



# **Defence Legislation Amendment (Instrument Making) Act 2017**

**No. 125, 2017**

**An Act to amend the *Defence Act 1903*, and for  
related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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## Contents

1	Short title.....	1
2	Commencement.....	2
3	Schedules.....	3
<b>Schedule 1—Amendments</b>		4
Part 1—Defence Force inquiries		4
	<i>Defence Act 1903</i>	4
Part 2—Defence aviation areas		5
	<i>Defence Act 1903</i>	5
Part 3—Infringement notices for by-laws for public areas		10
	<i>Defence Act 1903</i>	10
Part 4—Contingent amendments		12
	Division 1—Inserting definition	12
	<i>Defence Act 1903</i>	12
	Division 2—Repealing definition	12
	<i>Defence Act 1903</i>	12





# Defence Legislation Amendment (Instrument Making) Act 2017

No. 125, 2017

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## An Act to amend the *Defence Act 1903*, and for related purposes

[Assented to 30 November 2017]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Defence Legislation Amendment (Instrument Making) Act 2017*.

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## 2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	1 December 2017
2. Schedule 1, Parts 1 to 3	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	26 March 2018 (F2018N00018)
3. Schedule 1, Part 4, Division 1	At the same time as the provisions covered by table item 2. However, the provisions do not commence at all if item 1 of Schedule 5 to the <i>Regulatory Powers (Standardisation Reform) Act 2017</i> commences before the commencement of the provisions covered by table item 2.	26 March 2018
4. Schedule 1, Part 4, Division 2	Immediately after the commencement of item 1 of Schedule 5 to the <i>Regulatory Powers (Standardisation Reform) Act 2017</i> . However, the provisions do not commence at all if that item commences before the commencement of the provisions covered by table item 2.	6 November 2018
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

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- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

### **3 Schedules**

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Amendments

### Part 1—Defence Force inquiries

#### *Defence Act 1903*

##### **1 Paragraph 110ZB(1)(d)**

Omit “a court of inquiry, a board of inquiry or a Chief of the Defence Force commission of inquiry”, substitute “an inquiry”.

##### **2 Paragraph 124(1)(gc)**

Repeal the paragraph, substitute:

- (gc) inquiries concerning the Defence Force, other than inquiries conducted by:
- (i) the Defence Force Remuneration Tribunal under Part IIIA; or
  - (ii) the Inspector-General ADF under Part VIIIB; or
  - (iii) the Defence Honours and Awards Appeals Tribunal under Part VIIC; and

##### **3 Subsection 124(2A)**

Omit “a court of inquiry, a board of inquiry, a Chief of the Defence Force commission of inquiry, an inquiry officer or an inquiry assistant”, substitute “an inquiry”.

##### **4 Subsection 124(2C)**

Omit “a court of inquiry, a board of inquiry, a Chief of the Defence Force commission of inquiry, an inquiry officer or an inquiry assistant”, substitute “an inquiry, established (however described) under regulations made for the purposes of paragraph (1)(gc),”.

##### **5 Subsection 124(2C)**

Omit “the court of inquiry, the board of inquiry, the Chief of the Defence Force commission of inquiry, the inquiry officer or the inquiry assistant”, substitute “the inquiry”.



## **Part 2—Defence aviation areas**

### *Defence Act 1903*

#### **6 Subsection 4(1)**

Insert:

*defence aviation area* has the meaning given by  
subsection 117AC(1).

*defence aviation area inspector* has the meaning given by  
subsection 117AG(1).

#### **7 After Part IXC**

Insert:

## **Part IXD—Defence aviation areas**

### **117AC Defence aviation areas**

- (1) 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*.
- (2) The Minister must not declare an area unless the Minister is satisfied that:
  - (a) 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
  - (b) in particular, the matters are necessary for the purpose of preventing or reducing hazards to the following as they relate to the defence of Australia:
    - (i) aircraft;
    - (ii) aviation-related communications, navigation or surveillance.
- (3) Without limiting section 117AD, a declaration of an area may also specify height restrictions that apply in relation to buildings,

structures and objects (including trees and other natural obstacles) within the area.

