

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument No. 116, 2014**

Issued by the authority of the Attorney-General

*Defence (Visiting Forces) Act 1963*

#### ***Defence (Visiting Forces) Amendment (Privileges and Immunities) Regulation 2014***

Section 30 of the *Defence (Visiting Forces) Act 1963* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The Act makes provision with respect to Naval, Military and Air Forces of other countries visiting Australia.

Paragraph 16(2)(b) of the Act provides that regulations may confer on a visiting force, its members, its service tribunals, persons in any way connected with a visiting force or property used or to be used for the purposes of a visiting force any privilege or immunity specified in the regulations, being a privilege or immunity that would be enjoyed by, or would be capable of being conferred on, the force, its members, its service tribunals, such persons or such property if the force were a part of the Defence Force.

Australian and United States (US) officials recently concluded formal negotiations for the *Force Posture Agreement between the Government of Australia and the Government of the United States of America* (the Agreement). First announced in 2011, the force posture initiatives currently comprise annual rotational US Marine Corps (USMC) deployments and enhanced aircraft cooperation activities with the US Air Force (USAF) in northern Australia.

The Agreement, in addition to the *Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America concerning the Status of United States Forces in Australia* (US SOFA), and other relevant agreements and arrangements, governs US force posture initiatives in Australia. The US SOFA is implemented in Australian domestic law by the Act and the *Defence (Visiting Forces) Regulations 1963* (the Principal Regulations).

The *Defence (Visiting Forces) Amendment (Privileges and Immunities) Regulation 2014* (the Regulation) amends the Principal Regulations to implement licensing recognitions under the proposed Agreement and address a minor gap in Australia's obligations arising under the US SOFA.

The Regulation also addresses a similar gap in Australia's obligations under its SOFAs with Papua New Guinea and Singapore.

#### **Part 1 – Immunities for members of civilian components of certain visiting forces**

Article 14(1) of the US SOFA requires Australian authorities to recognise driving permits and licences issued by US authorities to 'members of the US Forces or the civilian component'. Australia's licensing obligations under the US SOFA was implemented domestically by the previous Regulation 6(2) of the Principal Regulations. However, due to the definitions of 'visiting force' and 'forces' in the Act, the previous domestic legal framework did not extend to the civilian component of the US visiting force. The Regulation (new subregulation 6(3)) extends the drivers licence recognition to the civilian component of the US visiting force, thus ensuring that Australia's obligations under the US SOFA is properly implemented.

Similarly, while Australia's SOFAs with Papua New Guinea and Singapore also extend drivers licence recognition to the civilian component of visiting forces from those countries, this recognition had not been implemented in Australia's domestic legal framework. The Regulation (new subregulation 6(3)) extends the drivers licence recognition to the civilian component of Papua New Guinea and Singapore visiting forces, thus ensuring that Australia's obligations under its SOFAs with Papua New Guinea and Singapore are properly implemented.

Part 1 also amends subregulation 6(2) with a new subregulation to the same effect so that it is consistent with the language used in the Act and with new subregulations 6(3) to 6(5).

#### Part 2 – Immunities for use of hired and leased vehicles

Under Article 14 of the US SOFA, Australia accepts as valid a US licence or permit held by members of US forces for the purpose of driving a 'military vehicle' in Australia. Through an immunity conferred on visiting forces pursuant to the previous Regulation 6(2) of the Principal Regulations, members of US forces could drive or operate any vehicle 'belonging to the US' without the need for an Australian driver's licence or relevant permission. This did not extend to hired or leased vehicles.

Given the rotational nature of the US force posture initiatives in northern Australia, the US is likely to make extensive use of hired and leased vehicles for routine transportation. The Agreement thus extends the recognition of US drivers' licences to the operation of vehicles on exclusive hire or lease to the US Government by members of the US forces and the civilian component (i.e. US Civilian officials). The Regulation (new subregulation 6(4)) implements this licensing recognition under the Agreement.

Part 1 of the Regulation commenced on the day after it was registered on the Federal Register of Legislative Instruments. As Part 2 of the Regulation was made for the purpose of implementing an obligation under the Agreement, it will commence on the day the Agreement enters into force in Australia (or the day after the Regulation is registered, whichever is later). Once the Agreement enters into force, it will be publicly available on the Australian Treaties Library website.

Consultation outside the Australian Government was not undertaken for this legislative instrument as it relates to defence matters.

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not necessary for any of these amendments.

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

## **STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

### ***Defence (Visiting Forces) Amendment (Privileges and Immunities) Regulation 2014***

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 Legislative Instrument**

The Defence (Visiting Forces) Amendment (Privileges and Immunities) Regulation 2014 (the Regulation) amends the Defence (Visiting Forces) Regulations 1963 (the Principal Regulations) to implement driver license recognitions under the *Force Posture Agreement between the Government of Australia and the Government of the United States of America* (the Agreement). The Agreement, in addition to the *Agreement between the Government of the Commonwealth of Australia and the Government of the United States of America concerning the Status of United States Forces in Australia* (US SOFA) and other relevant agreements and arrangements, will govern US force posture initiatives in Australia.

Under Article 14 of the US SOFA, Australia accepts as valid a US drivers licence or permit held by members of US forces for the purpose of driving a ‘military vehicle’ in Australia. Through an immunity conferred on visiting forces pursuant to the Principal Regulations, members of US forces may drive or operate any vehicle ‘belonging to the US’ without the need for an Australian driver’s licence or relevant permission. This does not extend to hired or leased vehicles.

Given the rotational nature of the US force posture initiatives in northern Australia, the US is likely to make extensive use of hired or leased vehicles. The Agreement thus extends the recognition of US drivers licences to the operation of vehicles on exclusive hire or lease to the US Government by members of the US forces and the civilian component (i.e. US Civilian officials). The Regulation implements this licensing recognition under the Agreement.

The Regulation also addresses a minor gap in Australia’s obligations under SOFA agreements with the US, Papua New Guinea and Singapore. Under Australia’s SOFA agreements with the US, PNG and Singapore, Australia is required to accept as valid a driving licence issued by those countries to members of visiting forces as well as the civilian components attached to a visiting force when they are driving official vehicles. The domestic implementation of these obligations in the Principal Regulations only extends drivers licence recognition to members of a visiting force, and not to the civilian component attached to that visiting force. The Regulation would recognise drivers license for civilian components of visiting forces from these countries thus ensuring that Australia’s obligations under its SOFAs with these countries are properly implemented.

#### **Human Rights Implications**

This Regulation does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Regulation is compatible with human rights, as it does not raise any human rights issues.

**Senator the Hon George Brandis QC**  
**Attorney-General**