



Defence (Inquiry) Regulations 1985

Statutory Rules 1985 No. 114 as amended

made under the

*Defence Act 1903, the Naval Defence Act 1910 and the
Air Force Act 1923*

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Part I Preliminary

1 Name of Regulations [see Note 1]

These Regulations are the *Defence (Inquiry) Regulations 1985*.

2 Commencement

These Regulations shall come into operation on 3 July 1985.

3 Interpretation

- (1) In these Regulations, unless the contrary intention appears:

appointing authority:

- (a) in relation to a Court of Inquiry appointed by the Minister, means the Minister; and
- (b) in relation to a Board of Inquiry, means the officer who appointed the Board or, where the Board was appointed by the Chief of the Defence Force and the Secretary acting concurrently, both of those persons acting concurrently.

appointing officer, in relation to an Inquiry Officer or an inquiry assistant, means the officer who appointed the Officer or assistant.

Note See Part 6.

article includes any substance.

Court of Inquiry means any of the following:

- (a) a General Court of Inquiry under Part II;
- (b) a Board of Inquiry under Part III;
- (c) a Combined Board of Inquiry under Part IV;
- (d) a Chief of the Defence Force Commission of Inquiry under Part VIII.

inquiry means an inquiry under these Regulations and:

- (a) if an inquiry conducted by a Court of Inquiry is re-opened under regulation 66, includes that inquiry as so re-opened; and

Regulation 3

- (b) if an inquiry conducted by an Inquiry Officer is re-opened under regulation 76, includes that inquiry as so re-opened.

lawyer means a legal practitioner and, in relation to a Combined Board of Inquiry, includes a person appointed under subregulation 44 (1).

legal practitioner means a person enrolled as a legal practitioner of the High Court or of the Supreme Court of a State or Territory.

member, in relation to a Court of Inquiry, does not include a person who constitutes a Court of Inquiry.

President, in relation to a Court of Inquiry, means the President of the Court or Board, as the case may be, and where 2 or more members of a Combined Board of Inquiry are appointed under subregulation 43 (2), includes each of those members.

- (2) A reference in these Regulations to an officer includes a reference to a person for the time being performing the duties of that officer.
- (3) A reference in these Regulations to a person who ceases to be a member of a Court of Inquiry is a reference to a member who dies or resigns, or whose appointment is terminated under regulation 58.
- (4) A reference in these Regulations to a Court of Inquiry that has not, at a particular time, completed its inquiry includes a reference to a Court of Inquiry that has not, at that time, begun to conduct its inquiry.
- (5) A reference in these Regulations to a person who constitutes, or is directed to constitute, a Court of Inquiry, is a reference to a person who constitutes, or is intended to constitute, as the case may be, a Court of Inquiry alone.
- (6) A reference in these Regulations to a Court of Inquiry is a reference to the Court as constituted or reconstituted from time to time in accordance with these Regulations.

Regulation 3B

- (7) Where a provision of these Regulations confers a power to give a direction or make an order, the power shall, unless the contrary intention appears, include a power exercisable in the same manner and subject to the same conditions (if any) to revoke or vary the direction or order.

3A References to appointing authority

Where the power of appointing a person to be a member of a Court of Inquiry or a Board of Inquiry, as the case may be, has been delegated, a reference in regulation 27A, 27B, 43A or 43B to the appointing authority includes a reference to the person to whom that power has been delegated.

3B Application of *Criminal Code*

Chapter 2 of the *Criminal Code* applies to offences against these Regulations.

Note Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Regulation 4

Part II General courts of inquiry**4 Interpretation of Part II**

- (1) In this Part, unless the contrary intention appears:
- eligible person* means a person who is or has been:
- (a) a Judge of a court created by the Parliament or of a court of a State; or
 - (b) a legal practitioner for not less than 5 years.
- summons* means a summons issued under regulation 12.
- (2) For the purposes of these Regulations, an inquiry conducted by a General Court of Inquiry constituted by one person is completed when the report of that person has been prepared (whether or not in writing and whether or not signed by that person) in relation to that inquiry.
- (3) For the purposes of these Regulations, an inquiry conducted by a General Court of Inquiry that is constituted by more than one person is completed:
- (a) when the members of a General Court of Inquiry agree on a document prepared under subregulation 18 (1) in relation to that inquiry; or
 - (b) if the members cannot so agree — when each of them has recorded in relation to that inquiry a statement required by subregulation 18 (4) whether or not in writing and whether or not signed or capable of being signed by the member who prepared it.

5 Appointment of Courts

- (1) The Minister may, by instrument published in the *Gazette*, appoint a General Court of Inquiry to inquire into such matters concerning the Defence Force as are specified in the instrument and to make a report on those matters in accordance with this Part.

Regulation 7A

- (2) The Minister may, by instrument published in the *Gazette*, add to or vary the matters into which a General Court of Inquiry is to inquire.

6 Constitution

- (1) A General Court of Inquiry may be constituted by an eligible person or by 2 or more persons who include at least one eligible person.
- (2) The name of the person who is, or the names of the persons who are, to constitute a General Court of Inquiry shall be specified in the instrument appointing the Court.
- (3) Subject to regulation 21, the performance of the functions, or the exercise of the powers, of a General Court of Inquiry that is constituted by more than one person is not affected by reason only of a vacancy or vacancies in the membership of the Court.

7 President

- (1) Where a General Court of Inquiry is constituted by one person that person may exercise all the powers and perform all the functions of, and shall in all respects (other than for the purposes of regulation 21) be considered as, the President of the Court.
- (2) Where a General Court of Inquiry is constituted by 2 or more persons the Minister shall, in the instrument appointing the Court or in a later instrument published in the *Gazette*, appoint one of those persons, being an eligible person, to be the President of the Court.

7A Resignation as President of a General Court of Inquiry

The President of a General Court of Inquiry, if he or she is not a member of the Defence Force, may resign the office of President by writing signed by the President and delivered to the Minister.

Regulation 7B

7B Resignation from a General Court of Inquiry

A member of a General Court of Inquiry, including its President or a person who constitutes a General Court of Inquiry, other than a member of the Defence Force, may resign the office of member by writing signed by the member and delivered to the Minister.

8 Assessors

Where a General Court of Inquiry is constituted by one person, the Minister may, in the instrument appointing the Court or by a later instrument published in the *Gazette*, appoint 2 or more persons possessing special knowledge or experience to be assessors to assist the Court.

9 Secretary

- (1) The Minister may, by instrument in writing, appoint a secretary to a General Court of Inquiry.
- (2) Subject to these Regulations, the secretary to a General Court of Inquiry shall perform such duties as the Minister or the President directs.

10 Procedure

The procedure of a General Court of Inquiry shall be as the President directs.

11 Conduct of inquiries in public or in private

- (1) Subject to this regulation, an inquiry conducted by a General Court of Inquiry shall be in public.
- (2) Where the President of a General Court of Inquiry is satisfied that it is necessary to do so in the interests of the defence of the Commonwealth or of fairness to a person who the President considers may be affected by the inquiry conducted by the Court, the President may:
 - (a) direct that all or part of the inquiry shall be conducted in private and give directions as to the persons who may be present; or

Regulation 14

- (b) order that a person, or persons included in a class of persons, specified in the order not be present during the hearing of all or part of the inquiry.
- (3) Where the President of a General Court of Inquiry makes an order referred to in paragraph (2) (b), the President may authorize a person to take such reasonable action as is required to give effect to that order.

12 Summoning of witnesses

For the purposes of an inquiry conducted by a General Court of Inquiry, the President may, by writing signed by the President, summon a person to appear at the inquiry to give evidence or to produce a document or article.

13 Manner of taking evidence

- (1) A General Court of Inquiry may take evidence on oath or affirmation.
- (2) For the purposes of an inquiry conducted by a General Court of Inquiry, the President may, subject to subregulation (3), administer or cause to be administered to a witness appearing before the Court an oath or affirmation in accordance with the form in the Schedule.
- (3) The President of a General Court of Inquiry may permit a person to take an oath in such form as the person declares to the President to be binding on the conscience of that person.

14 Duties of witnesses

- (1) A person is guilty of an offence if:
 - (a) the person is served with a summons to appear before a General Court of Inquiry; and
 - (b) a reasonable amount for the costs of the person's conveyance to appear before the Court has been tendered to the person; and

Regulation 14

- (c) the person fails to appear and report at the time and place specified in the summons.

Penalty: 5 penalty units or imprisonment for 3 months.

(1AA) A person is guilty of an offence if:

- (a) the person is served with a summons to appear before a General Court of Inquiry; and
- (b) a reasonable amount for the costs of the person's conveyance to appear before the Court has been tendered to the person; and
- (c) the person fails to appear and report from day to day.

Penalty: 5 penalty units or imprisonment for 3 months.

(1A) An offence against subregulation (1) or (1AA) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

(1B) It is a defence to a prosecution for an offence against subregulation (1) or (1AA) if:

- (a) the person has been excused by the President of the Court from appearing and reporting at the time and place specified in the summons or from day to day; or
- (b) the person has a reasonable excuse for failing to so appear and report.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (1B) (see section 13.3 of the *Criminal Code*).

(2) A person is guilty of an offence if the person:

- (a) appears before a General Court of Inquiry; and
- (b) is called upon by the President of the Court to be sworn or to make an affirmation; and
- (c) refuses to be sworn or to make an affirmation.

Penalty: 5 penalty units or imprisonment for 3 months.

(2A) A person is guilty of an offence if the person:

- (a) appears before a General Court of Inquiry; and
- (b) is called upon by the President of the Court to be sworn or to make an affirmation; and

Regulation 14

(c) fails to be sworn or to make an affirmation.

Penalty: 5 penalty units or imprisonment for 3 months.

(2B) An offence against subregulation (2A) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

(2C) It is a defence to a prosecution for an offence against subregulation (2) or (2A) if the person has a reasonable excuse for refusing or failing to be sworn or to make an affirmation.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (2C) (see section 13.3 of the *Criminal Code*).

(3) A person is guilty of an offence if:

- (a) the person appears as a witness before a General Court of Inquiry; and
- (b) the person refuses to answer a question relevant to the inquiry put to that person by:
 - (i) a member of the Court or, if the Court is constituted by one person, by that person; or
 - (ii) a legal practitioner appointed to assist the Court; or
 - (iii) a person who may examine a witness under regulation 55; and
- (c) the President of the Court requires the person to answer the question.

Penalty: 5 penalty units or imprisonment for 3 months.

(3A) A person is guilty of an offence if:

- (a) the person appears as a witness before a General Court of Inquiry; and
- (b) the person fails to answer a question relevant to the inquiry put to that person by:
 - (i) a member of the Court or, if the Court is constituted by one person, by that person; or
 - (ii) a legal practitioner appointed to assist the Court; or
 - (iii) a person who may examine a witness under regulation 55; and

Regulation 14

- (c) the President of the Court requires the person to answer the question.

Penalty: 5 penalty units or imprisonment for 3 months.