- (4) A declaration of an area may apply, adopt or incorporate, with or without modification:
- (a) a map, or a matter contained in a map, as in force or existing from time to time; or
  - (b) a matter contained in an instrument or other writing as in force or existing from time to time, to the extent that the matter relates to a map.

### **117AD Regulations in relation to defence aviation areas**

Without limiting section 124, the regulations may prescribe matters providing for and in relation to the following:

- (a) the regulation or prohibition of the construction or use of buildings, structures or objects within defence aviation areas;
- (b) the regulation or prohibition of the bringing of objects into, or having objects within, defence aviation areas;
- (c) 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.

Note: The regulations may also provide for and in relation to the payment by the Commonwealth of compensation, and may provide for penalties for offences against the regulations (see paragraphs 124(1)(r) and (w)).

### **117AE Monitoring powers**

*Provisions subject to monitoring*

- (1) A provision of the regulations made for the purposes of section 117AD is subject to monitoring under Part 2 of the Regulatory Powers Act if the regulations prescribe the provision for the purposes of this subsection.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether provisions of the regulations have been complied with. It includes powers of entry and inspection.

*Information subject to monitoring*

- (2) Information given in compliance or purported compliance with a provision of the regulations made for the purposes of section 117AD is subject to monitoring under Part 2 of the Regulatory Powers Act if the regulations prescribe the provision for the purposes of this subsection.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

*Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court*

- (3) For the purposes of Part 2 of the Regulatory Powers Act, as it applies in relation to a provision prescribed for the purposes of subsection (1) and the information mentioned in subsection (2):
- (a) a defence aviation area inspector is an authorised applicant; and
  - (b) a defence aviation area inspector is an authorised person; and
  - (c) a magistrate is an issuing officer; and
  - (d) each of the following is a relevant chief executive:
    - (i) the Secretary;
    - (ii) the Chief of the Defence Force; and
  - (e) each of the following is a relevant court:
    - (i) the Federal Court of Australia;
    - (ii) the Federal Circuit Court of Australia;
    - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

*Person assisting*

- (4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to a provision prescribed for the purposes of subsection (1) and the information mentioned in subsection (2).

## 117AF Modifications of Part 2 of the Regulatory Powers Act

### *Additional purpose and monitoring powers*

- (1) Part 2 of the Regulatory Powers Act, subsections 117AE(3) and (4) of this Act, and section 117AH of this Act (as that section relates to that Part), also apply in relation to a provision prescribed for the purposes of subsection 117AE(1) (the **monitored provision**) as if:
- (a) the powers under that Part may be exercised for the purpose of ensuring compliance with the monitored provision; and
  - (b) the monitoring powers in that Part included the taking of any action that is reasonably necessary to ensure compliance with the monitored provision.

Note 1: A warrant may be issued under subsection 32(2) of the Regulatory Powers Act if the issuing officer is satisfied, by information on oath or affirmation, that it is reasonably necessary that one or more authorised persons should have access to a premises for that purpose.

Note 2: The regulations may provide for and in relation to the payment by the Commonwealth of compensation (see paragraph 124(1)(r)).

- (2) Without limiting paragraph (1)(b), the taking of action may include the removal (in whole or in part), destruction or modification of a building, structure or object.

### *Use of force in executing a warrant*

- (3) In executing a monitoring warrant for the purpose mentioned in paragraph (1)(a):
- (a) an authorised person may use such force against persons and things as is necessary and reasonable in the circumstances; and
  - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

## 117AG Appointment of inspectors for defence aviation areas

- (1) The Secretary, or the Chief of the Defence Force, (the **appointer**) may, in writing, appoint any of the following as an inspector (a **defence aviation area inspector**) for the purposes of this Part:
- (a) an APS employee in the Department;
  - (b) a member of the Defence Force.

