

## **EXPLANATORY STATEMENT**

Issued by the authority of the Assistant Minister for Defence, Parliamentary Secretary to the  
Minister for Defence

*Defence Act 1903*

*Defence Legislation Amendment (Australian Defence Force Cadets) Regulations 2023*

### **Legislative Authority**

The *Defence Act 1903* (the Act) prescribes the control, administration, constitution and service of the Australian Defence Force.

Subsection 124(1) of 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 securing the good government of the Defence Force, or for carrying out or giving effect to the Act.

The *Defence Regulation 2016* (the Defence Regulation) is made under the Act.

The *Defence Legislation Amendment (Australian Defence Force Cadets) Regulations 2023* (the Amending Regulations) amend the Defence Regulation.

### **Purpose**

The purpose of the Amending Regulations is to amend the Defence Regulation to provide an exemption for ADF Cadets from the requirements under State or Territory law to obtain or hold a licence or other permission to possess, use or transport an item of equipment that is the property of the Commonwealth and used for the performance of their duties. This exemption would not be applicable in relation to a licence or permission to operate a vehicle.

### **Background**

State and Territory legislation contains various levels of exemption from licencing and permission requirements for ADF Cadets to possess, use and transport items of Commonwealth equipment used in ADF Cadet activities, including but not limited to, weapons, ammunition and ceremonial swords.

Section 12 of the *Cadet Forces Regulation 2013* provided an exemption for ADF Cadets from the requirements under State or Territory law to obtain or hold a licence or other permission to possess, use or transport items of Commonwealth equipment used by ADF Cadets in the performance of their cadet duties. The exemption did not apply in relation to licences required for the operation of a vehicle.

The *Cadet Forces Regulation 2013* was due to sunset on 1 October 2023. With the exception of section 12, all other provisions in the *Cadet Forces Regulation 2013* no longer had any legal effect, and did not need to be remade.

The remaking of the section 12 exemption within the Defence Regulation was necessary to ensure continuity of delivery of ADF Cadet activities. If the provision was not remade, ADF Cadet activities would have been significantly adjusted or discontinued after 1 October 2023, given the operation of different regulation and licencing regimes at the State and Territory level.

### **Commencement**

The Amending Regulations commence the day after this instrument is registered on the Federal Register of Legislation.

### **Consultation**

During the development of the Amending Regulations, Defence consulted the Head Joint Support Service Division, Director General Navy Cadets, Commander Australian Army Cadets, and Director General Australian Air Force Cadets. They were supportive of the process and were consulted on a draft of the Amending Regulations. The Amending Regulations were drafted by the Office of Parliamentary Counsel.

### **Impact Analysis**

The Office of Impact Analysis advised that the proposal is unlikely to have a more than minor regulatory impact, as this proposal affects only Australian Defence Force Cadets personnel (OIA23-05231).

### **Details / Operation**

Details of the Amending Regulations are set out in [Attachment A](#).

The Amending Regulations are a disallowable legislative instrument for the purposes of the *Legislation Act 2003*.

### **Human Rights Statement**

The Amending Regulations are compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A Statement of Compatibility with Human Rights is at [Attachment B](#).

## **Defence Legislation Amendment (Australian Defence Force Cadets) Regulations 2023**

### Section 1 – Name of Regulations

This section provides that the title of the Amending Regulations is the *Defence Legislation Amendment (Australian Defence Force Cadets) Regulations 2023* (Amending Regulations).

### Section 2 – Commencement

This section provides that the Amending Regulations commence on the day after this instrument is registered on the Federal Register of Legislation.

### Section 3 – Authority

This section provides that the Amending Regulations are made under the *Defence Act 1903*.

### Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in this Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

### Schedule 1 – Amendments

This Schedule provides for amendments to the *Defence Regulation 2016* (Defence Regulation).

#### **Item [1] – After Part 15**

This item inserts a new Part 15A – Australian Defence Force Cadets into the Defence Regulation.

This part inserts a new section 81A, which provides that a cadet is not required to have a licence or other permission under State or Territory law to use, possess or transport a Commonwealth item of equipment when used for the performance of their duties as a cadet. This does not apply to a licence or permission to operate a vehicle. The intent is to cover firearms, ammunition, ceremonial swords and similar items which are utilised in the cadet activities.

### Schedule 2 – Repeals

#### **Item [1] – *Cadet Forces Regulation 2013***

This item provides that the whole of the *Cadet Forces Regulation 2013* is repealed.

**STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS**

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

***Defence Legislation Amendment (Australian Defence Force Cadets) Regulations 2023***

The *Defence Legislation Amendment (Australian Defence Force Cadets) Regulations 2023* (the Amending Regulations) are 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 purpose of the Amending Regulations is to amend the *Defence Regulation 2016* to provide an exemption for ADF Cadets from the requirements under State or Territory law to obtain or hold a licence or other permission to possess, use or transport an item of equipment that is the property of the Commonwealth and used for the performance of their duties. This exemption would not be applicable in relation to a licence or permission to operate a vehicle.

The Amending Regulations remake a provision (section 12) from the *Cadet Forces Regulation 2013*. The *Cadet Forces Regulation 2013* was due to sunset on 1 October 2023 and the provision was remade to ensure the continuity of ADF Cadets activities.

**Human rights implications**

The Amending Regulations do not engage any of the applicable rights or freedoms.

**Conclusion**

The Amending Regulations are compatible with human rights as they do not raise any human rights issues.