

Australian War Memorial Amendment Regulations 2001 (No. 1) 2001 No. 229

EXPLANATORY STATEMENT

Statutory Rules 2001 No. 229

Issued by the Authority of the Minister for Veterans' Affairs

Australian War Memorial Act 1980

Australian War Memorial Amendment Regulations 2001 (No. 1)

Section 42 of the *Australian War Memorial Act 1980* (the Act) enables the Governor-General to make regulations prescribing matters that are 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. In particular, regulations may be made to control entry onto War Memorial premises, to impose charges for that entry and set penalties for offences committed on those premises.

The purpose of the Regulations is to:

- update outdated provisions in the *Australian War Memorial Regulations 1983* (Principal Regulations);
- increase charges for admission to the Australian War Memorial premises known as the Treloar Centre; and
- ensure that existing offences of strict liability continue as such after the introduction of the *Criminal Code* on 15 December 2001.

A number of provisions in the Principal Regulations were out-of-date. For example, penalties were expressed in financial terms instead of penalty units. The Regulations rectify this situation.

The former charges for admission to the Treloar Centre did not include a Goods and Services Tax (GST) meaning that the War Memorial was paying a GST amount that was not being passed on to members of the public who used the Centre. The Treloar Centre is a building operated by the Australian War Memorial at Mitchell, ACT and houses large war relics. It is not part of the main War Memorial building. Admission charges have been increased by, at the most, \$0.25.

The Criminal Code (the Code) is contained in a Schedule to the *Criminal Code Act 1995*. Its purpose is to codify the general principles of criminal responsibility under laws of the Commonwealth. It will apply on and after 15 December 2001.

The Code will provide that, unless otherwise specified in the relevant legislation, in order for an offence to be proved, an accused must not only intend to do an act but intend to do it with a guilty mind. An offence that merely requires an accused to do an act without a guilty mind is an offence of "strict liability".

The Code is not intended to interfere with the policy underlying existing offences meaning that if an offence is currently an offence of strict liability then it is to remain so after the introduction of the Code.

In order to ensure this, it was necessary, in the present case, for regulations to specify that the offences of strict liability in the Principal Regulations were to remain offences of strict liability after the introduction of the Criminal Code.

Details of each of the Regulations are set out in the attachment. The Regulations take effect on gazettal.

ATTACHMENT

Australian War Memorial Amendment Regulations 2001 (No. 1)

Regulation 1 refers to the name of the Regulations.

Regulation 2 provides for the Regulations to commence on gazettal.

Regulation 3 refers to the Schedule of the Regulations which lists the various amendments to the Principal Regulations.

Item [1] omits Regulation 7 of the Principal Regulations and substitutes new Regulation 7.

Essentially the new Regulation merely updates the former Regulation in terms of drafting style and legal concepts. For example, the references in former Regulation 7 to financial penalties have been replaced with references to penalty units. One penalty unit is equivalent to \$110.

The main effect of new Regulation 7 is to include the statement in subregulation 7(6) describing those offences under the Regulation that are to be offences of strict liability. This ensures that Regulation 7 is not affected by the *Criminal Code* when it is introduced. The *Criminal Code* will provide, among other things, that, in the absence of a contrary intention, offences in legislation are not offences of strict liability. Subregulation 7(6) sets out a contrary intention, meaning that the relevant offences may be established without the Prosecution needing to show the accused intended to do something wrong.

Regulation 7 is largely self-explanatory, however a number of terms require explanation:

The terms "Memorial building" and "Memorial land" are defined in Regulation 3 of the Principal Regulations.

"Council" means the Council of the Australian War Memorial and "Director" means the Director of the Australian War Memorial,

Item [2] replaces part of Regulation 8 of the Principal Regulations. Regulation 8 is an offence-provision in relation to the parking of motor-vehicles on Memorial land.

Subregulation 8(1) of the Principal Regulations enables a security officer to give "parking directions".

The Regulations merely modernised the drafting style of Regulation 8 of the Principal Regulations and replaced references to financial penalties with references to penalty units. One penalty unit is equivalent to \$110.

Item [3] increased the charge payable by a 15 year old visitor to the Treloar Centre (an adjunct of the Australian War Memorial) from \$3 to \$3.25. The purpose of this increase is to pass on the GST to visitors to the Centre. The Australian War Memorial must remit the GST to the Australian Tax Office in respect of the service it provides at the Treloar Centre.

People above 15 who are students or holders of pensioner or health concession cards will pay an entry charge of \$2.15 (see Item [4]).

Item [4] increased the charge payable by under- 15 year old visitors to the Treloar Centre and the charge payable by visitors not required to pay the \$3.25 charge referred to in Item [3], from \$2 to \$2.15.

Item [5] updates a reference in the Principal Regulations.

Some categories of visitors to the Treloar Centre are intended to be exempt from the entry charge. One such category is ex-service personnel who performed operational service in the Northern Territory or the Torres Strait Islands.

The Principal Regulations refer to this category by referring to the provision which applies to it in the *Veterans' Entitlements Act 1986* (VEA) but that provision was amended meaning the former reference in the Principal Regulations to the former provision in the VEA, was out-of-date.

Item [5] ensures the relevant reference in the Principal Regulations corresponds to the relevant reference in the VEA.