- (2) The appointer must not appoint a person as a defence aviation area inspector unless the appointer is satisfied that the person has the knowledge, training or experience necessary to properly exercise the powers of a defence aviation area inspector.
- (3) A defence aviation area inspector must, in exercising powers as such, comply with any directions of the appointer.
- (4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

### **117AH Delegation of powers of Secretary or Chief of Defence Force**

- (1) The Secretary, or the Chief of the Defence Force, (the *delegator*) may, in writing, delegate the powers and functions mentioned in subsection (2) to any of the following:
  - (a) an SES employee, or an acting SES employee, in the Department;
  - (b) an officer of the Navy who holds the rank of Commodore or a higher rank;
  - (c) an officer of the Army who holds the rank of Brigadier or a higher rank;
  - (d) an officer of the Air Force who holds the rank of Air Commodore or a higher rank.
- (2) The powers and functions that may be delegated are the following:
  - (a) the powers and functions of the relevant chief executive under Part 2 of the Regulatory Powers Act in relation to a provision prescribed for the purposes of subsection 117AE(1) and the information mentioned in subsection 117AE(2);
  - (b) the powers and functions of the appointer under section 117AG.
- (3) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any directions of the delegator.

### **8 Paragraph 124(1)(na)**

Repeal the paragraph.

## Part 3—Infringement notices for by-laws for public areas

### *Defence Act 1903*

#### 9 After section 116ZC

Insert:

#### 116ZCA Infringement notices

##### *Provisions subject to an infringement notice*

- (1) A strict liability offence against the by-laws is subject to an infringement notice under Part 5 of the Regulatory Powers Act if the by-laws specify the offence for the purposes of this subsection.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

##### *Infringement officer*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, a ranger is an infringement officer in relation to an offence specified for the purposes of subsection (1).

##### *Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act, each of the following is a relevant chief executive in relation to an offence specified for the purposes of subsection (1):
  - (a) the Secretary;
  - (b) the Chief of the Defence Force.
- (4) A relevant chief executive may, in writing, delegate the powers and functions of the relevant chief executive under that Part to any of the following:
  - (a) an SES employee, or an acting SES employee, in the Department;
  - (b) an officer of the Navy who holds the rank of Commodore or a higher rank;

- (c) an officer of the Army who holds the rank of Brigadier or a higher rank;
  - (d) an officer of the Air Force who holds the rank of Air Commodore or a higher rank.
- (5) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the relevant chief executive.

*Additional matters to be included in infringement notices*

- (6) In addition to the matters included in subsection 104(1) of the Regulatory Powers Act, an infringement notice given in relation to an alleged contravention of an offence specified for the purposes of subsection (1) of this section must also state who is the relevant chief executive in relation to the offence.

Note: The relevant chief executive may be the Secretary or the Chief of the Defence Force (see subsection (3)).

**10 Paragraph 116ZD(2)(r)**

Repeal the paragraph, substitute:

- (r) specifying strict liability offences against the by-laws for the purposes of subsection 116ZCA(1);

**11 Paragraph 116ZD(2)(za)**

Omit “5 penalty units”, substitute “10 penalty units”.

## Part 4—Contingent amendments

### Division 1—Inserting definition

#### *Defence Act 1903*

##### **12 Subsection 4(1)**

Insert:

*Regulatory Powers Act* means the *Regulatory Powers (Standard Provisions) Act 2014*.

### Division 2—Repealing definition

#### *Defence Act 1903*

##### **13 Subsection 4(1) (the definition of *Regulatory Powers Act* inserted by item 1 of Schedule 5 to the *Regulatory Powers (Standardisation Reform) Act 2017*)**

Repeal the definition.

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[Minister's second reading speech made in—  
House of Representatives on 14 September 2017  
Senate on 18 October 2017]

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(198/17)