

# Defence (Visiting Forces) Amendment Regulations 1999 (No. 1) 1999 No. 218

EXPLANATORY STATEMENT

STATUTORY RULES 1999 No. 218

Issued by the Authority of the Attorney-General

*Defence (Visiting Forces) Act 1963*

Defence (Visiting Forces) Amendment Regulations 1999 (No. 1)

Section 30 of the *Defence (Visiting Forces) Act 1963* (the Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Act to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act. Paragraph 6(1)(a) of the Act provides that regulations may declare that the Act applies to a Commonwealth country. Paragraph 6(1)(b) of the Act provides that non-Commonwealth countries may be declared a country to which the Act applies.

The Act governs the legal status of foreign military forces whilst in Australia. The Act allows the military authorities of visiting foreign forces to apply their military law to their personnel whilst they are in Australia, and provides for a corresponding suspension of Australian jurisdiction over such personnel in certain circumstances. The Act, applied to foreign countries by way of the *Defence (Visiting Forces) Regulations* (the Regulations), is the enabling mechanism for the domestic implementation of Status of Forces Agreements (SOFAs) between Australia and various countries.

Currently there are eight Commonwealth countries listed in the Regulations: Brunei Darussalam, Canada, Malaysia, New Zealand, Papua New Guinea, Singapore, Tonga and the United Kingdom of Great Britain and Northern Ireland. There are six other countries listed: Cambodia, Fiji, Indonesia, the Philippines, Thailand and the United States of America.

The United Nations Security Council has passed a resolution under which Australia is to lead a multinational peacekeeping force to East Timor. For that purpose, the personnel of the participating nations are gathering in Darwin. However a number of these participating nations are not yet included in the Regulations.

It is therefore necessary to amend the Regulations to include the personnel of those nations which will be located in, or passing through, Australia and which are not already listed. The Department of Defence has advised that the following nations which are not currently listed have made a firm commitment to contribute to the peacekeeping force: Italy, France, Ireland, Brazil and Portugal. The following countries have indicated a willingness in principle to contribute: Pakistan, Zimbabwe, Egypt, Mozambique and Spain. The following countries are considering their position: Chile, Sweden, Norway, Sri Lanka, South Korea and Nepal. The listing of all of these nations in the Regulations will ensure that their personnel are covered by the arrangements.

Details of the Regulations are as follows:

**Regulation 1** names the amending Regulations.

**Regulation 2** provides that the amending Regulations commence on gazettal.

**Regulation 3** provides that Schedule 1 amends the Defence (Visiting Forces) Regulations.

In **Schedule 1, Item 1** provides that the Regulations shall be named the *Defence (Visiting Forces) Regulations 1963*. This accords with the current drafting practice of italicising the name and including the year of making in the name of the principal regulations.

**Item 2 of Schedule 1** omits the Commonwealth countries which are listed after Malaysia, and inserts in alphabetical order those Commonwealth countries which have indicated that they may contribute to the peacekeeping force. The legal effect is that the amended list now includes all of the Commonwealth countries as originally listed, plus those which may or will be participating in East Timor.

**Item 3 of Schedule 1** changes the full stop after the word "America" to become a semi colon, to enable the list of non-Commonwealth countries to be expanded.

**Item 4 of Schedule 1** inserts the names of those non-Commonwealth countries which have indicated that they may contribute to the peacekeeping force. The legal effect is that the amended list now includes all of the non-Commonwealth countries as originally listed, plus those which may or will be participating in East Timor.