

Statement from Acting Chief of the Defence Force - Message to Australian Defence Force personnel conducting border security operations

The safety, protection and welfare of Australian Defence Force (ADF) personnel are and remain my highest priorities. This includes those personnel deployed on the water conducting Operation Resolute in support of the whole-of-government Operation Sovereign Borders. Additionally, the safety of life at sea of all people, not just Defence members is, and will remain, Defence's paramount consideration in the conduct of border protection operations.

Contrary to recent media reporting, the declaration made by the Chief of the Defence Force under sub-section 12D(2) of the *Work Health and Safety Act 2011* (WHS Act) has not stripped Defence personnel carrying out border protection operations of their workplace safety protections and obligations under the WHS Act. It has instead provided greater protection from prosecution under the WHS Act.

Those of you deployed on Operation Resolute are required to operate in a hazardous, uncertain and high-tempo operational environment; boarding vessels, and controlling and ensuring the safety of people, some of whom will potentially be uncooperative.

The Declaration made by the Chief of the Defence Force will prevent individuals involved in these activities from being subject to criminal or civil penalties should a breach of the WHS Act occur.

Without the Declaration, the risk of penalties being imposed on you in inappropriate circumstances could undermine your ability to perform your work to the best of your ability and compromise Defence's mission. This in itself could give rise to safety issues.

Critically, the Declaration does not exempt you from your obligations under the WHS Act to comply with any reasonable instructions that are given to you by your supervisors to allow Defence to comply with the WHS Act. Additionally, the Declaration does not alter the fact that you remain subject to the normal requirements of the criminal and general law, as well as the *Defence Force Discipline Act 1982* which, in effect, imposes the requirement on you to comply with orders given to you and to perform your duties with an appropriate level of care.

Great care has been taken such that the Declaration delivers what is necessary to achieve a fair and practical outcome. Importantly, the measures taken do not mean that your right to a safe workplace has been diminished whilst you serve on Operation Resolute. The obligations owed to you under the WHS Act by the Department of Defence and by senior commanders remain unchanged.

M.D. BINSKIN, AO
AIRMSHL

A/CDF 15 January 2014