- (3B) An offence against subregulation (3A) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3C) It is a defence to a prosecution for an offence against subregulation (3) or (3A) if the person has a reasonable excuse for refusing or failing to answer the question.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (3C) (see section 13.3 of the *Criminal Code*).

- (4) A person is guilty of an offence if:
- (a) the person appears as a witness before a General Court of Inquiry; and
 - (b) the person has been served with a summons to produce a document or article; and
 - (c) the document or article:
 - (i) is in the custody or control of that person; and
 - (ii) is relevant to the inquiry; and
 - (d) the person refuses to produce that document or article.

Penalty: 5 penalty units or imprisonment for 3 months.

- (4A) A person is guilty of an offence if:
- (a) the person appears as a witness before a General Court of Inquiry; and
 - (b) the person has been served with a summons to produce a document or article; and
 - (c) the document or article is:
 - (i) in the custody or control of that person; and
 - (ii) relevant to the inquiry; and
 - (d) the person fails to produce that document or article.

Penalty: 5 penalty units or imprisonment for 3 months.

- (4B) An offence against subregulation (4A) is an offence of strict liability.

Regulation 14

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4C) It is a defence to a prosecution for an offence against subregulation (4) or (4A) if the person has a reasonable excuse for refusing or failing to produce the document or article.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (4C) (see section 13.3 of the *Criminal Code*).

- (5) A person appearing as a witness before a General Court of Inquiry is not excused from answering a question, when required to do so, on the ground that the answer to the question may tend to incriminate that person, except where the answer to the question:
- (a) may tend to incriminate that person in respect of an offence with which that person has been charged; and
 - (b) the charge has not been finally dealt with by a court or otherwise disposed of.

Note At 30 June 2006, subsection 124 (2C) of the *Defence Act 1903* provided: 'A statement or disclosure made by a witness in the course of giving evidence before a court of inquiry, a board of inquiry, an inquiry officer or an inquiry assistant is not admissible in evidence against that witness in:

- (a) any civil or criminal proceedings in any federal court or court of a State or Territory; or
- (b) proceedings before a service tribunal;

otherwise than in proceedings by way of a prosecution for giving false testimony at the hearing before the court of inquiry, the board of inquiry, the inquiry officer or the inquiry assistant.'

- (6) Without limiting the circumstances that may constitute a reasonable excuse for the purposes of subregulation (3C), where a person giving evidence in public before a General Court of Inquiry considers, on reasonable grounds, that the answering of a question in public at the inquiry may:
- (a) disclose a secret process of manufacture; or
 - (b) be prejudicial to the defence of the Commonwealth;
- that person has a reasonable excuse for not answering that question in public at the inquiry.

Regulation 15

- (7) Without limiting the circumstances that may constitute a reasonable excuse for the purposes of subregulation (4C), where a person appearing as a witness before a General Court of Inquiry considers, on reasonable grounds, that the production in public at the inquiry of a document or article may:
- (a) disclose a secret process of manufacture; or
 - (b) be prejudicial to the defence of the Commonwealth;
- that person has a reasonable excuse for not producing that document or article in public at the inquiry.

15 Appearances

- (1) The Chief of the Defence Force or a service chief is authorized to appear before a General Court of Inquiry.
- (2) Where the President of a General Court of Inquiry considers that a person may be affected by the inquiry conducted by the Court, the President may authorize that person to appear before the Court.
- (3) A person authorized to appear before a General Court of Inquiry may appoint another person to represent the first-mentioned person for the purposes of the inquiry and the person so appointed is authorized to appear before the Court.

16 Copy of evidence affecting a person

Where the President of a General Court of Inquiry considers that any evidence given before the Court may affect a person who was not present or represented before the Court when the evidence was given, the President may:

- (a) forward to the person a copy of the relevant evidence; and
- (b) inform the person of the right of that person:
 - (i) to apply to the President to appear before the Court; and
 - (ii) to submit to the Court any written statement that the person thinks fit relevant to the inquiry.

Regulation 18

17 Powers in relation to documents or articles produced

- (1) A General Court of Inquiry may:
 - (a) retain any document or article produced before it for such period as the President considers necessary for the purposes of the inquiry;
 - (b) make copies of, or take extracts from, a document so produced; and
 - (c) order the carrying out on an article so produced of such tests as the President considers necessary for the purposes of the inquiry.
- (2) A test referred to in paragraph (1) (c) may be carried out even though it results in the destruction of, or damage to, the article concerned.
- (3) Where an article is destroyed or damaged as a result of a test referred to in paragraph (1) (c), a person who has an interest in the article is entitled to be paid compensation in full by the Commonwealth for any loss suffered by the person by reason of the destruction of, or the damage to, the article.
- (4) Subject to this regulation, a document or article produced to a General Court of Inquiry shall be returned to the person who produced it to the Court.

18 Preparation of report

- (1) Where the President of a General Court of Inquiry is satisfied that all information relevant to the inquiry that it is practicable to obtain has been obtained, the President shall prepare a document setting out:
 - (a) the findings of the Court; and
 - (b) any observations and recommendations arising from those findings that the President thinks fit to make;and, where the President constitutes the Court, the document shall constitute the report of the Court and shall be signed by the President.
- (2) Where a General Court of Inquiry is constituted by 2 or more persons the document referred to in subregulation (1) shall be furnished to the other member or members of the Court.

Regulation 19

- (3) Where the member or members referred to in subregulation (2) agree on the document transmitted to them under that subregulation, the document shall constitute the report of the Court and shall be signed by both or all members of the Court, as the case may be.
- (4) Where the member or members referred to in subregulation (2) cannot agree on the document furnished under that subregulation, the member or each member, as the case may be, shall make a statement in writing, to be signed by the member who prepared it, of:
 - (a) the findings made by that member; and
 - (b) any observations and recommendations arising from those findings that that member thinks fit to make;and those statements shall constitute the report of the Court.

19 Role of assessors in relation to report

- (1) Where an assessor has been appointed to assist a General Court of Inquiry, the assessor shall not join in making the report of the Court, but each assessor so appointed shall be allowed a reasonable opportunity to examine a copy of the report before it is furnished to the Minister.
- (2) Subject to subregulation (3), where an assessor appointed to assist a General Court of Inquiry disagrees with a finding, observation or recommendation in the report of the Court, the assessor may make a statement in writing, to be signed by the assessor, of the reasons for that disagreement and furnish the statement to the President.
- (3) Where an assessor appointed to assist a General Court of Inquiry has made a statement referred to in subregulation (2) and the President has died or the appointment of the President has been terminated under regulation 58 before the statement has been furnished to the President, the statement shall be furnished to the Minister.

20 Furnishing of report

- (1) The report of a General Court of Inquiry shall be furnished to the Minister.

Regulation 20A

- (2) Where a report of a General Court of Inquiry is furnished to the Minister, it shall be accompanied by any statement made by an assessor under subregulation 19 (2) and a copy of:
- (a) the transcript or other record of any oral evidence taken; and
 - (b) any documents received by the Court and accepted as evidence;
- during the course of the inquiry.

20A Tabling of report

- (1) Subject to subregulation (2), as soon as practicable after any disciplinary or administrative action has been taken as a consequence of a report of a General Court of Inquiry, the Minister must table the following in each House of the Parliament:
- (a) the report;
 - (b) the recommendations of the General Court of Inquiry;
 - (c) a statement setting out details of the action (if any) taken to implement the recommendations;
 - (d) if a recommendation is rejected, a statement of the reasons for rejecting the recommendation.
- (2) If the Minister is of the opinion that disclosure of information contained in the report or other material to be tabled under subregulation (1) would be contrary to the public interest because of a reason or combination of reasons mentioned in subregulation (3), the Minister may decide:
- (a) having regard to the amount of information of that kind in the report — not to table the report; or
 - (b) to leave the information out of the report or other material to be tabled.
- (3) For subregulation (2), the reasons are that:
- (a) the information relates to a secret process of manufacture; or
 - (b) disclosure of the information would be prejudicial to the defence of the Commonwealth; or

Regulation 21

- (c) disclosure of the information would unreasonably affect the privacy of an individual.
- (4) If the Minister decides not to table the report, or to leave out information from material to be tabled under subregulation (1), the material that is tabled (or, if no material is tabled, a separate statement that itself must be tabled) must set out:
 - (a) for a decision not to table the report — that fact; and
 - (b) for a decision to leave out information:
 - (i) that fact (although the information that has been left out does not have to be identified); and
 - (ii) the reason or reasons why the information was left out.

21 Dissolution or reconstitution of Court on death etc of member

- (1) In this regulation:

multi-member Court means a General Court of Inquiry appointed by an instrument that specifies the names of 3 or more persons who are to constitute the Court.

non-Presidential member means a member of a General Court of Inquiry other than the President.

President does not include a person who constitutes a General Court of Inquiry.

2 member Court means a General Court of Inquiry appointed by an instrument that specifies the names of 2 persons who are to constitute the Court and includes a multi-member Court the membership of which is reduced to 2 persons by virtue of a direction referred to in paragraph (6) (a) or subparagraph (7) (a) (ii).

- (2) A reference in this regulation to a person who constitutes a General Court of Inquiry includes a reference to a 2 member Court which is reconstituted by a single person by virtue of a direction referred to in paragraph (4) (a) or subparagraph (5) (a) (ii).
- (3) Where:

Regulation 21

- (a) a person who constitutes a General Court of Inquiry dies before the Court completes its inquiry or the appointment of that person is terminated under regulation 58 before the Court completes its inquiry;
- (b) a member of a General Court of Inquiry ceases to be a member of the Court while the inquiry by the Court is suspended by virtue of this regulation;
- (c) a member of a 2 member Court ceases to be a member of the Court before the Court completes its inquiry and the other member of the Court is not the President or an eligible person; or
- (d) a member of a multi-member Court ceases to be a member of the Court before the Court completes its inquiry and the other members of the Court do not include the President or an eligible person;

the Court shall be deemed to have been dissolved under subregulation 67 (3).

- (4) Where a member of a 2 member Court ceases to be a member of the Court before the Court completes its inquiry and the other member is the President:
 - (a) the Minister may, by instrument published in the *Gazette*, appoint a person to be a member of the Court or direct the President to constitute the Court; and
 - (b) the inquiry by the Court is suspended until the Minister so appoints or directs or the Court is dissolved, or deemed to be dissolved, under subregulation 67 (3).
- (5) Where the President of a 2 member Court ceases to be a member of the Court before the Court completes its inquiry and the other member is an eligible person:
 - (a) the Minister may, by instrument published in the *Gazette*:
 - (i) appoint the other member to be the President and, in the same instrument, appoint a person to be a member of the Court; or
 - (ii) appoint the other member to be the President and direct that person to constitute the Court; and
 - (b) the inquiry by the Court is suspended until the Minister so appoints the other member to be the President or the Court

Regulation 21

is dissolved, or deemed to be dissolved, under subregulation 67 (3).

