**EXPLANATORY STATEMENT**

Issued by the authority of the Assistant Minister for Defence

*Defence Act 1903*

*Defence Regulation 2016*

*Defence (Defence Area – RAAF Base Williamtown Runway Works) Declaration 2023*

**Purpose**

The purpose of the *Defence (Defence Area – RAAF Base Williamtown Runway Works) Declaration 2023* (Declaration)is to declare the RAAF Base Williamtown runway works area to be a Defence Area for the defence purpose of supporting safe aircraft operations from RAAF Base Williamtown. Aircraft operation includes, but is not limited to, the operation of Defence Force aircraft for training purposes and in exercises and operations. The Declaration will prohibit unauthorised entry during the period 14 November 2023 to 12 November 2028.

**Background**

RAAF Base Williamtown is the Royal Australian Air Force’s main fighter pilot training base and houses most of the F-35A Lightning II (Joint Strike Fighter) aircraft.

To support the introduction of the F-35A Lightning II (Joint Strike Fighter) aircraft, the then Minister for Defence made the *Defence (Defence Area—RAAF Base Williamtown runway works) Declaration 2018* (the 2018 declaration). This enabled the:

* extension of the runway in both northwest and southeast directions, delivering a compliant 10,000 foot runway which is a mandatory requirement for the F-35A Lightning II (Joint Strike Fighter) aircraft;
* placement of high intensity approach lighting outside the base perimeter at the end of the runway, significantly enhancing the operability of the runway in inclement weather; and
* the extension of obstacle clearance constraints to maintain compliance with the Civil Aviation Safety Regulations (applied by Defence to aerodrome design in accordance with regulations issued by the Defence Aviation Safety Authority). This required removal and/or pruning of selected vegetation on land outside the base perimeter at either end of the runway.

Portions of two land parcels owned by the NSW National Parks and Wildlife Service and three owned by the NSW Crown Lands are affected by the runway extension. The Hunter Water Corporation has various assets and access routes across the affected area and maintains a joint management arrangement with the NSW National Parks and Wildlife Service.

As the 2018 declaration will be repealed on 13 November 2023, the instrument is being remade to ensure that Defence maintain continued access to the subject land for ongoing operation and maintenance of runway works, ensuring that appropriate safety and security measures can be implemented until the acquisition of the land is negotiated.

**Legislative authority**

The Declaration is made under section 58 of the *Defence Regulation 2016* (Defence Regulation). Under that provision, the Minister may, by legislative instrument, declare an area of land, sea or airspace in or adjacent to Australia to be a Defence Area for use for a defence purpose. However, under subsection 58(3), the Minister must not declare an area unless one of the four listed conditions applies. Relevantly, subparagraph 58(3)(c)(ii) provides for the case where it is necessary or expedient, in the interests of the safety or defence of Australia, to use the area for the purpose of carrying out a defence operation or practice.

The introduction of the F-35A Lightning II (Joint Strike Fighter) aircraft is in the interest of the safety and defence of Australia, and it is both necessary and expedient to use the area in question to support operations and practices out of RAAF Base Williamtown.

Subsection 58(2) of the Defence Regulation requires that the declaration of a Defence Area must specify the defence purpose for which the area is required, and whether entry to the Defence Area is to be prohibited at all times or during particular periods only.

*Defence purpose for which area is required (paragraph 58(2)(a))*

The area is required for the defence purpose of supporting safe aircraft operation from RAAF Base Williamtown (including, but not limited to, the operation of Defence Force aircraft for training purposes and in exercises and operations).

*Prohibition of entry (paragraph 58(2)(b))*

Entry into the RAAF Base Williamtown runway works area is to be prohibited at all times. Permission for a person to enter the area may be given under section 62 of the Defence Regulation.

*Area to be declared*

The Declaration provides a description of the RAAF Base Williamtown runway works. The total area in the RAAF Base Williamtown runway works is approximately 113 hectares. This is the minimum amount of land that meets the relevant aviation safety requirements. The map set out in the Schedule to the Declaration includes lot / plan numbers for affected land parcels and latitude / longitude coordinates for key points of areas of land.

*Period declaration is to be in effect*

The area will be declared for a period of five years, from 14 November 2023 to

12 November 2028.

Details of the Declaration are set out in Attachment A.

**Commencement**

This Declaration commences on 14 November 2023.

**Consultation**

During the development of the Declaration, Defence consulted with the land owners, the NSW National Parks and Wildlife Service, the NSW Crown Lands, and the Hunter Water Corporation which holds interests in the land and none of those consulted have any objection to the Declaration. The consultation was done through meetings, followed by letters and emails, and was completed within the period of April - May 2023. Defence is continuing engagement with these stakeholders through monthly meetings in order to provide updates on the progress of the Declaration.

