

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 26

Issued by the authority of the Attorney-General

Defence (Visiting Forces) Act 1963

Defence (Visiting Forces) Amendment Regulation 2012 (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.

Section 6 of the Act provides that the regulations may declare countries to be countries to which the Act applies.

The Act governs jurisdiction over foreign military forces while in Australia. This includes regulating the ability of military authorities of visiting forces to apply their military law to their personnel while they are in Australia and providing for the suspension of Australian jurisdiction over visiting force members in certain circumstances.

The *Defence (Visiting Forces) Regulations 1963* (the Principal Regulations) detail a number of matters that are essential for the operation of the Act, including declaring 44 countries to be countries to which the Act applies. The effect of applying the Act to a particular country is to establish the jurisdictional arrangements between Australia and the visiting defence force.

Since the Principal Regulations were last amended in 2003, Australia has entered into, or is looking to enter into, agreements or cooperative relationships with the defence forces of six additional countries. The Regulation adds India, Iraq, Japan, the Netherlands, Qatar and the United Arab Emirates to the list of countries to which the Act applies.

The Regulation also makes minor amendments to modernise the drafting of the Principal Regulations. For example, the Regulation moves the lists of countries that are countries to which the Act applies into schedules to improve readability. Aside from the addition of the six specified countries, the Regulation does not make any substantive changes to the Principal Regulations. The amendments to improve clarity and readability of the Regulations would only affect the style of the provisions. In accordance with section 15AC of the Acts Interpretation Act 1901, the changes to style do not affect the meaning of any provision.

The Regulation commenced on the day after they were registered on the Federal Register of Legislative Instruments.

Consultation outside the Australian Government was not undertaken for this legislative instrument as it relates to criminal justice and law enforcement matters. The legislative arrangement does not have a direct, or substantial indirect, effect on business and does not restrict competition.

The Regulation 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*.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.