- (6) Where a non-Presidential member of a multi-member Court ceases to be a member of the Court before the Court completes its inquiry and the other members of the Court include the President:
- (a) the Minister may, by instrument published in the *Gazette*, appoint a person to be a member of the Court or direct the Court to continue the inquiry constituted with its remaining members; and
 - (b) the inquiry by the Court is suspended until the Minister so appoints or directs or the Court is dissolved, or deemed to be dissolved, under subregulation 67 (3).
- (7) Where the President of a multi-member Court ceases to be a member of the Court before the Court completes its inquiry and the other members of the Court include at least one eligible person:
- (a) the Minister may, by instrument published in the *Gazette*:
 - (i) appoint a member who is an eligible person to be the President and, in the same instrument, appoint a person to be a member of the Court; or
 - (ii) appoint a member who is an eligible person to be the President and direct that person and the other members to constitute the Court for the purpose of continuing the inquiry; and
 - (b) the inquiry by the Court is suspended until the Minister so appoints a member to be the President or the Court is dissolved, or deemed to be dissolved, under subregulation 67 (3).

Part III Boards of inquiry

22 Interpretation of Part III

- (1) In this Part, unless the contrary intention appears, *summons* means a summons issued under regulation 30.
- (2) For the purposes of these Regulations, an inquiry conducted by a Board of Inquiry is completed:
 - (a) when the members of the Board agree on a document prepared under subregulation 36 (1) in relation to that inquiry; or
 - (b) if the members cannot so agree — when each of them has recorded in relation to that inquiry a statement required by subregulation 36 (2) whether or not in writing and whether or not signed or capable of being signed by the member who prepared it.

23 Appointment of Boards

- (1) A Board of Inquiry may be appointed by instrument:
 - (a) by the Chief of the Defence Force and the Secretary, acting concurrently, to inquire into such matters concerning the administration of the Defence Force as are specified in the instrument;
 - (b) by the Chief of the Defence Force, to inquire into such matters concerning the Defence Force as are specified in the instrument; or
 - (c) by the Chief of Navy, the Chief of Army or the Chief of Air Force, to inquire into such matters concerning the Navy, Army or Air Force, respectively, as are specified in the instrument;and to make a report on those matters in accordance with this Part.
- (2) The appointing authority may, by instrument, add to or vary the matters into which a Board of Inquiry is to inquire.

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24 Delegation of power to appoint Boards

- (1) The Chief of the Defence Force may, by instrument, delegate, either generally or as otherwise provided in the instrument, to an officer commanding a force consisting of members belonging to more than one arm of the Defence Force, who holds a rank not below that of Commander, Lieutenant-Colonel or Wing Commander, the power of the Chief of the Defence Force under subregulation 23 (1) in respect of the matters referred to in paragraph 23 (1) (b).
- (2) A service chief may, by instrument, delegate, either generally or as otherwise provided in the instrument:
 - (a) in the case of the Chief of Navy — to an officer who holds a rank not below that of Commander;
 - (b) in the case of the Chief of Army — to an officer who holds a rank not below that of Lieutenant-Colonel; or
 - (c) in the case of the Chief of Air Force — to an officer who holds a rank not below that of Wing Commander;all or any of the powers of that service chief under subregulation 23 (1) in respect of the matters referred to in paragraph 23 (1) (c).
- (3) A power delegated under subregulation (1) or (2), when exercised by the delegate, shall, for the purposes of these Regulations, be deemed to have been exercised by the person delegating the power.
- (4) A delegation under subregulation (1) or (2) does not prevent the exercise of a power by the person delegating that power.

25 Power to make recommendations

A Board of Inquiry is empowered to make recommendations arising from its findings.

26 Constitution

- (1) A Board of Inquiry shall be constituted by 2 or more persons.

Regulation 28

- (2) The appointing authority shall specify in the instrument appointing a Board of Inquiry the names of the persons who are to constitute the Board.
- (3) Subject to regulation 37, the performance of the functions, or the exercise of the powers, of a Board of Inquiry is not affected by reason only of a vacancy or vacancies in the membership of the Board.

27 President

The appointing authority must, in the instrument appointing a Board of Inquiry or by later instrument, appoint one of the members of a Board of Inquiry to be the President of the Board.

27A Resignation as President of a Board of Inquiry

The President of a Board of Inquiry, if he or she is not a member of the Defence Force, may resign the office of President by writing signed by the President and delivered to the appointing authority.

27B Resignation from a Board of Inquiry

A member of a Board of Inquiry, including its President, other than a member of the Defence Force, may resign the office of member by writing signed by the member and delivered:

- (a) in the case of an inquiry into a matter referred to in paragraph 23 (1) (a) — to either of the persons who acted concurrently as the appointing authority; or
- (b) in the case of an inquiry into a matter referred to in paragraph 23 (1) (b) or (c) — to the appointing authority.

28 Procedure

Subject to these Regulations, the procedure of a Board of Inquiry shall be as the appointing authority directs.

Regulation 29

29 Conduct of inquiries in private or in public

- (1) Subject to subregulation (2), a Board of Inquiry shall not conduct its inquiry in public.
- (2) The appointing authority may direct:
 - (a) that a Board of Inquiry conduct all or part of its inquiry in public; or
 - (b) that a person, or persons included in a class of persons, specified in the direction may be present during all or part of its inquiry.
- (3) Where the President of a Board of Inquiry that is conducting all or part of its inquiry in public is satisfied that it is necessary to do so in the interests of the defence of the Commonwealth or of fairness to a person who the President considers may be affected by the inquiry, the President may:
 - (a) direct that all or part of the inquiry shall be conducted in private and give directions as to the persons who may be present; or
 - (b) order that a person, or persons included in a class of persons, specified in the order not be present during the hearing of all or part of the inquiry.
- (4) Where the President of a Board of Inquiry makes an order referred to in paragraph (3) (b), the President may authorize a person to take such reasonable action as is required to give effect to that order.

30 Summoning of witnesses

For the purposes of an inquiry conducted by a Board of Inquiry, the President may, by writing signed by the President, summon a person to appear at the inquiry to give evidence or to produce a document or article.

31 Manner of taking evidence

- (1) Subject to this regulation, a Board of Inquiry shall not take evidence on oath or affirmation.

Regulation 32

- (2) Where the appointing authority considers that a person may be affected by an inquiry that is to be made, or that is being made, by a Board of Inquiry, the appointing authority shall direct that all evidence to be given before the Board or all evidence to be so given after the giving of the direction, as the case may be, shall be on oath or affirmation.
- (3) Where, by virtue of a direction under subregulation (2), the evidence to be given by a witness appearing before a Board of Inquiry is to be on oath or affirmation, the President shall, subject to subregulation (4), administer, or cause to be administered, to the witness an oath or affirmation in accordance with the form in the Schedule.
- (4) For the purposes of giving effect to a direction referred to in subregulation (3), the President may permit a person to take an oath in such form as the person declares to the President to be binding upon the conscience of that person.

32 Duties of witnesses

- (1) A person is guilty of an offence if:
 - (a) the person is served with a summons to appear before a Board of Inquiry; and
 - (b) a reasonable amount for the costs of the person's conveyance to appear before the Board has been tendered to the person; and
 - (c) the person fails to appear and report at the time and place specified in the summons.

Penalty: 5 penalty units or imprisonment for 3 months.

- (1AA) A person is guilty of an offence if:
 - (a) the person is served with a summons to appear before a Board of Inquiry; and
 - (b) a reasonable amount for the costs of the person's conveyance to appear before the Board has been tendered to the person; and
 - (c) the person fails to appear and report from day to day.

Penalty: 5 penalty units or imprisonment for 3 months.

Regulation 32

- (1A) An offence against subregulation (1) or (1AA) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (1B) It is a defence to a prosecution for an offence against subregulation (1) or (1AA) if:
- (a) the person has been excused by the President of the Board from appearing and reporting at the time and place specified in the summons or from day to day; or
 - (b) the person has a reasonable excuse for failing to so appear and report.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (1B) (see section 13.3 of the *Criminal Code*).

- (2) A person is guilty of an offence if the person:
- (a) appears before a Board of Inquiry; and
 - (b) is called upon by the President of the Board to be sworn or to make an affirmation; and
 - (c) refuses to be sworn or to make an affirmation.

Penalty: 5 penalty units or imprisonment for 3 months.

- (2A) A person is guilty of an offence if the person:
- (a) appears before a Board of Inquiry; and
 - (b) is called upon by the President of the Board to be sworn or to make an affirmation; and
 - (c) fails to be sworn or to make an affirmation.

Penalty: 5 penalty units or imprisonment for 3 months.

- (2B) An offence against subregulation (2A) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2C) It is a defence to a prosecution for an offence against subregulation (2) or (2A) if the person has a reasonable excuse for refusing or failing to be sworn or to make an affirmation.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (2C) (see section 13.3 of the *Criminal Code*).

- (3) A person is guilty of an offence if:

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- (a) the person appears as a witness before a Board of Inquiry; and
- (b) the person refuses to answer a question relevant to the inquiry put to that person by:
 - (i) a member of the Board; or
 - (ii) a legal practitioner appointed to assist the Board; or
 - (iii) a person who may examine a witness under regulation 55; and
- (c) the President of the Board requires the person to answer the question.

Penalty: 5 penalty units or imprisonment for 3 months.

(3A) A person is guilty of an offence if:

- (a) the person appears as a witness before a Board of Inquiry; and
- (b) the person fails to answer a question relevant to the inquiry put to that person by:
 - (i) a member of the Board; or
 - (ii) a legal practitioner appointed to assist the Board; or
 - (iii) a person who may examine a witness under regulation 55; and
- (c) the President of the Board requires the person to answer the question.

Penalty: 5 penalty units or imprisonment for 3 months.

(3B) An offence against subregulation (3A) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

(3C) It is a defence to a prosecution for an offence against subregulation (3) or (3A) if the person has a reasonable excuse for refusing or failing to answer the question.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (3C) (see section 13.3 of the *Criminal Code*).

(4) A person is guilty of an offence if:

- (a) the person appears as a witness before a Board of Inquiry; and

Regulation 32

- (b) the person has been served with a summons to produce a document or article; and
- (c) the document or article:
 - (i) is in the custody or control of that person; and
 - (ii) is relevant to the inquiry; and
- (d) the person refuses to produce that document or article.

Penalty: 5 penalty units or imprisonment for 3 months.

(4A) A person is guilty of an offence if:

- (a) the person appears as a witness before a Board of Inquiry; and
- (b) the person has been served with a summons to produce a document or article; and
- (c) the document or article is:
 - (i) in the custody or control of that person; and
 - (ii) relevant to the inquiry; and
- (d) the person fails to produce that document or article.

Penalty: 5 penalty units or imprisonment for 3 months.

(4B) An offence against subregulation (4A) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

(4C) It is a defence to a prosecution for an offence against subregulation (4) or (4A) if the person has a reasonable excuse for refusing or failing to produce the document or article.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (4C) (see section 13.3 of the *Criminal Code*).

- (5) A person appearing as a witness before a Board of Inquiry is not excused from answering a question, when required to do so, on the ground that the answer to the question may tend to incriminate that person, except where the answer to the question:
 - (a) may tend to incriminate that person in respect of an offence with which that person has been charged; and
 - (b) the charge has not been finally dealt with by a court or otherwise disposed of.

