

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Defence Personnel

Defence Act 1903

Defence (RAAF Base Scherger Defence Aviation Area) Declaration 2018

GENERAL SUMMARY

The *Defence Act 1903* (the Act) has been amended by the *Defence Legislation Amendment (Instrument Making) Act 2017* to insert new Part IXD—Defence aviation areas. Part IXD enables the Minister to declare an area to be a defence aviation area, including height restrictions that apply to buildings, structures and objects within the area.

New section 117AD of the Act provides that the regulations may prescribe certain matters in relation to defence aviation areas. The *Defence Amendment (Defence Aviation Areas) Regulations 2018* (the Amending Regulations) are made under section 117AD of the Act. The Amending Regulations insert new Part 11A—Defence aviation areas in the *Defence Regulation 2016* (the Defence Regulation).

This instrument is a declaration of a defence aviation area made under section 117AD of the Act. Together, Part IXD of the Act, Part 11A of the Defence Regulation, and declarations made under section 117AD of the Act replace the content of the *Defence (Areas Control) Regulations 1989*, which were scheduled to sunset on 1 April 2018.

The new scheme for defence aviation areas

Defence bases, air weapons ranges and low flying training areas play a significant role in the Defence strategy for Australia. They are essential for maintaining Defence's high training standards, operational capability and ability to respond to emergencies. Safe aircraft operations at military and joint-user airfields are not only concerned with defence aviation, but are also essential for the safety of the local community. The new scheme for defence aviation areas imposes height controls around a number of defence airfields in order to provide obstacle-free airspace for aircraft, Defence navigation aids, radio equipment, and surveillance facilities such as airfield radars.

The new scheme for defence aviation areas is substantially the same as the scheme that was previously provided for in the *Defence (Areas Control) Regulations 1989*. The scheme includes:

- legislative instruments declaring certain areas to be defence aviation areas, and specifying height restrictions that apply within those areas;
- requirements to obtain approval before constructing a building, structure or object that either exceeds the height restrictions applying in a defence aviation

area, or that will generate air turbulence or plumes above the height restrictions in a defence aviation area;

- requirements to obtain approval before bringing in, having or using an object that is hazardous to aviation in a defence aviation area;
- offences associated with constructing a building, structure or object, or bringing in, having or using an object without a relevant approval, or in a way that breaches conditions of an approval;
- powers to direct the removal, marking, lighting, screening, modification or relocation of a building, structure or object in a defence aviation area that exceeds the height restrictions or is otherwise hazardous to aviation, and offences if a person fails to comply with a notice;
- provisions that are subject to monitoring under Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014*, as modified by section 117AF of the Act, enabling entry to property by consent or with a warrant to monitor compliance or to take action to deal with buildings, structures or objects in a defence aviation area that is hazardous to aviation;
- provisions providing for compensation to cover loss of land value, loss or damage or expenses incurred in certain circumstances, or any acquisition of property that may occur; and
- merits review by the Administrative Appeals Tribunal of decisions to refuse to grant an approval or to grant an approval on conditions, and directions in relation to the removal, marking, lighting, screening, modification or relocation of a building, structure or object.

In civil aviation, similar content is included in regulations made under the *Airport Act 1996* and the *Civil Aviation Act 1988*, but these regulations do not generally apply in relation to defence aviation.

Purpose of the *Defence (RAAF Base Scherger Defence Aviation Area) Declaration 2018*

This instrument declares an area in the vicinity of RAAF Base Scherger, in Queensland, to be a defence aviation area. The area is depicted in the map in Schedule 1, and includes height restrictions that apply throughout the area.

While the map has been improved, the boundaries of the defence aviation area and the applicable height restrictions are the same as those that were previously prescribed in Schedule 14 of the *Defence (Areas Control) Regulations 1989*.

Authority for *Defence (RAAF Base Scherger Defence Aviation Area) Declaration 2018*

This instrument is made under section 117AC of the Act. Under section 117AC, the Minister may, by legislative instrument, declare an area of land, sea or airspace in or

adjacent to Australia to be a defence aviation area. The Minister must not declare an area unless the Minister is satisfied that it is necessary for the defence of Australia for any of the matters mentioned in paragraphs 117AD(a) to (c) of the Act to apply in relation to the area, and in particular, the matters are necessary for the purpose of preventing or reducing hazards to aircraft or aviation-related communication, navigation or surveillance. Matters mentioned in paragraphs 117AD(a) to (c) include:

- the regulation or prohibition of the construction or use of buildings, structures or objects within defence aviation areas;
- the regulation or prohibition of the bringing of objects into, or having objects within, defence aviation areas; or
- the removal (in whole or in part), marking, lighting, screening, modification or relocation of buildings, structures or objects (including trees or other natural obstacles) within defence aviation areas.

