

EXPLANATORY STATEMENT

Select Legislative Instrument 2013 No. 112

Issued by the authority of the Parliamentary Secretary for Defence

Subject- *Defence Act 1903*
 Naval Defence Act 1910
 Air Force Act 1923

Cadet Forces Regulation 2013

Subsection 124(1) of the *Defence Act 1903* (the Act) , subsection 45(1) of the *Naval Defence Act 1910* and section 9 of the *Air Force Act 1923* (the relevant Acts) provide, in part, that the Governor-General may make regulations not inconsistent with the relevant Acts prescribing all matters which by the relevant Acts are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for securing the good government of the Defence Force , or for carrying out or giving effect to the relevant Acts. Subsection 62(7) of the *Defence Act 1903*, subsection 38(7) of the *Naval Defence Act 1910* and subsection 8(7) of the *Air Force Act 1923* prescribe, in part, matters for the organisation and regulation of Australian Defence Force Cadets (ADF cadets).

The ADF Cadets is a personal development program for young people, conducted by the Australian Defence Force in cooperation with the community, which benefits the nation by developing an individual's capacity to contribute to society, fostering an interest in Defence Force careers, and developing ongoing support for Defence. The Regulation provides a number of assessments to ensure cadet members are suitable in working with children and voluntary community activities. Cadet members are not members of the Australian Defence Force.

The existing *Cadet Forces Regulations 1977* are to be repealed by this Regulation.

The Regulation aims to ensure best practice child safety measures and the highest standards of safety for minors participating in the ADF cadets program. The Regulation would have all appointments and re-appointments for officers and instructors of cadets satisfy assessment for suitability under the Working With Children Check or National Police Checks, as stipulated by the State or Territory where the unit to which they will be appointed is located. The Regulation would also provide for the ongoing supervision and assessment of officers and instructors of cadets to ensure that they are suitable to work with children and any relevant qualifications are current, for example first aid and Work Health and Safety training.

The Regulation emphasises that cadets are a voluntary community organisation in partnership with the Department of Defence and aimed at personal development programs for young people which are provided administratively in policy and local manuals. The effect of the Regulation would be to ensure that the service chief or delegate will be responsible for the detail of these administrative aspects where they are not covered in the Regulation.

Details of the Regulation are outlined in the Attachment.

The Act specifies no condition that must be met before the power to make the Regulation may be exercised.

The Regulation would be a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

The Regulation would commence on the day after it is registered on the Federal Register of Legislative Instruments.

Authority: This Regulation is made under the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Act 1923*.

Consultation- In developing these amendments, consultation was undertaken within Defence and included:

- Head Defence Legal and Defence Legal division,
- Vice Chief Defence Force, Head Cadets Reserves Employer Support Division, Head People Policy and Culture.

External consultation was undertaken with:

- Attorney General's Department (Australian Government Solicitor and Legislative Scrutiny Unit);
- Office Parliamentary Counsel;
- Prime Minister and Cabinet (Executive Council Secretariat) and
- Department of Finance and Deregulation (Office of Best Practice advised that a Regulation Impact Statement was not required ID 14793).

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Cadet Forces Regulation 2013

This Legislative Instrument 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*.

Overview of the Instrument

The Australian Defence Force Cadets (ADF Cadets) is a personal development program for young people, conducted by the Australian Defence Force in cooperation with the community, which benefits the nation by developing an individual's capacity to contribute to society, fostering an interest in Defence Force careers, and developing ongoing support for Defence. The Regulation provides a number of assessments to ensure cadet members are suitable in working with children and voluntary community activities. Cadet members are not members of the Australian Defence Force.

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Human rights implications

The Legislative Instrument engages and promotes the following human rights in relation to the **Convention on the Rights of the Child (CRC)**:

Article 3 of the CRC, which states that all actions concerning children, the best interests of the child shall be the primary consideration.

Article 34 of the CRC, which protects the child from all forms of sexual exploitation and sexual abuse.

Article 36 of the CRC, which protects the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

The legitimate objective is promoting the rights of children participating in the ADF cadets. This is achieved as stated in the Legislative Instrument which outlines a

number of conditions that needs to be met before officers and instructors of cadets are appointed including:

- assessing the persons previous experience and/or aptitude in youth leadership,
- assessing suitability to supervise cadet activities,
- assessing suitability to work with children and
- assessing suitability based on background and mandatory working with children checks or police checks who will advise of suitability.

This objective is maintained with the re-appointments of officers and instructors of cadets where a new background and working with children or police checks is conducted as part of the suitability re-assessment.

These actions are aimed at achieving the best interests of the child and protection of children from exploitation while participating in ADF cadet activities.

The Legislative Instrument engages and limits the following human right in relation to the **International Covenant on Civil and Political Rights (ICCPR)**:

Article 26 of the ICCPR, equality and non discrimination to all individuals without distinction of any kind, including 'other status'.

Not all treatment that differs among individuals or groups on other status grounds will amount to prohibited discrimination. Differential treatment will be justifiable provided that it is aimed at achieving a purpose which is legitimate, based on reasonable and objective criteria, and proportionate to the aim to be achieved.