Regulation 33

Note At 30 June 2006, subsection 124 (2C) of the *Defence Act 1903* provided: 'A statement or disclosure made by a witness in the course of giving evidence before a court of inquiry, a board of inquiry, an inquiry officer or an inquiry assistant is not admissible in evidence against that witness in:

(a) any civil or criminal proceedings in any federal court or court of a State or Territory; or

(b) proceedings before a service tribunal;

otherwise than in proceedings by way of a prosecution for giving false testimony at the hearing before the court of inquiry, the board of inquiry, the inquiry officer or the inquiry assistant.'

(6) Without limiting the circumstances that may constitute reasonable excuse for the purposes of subregulation (3C), where a person giving evidence in public before a Board of Inquiry considers, on reasonable grounds, that the answering of a question in public at the inquiry may:

(a) disclose a secret process of manufacture; or

(b) be prejudicial to the defence of the Commonwealth;

that person has a reasonable excuse for not answering that question in public at the inquiry.

(7) Without limiting the circumstances that may constitute a reasonable excuse for the purposes of subregulation (4C), where a person appearing as a witness before a Board of Inquiry considers, on reasonable grounds, that the production in public at the inquiry of a document or article may:

(a) disclose a secret process of manufacture; or

(b) be prejudicial to the defence of the Commonwealth;

that person has a reasonable excuse for not producing that document or article in public at the inquiry.

33 Appearances and representation

(1) If the President of a Board of Inquiry considers that a person (*person A*) may be affected by the inquiry conducted by the Board, person A is authorised to appear before the Board.

Regulation 34

- (2) If the President of a Board of Inquiry considers that the record or reputation of a person who has died (*person B*) may be affected by the inquiry conducted by the Board, a single representative of person B is authorised to appear before the Board.
- (3) Person A, and the representative of person B, may appoint another person (*person C*) (who may be a legal practitioner) to represent him or her for the purposes of the inquiry, and person C is authorised to appear before the Board.
- (4) If a legal practitioner appointed under subregulation (3) is an officer in the Defence Force, his or her services must be made available at the expense of the Commonwealth.

34 Copy of evidence affecting a person

- (1) This regulation applies if:
 - (a) the President of a Board of Inquiry considers that any evidence given before the Board may affect a person (*affected person*) who was not present or represented before the Board when evidence was given; and
 - (b) the President is:
 - (i) a civilian; or
 - (ii) an officer not lower in rank than the affected person.
- (2) If this regulation applies, the President must:
 - (a) forward to the affected person a copy of the relevant evidence; and
 - (b) inform the affected person of the right of that person:
 - (i) to appear before the Board; and
 - (ii) to submit to the Board any written statement that the person thinks fit relevant to the inquiry.

35 Senior officer affected by evidence

- (1) If the President of a Board of Inquiry:
 - (a) considers that any evidence given before the Board may affect a person (*affected person*) who was not present or

Regulation 35

- represented before the Board when evidence was given;
and
- (b) is an officer lower in rank than the affected person;
the President must:
 - (c) inform the appointing authority, in writing, of that opinion; and
 - (d) furnish the appointing authority with a copy of the relevant evidence; and
 - (e) forward to the affected person a copy of the relevant evidence; and
 - (f) inform the affected person of the right of his or her right:
 - (i) to appear before the Board; and
 - (ii) to submit to the Board any written statement, relevant to the inquiry, that the affected person thinks fit.
- (2) Where information is furnished under subregulation (1), the inquiry by the Board is suspended until:
- (a) the appointing authority makes the appointment referred to in paragraph (3) (a);
 - (b) the appointing authority gives the direction referred to in paragraph (3) (b); or
 - (c) the Court is dissolved or deemed to be dissolved under subregulation 67 (3).
- (3) Where the appointing authority receives information under subregulation (1), the appointing authority may, by instrument in writing:
- (a) terminate the appointment of the President as President of the Board of Inquiry and appoint an officer (being an officer who is not lower in rank than the officer who may be affected) to be a member, and the President, of the Board of Inquiry; or
 - (b) direct that the Board of Inquiry continue with its inquiry.

Regulation 36

36 Report of Board

- (1) Subject to subregulation (2), where the President of a Board of Inquiry is satisfied that all information relevant to the inquiry that is practicable to obtain has been obtained, the President shall prepare a document, to be signed by each member of the Board, setting out:
 - (a) the findings of the Board; and
 - (b) any recommendations arising from those findings that the Board thinks fit to make;to be the report of the Board.
- (2) If the members of a Board of Inquiry cannot agree on a document prepared under subregulation (1), each member of the Board must make a statement in writing, to be signed by that member, of:
 - (a) the findings made by the member; and
 - (b) any recommendations arising from those findings that the member may think fit to make;and those statements constitute the report of the Board.
- (3) The report of a Board of Inquiry shall be furnished to the appointing authority and where the appointing authority comprises 2 or more persons a signed copy of the report shall be furnished to each of those persons.
- (4) Where a report or a copy of a report of a Board of Inquiry is furnished under this regulation, it shall be accompanied by a copy of:
 - (a) the transcript or other record of any oral evidence taken; and
 - (b) any documents received by the Board and accepted as evidence;during the course of the inquiry.

Regulation 37

37 Dissolution or reconstitution of Board on death etc of member

(1) In this regulation:

multi-member Board means a Board of Inquiry appointed by an instrument that specifies the names of 3 or more persons who are to constitute the Board.

non-Presidential member means a member of a Board of Inquiry other than the President.

2 member Board means a Board of Inquiry appointed by an instrument that specifies the names of 2 persons who are to constitute the Board and includes a multi-member Board the membership of which is reduced to 2 persons by virtue of a direction referred to in paragraph (5) (a) or subparagraph (6) (a) (ii).

(2) Where:

- (a) a member of a Board of Inquiry ceases to be a member of the Board while the inquiry by the Board is suspended;
- (b) a member of a 2 member Board ceases to be a member of the Board before the Board completes its inquiry and the other member of the Board is not the President; or
- (c) a member of a multi-member Board ceases to be a member of the Board before the Board completes its inquiry and the other members of the Board do not include the President;

the Board shall be deemed to have been dissolved under subregulation 67 (3).

(3) Where a member of a 2 member Board ceases to be a member of the Board before the Board completes its inquiry and the other member is the President:

- (a) the appointing authority may, by instrument, appoint a person to be a member of the Board; and
- (b) the inquiry by the Board is suspended until the appointing authority so appoints or the Board is dissolved, or deemed to be dissolved, under subregulation 67 (3).

(4) Where the President of a 2 member Board ceases to be a member of the Board before the Board completes its inquiry:

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- (a) the appointing authority may, by instrument, appoint the other member to be the President and, in the same instrument, appoint a person to be a member of the Board; and
 - (b) the inquiry by the Board is suspended until the appointing authority makes those appointments or the Board is dissolved, or deemed to be dissolved, under subregulation 67 (3).
- (5) Where a non-Presidential member of a multi-member Board ceases to be a member of the Board before the Board completes its inquiry and the other members of the Board include the President:
- (a) the appointing authority may, by instrument, appoint a person to be a member of the Board or direct the Board to continue the inquiry constituted with its remaining members; and
 - (b) the inquiry by the Board is suspended until the appointing authority so appoints or directs or the Board is dissolved, or deemed to be dissolved, under subregulation 67 (3).
- (6) Where the President of a multi-member Board ceases to be a member of the Board before the Board completes its inquiry:
- (a) the appointing authority may, by instrument:
 - (i) appoint a member to be the President and, in the same instrument, appoint a person to be a member of the Board; or
 - (ii) appoint a member to be the President and direct that person and the other members to constitute the Board for the purpose of continuing the inquiry; and
 - (b) the inquiry by the Board is suspended until the appointing authority so appoints a member to be the President or the Board is dissolved, or deemed to be dissolved, under subregulation 67 (3).

Part IV Combined boards of inquiry

38 Interpretation of Part IV

- (1) In this Part, unless the contrary intention appears, *participating country*, in relation to a Combined Board of Inquiry, means the country or a country, as the case may be, other than Australia specified in the instrument appointing the Board as being involved in the inquiry conducted by that Board.
- (2) For the purposes of these Regulations, an inquiry conducted by a Combined Board of Inquiry is completed:
 - (a) when the members of the Board agree on a document prepared under subregulation 47 (1) in relation to that inquiry; or
 - (b) if the members cannot so agree — when each of them has recorded in relation to that inquiry a statement required by subregulation 47 (2) whether or not in writing and whether or not signed or capable of being signed by the member who prepared it.

39 Appointment of Boards

- (1) Subject to this Part, the Minister may, by instrument, appoint a Combined Board of Inquiry to inquire into, and to make a report on, a matter concerning the Defence Force that involves the armed forces of another country or of other countries.
- (2) In appointing a Combined Board of Inquiry the Minister shall, in the instrument appointing the Board:
 - (a) specify the matter in relation to which the Board has been appointed; and
 - (b) specify the country or countries other than Australia that are involved in the inquiry.
- (3) The Minister may, by instrument, add to or vary the matters into which a Combined Board of Inquiry is to inquire.

Regulation 40

40 Delegation of power to appoint Boards

- (1) The Minister may, by instrument, delegate, either generally or as otherwise provided in the instrument, to the Chief of the Defence Force or a service chief the power of the Minister under subregulation 39 (1).
- (2) A power delegated under subregulation (1), when exercised by the delegate, shall, for the purposes of these Regulations, be deemed to have been exercised by the Minister.
- (3) A delegation under subregulation (1) does not prevent the exercise of a power by the Minister.

41 Power to make recommendations

- (1) The instrument appointing a Combined Board of Inquiry shall indicate whether or not the Board is empowered to make recommendations arising from its findings.
- (2) Where:
 - (a) the instrument appointing a Combined Board of Inquiry to inquire into a matter does not empower the Board to make recommendations arising from its findings; or
 - (b) the Minister adds a matter to the matters into which a Combined Board of Inquiry is to inquire or varies a matter into which the Board is to inquire;the Minister may, by instrument, empower the Board to make recommendations arising from its findings in relation to that matter.

42 Constitution

- (1) A Combined Board of Inquiry shall be constituted by 2 or more persons who include:
 - (a) at least one member who is an officer; and
 - (b) one member from the armed forces of the participating country or from each of the participating countries, as the case may be.

Regulation 44

- (2) The Minister shall specify in the instrument appointing a Combined Board of Inquiry the names of the persons who are to constitute the Board.

43 President

- (1) Subject to subregulation (2), the Minister shall, in the instrument appointing a Combined Board of Inquiry, appoint one of the members of the Board to be the President of the Board.
- (2) The Minister may appoint 2 or more members of a Combined Board of Inquiry to be Presidents of the Board.

43A Resignation as President of a Combined Board of Inquiry

The President of a Combined Board of Inquiry, if he or she is not a member of the Defence Force, may resign the office of President by writing signed by the President and delivered to the appointing authority.

