

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Immigration and Border Protection

Australian Border Force Act 2015

Australian Border Force (Oath and Affirmation) Rule 2015

Section 58 of the *Australian Border Force Act 2015* (the Act) provides, in part, that the Minister may make rules, not inconsistent with the Act, prescribing all matters which are required or permitted by the Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the Act.

Purpose

The Act provides the legislative framework for the Australian Border Force, a single frontline operational border control and enforcement entity, that will be formed within the Department of Immigration and Border Protection (the Department) from 1 July 2015. This follows the Government decision to integrate the Department and the Australian Customs and Border Protection Service (ACBPS) into a single department of State.

Section 13 of the Act requires the Australian Border Force Commissioner to make and subscribe an oath or affirmation before the Minister before discharging the duties of his or her office. Section 24 of the Act also enables the Australian Border Force Commissioner to request that an Immigration and Border Protection worker in the Australian Border Force make and subscribe an oath or affirmation before the Australian Border Force Commissioner or a person authorised by the Australian Border Force Commissioner.

The oath or affirmation sets a clear up-front marker about the standards of professionalism and conduct expected of the Australian Border Force Commissioner and officers of the Australian Border Force. By making and subscribing an oath or affirmation, the Australian Border Force Commissioner and officers of the Australian Border Force would subscribe to behaviour that upholds public service professionalism and ethics, and the reputation of the Australian Border Force.

The Act provides that the form of the oath or affirmation is to be prescribed in rules. The purpose of the *Australian Border Force (Oath and Affirmation) Rule 2015* (the Rule) is to prescribe the form of the oath and affirmation.

Details of the Rule are set out in the [Attachment](#).

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

Timing

The Rule commences on 1 July 2015.

Consultation

The Australian Public Service Commission and the Australian Government Solicitor were consulted in the development of the Rule.

DETAILS OF THE *AUSTRALIAN BORDER FORCE (OATH AND AFFIRMATION) RULE 2015*

Section 1 – Name of Rule

This section provides that the title of the Rule is the *Australian Border Force (Oath and Affirmation) Rule 2015*.

Section 2 – Commencement

This section provides that the Rule commences on 1 July 2015.

Section 3 – Authority

Section 3 provides that the authority to make the Rule is the *Australian Border Force Act 2015*.

Section 4 – Definitions

Section 4 inserts two definitions for the purposes of the Rule. These are:

Act means the *Australian Border Force Act 2015*.

officer of the Australian Border Force means an Immigration and Border Protection worker in the Australian Border Force.

Section 5 – Oaths and affirmations

Section 5 provides that, for the purposes of subsections 13(1) and 24(1) of the *Australian Border Force Act 2015*, the oath in the form set out in Form 1 of Schedule 1 and the affirmation in the form set out in Form 2 of Schedule 1 are prescribed.

Subsection 13(1) of the Act requires the Australian Border Force Commissioner to make and subscribe an oath or affirmation, in accordance with the form prescribed by the rules, before the Minister before discharging the duties of his or her office.

Subsection 24(1) of the Act also enables the Australian Border Force Commissioner to request that an Immigration and Border Protection worker in the Australian Border Force make and subscribe an oath or affirmation, in accordance with the form prescribed by the rules, before the Australian Border Force Commissioner or a person authorised by the Australian Border Force Commissioner.

Schedule 1 – Form of Oath and Affirmation

Form 1 – Oath for Australian Border Force Commissioner or officer of the Australian Border Force

Form 1 sets out the form of the oath for the Australian Border Force Commissioner or an officer of the Australian Border Force.

Form 2 – Affirmation for Australian Border Force Commissioner or officer of the Australian Border Force

Form 2 sets out the form of the affirmation for the Australian Border Force Commissioner or an officer of the Australian Border Force.

Statement of Compatibility with Human Rights

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

Australian Border Force (Oath and Affirmation) Rule 2015

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Rule

The *Australian Border Force (Oath and Affirmation) Rule 2015* (the Rule) prescribes the form of the oath or affirmation for the Australian Border Force Commissioner and Immigration and Border Protection workers in the Australian Border Force.

Section 13 of the *Australian Border Force Act 2015* (the Act) requires the Australian Border Force Commissioner to make and subscribe an oath or affirmation before the Minister before discharging the duties of his or her office.

Section 24 of the Act also enables the Australian Border Force Commissioner to request that an Immigration and Border Protection worker in the Australian Border Force make and subscribe an oath or affirmation before the Australian Border Force Commissioner or an authorised person. The Act provides that the form of the oath or affirmation is to be prescribed by rules.

The Rule commences on 1 July 2015.

Human Rights implications

The Rule engages the following human rights:

Right to freedom of thought, conscience and religion

Article 18 of the *International Covenant on Civil and Political Rights* (ICCPR) contains the right to freedom of thought, conscience and religion, which protects religious beliefs, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief. This Rule promotes this human right by giving workers a choice between making and subscribing an oath, consistent with the worker's religion, or making and subscribing an affirmation.

Right to work and rights at work

The protection of workers' rights in the workplace is contained within articles 6 and 7 of the *International Covenant on Economic Social and Cultural Rights (ICESCR)*. Rights at work include the enjoyment of just and favourable conditions of work. The oath or affirmation will require certain employees to subscribe to a level of professionalism and ethics.

The oath or affirmation sets an upfront marker that the Government and the public expect the highest standards of professionalism and integrity for the office of the Australian Border Force Commissioner and officers of the Australian Border Force.

The Australian Border Force Commissioner will lead a professional and agile team of highly trained officers tasked with protecting and managing Australia's borders, and who will make decisions that affect the safety, rights and freedoms of individuals as well as trade and commerce in Australia. They will hold a privileged place at the border and in the community, with access to secure environments and law enforcement databases. They will also exercise significant powers under the *Customs Act 1901*, *Migration Act 1958* and *Maritime Powers Act 2013* and other Commonwealth law, such as detention, arrest, boarding a vessel, entry, search, questioning, seizure, use of force, and removal from Australia.

The community and government trust officers of the Australian Border Force to exercise these powers reasonably, lawfully, impartially and professionally. The oath or affirmation enhances government and public confidence in the Australian Border Force Commissioner and officers of the Australian Border Force, as well as the confidence of other partners including intelligence organisations and foreign governments.

The Act provides that conduct that is inconsistent with the oath or affirmation is considered a breach of law and the APS Code of Conduct, and may attract sanctions for breach of the Code of Conduct under section 15 of the *Public Service Act 1999*. As such, breaches of the oath or affirmation will be properly investigated through established Code of Conduct investigation procedures that uphold the requirements of natural justice and procedural fairness.

Right to take part in public affairs and elections

Legislation that regulates eligibility for employment in the public service or appointment to public office must be considered under article 25 of the ICCPR which contains the right to take part in public affairs and elections. Subparagraph (c) in article 25 of the ICCPR requires that citizens have the opportunity, in general terms, to access and equality for public service positions.

The requirement to undertake an oath or affirmation for some positions within the Australian Border Force may limit eligibility for these positions. However, this requirement will be implemented in a manner consistent with the functions of the role and with respect to the relevant enforcement powers the employee will be required to exercise. Requiring employees responsible for exercising significant enforcement powers to subscribe to behaviour that upholds public service professionalism and ethics therefore does not represent an unreasonable qualification of the right to take part in public affairs and elections.

Conclusion

This legislative instrument is compatible with human rights because it is consistent with Australia's human rights obligations and, to the extent that it may also limit human rights, those limitations are reasonable, necessary and proportionate.

Minister for Immigration and Border Protection