

EXPLANATORY STATEMENT

DEFENCE (SECURITY AUTHORISED MEMBERS- MILITARY WORKING DOG HANDLERS: TRAINING AND QUALIFICATION REQUIREMENTS) DETERMINATION 2015

Defence Act 1903

GENERAL SUMMARY

Introduction

Part VIA of the *Defence Act 1903* (the Act) allows for certain powers that may be exercised by three identified classes of persons who will perform a security role at Defence Premises, namely contracted Defence security guards, Defence security screening employees and security authorised members of the Defence Force. Collectively these categories of persons are referred to as Defence security officials. The Act also allows that different training and qualification requirements may apply to different kinds of Security Authorised Members of the Defence Force. This instrument deals with Military Working Dog Handlers, a kind of security authorised member of the Defence Force; who are authorised to use a dog to assist with performing a function or exercising a power under the Act.

Legal authority for instrument

Subsection 71C (4) of the Act provides that the Minister must, by legislative instrument, determine the training and qualification requirements for security authorised members of the Defence Force.

Subsection 71F (2) of the Act provides that the Minister may, by writing, delegate the Minister's power under subsection 71C (4) to:

- (a) an officer of the Army who holds the rank of Brigadier or a higher rank; or
- (b) an officer of the Navy who holds the rank of Commodore or a higher rank; or;
- (c) an officer of the Air Force who holds the rank of Air Commodore or a higher rank.

The Minister delegated this power for the training and qualification requirements for military working dog handlers to the Director General Capability Planning – Air Force, an Air Commodore ranked position, on 30 April 2012.

Reasons for making the instrument

This instrument will bring into effect an important safeguard associated with the exercise of powers under the Act. It will ensure that military working dog handlers exercise their powers appropriately and do not trespass unduly on personal rights and liberties when required to perform security functions on Defence premises.

Likely impact and effect

Visitors, contractors, ADF members and Defence employees may be subject to consensual identification and search actions on entry to Defence premises, or consensual and non-consensual identification actions on exit from, or at other locations on, Defence premises by Military Working Dog Handlers. Under Defence security policy, persons with diplomatic credentials who are accompanied by a Defence Force member or Defence civilian employee are exempt from the statutory identification search and seizure regime. Civilian law enforcement officers (including Australian Border Force Officers); emergency service personnel and other Commonwealth government officials (such as COMCARE inspectors) are also provided with a limited exemption under Departmental policy when they are undertaking their statutory functions on Defence premises.

The Department intends to implement a number of administrative measures to ensure that persons entering Defence premises are aware of the requirements of the identification search and seizure regime and the obligations and consequences arising from it.

Given the diverse nature and composition of Defence premises, the definition of which includes movable assets such as aircraft, vessels and vehicles, the selection and implementation of these measures will be tailored to the particular circumstances of each Defence premise. Measures will include:

- a) prominently displaying signs at the entrance to Defence premises notifying people that they, their carried items and vehicles may be subject to consensual and non-consensual searches;
- b) conducting a comprehensive awareness campaign, prior to the introduction of the Act's measures, to ensure all Defence personnel and contractors are aware of the Act's provisions and their rights and responsibilities in relation to consensual and non-consensual searches;
- c) incorporating appropriate advice on the Act's provisions in recruitment material for all advertised Defence vacancies and tenders to ensure prospective employees and contractors are aware of Defence's expectations and security requirements;
- d) addressing the Act's provisions during staff and contractor induction training and in regular, mandatory security awareness training; and
- e) requiring Defence Force members and Defence civilian employees who are hosting or escorting visitors on Defence premises to notify visitors of search requirements.

Consultation

The Office of Best Practice Regulation (OBPR) in the Department of Finance and Deregulation was consulted on the proposed legislative amendments and, on 19 Apr 2010, agreed that the amendments would have no to low regulatory impact on business and individuals and that no further regulatory impact analysis was required (OBPR Letter 11359 refers).

Defence gave a commitment to Parliament that the Australian Federal Police (AFP) would be consulted to assist in identifying the appropriate training and qualification requirements for the identification search and seizure regime. Consultation with the AFP has been undertaken throughout the development of the training regime. The AFP has been represented at trials, training workshops and working groups.

Defence consulted union representatives on a number of occasions during the development of the Act and intends to provide further briefings through Defence's National Workplace Relations Committee as the statutory search regime is implemented.

Details of the instrument are outlined in Attachment 1.

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

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

The instrument commences on the day after registration.

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PRELIMINARY PROVISIONS

Section 1- Name

Names the Determination, *Defence (Security Authorised Members – Military Working Dog Handlers: Training and Qualification Requirements) Determination 2015*.

Section 2- Commencement

This Determination commences on the day after it is registered.