43B Resignation from a Combined Board of Inquiry

A member of a Combined Board of Inquiry, including its President, other than a member of the Defence Force, may resign the office of member by writing signed by the member and delivered to the appointing authority.

44 Persons to assist Board

- (1) The Minister may, by instrument, appoint a person or persons, as the case may require, qualified to practise law in the participating country or in each of the participating countries, to assist a Combined Board of Inquiry.
- (2) For the purposes of these Regulations, a person appointed under subregulation (1) has the powers, duties and status of a legal practitioner.
- (3) Nothing in this regulation limits the application of regulation 51 in relation to Combined Boards of Inquiry.

Regulation 45

45 Procedure, summoning of witnesses etc

Regulation 28 and regulations 30 to 34 (inclusive) apply to, and in relation to, a Combined Board of Inquiry as if references in those regulations:

- (a) to a Board of Inquiry were references to a Combined Board of Inquiry; and
- (b) to the appointing authority were references to the Minister.

46 Conduct of inquiries in private or in public

- (1) Subject to subregulation (2), a Combined Board of Inquiry shall not conduct its inquiry in public.
- (2) The Minister may direct:
 - (a) that a Combined Board of Inquiry conduct all or part of its inquiry in public; or
 - (b) that a person, or persons included in a class of persons, specified in the direction may be present during all or part of its inquiry.
- (3) Where the President of a Combined Board of Inquiry that is conducting all or part of its inquiry in public is satisfied that it is necessary to do so in the interests of the defence of the Commonwealth or of fairness to a person who the President considers may be affected by the inquiry, the President may:
 - (a) direct that all or part of the inquiry shall be conducted in private and give directions as to the persons who may be present; or
 - (b) order that a person, or persons included in a class of persons, specified in the order not be present during the hearing of all or part of the inquiry.
- (4) Where the President of a Combined Board of Inquiry makes an order referred to in paragraph (3) (b), the President may authorize a person to take such reasonable action as is required to give effect to that order.

Regulation 47

47 Report of Board

- (1) Subject to subregulation (2), where the President of a Combined Board of Inquiry is satisfied that all information relevant to the inquiry that it is practicable to obtain has been obtained, the President shall prepare a document, to be signed by each member of the Board, setting out:
 - (a) the findings of the Board; and
 - (b) if the Board is empowered to make recommendations — any recommendations arising from those findings that the Board thinks fit to make;to be the report of the Board.
- (2) Where the members of a Combined Board of Inquiry cannot agree on a document prepared under subregulation (1), each member of the Board shall make a statement in writing, to be signed by that member, of:
 - (a) the findings made by that member; and
 - (b) if the Board is empowered to make recommendations — any recommendations arising from those findings that that member may think fit to make;and those statements shall constitute the report of the Board.
- (3) A signed copy of the report of a Combined Board of Inquiry shall be furnished to:
 - (a) the Minister; and
 - (b) the authority or to each authority, as the case may be, responsible for the armed forces of the participating country or for each of the participating countries.
- (4) The Minister shall specify the manner in which a copy of the report of a Combined Board of Inquiry is to be furnished to the authority or to each authority responsible for the armed forces of the participating country or of each participating country.
- (5) Where a copy of a report of a Combined Board of Inquiry is furnished under this regulation, it shall be accompanied by a copy of:
 - (a) the transcript or other record of any oral evidence taken; and

Regulation 48

- (b) any documents received by the Board and accepted as evidence;
during the course of the inquiry.

48 Reconstitution of Combined Board of Inquiry on death etc of member

Notwithstanding anything in this Part, where a person ceases to be a member of a Combined Board of Inquiry before the Board completes its inquiry:

- (a) the Minister may appoint a person to be a member of the Board or direct the Board to continue the inquiry constituted with its remaining members; and
- (b) the inquiry by the Board is suspended until the Minister so appoints or directs or the Board is dissolved under subregulation 67 (3).

Part V General provisions relating to Courts of Inquiry

49 Times and places for conduct of inquiries

- (1) A Court of Inquiry shall conduct its inquiry at such times, and at such places, as the President determines.
- (2) A Court of Inquiry may conduct its inquiry and exercise its powers either within or outside Australia.

50 Informal procedures etc

Subject to these Regulations, a Court of Inquiry:

- (a) shall conduct its inquiry without regard to legal forms;
- (b) is not bound by any rules of evidence; and
- (c) may inform itself on any matter relevant to its inquiry in such manner as the Court thinks fit.

51 Legal practitioner assisting Court of Inquiry

The appointing authority may, by instrument, appoint a legal practitioner to assist a Court of Inquiry.

52 Statement by person affected

The President of a Court of Inquiry shall grant to a person who the President considers may be affected by the inquiry leave to submit to the Court any written statement of that person relevant to the inquiry.

53 Evidence by members of the Defence Force

- (1) A member of the Defence Force may, for the purpose of assisting an inquiry being conducted by a Court of Inquiry, be ordered by the Court to give evidence or to produce a document or article.

Regulation 54

- (2) An order under subregulation (1) shall not require a member of the Reserves to appear before a Court of Inquiry at a time when the member is not on duty.
- (3) For the purposes of subregulation (2), a member of the Reserves shall be deemed to be on duty from the time appointed for that member to report or to attend at a specified place for any naval service, military service or air force service that the member is required by or under the *Defence Act 1903*, the *Naval Defence Act 1910* or the *Air Force Act 1923* to render until the member is duly released or discharged from that service.

54 Exclusion of prospective witnesses

- (1) Where the President of a Court of Inquiry is satisfied that it is necessary to do so in the interests of the defence of the Commonwealth or of fairness to a person who the President considers may be affected by the inquiry, the President may order that a prospective witness not be present while the evidence of another witness is taken.
- (2) Where the President of a Court of Inquiry makes an order under subregulation (1), the President may authorize a person to take such reasonable action as is required to give effect to that order.

55 Examination of witnesses

- (1) Subject to subregulation (2), a person authorized to appear before a Court of Inquiry may examine a witness on any matter relevant to the inquiry.
- (2) Where the President of a Court of Inquiry considers it proper to do so, the President may disallow any question put in an examination under subregulation (1).

56 False evidence

A person is guilty of an offence if the person gives false evidence before a Court of Inquiry.

Penalty: 5 penalty units or imprisonment for 3 months.

Regulation 59

57 Contempt of Courts of Inquiry

- (1) A person is guilty of an offence if the person:
 - (a) insults or disturbs a Court of Inquiry; or
 - (b) interrupts the proceedings of a Court of Inquiry; or
 - (c) uses any insulting language towards a Court of Inquiry; or
 - (d) by writing or speech uses words that are false and defamatory of a Court of Inquiry; or
 - (e) is in contempt of a Court of Inquiry.

Penalty: 5 penalty units or imprisonment for 3 months.

- (2) Where the President of a Court of Inquiry considers that a person has committed an offence under subregulation (1) in the face of the Court, the President may order that the person be removed from the place where the Court is conducting its inquiry.
- (3) Where the President of a Court of Inquiry makes an order under subregulation (2) the President may authorize a person to take such reasonable action as is required to give effect to the order.
- (4) The removal of a person from a place under subregulation (2) does not preclude the institution of proceedings against the person for an offence under subregulation (1).

58 Termination of appointment of member etc of Court of Inquiry

The appointing authority may terminate the appointment of a member of a Court of Inquiry, or the appointment of the person constituting a Court of Inquiry, as the case may be, for physical or mental incapacity.

59 Duties of Courts of Inquiry on lifting of suspension

Where the suspension of an inquiry by a Court of Inquiry ends otherwise than by dissolution of the Court, the Court shall continue with its inquiry, and in making its report shall have regard to any oral evidence taken and to any documents accepted as evidence, whether before or after that suspension.

Regulation 60

60 Fees and allowances

- (1) Subject to subregulation (6), a member of a Court of Inquiry, a person constituting a Court of Inquiry or an assessor assisting a General Court of Inquiry is entitled to receive a fee for each day, or part of a day, on which that person attends the inquiry conducted by the Court, being a fee that the Minister, having regard to the qualifications of the member, person or assessor, as the case may be, and to the nature of the inquiry, considers reasonable.
- (2) Where a member of a Court of Inquiry, the person constituting a Court of Inquiry or an assessor assisting a General Court of Inquiry is, in order to attend the inquiry conducted by the Court, necessarily absent overnight from the place of residence of that person the person is entitled, subject to subregulation (6), to receive travelling allowance in respect of each day that the person is necessarily absent from the place of residence of that person at the rate of travelling allowance that would be applicable when that day's absence occurs if that person were an officer of the Navy holding the rank of Commodore visiting a place within Australia, other than the normal place of duty of that person, for the purpose of performing duty in accordance with a direction given by the proper Service authority.
- (3) Where a person referred to in subregulation (2) is outside Australia during any period in respect of which travelling allowance is payable to that person under that subregulation, the Minister may authorize the payment, in addition to the travelling allowance payable to the person under that subregulation, of a further travelling allowance, at a rate fixed by the Minister, in respect of the period outside Australia.
- (4) A travelling allowance payable under subregulation (2) or (3) is in addition to the cost of conveyance.
- (5) Subject to subregulation (6), a witness appearing before a Court of Inquiry is entitled to be paid fees (including expenses) in accordance with the scale of fees payable to witnesses prescribed by the Public Works Committee Regulations.
- (6) This regulation does not authorize the payment of any fees, allowances or expenses to:

Regulation 62

- (a) a member of a Court of Inquiry or the person constituting a Court of Inquiry who is a judge;
- (b) a member of the Defence Force who is rendering service;
- (c) an officer or employee of the Public Service of the Commonwealth or of a Territory of the Commonwealth;
or
- (d) a member of the armed forces of a country other than Australia who is a member of, a lawyer assisting, or a witness appearing before, a Combined Board of Inquiry.

61 Protection of Courts of Inquiry

- (1) Each member of, or the person constituting, as the case may be, a Court of Inquiry and each assessor of a General Court of Inquiry has, in the exercise of the duties of that person, the same protection and immunity as a Justice of the High Court.
- (2) A person authorized to appear before a Court of Inquiry, or a lawyer assisting a Court of Inquiry, has the same protection and immunity as a barrister appearing for a party in proceedings in the High Court.
- (3) A witness appearing before a Court of Inquiry has the same protection as a witness in proceedings in the High Court.

62 Directions regarding disclosure of evidence

- (1) Where the President of a Court of Inquiry is satisfied that it is necessary to do so in the interests of the defence of the Commonwealth or of fairness to a person who the President considers may be affected by the inquiry conducted by the Court, the President may give directions relating to the disclosure of:
 - (a) information contained in oral evidence given before the Court, whether in public or in private;
 - (b) any documents received by the Court and accepted as evidence; or
 - (c) any statement made under regulation 52 and received by the Court, whether or not accepted as evidence;during the course of the inquiry by the Court.