**Impact Analysis**

The Office of Impact Analysis advised that no Impact Analysis was required, as this Declaration is unlikely to have more than a minor regulatory impact (OIA23-05160).

**Details / Operation**

Details of the Declaration are set out in Attachment A.

The Declaration is a disallowable legislative instrument for the purposes of the *Legislation Act 2003*.

**Human Rights Statement**

The Declaration is 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.

**ATTACHMENT A**

**Defence (Defence Area – RAAF Base Williamtown Runway Works) Declaration 2023**

**Section 1 – Name**

This section provides that the title of the instrument is the *Defence (Defence Area – RAAF Base Williamtown Runway Works) Declaration 2023* (Declaration)*.*

**Section 2 – Commencement**

This section provides that the Declaration commences on 14 November 2023.

**Section 3** – **Authority**

This section provides that this Declaration is made under section 58 of the *Defence Regulation 2016* (Defence Regulation)*.*

**Section 4 – Declaration of defence area**

Subsection 4(1) sets out that the ‘RAAF Base Williamtown runway works area’ is declared to be a Defence Area for the purpose of supporting safe aircraft operation from RAAF Base Williamtown. Safe aircraft operation includes, but is not limited to, the operation of Defence Force aircraft for training purposes and in exercises and operations.

Subsection 4(2) sets out that entry into the ‘RAAF Base Williamtown runway works area’ is prohibited at all times. However, the note at the end of subsection 4(2) specifies that a person may be given permission to enter the area under section 62 of the Defence Regulation*.*

Subsection 4(3) provides that the ‘RAAF Base Williamtown runway works area’ is the area of land adjacent to RAAF Base Williamtown in New South Wales that is depicted on the map set out in the Schedule to the Declaration.

Subsection 4(4) provides that the property boundaries and geographical coordinates shown on the map are to be used to determine the areas of land depicted on the map showing the declared Defence Area.

**Section 5 – Repeal of this instrument**

This section provides that the Declaration will be repealed on 12 November 2028.

**Schedule 1 – Map­­­­­­­**

Schedule 1 contains the map depicting the ‘RAAF Base Williamtown runway works area’.



**ATTACHMENT B**

## Statement of Compatibility with Human Rights

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

***Defence (Defence Area – RAAF Base Williamtown Runway Works) Declaration 2023***

The *Defence (Defence Area – RAAF Base Williamtown Runway Works) Declaration 2023* (Declaration) 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 purpose of this Declaration is to declare the RAAF Base Williamtown runway works area to be a Defence Area for the defence purpose of supporting safe aircraft operations from RAAF Base Williamtown. Aircraft operation includes, but is not limited to, the operation of Defence Force aircraft for training purposes and in exercises and operations. The Declaration will prohibit unauthorised entry during the period 14 November 2023 to 12 November 2028.

### Human rights implications

This Declaration engages the following right:

* The freedom of movement (article 12 of the *International Covenant on Civil and Political Rights*).

The right to freedom of movement includes the right to move freely within a country for those who are lawfully in that country. This Declaration places restrictions on who may enter the RAAF Base Williamtown runway works area, thereby limiting the right to move freely within a country.

Limiting this right is reasonable and necessary as the Declaration is intended to protect national security and human safety. The Declaration will ensure that Defence maintains continued access to the subject land for ongoing operation and maintenance of runway works, which were undertaken in preparation for the introduction of the F-35A Lightning II (Joint Strike Fighter) aircraft. This included the placement of high intensity approach lighting, clearance of obstacles at either end of the runway to meet Civil Aviation Safety Regulations (applied by Defence to aerodrome design in accordance with regulations issued by the Defence Aviation Safety Authority) and the delivery of a compliant 10,000 foot runway required for the F-35A Lightning II (Joint Strike Fighter) aircraft.

This Declaration places restrictions on who may enter the RAAF Base Williamtown runway works area and provides the necessary authority for Defence to control the movement of members of the public within the Defence Area. This may include the removal of unauthorised members of the public or movable property from the area. This Declaration provides a legal basis to regulate entries into the area for the safety and security of the public and Defence Force aircraft and personnel.

This Declaration provides the necessary authority to meet aviation safety standards and supports safe aircraft operation including, but not limited to, the operation of Defence Force aircraft for training purposes and in exercises and operations.

### Conclusion

The Declaration is compatible with human rights because to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.