(4) of the Act.

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

**Details of the *Defence (Security authorised member of the Defence Force—Training and qualification requirements for Identification and Search Wardens) Determination 2025***

**Section 1      Name**

Section 1 provides that the name of the instrument is the *Defence (Security authorised member of the Defence Force—Training and qualification requirements for Identification and Search Wardens) Determination 2025*.

**Section 2      Commencement**

Section 2 provides that the instrument commences on the day after the instrument is registered on the Federal Register of Legislation.

**Section 3      Authority**

Section 3 provides that this instrument is made under subsection 71C(4) of the *Defence Act 1903* (the Act). Subsection 71C(4) of the Act provides that the Minister must, by legislative instrument, determine the training and qualification requirements for a security authorised member of the Defence Force (SAMDF).

**Section 4      Definitions**

Section 4 contains definitions relevant to this instrument.

**Section 5      Training requirements**

Section 5 of the instrument sets out the training requirements for a person who is a SAMDF for the purposes of subsection 71C(1) of the Act. As set out in subsection 71C(5) of the Act, different training and qualification requirements may apply to different kinds of SAMDF.

Subsection 5(1) provides that this section sets out the training requirements that a person must satisfy to be a SAMDF who is an Identification and Search Warden (ISW). An ISW is a specialised type of sub-category of SAMDF which is reflected in the specialised training and qualification requirements that must be met.

Subsection 5(2) provides that the person must have successfully completed the Security Authorised Members of the Defence Force – Identification and Search Warden Course (SAMDF-ISW Course). The SAMDF-ISW Course is a specialised Defence Force training course, designed to provide selected Australian Defence Force (ADF) members with the knowledge, skills and attitudes required to conduct identification, search and seizure activities as part of security arrangements for defence premises. Specifically, the SAMDF-ISW Course is designed to give ADF members proficiency in the following learning outcomes:

- determining the authority of a person to enter or be present on defence premises;

- searching people and their possessions;
- searching a vehicle; and
- selecting, establishing and operating a search point.

Subsection 5(3) provides that the person must successfully complete annual refresher training comprising: Defence Security Official – Roles and Responsibilities (Module 1) Defence Annual Security Awareness; and Operational Safety Training recertification including scenario based training to test the practical application of powers exercisable by a SAMDF who is an ISW. This training is designed to refresh or update the skills and knowledge the person needs to perform the duties of a SAMDF who is an ISW.

## **Section 6      Qualification requirements**

Section 6 of the instrument sets out that there are no qualification requirements that a person must satisfy to be a SAMDF who is an ISW.

The effect of this provision is to clarify that there are no specific qualification requirements that need to be obtained by a person to be a SAMDF who is an ISW, instead the only requirements that must be satisfied are those set out under section 5 of the instrument.

## **Section 7      Schedules**

Section 7 provides that each instrument that is specified in a Schedule to the instrument is amended or repealed as set out in the applicable items in the relevant Schedule and other items in the Schedules have effect according to its terms.

## **Schedule 1      Repeals**

Schedule 1 to the instrument repeals the *Defence (Security Authorised Members—Identification and Search Wardens: Training and Qualification Requirements) Determination 2014*.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

## Statement of Compatibility with Human Rights

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

### **Defence (Security authorised member of the Defence Force—Training and qualification requirements for Identification and Search Wardens) Determination 2025**

This disallowable 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 (Security authorised member of the Defence Force—Training and qualification requirements for Identification and Search Wardens) Determination 2025* (the Determination) sets out the training and qualification requirements a person must satisfy in order to be a security authorised member of the Defence Force (SAMDF), specifically an Identification and Search Warden (ISW).

The *Defence Act 1903* (the Act) prescribes the control, administration, constitution and service of the Australian Defence Force. Part VIA of the Act allows for certain powers to be exercised by defence security officials and special defence security officials to enhance the security of defence bases, facilities, assets, and personnel within Australia in response to the changing nature of security threats.

Division 3 of Part VIA of the Act sets out the powers exercisable by defence security officials with consent at defence access control points and on defence premises. The powers exercisable by a defence security official include, but are not limited to, things such as being able to request a person to provide identification under subsection 71H(1) or requesting a person to permit a limited search of their vehicle, vessel or aircraft under subsection 71J(1). Under the Act, a defence security official is defined to mean a contracted defence security guard, a SAMDF or a defence security screening employee.

Division 4 of Part VIA of the Act sets out powers exercisable by a special defence security official at defence access control points and on defence premises. The powers exercisable by a special defence security official include, but are not limited to, things such as being able to respond to an attack on defence premises under subsection 71X and to stop and detain a person, vehicle, vessel or aircraft in order to exercise other powers under subsection 71Y. Under the Act, a special defence security official is defined to mean a SAMDF or a defence security screening employee.

Relevantly, for a person to be a SAMDF, the person must meet the requirements of subsection 71C(1) of the Act. These requirements include that a person:

- is a member of the Defence Force;
- is authorised or part of a class of persons authorised under subsection 71C(2) of the Act; and
- satisfies the training and qualification requirements determined under subsection 71C(4) of the Act.

Subsection 71C(4) of the Act sets out that the Minister must, by legislative instrument, determine the training and qualification requirements for a SAMDF. Additionally, subsection 71C(5) provides that different training and qualification requirements may apply to different kinds of SAMDF.

The Determination also repeals the *Defence (Security Authorised Members—Identification and Search Wardens: Training and Qualification Requirements) Determination 2014*.

### **Human rights implications**

The Determination engages the following rights:

- the right to work, including technical and vocational guidance and training programs, policies and techniques to achieve development and employment under conditions safeguarding individual freedom, per Article 6(2) of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
- the right to just and favourable conditions of work, including safe and healthy working conditions, per Article 7(b) of the ICESCR.

#### **The right to work—including technical and vocational guidance and training programs etc.**

The Determination will engage and promote the right to work by setting out the training and qualification requirements necessary for a person to be an ISW. These requirements ensure Australian Defence Force (ADF) members acquire the necessary skills and competencies to effectively carry out their professional duties.

This also aims to enhance the employability of ADF members by providing the necessary training and qualifications to access and sustain employment and long-term career opportunities which in turn ensures that ADF members can engage in meaningful work. On this basis, the Determination directly contributes to promoting the right to work.

#### **The right to just and favourable conditions of work, including safe and healthy working conditions**

The Determination will engage and promote the right to work in safe and healthy work conditions and environments as it ensures that ADF members are adequately prepared to carry out their responsibilities safely and effectively. Proper training and qualification requirements reduce workplace hazards, promote a positive and supportive workplace culture and enhance the security of defence access control points, defence premises and defence personnel. On this basis, the Determination directly contributes to promoting the right to just and favourable conditions of work.

### **Conclusion**

The Determination is compatible with human rights because it promotes the protection of human rights.