Regulation 62

- (2) A direction under subregulation (1) may be expressed:
 - (a) to prohibit disclosure of information, or disclosure of a document, absolutely;
 - (b) to prohibit disclosure of information or disclosure of a document other than to a person or to persons included in a class of persons specified in the direction; or
 - (c) to prohibit disclosure of information or disclosure of a document to a person or persons.
- (3) Where the President of a Court of Inquiry gives a direction under subregulation (1) that is expressed to prohibit disclosure absolutely, the direction prohibits disclosure to all persons other than the Court or a person, or persons included in a class of persons, authorized for that purpose by the President.
- (4) Where the President of a Court of Inquiry gives a direction under subregulation (1) that is expressed to prohibit disclosure other than to a person specified in the direction or to persons included in a class of persons specified in the direction, the direction prohibits disclosure to all persons other than:
 - (a) the person or persons so specified;
 - (b) the Court; or
 - (c) a person, or persons included in a class of persons, authorized for that purpose by the President.
- (5) A direction under subregulation (1) that is expressed to prohibit the disclosure of a document also prohibits:
 - (a) the disclosure of part of that document or the disclosure of a copy of all or part of that document; and
 - (b) the disclosure of information contained in that document.
- (6) Where the President of a Court of Inquiry gives a direction under subregulation (1) that is expressed to prohibit the disclosure of information or the disclosure of a document, the direction does not prohibit the inclusion of all or part of that information or document in the report of the Court.
- (7) A person is guilty of an offence if the person contravenes a direction given by the President of a Court of Inquiry under subregulation (1).

Regulation 63

Penalty: 5 penalty units or imprisonment for 3 months.

- (7A) An offence against subregulation (7) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (7B) It is a defence to a prosecution for an offence against subregulation (7) if the person has a reasonable excuse for contravening the direction.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (7B) (see section 13.3 of the *Criminal Code*).

- (8) Subregulation (7) does not apply to a person who discloses to particular persons, or makes available to the public generally, information or a document, in accordance with an authorization under subregulation 63 (3).
- (9) Subregulation (7) does not apply in relation to information or a document that has been made available to the public generally by virtue of an authorization under subregulation 63 (3).

63 Disclosure of records or reports of Courts of Inquiry

- (1) In this regulation:

person to whom this regulation applies means a person employed by the Commonwealth and includes a member of the Defence Force.

records, in relation to a Court of Inquiry, means:

- (a) the transcript or other record of any oral evidence taken;
- (b) any documents received by the Court and accepted as evidence; and
- (c) any statement made under regulation 52 and received by the Court, whether or not accepted as evidence;

during the course of the inquiry by the Court.

report means a report of a Court of Inquiry and, in the case of a General Court of Inquiry, includes a statement of an assessor made under subregulation 19 (2).

- (2) A person to whom this regulation applies is guilty of an offence if:
- (a) the person either:

Regulation 63

- (i) discloses to a person, or makes available to the public generally, information contained in the records or report of a Court of Inquiry; or
 - (ii) copies a document, or part of a document, forming part of the records or report of a Court of Inquiry; or
 - (iii) discloses to a person, or makes available to the public generally, a document, part of a document, or a copy of all or part of a document, forming part of the records or report of a Court of Inquiry; and
- (b) the information or document referred to in paragraph (a) came to the knowledge, or into the possession, of the person in the course of his or her employment.

Penalty: 5 penalty units or imprisonment for 3 months.

- (2A) It is defence to a prosecution for an offence against subregulation (2) if the person is acting in the performance of the duties of his or her office.

Note A defendant bears an evidential burden in relation to the matter mentioned in subregulation (2A) (see section 13.3 of the *Criminal Code*).

- (3) The Minister may, by instrument, authorize a person to whom this regulation applies to disclose to particular persons or make available to the public generally:
- (a) all or part of the information contained in the records of, or the report of, a Court of Inquiry; or
 - (b) a document or part of a document forming part of those records or of that report.
- (4) An authorization under subregulation (3) may be expressed:
- (a) to permit disclosure to a person, or to persons included in a class of persons, specified in the authorization; or
 - (b) to be subject to conditions.
- (5) An authorization may be given under subregulation (3) notwithstanding that the information or the documents to which it relates is or are the subject, in whole or in part, of a direction under subregulation 62 (1).

Regulation 66

- (6) Subregulation (2) does not apply to a person who discloses to particular persons or makes available to the public generally information, a document, or part of a document, in accordance with an authorization under subregulation (3).
- (7) Subregulation (2) does not apply to or in relation to information, to a document, or to part of a document, that has been made available to the public generally by virtue of an authorization under subregulation (3).
- (8) Subregulation (2) does not apply to a person who discloses to a person or makes available to the public generally information contained in oral evidence given in public in the course of an inquiry.
- (9) Subregulation (2) shall not be taken to limit the operation of subregulation 62 (7).

64 Protection of certain publications

- (1) In this regulation, *report* means a report of a Court of Inquiry and, in the case of a General Court of Inquiry, includes a statement of an assessor made under subregulation 19 (2).
- (2) Subject to subregulations 62 (7) and 63 (2), no action or proceeding, civil or criminal, lies in respect of the publication of a fair and accurate account of all or part of the proceedings of a Court of Inquiry, being proceedings conducted by the Court in public.
- (3) No action or proceeding, civil or criminal, lies in respect of the publication of a report, not being a publication in contravention of a direction under subregulation 62 (1) or a contravention of subregulation 63 (2).

66 Re-opening of inquiry

- (1) Where:
 - (a) a Court of Inquiry has completed its inquiry; and

Regulation 67

(b) the appointing authority considers that the Court, being a Court that is still in existence, should re-open its inquiry and make a further report with respect to particular matters;

the appointing authority may:

(c) if the Court is a Board of Inquiry or a Combined Board of Inquiry — by instrument; or

(d) if the Court is a General Court of Inquiry — by instrument published in the *Gazette*;

direct the Court accordingly and shall specify in the direction the matters with which the further report is to deal.

(2) Where a direction is given to a Court of Inquiry under subregulation (1) in relation to an inquiry completed by the Court, the inquiry is re-opened.

67 Duration and dissolution

(1) Unless it is sooner dissolved or deemed to be dissolved under these Regulations, a Court of Inquiry shall continue in existence until the expiration of 2 months after it has completed its inquiry.

(2) Where a Court of Inquiry has been directed under regulation 66 to make a further report, the Court shall continue in existence, unless it is sooner dissolved or deemed to be dissolved under these Regulations, until the expiration of 2 months after it has completed the re-opened inquiry.

(3) The appointing authority may dissolve a Court of Inquiry at any time before it has completed its inquiry.

(4) The suspension of an inquiry conducted by a Court of Inquiry does not prevent the dissolution of that Court.

Part 6 Inquiry Officers and inquiry assistants

68 Definitions

In this Part:

APS employee, and *ongoing APS employee*, have the respective meanings given by the *Public Service Act 1999*.

the inquiry, in relation to an Inquiry Officer, means the inquiry that the Officer has been appointed to conduct.

69 Inquiry Officers and inquiry assistants

- (1) An Inquiry Officer may be appointed to inquire into a matter concerning a part of the Defence Force.
- (2) One or more inquiry assistants may be appointed to assist an Inquiry Officer to inquire into a matter concerning a part of the Defence Force.

70 Eligibility to be Inquiry Officer or inquiry assistant

- (1) The following persons are eligible to be appointed as an Inquiry Officer or inquiry assistant:
 - (a) an officer;
 - (b) a warrant officer;
 - (c) an ongoing employee in the Australian Public Service who is performing duties at or above the classification of APS Level 4;
 - (d) any other person (except an APS employee who does not comply with paragraph (c)).
- (2) However, a person mentioned in paragraph (1) (c) or (d) is not eligible to be appointed unless:
 - (a) for a person mentioned in paragraph (1) (c) — the person has agreed in writing to the appointment; and
 - (b) for a person mentioned in paragraph (1) (d):

Regulation 70A

- (i) a proposal to appoint the person has been approved in writing by the Chief of the Defence Force or the Chief of an arm of the Defence Force; and
- (ii) the person has agreed in writing to the appointment.

70A Appointment of Inquiry Officers and inquiry assistants

- (1) An Inquiry Officer or inquiry assistant may be appointed by one of the following officers in relation to an inquiry into a matter concerning the part of the Defence Force that is under the command or control of the officer:
 - (a) a commanding officer in the Defence Force;
 - (b) an officer who has the powers of a formation commander under the *Australian Military Regulations 1927*;
 - (c) an officer who holds an appointment superior to that of an officer mentioned in paragraph (a) or (b).
- (2) However, subregulation (1) does not authorise an officer to appoint an Inquiry Officer in relation to an inquiry into a matter if an appointment of an Inquiry Officer is in force in relation to an inquiry into the same matter.
- (3) An appointment must:
 - (a) be made in writing; and
 - (b) give the name of the Inquiry Officer or inquiry assistant to whom the instrument of appointment relates.

70B Power of Inquiry Officer

- (1) A person who is appointed as an Inquiry Officer is empowered to make recommendations resulting from his or her findings (including findings about a matter added under subregulation (2)).
- (2) The appointing officer may add a matter to the matters into which an Inquiry Officer is to inquire, or vary a matter into which the Inquiry Officer is to inquire.

Regulation 74

70C Power of inquiry assistant

If a person is appointed as an inquiry assistant to assist an Inquiry Officer, the person:

- (a) may assist the Inquiry Officer to gather evidence for the purposes of the inquiry; and
- (b) must give to the Inquiry Officer any evidence he or she has gathered for the purposes of the inquiry.

71 Procedure

Subject to these Regulations, the procedure to be followed by an Inquiry Officer shall be as the appointing officer directs.

72 Conduct of inquiries in private

An Inquiry Officer shall not conduct an inquiry in public.

73 Manner of taking evidence

An Inquiry Officer and an inquiry assistant must not take evidence on oath or affirmation.

74 Duty to answer questions

- (1) A member of the Defence Force is guilty of an offence if the member:
 - (a) appears as a witness before an Inquiry Officer or inquiry assistant; and
 - (b) refuses to answer a question that is relevant to the inquiry and that has been put to the member by an Inquiry Officer or inquiry assistant.

Penalty: 5 penalty units or imprisonment for 3 months.

- (2) A member of the Defence Force is guilty of an offence if the member:
 - (a) appears as a witness before an Inquiry Officer or inquiry assistant; and

Regulation 74

- (b) fails to answer a question that is relevant to the inquiry and that has been put to the member by an Inquiry Officer or inquiry assistant.

Penalty: 5 penalty units or imprisonment for 3 months.

- (3) An offence against subregulation (2) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3A) A person appearing as a witness before an Inquiry Officer or an inquiry assistant is not excused from answering a question, when required to do so, on the ground that the answer to the question may tend to incriminate that person, except where the answer to the question:

- (a) may tend to incriminate that person in respect of an offence with which that person has been charged; and
(b) the charge has not been finally dealt with by a court or otherwise disposed of.