Section 3-Authority

This item refers to subsection 71C(4) of the *Defence Act 1903* and provides the legislative authority to determine the training and qualification requirements for a Military Working Dog Handler, a kind of security authorised member of the Defence Force, in a legislative instrument.

Section 4- Definitions

This section contains definitions relevant to this Determination.

TRAINING AND QUALIFICATION PROVISIONS

Section 5 Training and qualification requirements

Section 5(1) - sets out the training and qualification requirements.

Section 5(2) – Identification and search warden training and qualification

This section provides that the person must have completed the training and qualification requirements for a Security Authorised Member of the Defence Force- Identification and Search Warden. This ensures that the person is trained in the exercise of their powers as a special defence security official under the *Defence Act 1903*.

Section 5(3) – Military working dog handler training

This section provides that a person employing a military working dog must have successfully completed training to:

- conduct patrols with a military working dog utilising the dogs detection senses
- challenge and apprehend intruders using a military working dog, and
- train a dog to a military working dog standard.

To ensure that both the person and the military working dog are trained and assessed to escalate and de-escalate the use of a military working dog as a use of force option, the military working dog team must have been assessed as proficient at the Operational Level of Capability.

Section 5(4) – Explosive detector dog handler training

This section provides that a person employing an explosive detector dog (EDD) must be drawn from the Air Force Security mustering, and have successfully completed training to:

- handle a dog to detect Improvised Explosive Devices (IED), explosives, ammunition and firearms;
- be unit authorised to handle EDD training aids; and
- develop the capability to direct and control an EDD in an off-lead search at distance.

All EDD must have successfully completed either the Australian Customs Service (ACS) Explosive Detector Dog (EDD) Course, United States Air Force (USAF) Specialised Search Dog (SSD) Course, or the Royal Australian Air Force (RAAF) EDD course. The ACS EDD course was undertaken by 12 RAAF handlers between 2006 and 2011. The USAF SDD course was first undertaken by RAAF EDD handlers in 2011 and is the current training and qualification pathway for these members. Both courses train EDD handlers in the skills required to conduct on-lead dog searches or off-lead dog searches under the directional control of a handler at distance.

The RAAF course is under development, and will share many of the same course methodologies and techniques as used in the ACS EDD and USAF SDD courses. The content of the RAAF course includes topics such as:

- safety;
- explosives;
- first aid;
- equipment and maintenance;
- obedience and principles of learning;
- utilisation of EDD;
- EDD searches; and
- EDD training.

Section 5(5) – Refresher training

This item provides that Military Working Dog Handlers undertake training approved by the Minister or their delegate designed to maintain and update their skills and knowledge regarding the organisational policies, guidelines and procedures relating to the statutory search regime. This training is to be undertaken every twelve months from the completion of their last training.

Section 5(6) – Security clearance

Defence security policy mandates the security clearance requirements for Defence Force members.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

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This 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 instrument identifies the training and qualification requirements for Military Working Dog Handlers, a kind of Security Authorised Member of the Defence Force, authorised to exercise the consensual and non-consensual identification, search, seizure and related powers under the *Defence Act 1903, Part VIA*.

Human rights implications

This instrument engages the following human rights:

- **The right to work- includes technical and vocational guidance and training programs, policies and techniques to achieve development and employment under conditions safeguarding individual freedom. Article 6(2) of the International Covenant on Economic, Social and Cultural Rights (ICESCR);**

This instrument will engage and promote vocational guidance and training as it sets out formal training and qualification requirements for Military Working Dog Handlers. This instrument requires a person to meet a set of relevant training and qualification preconditions in order to be eligible for appointment as a Military Working Dog Handler. It will ensure that Military Working Dog Handlers exercise their powers appropriately and do not trespass unduly on personal rights and liberties when undertaking security functions on Defence premises. As such it will limit the right to work by setting out preconditions on who can exercise the powers of a Military Working Dog Handler.

There are a number of safeguards in place in relation to the exercise of these powers, which further demonstrates the need for Military Working Dog Handlers to meet specified training and qualification requirements to exercise these powers and understand their obligations under the Act.

- **The right to just and favourable conditions of work, including safe and healthy working conditions- Article 7(b) of the ICESCR**

This instrument will engage and promote safe and healthy work conditions and environment as it gives effect to Government initiatives to enhance the security of Defence premises and its personnel. The training and qualification requirements will contribute to this security layer by ensuring that Military Working Dog Handlers will have successfully completed a structured program of training and qualifications. This is aimed at having these security officials professionally skilled and capable in their security responsibilities.

Military Working Dog Handlers who have met the training and qualification framework will be appropriately skilled in providing a layer of protective capability to Defence premises and its personnel.

Conclusion

This 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.

Air Commodore Michael Kitcher
Director General Capability Planning – Air Force
Royal Australian Air Force