

**DEFENCE (VISITING FORCES) AMENDMENT (AUSTRALIA TIMOR-LESTE
DEFENCE COOPERATION AGREEMENT) REGULATIONS 2024**

EXPLANATORY STATEMENT

Issued by authority of the Attorney-General

under section 30 of the *Defence (Visiting Forces) Act 1963*

PURPOSE AND OPERATION OF THE INSTRUMENT

Section 30 of the *Defence (Visiting Forces) Act 1963* (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 carrying out or giving effect to the Act.

Paragraph 16(2)(b) of the Act provides that the regulations may, subject to any prescribed conditions, confer on a visiting force (including its members, its service tribunals, persons in any way connected with a visiting force, or property used or to be used for the purposes of a visiting force) any privilege or immunity specified in the regulations, being a privilege or immunity that would be enjoyed by, or would be capable of being conferred on, the force (including its members, its service tribunals, such persons or such property) if the force were a part of the Australian Defence Force (the Defence Force).

Pursuant to subsection 16(4) of the Act, any regulations made for the purposes of section 16 of the Act may contain such incidental, consequential and supplementary provisions as are expedient for the purposes of any provision of those regulations. Moreover, any provision of regulations made for the purposes of section 16 of the Act may be expressed to apply either generally or in relation to a particular visiting force or in relation to a particular place, pursuant to subsection 16(5) of the Act.

The *Defence (Visiting Forces) Amendment (Australia Timor-Leste Defence Cooperation Agreement) Regulations 2024* (the Regulations) amend the *Defence (Visiting Forces) Regulations 1963* (the Principal Regulations) to give effect to a treaty obligation between Australia and Timor-Leste. On 7 September 2022, Australia and Timor-Leste signed the *Agreement Between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces* (the Agreement). The Agreement is a bilateral visiting forces agreement which provides a framework to govern the status of Australia's and Timor-Leste's forces while conducting cooperative activities in each other's territories.

The text of the Agreement is publicly available on the [Parliament of Australia's website](#).

The Regulations extend the immunities from Australian State and Territory laws relating to permissions (in the form of a licence or otherwise) to perform official duties which are conferred by paragraph 123(1)(b) of the *Defence Act 1903* on members of the Defence Force (and already conferred on members of visiting forces by current subregulation 6(2) of the Principal Regulations) to members of the civilian component of a visiting force of Timor-Leste.

The extension of those immunities will allow members of the civilian component of a visiting force of Timor-Leste to conduct their official duties in Australian territory without the State or Territory licences or other permissions that would otherwise be required. This will allow, for example, any medical professionals who are members of Timor-Leste's civilian component to provide medical treatment to members of Timor-Leste's visiting force and civilian component whilst in Australia. There is no scope under the Agreement for Timor-Leste's medical professionals to provide medical treatment to members of the Defence Force or Australian citizens whilst in Australia.

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

The Regulations commence on the later of the day after the instrument is registered on the Federal Register of Legislation or the day the Agreement enters into force for Australia.

Details of the Regulations are set out in Attachment A.

CONSULTATION

Consultation occurred with the Department of Defence. A public consultation process was not held as the Regulations implement the obligations contained in the Agreement which was itself the subject of a consultation process through the Joint Standing Committee on Treaties inquiry, which recommended that the Government take binding treaty action.

POLICY IMPACT ANALYSIS

The Office of Impact Analysis, Department of Prime Minister and Cabinet, was consulted in relation to the Regulations and advised that, based on the information provided, the preparation of a detailed impact analysis was not required.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The 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*. A Statement of Compatibility with Human Rights is at Attachment B.

Details of the *Defence (Visiting Forces) Amendment (Australia Timor-Leste Defence Cooperation Agreement) Regulations 2024*

Section 1 – Name of Regulations

This section provides that the title of the Regulations is the *Defence (Visiting Forces) Amendment (Australia Timor-Leste Defence Cooperation Agreement) Regulations 2024* (the Regulations).

Section 2 – Commencement

This section provides for the instrument to commence on the later of:

- the day after the instrument is registered; and
- the day the *Agreement between Australia and Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces*, done at Canberra on 7 September 2022 (the Agreement), enters into force for Australia.

The provisions will not commence if the Agreement is never entered into force for Australia.

Section 3 – Authority

This section provides that the Regulations are made under the *Defence (Visiting Forces) Act 1963* (the Act).

Section 4 – Schedules

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

Schedule 1 – Amendments

Background: Relevant provisions in the Agreement and Defence Act

Article 13(1) of Annex 1 to the Agreement requires Australia to allow members of Timor-Leste’s visiting force and any civilian component with current and valid professional, technical or trade licences and qualifications issued by Timor-Leste to conduct their official duties in Australian territory, even where doing so would typically require the individual to have permission (whether in the form of a licence or otherwise).