Note At 30 June 2006, subsection 124 (2C) of the *Defence Act 1903* provided: 'A statement or disclosure made by a witness in the course of giving evidence before a court of inquiry, a board of inquiry, an inquiry officer or an inquiry assistant is not admissible in evidence against that witness in:

- (a) any civil or criminal proceedings in any federal court or court of a State or Territory; or
(b) proceedings before a service tribunal;

otherwise than in proceedings by way of a prosecution for giving false testimony at the hearing before the court of inquiry, the board of inquiry, the inquiry officer or the inquiry assistant.'

- (4) It is a defence to a prosecution for an offence against subregulation (1) or (2) if the person has a reasonable excuse for refusing or failing to answer the question.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (4) (see section 13.3 of the *Criminal Code*).

- (5) Without limiting the circumstances that may constitute a reasonable excuse for the purposes of subregulation (4), a member has a reasonable excuse for refusing or failing to answer a question if the member considers, on reasonable grounds, that answering the question may:

Regulation 74A

- (a) disclose a secret process of manufacture; or
- (b) be prejudicial to the defence of the Commonwealth.

74A Duty to produce document or article

- (1) A member of the Defence Force is guilty of an offence if:
 - (a) the member appears as a witness before an Inquiry Officer or an inquiry assistant; and
 - (b) the member is ordered by the Inquiry Officer or inquiry assistant to produce a document or an article that:
 - (i) is in the custody or control of the member; and
 - (ii) is relevant to the inquiry; and
 - (c) the member refuses to produce the document or article.

Penalty: 5 penalty units or imprisonment for 3 months.

- (2) A member of the Defence Force is guilty of an offence if:
 - (a) the member appears as a witness before an Inquiry Officer or an inquiry assistant; and
 - (b) the member is ordered by the Inquiry Officer or inquiry assistant to produce a document or an article that:
 - (i) is in the custody or control of the member; and
 - (ii) is relevant to the inquiry; and
 - (c) the member fails to produce the document or article.

Penalty: 5 penalty units or imprisonment for 3 months.

- (3) An offence against subregulation (2) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (4) It is a defence to a prosecution for an offence against subregulation (1) or (2) if the person has a reasonable excuse for refusing or failing to produce the document or article.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (4) (see section 13.3 of the *Criminal Code*).

Regulation 75

- (5) Without limiting the circumstances that may constitute a reasonable excuse for the purposes of subregulation (4), a member has a reasonable excuse for refusing or failing to produce a document or article if the member considers, on reasonable grounds, that producing the document or article may:
- (a) disclose a secret process of manufacture; or
 - (b) be prejudicial to the defence of the Commonwealth.

75 Report of Inquiry Officer

- (1) Where an Inquiry Officer is satisfied that all information relevant to the inquiry that is practicable to obtain has been obtained, the Inquiry Officer shall prepare a report setting out:
- (a) the findings of the Inquiry Officer; and
 - (b) any recommendations arising from the findings of the Inquiry Officer that the Inquiry Officer thinks fit to make.
- (2) The report of an Inquiry Officer shall be furnished to the appointing officer.
- (3) Where a report of an Inquiry Officer is furnished under this regulation, it shall be accompanied by a copy of:
- (a) the transcript or other record of any oral evidence taken; and
 - (b) any documents received by the officer and accepted as evidence;
- during the course of the inquiry.

75A Completion of inquiry

- (1) An inquiry is taken to be completed when the report of the Inquiry Officer has been:
- (a) prepared under regulation 75; and
 - (b) given to the appointing officer.
- (2) The inquiry is taken to be completed whether or not the report has been signed by the Inquiry Officer.

Regulation 77

76 Re-opening of inquiry

- (1) Where:
 - (a) an Inquiry Officer has completed the inquiry;
 - (b) the appointment of the Inquiry Officer in relation to that inquiry continues in existence; and
 - (c) the appointing officer considers that the Inquiry Officer should re-open the inquiry and make a further report with respect to particular matters;the appointing officer may direct the Inquiry Officer accordingly and shall specify in the direction the matters with which the further report is to deal.
- (2) Where a direction is given to an Inquiry Officer under subregulation (1) in relation to an inquiry completed by the officer, the inquiry is re-opened.

77 Duration and termination of appointment

- (1) Subject to subregulation (2), if a person is appointed as an Inquiry Officer or an inquiry assistant, the appointment continues until the end of 2 months after the inquiry is taken to be completed.
- (2) If an Inquiry Officer has been directed, under regulation 76, to make a further report:
 - (a) the appointment of the person to be an Inquiry Officer is taken to continue in existence until the end of 2 months after the re-opened inquiry is taken to be completed; and
 - (b) the appointment of a person to be an inquiry assistant to the Inquiry Officer is taken to continue in existence until the end of 2 months after the re-opened inquiry is taken to be completed.

Regulation 78

78 Application of provisions to Inquiry Officers and inquiry assistants

- (1) If a person is appointed as an Inquiry Officer, regulations 49, 50, 53, 56, 57, subregulations 60 (5) and (6), regulations 61 and 63 and subregulations 64 (1) and (3) apply to and in relation to the Inquiry Officer as if the Inquiry Officer constituted a Court of Inquiry.
- (2) However:
 - (a) a reference to the appointing authority in a provision mentioned in subregulation (1) is to be read as a reference to the appointing officer; and
 - (b) a power or function that may be exercised or performed by the President of a Court of Inquiry under a provision mentioned in subregulation (1) may, in relation to an inquiry under this Part, be performed by the Inquiry Officer.
- (3) If a person is appointed as an inquiry assistant, subregulation 49 (2), regulations 50, 53, 56, subregulation 57 (1), subregulations 60 (5) and (6), regulations 61 and 63, subregulations 64 (1) and (3) apply to and in relation to the inquiry assistant as if the inquiry assistant constituted a Court of Inquiry.
- (4) However:
 - (a) a reference to the appointing authority in a provision mentioned in subregulation (3) is to be read as a reference to the appointing officer; and
 - (b) a power or function that may be exercised or performed by the President of a Court of Inquiry under a provision mentioned in subregulation (3) may, in relation to an inquiry under this Part, be performed by the inquiry assistant.

Part 7 Inquiries by the Inspector-General of the Australian Defence Force

Division 1 Preliminary

80 Definitions

- (1) In this Part:

Assistant IGADF means a person appointed under paragraph 82 (1) (c).

inquiry means an inquiry under this Part.

Inspector-General means the person appointed as the Inspector-General of the Australian Defence Force.

- (2) In this Part (other than Division 3):

Inquiry Assistant means a person appointed under paragraph 82 (1) (b).

Note Definitions for Division 3 are set out in regulation 91.

- (3) In this Part (other than Divisions 3 and 4):

Inquiry Officer means a person appointed under paragraph 82 (1) (a).

Note Definitions for Division 3 are set out in regulation 91. A definition for Division 4 is set out in regulation 99.

81 Application of Divisions 1 to 6

Divisions 1 to 6 apply if:

- (a) the Chief of the Defence Force directs the Inspector-General to inquire into a matter; or
- (b) a service chief requests the Inspector-General to inquire into a matter; or
- (c) the Inspector-General decides that it is appropriate to inquire into a matter.

Regulation 82

Note The Inspector-General need not conduct an inquiry personally: see regulation 88.

82 Inquiry Officers, Inquiry Assistants and Assistants IGADF

- (1) The Inspector-General may appoint an eligible person to be:
 - (a) an Inquiry Officer; or
 - (b) an Inquiry Assistant; or
 - (c) an Assistant IGADF.
- (2) An appointment must be in writing.

83 Eligibility for appointment as Inquiry Officer, Inquiry Assistant or Assistant IGADF

- (1) The following persons are eligible to be appointed as an Inquiry Officer, Inquiry Assistant or Assistant IGADF:
 - (a) a member of the Defence Force, of any rank;
 - (b) an APS employee, of any classification (including, but not limited to, an SES employee or acting SES employee);
 - (c) any other person who has agreed, in writing, to the appointment.
- (2) However, a person is not eligible to be appointed in relation to an inquiry into a matter:
 - (a) that relates to the conduct of the person; or
 - (b) in relation to which the giving of evidence, or the production of documents, by the person is likely to be required.

84 Role of Inquiry Officer

- (1) An Inquiry Officer must:
 - (a) inquire into the matter for which he or she is appointed; and
 - (b) report to the Inspector-General about the matter.
- (2) The Inspector-General may:
 - (a) in writing; and

- (b) at any time;
authorise an Inquiry Officer to make recommendations resulting from the Inquiry Officer's findings.

85 Role of Assistant IGADF

An Assistant IGADF must help the Inspector-General, on an ongoing basis, to carry out the Inspector-General's functions.

Note One of the functions that an Assistant IGADF may help with is inquiring into matters, under directions given by the Inspector-General under regulation 87.

86 Role of Inquiry Assistant

- (1) An Inquiry Assistant must help the Inspector-General, an Inquiry Officer or an Assistant IGADF to inquire into the matter for which the Inquiry Assistant was appointed.
- (2) An Inquiry Assistant:
 - (a) may help the Inspector-General, Inquiry Officer or Assistant IGADF to collect evidence for the purposes of the inquiry; and
 - (b) must give to the Inspector-General, Inquiry Officer or Assistant IGADF any evidence he or she has collected for the purposes of the inquiry.

87 Directions to Assistant IGADF

- (1) The Inspector-General may direct an Assistant IGADF, orally or in writing:
 - (a) to inquire into a matter; or
 - (b) to help the Inspector-General, an Inquiry Officer or another Assistant IGADF to inquire into a matter.
- (2) However, the Inspector-General must not direct an Assistant IGADF in relation to an inquiry into a matter:
 - (a) that relates to the conduct of the Assistant IGADF; or
 - (b) in relation to which the giving of evidence, or the production of documents, by the Assistant IGADF is likely to be required.

Regulation 88

- (3) If the Inspector-General directs an Assistant IGADF under subregulation (1), the Inspector-General may:
 - (a) orally or in writing; and
 - (b) at any time;authorise the Assistant IGADF to make recommendations resulting from the Assistant IGADF's finding.
- (4) The Inspector-General must make a record of an oral direction or authorisation as soon as practicable.

Division 2 Starting an inquiry

88 Way of conducting inquiry

- (1) The Inspector-General may inquire into a matter under this Part:
 - (a) personally; or
 - (b) by appointing an Inquiry Officer to inquire into the matter; or
 - (c) by directing an Assistant IGADF to inquire into the matter.
- (2) The appointment of an Inquiry Officer, or the giving of a direction to an Assistant IGADF, for a matter does not prevent:
 - (a) the Inspector-General from taking part personally in the inquiry into the matter; or
 - (b) an Inquiry Assistant from helping with an inquiry.

89 Scope of inquiry

- (1) The Inspector-General may give a direction:
 - (a) adding anything to a matter into which an Inquiry Officer or Assistant IGADF is to inquire; or
 - (b) varying the terms of the inquiry into a matter into which an Inquiry Officer or Assistant IGADF is to inquire.
- (2) The direction:
 - (a) if addressed to an Inquiry Officer — must be in writing; or

- (b) if addressed to an Assistant IGADF — may be oral or in writing.
- (3) If the direction is oral, the Inspector-General must make a record of the direction as soon as practicable after giving it.
- (4) The Inquiry Officer or Assistant IGADF must extend, or vary, the inquiry in accordance with the direction.