Communication of information about defence aviation areas to the public

Defence has developed a webpage, which will be available on the Defence website, providing detailed information about declared defence aviation areas, the processes for applying for relevant approvals under Part 11A of the Defence Regulation, and information about hazardous objects. The webpage will include accessible versions of the map at Schedule 1.

Defence is also working with local councils and other relevant planning authorities to provide information about defence aviation areas and approval requirements under the Defence Regulation, which can, where relevant, be conveyed to members of the public who seek planning or buildings approvals within defence aviation areas.

Operation of the *Defence (RAAF Base Scherger Defence Aviation Area) Declaration 2018*

Attachment A provides a provision-by-provision description of the operation of this instrument.

Legislative instrument

This declaration is a legislative instrument for the purposes of the *Legislation Act 2003*.

Consultation

It was not necessary to consult widely in relation to this declaration as the defence aviation area is the same as the affected area previously prescribed in the *Defence (Areas Control) Regulations 1989*.

Commencement

This instrument commences on 26 March 2018.

Attachment

A: Provisions in the *Defence (RAAF Base Scherger Defence Aviation Area) Declaration 2018*.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Defence (RAAF Base Scherger Defence Aviation Area) Declaration 2018

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 *Defence (RAAF Base Scherger Defence Aviation Area) Declaration 2018* sets out an area in the vicinity of RAAF Base Scherger to be a defence aviation area, and specifies height restrictions that apply to buildings, structures and objects within that area. The declaration means that the provisions of Part IXD of the *Defence Act 1903* and Part 11A of the *Defence Regulation 2016* apply within the area.

Human rights implications

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

Conclusion

This legislative instrument is compatible with human rights as it does not raise any human rights issues.

Attachment A –Provisions in the *Defence (RAAF Base Scherger Defence Aviation Area) Declaration 2018*

Section 1 – Name

Section 1 provides for the instrument's name: *Defence (RAAF Base Scherger Defence Aviation Area) Declaration 2018*.

Section 2 – Commencement

Section 2 provides for the *Defence (RAAF Base Scherger Defence Aviation Area) Declaration 2018* (the declaration) to commence at the same time as Part 2 of Schedule 1 to the *Defence Legislation Amendment (Instrument Making) Act 2017* commences, which amended the *Defence Act 1903* (the Act) to insert Part IXD – Defence aviation areas. The relevant Part of the amending Act commences on a day to be fixed by proclamation, which has been proclaimed to be 26 March 2018.

Section 3 – Authority

Section 3 provides that the declaration is made under subsection 117AC(1) of the Act.

Section 4 – Definition

This section includes a note that a number of expressions used in this instrument are defined in section 4 of the Act, including 'defence aviation area'.

In the declaration, 'Act' means the *Defence Act 1903*.

Section 5 – Declaration of RAAF Base Scherger Defence Aviation Area

Subsection 5(1) provides that for the purposes of subsection 117AC(1) of the Act, the RAAF Base Scherger Defence Aviation Area is declared to be a defence aviation area.

Subsection 5(2) provides that the 'RAAF Base Scherger Defence Aviation Area' is the areas of land in the vicinity of RAAF Base Scherger in Queensland that are depicted on the map set out in Schedule 1 to the instrument.

Subsection 5(3) makes it clear that areas depicted by white space on the map set out in Schedule 1 are not included in the RAAF Base Scherger Defence Aviation Area.

Section 6 – Specification of height restrictions that apply within the area

Subsection 6(1) provides that for the purposes of subsection 117AC(3), height restrictions apply in relation to buildings, structures and objects (including trees and other natural obstacles) within the RAAF Base Scherger Defence Aviation Area.

Subsection 6(2) provides that the height restrictions described in the legend to the map set out in Schedule 1 apply in the corresponding area depicted on the map.

Schedule 1 – Map

Schedule 1 contains the map depicting the RAAF Base Scherger Defence Aviation Area. It also includes various height restrictions that apply within the area, as described in the legend.