EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 5

Issued by the Authority of the Cabinet Secretary
Flags Act 1953
Flags (Australian Defence Force Ensign) Rules 2008

Section 7 of the Flags Act 1953 provides that the Governor-General may make, and cause to be published, rules for the guidance of persons in connexion with the flying or use of flags or ensigns referred to in, or appointed under, the Act.

The *Flags (Australian Defence Force Ensign) Rules 2000* were made by the Governor-General on 12 April, 2000 under section 7 of the *Flags Act 1953*. These rules related to the flying of the Australian Defence Force Ensign.

The rules articulated:
1. that the rule commenced on gazettal;
2. that the Australian Defence Force Ensign referred to the flag appointed to the Australian Defence Force ensign under section 5 of the *Flags Act 1953*; and
3. the precedence of the Australian Defence Force Ensign:
   "A person flying the Australian Defence Force Ensign together with the Australian White Ensign, the Royal Australian Air Force Ensign, or both of those ensigns must fly the Australian Defence Force Ensign in a way that shows it has precedence over each of those other ensigns."

Due to an administrative oversight, the *Flags (Australian Defence Force Ensign) Rules 2000* were not lodged in accordance with the requirements of the *Legislative Instruments Act 2003* to ensure they remained in force. Consequently, the *Flags (Australian Defence Force Ensign) Rules 2000* were automatically repealed on 1 October 2006.

The *Flags (Australian Defence Force Ensign) Rules 2008* replace the original rules to ensure that the Australian Defence Force Ensign retains precedence over the Australian White Ensign and the Royal Australian Air Force Ensign. The rules have effect from 1 October 2006.

Due to the instrument being machinery in nature consultation was not necessary.

The retrospective nature of the rules is not considered to affect the rights of, or liabilities imposed on, any individual to the individual's disadvantage.