This Instrument will allow a criminal record or assessment from the working with children checks to be taken into account when assessing officers and instructors of cadet's suitability for working with children. To the extent that consideration of a criminal record or adverse children check may be considered to constitute different treatment is for a legitimate objective, based on reasonable and objective criteria, and is proportionate to the objective to be achieved.

The legitimate objective is promoting the rights of children participating in the ADF cadets.

There is a rational connection between the limitation and the objective. The addition of the suite of working with children provisions including a police or mandatory working with children check provide a full assessment for decision-makers to assure the overall quality, conduct, character of instructors and officers of cadets.

Defence and the community have expectations that an instructor or officer of cadets working with children/ cadets is of good character and the best interest of the child is paramount. There are grievance handling processes and complaint handling mechanisms in place to ensure that powers are sufficiently circumscribed to prevent misuse. The effect of the Regulation would be to ensure that the service chief or delegate will be responsible for the detail of these administrative aspects where they are not covered in the Regulation. In all places the process of natural justice and individual merit assessment are applicable.

The Legislative Instrument engages and may limit the following human right in relation to the **International Covenant on Civil and Political Rights (ICCPR)**:

Article 17 of the ICCPR, Privacy and Reputation

The legitimate objective is promoting the rights of children participating in the ADF cadets.

There is a rational connection between the limitation and the objective. The addition of the suite of working with children provisions including a police or mandatory working with children check provide a full assessment for decision-makers to assure the overall quality, conduct, character of instructors and officers of cadets.

The main limiting consequence is that the Regulation is subject to common law including privacy and spent conviction legislation. The Regulation is general in nature and subordinate legislation to these Commonwealth laws.

There are numerous safeguards against arbitrary interference including the processing of personal information, standards for collection, storage, security, use and disclosure. Personnel involved in the collection and processing of criminal records need to be familiar with the existing security guidelines relating to personal information. Data is stored on restricted computer network and access limited to specific work areas.

A person will provide consent to undergo a Working with Children Check or police check prior to working with cadets and thereafter on an ongoing basis as required by their State/Territory requirement. This is limiting any arbitrary interference on the use of personal information.

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Conclusion

This Legislative Instrument is compatible with human rights because it advances the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

ATTACHMENT

Details of the *Cadet Forces Regulation 2013*

Part 1 -Preliminary

Regulation 1 – Name of Regulation

This regulation provides that the title of the Regulation is the *Cadet Forces Regulation 2013*

Regulation 2 – Commencement

This regulation commences on the day after it is registered on the Federal Register of Legislative Instruments.

Regulation 3 Authority

This regulation is made under the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Act 1923*.

Regulation 4- Definitions

This regulation provides definitions used within the Regulation.

Part 2- Organisation of a cadet force and service in a cadet force

Regulation 5 –Organisation

This regulation states that the service chief is responsible for the administration of the cadet organisation and undertakes particular measures in exercising responsibilities. This is subject to direction by the Minister or Chief of Defence Force for tri-service policy.

Regulation 6-Cadets

This regulation states the primary Acts for cadets, minimum age requirements and voluntary status of cadets.

Regulation 7-Officers and Instructors

This regulation states the primary Acts for officer and instructor of cadets and appointments as volunteers on an ongoing basis or specified period. The appointment of officers and instructors of cadets states a minimum age and suitability for working with children including assessment of National Police Checks or mandatory Working with Children Checks where applicable. Reappointment as volunteer officers and instructors of cadets includes continued suitability for working with children and reassessment of National Police Checks or mandatory Working with Children Checks where applicable.

Regulation 8- Request for Discharge

This regulation states that a request to discharge should be in writing and the date of effect is the day after received or a later day if specified.

Regulation 9-Other arrangements for members

This regulation states that the service chief may suspend or terminate members of the cadet force. This decision making is subject to procedural fairness and natural justice considerations. The service chief determines the uniforms and circumstances of wearing uniforms for members.

Regulation 10- Ongoing supervision and assessment

This regulation states the service chief must make arrangements to ensure that all members are suitable to work with children and all relevant information about working with children is made available to all members. The service chief must make arrangements for the assessment of suitability for officers and instructors of cadets to control training activities of cadets; identify members' qualifications or skills and assess for currency and relevance. The service chief ensures the cadet force is administered efficiently and the conduct of the cadet force is satisfactory.

Part 3- Offences and related matters

Regulation 11-Liquor

This regulation states the sale or supply of liquor to a uniformed member of the Air Force Cadets under the age of 18 years is an offence. Navy and Army Cadets have similar provisions in their primary Acts.

Regulation 12- Laws relating to equipment

This regulation states a member is not required to have a licence under State or Territory requirements for use, possession or transport of a Commonwealth item or equipment when used as part of their duties. This does not apply to vehicle or equipment operation. The intent is to cover firearms, ammunition, ceremonial swords and similar items which are utilised in the member's cadet activities.

Part 4- Miscellaneous

Regulation 13- Delegation

The service chief may delegate the powers and functions under these regulations except the power of delegation. These delegation directions may be in writing.

Part 5- Transitional provisions

Regulation 14- Arrangements relating to the Cadet Force Regulation 2013

This regulation repeals the *Cadet Forces Regulations 1977*. The new regulations replace the previous regulations and provide transitional arrangements for members to continue.