Paragraph 123(1)(b) of the *Defence Act 1903* (the Defence Act) applies to the Australian Defence Force (the Defence Force). That provision stipulates that, members of the Defence Force are not bound by any Australian State or Territory laws that would require the member to have permission (whether in the form of a licence or otherwise) to do anything in the course of their duties as a member of the Defence Force.

Items 1 to 2 below address these obligations directly and items 3 to 4 are consequential amendments.

Item [1] – Subregulation 6(5)

This item omits “the civilian component of a visiting force of Japan” from subregulation 6(5) and substitutes it with “a civilian component of a visiting force of Japan or Timor-Leste”.

The effect of this item is to extend the immunities conferred by paragraph 123(1)(b) of the Defence Act to members of the Defence Force to members of the civilian component of a visiting force of Timor-Leste in addition to members of the civilian component of a visiting force of Japan. This item operates as if references to the Defence Force in subsection 123(1) of the Defence Act were references to the civilian component of the visiting force of Timor-Leste.

The purpose of this subregulation is to ensure that members of the civilian component of a visiting force of Timor-Leste are able to carry out their official duties free of the licensing requirements under the laws of relevant States and Territories in a manner similar to that which applies to members of the Defence Force, and to members of the visiting force of Timor-Leste under current subregulation 6(2) of the *Defence (Visiting Forces) Regulations 1963* (the Principal Regulations). This immunity has already been extended to include members of the civilian component of a visiting force of Japan in this subregulation.

Item [2] – Subregulation 6(5)

This item omits “civilian component of the visiting force” from subregulation 6(5) and substitutes it with “relevant civilian component of the relevant visiting force”.

The effect of this item is to reflect the amendment in item 1 above, which extends the immunities conferred by paragraph 123(1)(b) of the Defence Act to members of the civilian component of a visiting force of Timor-Leste to ensure that those members are able to carry out their official duties in Australia without the otherwise required State or Territory licences or other permissions. The inclusion of the words “relevant civilian component of the relevant visiting force” ensures that the subregulation will apply to both of the sending countries referred to in subregulation 6(5) of the Principal Regulations, namely Japan and Timor-Leste.

Item [3] – Schedule 2

This item omits the reference to “East Timor” in Schedule 2 which contains the list of the “[o]ther countries to which [the] Act applies”.

The effect of this item is to replace the reference to “East Timor” with “Timor-Leste” (through item 4 below) noting that, while the country was formerly known as East Timor, the country’s official name is the Democratic Republic of Timor-Leste (or Timor-Leste, for short).

Item [4] – Schedule 2

This item inserts “Timor-Leste” after “Thailand” in Schedule 2.

As noted above in regards to item 3, the effect of this item is to replace the reference to “East Timor” with “Timor-Leste”.

Statement of Compatibility with Human Rights

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

Defence (Visiting Forces) Amendment (Australia Timor-Leste Defence Cooperation Agreement) Regulations 2024

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 Legislative Instrument

The *Defence (Visiting Forces) Amendment (Australia Timor-Leste Defence Cooperation Agreement) Regulations 2024* (the Regulations) amend the *Defence (Visiting Forces) Regulations 1963* (the Principal Regulations) to implement Australia's obligation under Article 13(1) of Annex 1 to the *Agreement Between the Government of Australia and the Government of the Democratic Republic of Timor-Leste on Cooperation in the Field of Defence and the Status of Visiting Forces* (the Agreement).

Article 13(1) of Annex 1 to the Agreement requires Australia to allow members of Timor-Leste's visiting force and any civilian component with current and valid professional, technical or trade licences and qualifications issued by Timor-Leste to conduct their official duties in Australian territory, even where doing so would typically require the individual to have permission (whether in the form of a licence or otherwise).

The Regulations implement that provision in the Agreement by extending the immunities from Australian State and Territory laws relating to permissions (in the form of a licence or otherwise) to perform official duties which are conferred by paragraph 123(1)(b) of the *Defence Act 1903* on members of the Australian Defence Force (and already conferred on members of visiting forces by current subregulation 6(2) of the Principal Regulations) to members of the civilian component of a visiting force of Timor-Leste.

The extension of those immunities will allow members of the civilian component of a visiting force of Timor-Leste to conduct their official duties in Australian territory without the otherwise required State or Territory licences or other permissions. This will allow, for example, any medical professionals who are members of Timor-Leste's civilian component to provide medical treatment to members of Timor-Leste's visiting force and civilian component whilst in Australia. There is no scope under the Agreement for Timor-Leste's medical professionals to provide medical treatment to members of the Australian Defence Force or Australian citizens whilst in Australia.

Human Rights Implications

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

Conclusion

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

The Hon Mark Dreyfus KC

Attorney-General