90 Discretion not to inquire further

- (1) This regulation applies if the Inspector-General, an Inquiry Officer or an Assistant IGADF:
 - (a) is inquiring into a matter; and
 - (b) believes that:
 - (i) the matter could be more appropriately dealt with in a way other than by an inquiry under this Part; or
 - (ii) if a submission has been made to the Inspector-General about the matter — the submission is frivolous or vexatious; or
 - (iii) the continuation of the inquiry is not otherwise warranted, having regard to all the circumstances.
- (2) If an Inquiry Officer or Assistant IGADF forms the belief:
 - (a) the Inquiry Officer or Assistant IGADF must inform the Inspector-General of that belief and the reasons for it; and
 - (b) the Inspector-General must decide whether the Inspector-General has the same belief.
- (3) If the Inspector-General forms the belief (after being informed under subregulation (2) or otherwise), the Inspector-General may decide to end the inquiry.
- (4) The Inspector-General must make a record, in writing, of:
 - (a) a decision to end the inquiry; and
 - (b) a decision not to end an inquiry, made following the Inspector-General being informed under subregulation (2) of an Inquiry Officer's or Assistant IGADF's belief.

Note The end of an inquiry in this way does not prevent the later commencement of a new inquiry into the matter, or of an inquiry into something that includes the matter.

Regulation 91

Division 3 Procedure for inquiry

91 Interpretation for Division 3

In this Division:

Inquiry Assistant includes an Assistant IGADF who is directed to help the Inspector-General, an Inquiry Officer or Assistant IGADF to inquire into a matter.

Inquiry Officer includes:

- (a) the Inspector-General; and
- (b) an Assistant IGADF who is directed to inquire into a matter.

92 Procedure

Subject to these Regulations, the procedure to be followed in the course of an inquiry is the procedure that the Inspector-General directs.

93 Concurrent inquiries

An Inquiry Officer may inquire into a matter whether or not an inquiry under another Part or another inquiry under this Part is being made into:

- (a) the matter; or
- (b) something that includes the matter.

94 Conduct of inquiries in private

An Inquiry Officer must not conduct an inquiry in public.

95 Way of taking evidence

An Inquiry Officer or Inquiry Assistant must not take evidence on oath or affirmation.

96 Duty to answer questions

- (1) A member of the Defence Force who appears as a witness before an Inquiry Officer or an Inquiry Assistant must not refuse or fail to answer a question relevant to the inquiry put to the member by the Inquiry Officer or Inquiry Assistant.

Penalty: 5 penalty units or imprisonment for 3 months.

- (2) Subregulation (1) does not apply if the member considers, on reasonable grounds, that answering a question may:
- (a) disclose a secret process of manufacture; or
 - (b) be prejudicial to the defence of the Commonwealth.

Note A defendant bears an evidential burden in relation to the matter in subregulation (2) (see subsection 13.3 (3) of the *Criminal Code*).

- (3) A person appearing as a witness before an Inquiry Officer or an Inquiry Assistant is not excused from answering a question, when required to do so, on the ground that the answer to the question may tend to incriminate that person, except where the answer to the question:
- (a) may tend to incriminate that person in respect of an offence with which that person has been charged; and
 - (b) the charge has not been finally dealt with by a court or otherwise disposed of.

Note At 30 June 2006, subsection 124 (2C) of the *Defence Act 1903* provided: 'A statement or disclosure made by a witness in the course of giving evidence before a court of inquiry, a board of inquiry, an inquiry officer or an inquiry assistant is not admissible in evidence against that witness in:

- (a) any civil or criminal proceedings in any federal court or court of a State or Territory; or
- (b) proceedings before a service tribunal;

otherwise than in proceedings by way of a prosecution for giving false testimony at the hearing before the court of inquiry, the board of inquiry, the inquiry officer or the inquiry assistant.'

Regulation 97

97 Duty to produce document or thing

- (1) If a member of the Defence Force who appears as a witness before an Inquiry Officer or an Inquiry Assistant is directed by the Inquiry Officer or Inquiry Assistant to produce a document or a thing that:
- (a) is in the custody or control of the member; and
 - (b) is relevant to the inquiry;
- the member must not refuse or fail to produce the document or thing.

Penalty: 5 penalty units or imprisonment for 3 months.

- (2) Subregulation (1) does not apply if the member considers, on reasonable grounds, that the production of a document or a thing may:
- (a) disclose a secret process of manufacture; or
 - (b) be prejudicial to the defence of the Commonwealth.

Note A defendant bears an evidential burden in relation to the matter in subregulation (2) (see subsection 13.3 (3) of the *Criminal Code*).

Division 4 Reporting

99 Interpretation for Division 4

In this Division:

Inquiry Officer includes an Assistant IGADF who is directed to inquire into a matter.

100 Report after inquiry by Inquiry Officer

- (1) If:
- (a) an Inquiry Officer has inquired into a matter and is satisfied that all information relevant to the inquiry that is practicable to obtain has been obtained; and
 - (b) a decision has not been made to end the inquiry under subregulation 90 (3);
- the Inquiry Officer must prepare a report.
- (2) The report must:

Regulation 101

- (a) set out the findings of the Inquiry Officer in relation to the inquiry; and
- (b) if the Inquiry Officer is authorised to make recommendations — any recommendations that the Inquiry Officer thinks appropriate to make because of those findings.

Note An Inquiry Officer may be authorised to make recommendations as part of the Inquiry Officer's appointment: see regulation 82.

- (3) The report must be accompanied by:
 - (a) a copy of the transcript or other record of any oral evidence taken during the inquiry; and
 - (b) a copy of each document accepted as evidence during the inquiry; and
 - (c) a list of all other things that were produced to the inquiry with information about where each thing is located.
- (4) The Inquiry Officer must give the report to the Inspector-General as soon as practicable.

101 Further inquiry and report

- (1) If:
 - (a) an Inquiry Officer has given the Inspector-General a report under regulation 100; and
 - (b) the Inspector-General considers that the Inquiry Officer should inquire further, and prepare a further report, in relation to the matter to which the inquiry relates;the Inspector-General may direct the Inquiry Officer accordingly and must specify in the direction the matters with which the further report is to deal.

Note See regulation 103 for what happens if an Inquiry Officer becomes unavailable.
- (2) If the Inspector-General directs an Inquiry Officer under subregulation (1):
 - (a) compliance with the direction is an additional function of the Inquiry Officer in relation to the inquiry; and
 - (b) helping further with the inquiry is an additional function of an Inquiry Assistant in relation to the inquiry.

Regulation 102

- (3) The further report must be accompanied by:
 - (a) a copy of the transcript or other record of any oral evidence taken during the further inquiry; and
 - (b) a copy of each document accepted as evidence during the further inquiry; and
 - (c) a list of all other things that were produced to the inquiry with information about where each thing is located.
- (4) The Inquiry Officer must give the further report to the Inspector-General as soon as practicable.

102 Record or report after inquiry by Inspector-General

- (1) This regulation applies if:
 - (a) an Inquiry Officer has given the Inspector-General a report under regulation 100 and a further report under regulation 101 has been given to the Inspector-General or is not required; or
 - (b) the Inspector-General personally has inquired into a matter and:
 - (i) is satisfied that all information relevant to the inquiry that is practicable to obtain has been obtained; and
 - (ii) a decision has not been made to end the inquiry under subregulation 90 (3).
- (2) The Inspector-General must:
 - (a) make a record of the findings in relation to the inquiry; and
 - (b) include with the record a copy of:
 - (i) the transcript or other record of any oral evidence taken during the inquiry; and
 - (ii) any documents accepted as evidence during the inquiry.
- (3) The Inspector-General may, if he or she thinks it appropriate to do so:
 - (a) inform 1 or more of the following persons of the findings in relation to the inquiry:

- (i) the Chief of the Defence Force;
 - (ii) an official in the Department;
 - (iii) a member of the Defence Force;
 - (iv) a person who is affected by a submission or the inquiry (whether or not the person made a submission); or
 - (b) give 1 or more of those persons a report of the findings and any recommendations that the Inspector-General thinks it appropriate to make as a result of the findings.
- (4) A report mentioned in paragraph (3) (b) must be accompanied by a copy of:
- (a) the transcript or other record of any oral evidence taken during the inquiry; and
 - (b) any document accepted as evidence during the inquiry.
- (5) However, the Inspector-General may leave out of a report, the material accompanying the report, or both, information that the Inspector-General considers is not appropriate for the person to whom the report is given because of 1 or more of the following reasons:
- (a) considerations of privacy;
 - (b) the person's responsibilities;
 - (c) the person's interest in the matter;
 - (d) the relevance of the information to other information considered not appropriate for the person because of paragraphs (a), (b) and (c).
- (6) If the Chief of the Defence Force has directed the Inspector-General to give him or her a report in relation to a matter that was the subject of an inquiry:
- (a) the Inspector-General must give the Chief of the Defence Force a report of:
 - (i) the findings in relation to the inquiry; and
 - (ii) any recommendations mentioned in paragraph (3) (b); and
 - (iii) any further recommendations; and
 - (b) subregulation (5) does not apply in relation to the report.

Regulation 103

Division 5 Change in inquiry personnel

103 Change in inquiry personnel

- (1) This regulation applies if:
 - (a) an Inquiry Officer who is appointed to inquire into a matter, or an Assistant IGADF who is directed to inquire into a matter, becomes unavailable to continue the inquiry before giving a report to the Inspector-General under subregulation 100 (3); or
 - (b) an Inquiry Officer who gives a report to the Inspector-General under subregulation 100 (3) becomes unavailable:
 - (i) to inquire further into a matter; or
 - (ii) to prepare a further report.
- (2) The Inspector-General may:
 - (a) appoint another eligible person as an Inquiry Officer (the *new Inquiry Officer*) to take over the responsibilities of the Inquiry Officer or Assistant IGADF who is unavailable; or
 - (b) direct an Assistant IGADF (the *new Inquiry Officer*) to inquire into the matter in place of the Inquiry Officer or Assistant IGADF who is unavailable; or
 - (c) personally take over the inquiry.
- (3) A new Inquiry Officer and the Inspector-General may have regard to any record of proceedings of the inquiry made by any other Inquiry Officer who previously took part in the inquiry.
- (4) A new Inquiry Officer and the Inspector-General may have regard to any evidence collected by an Inquiry Assistant or Assistant IGADF even if, after collecting the evidence, the Inquiry Assistant or Assistant IGADF becomes unavailable to help further with an inquiry.
- (5) In this regulation:

Inquiry Officer has the same meaning as in Division 4 (except in *new Inquiry Officer*).

Division 6 Ending of inquiry

104 Ending of inquiry

An inquiry that has not been ended under subregulation 90 (3) ends:

- (a) if subregulation 102 (3) applies — when the Inspector-General gives the report mentioned in that subregulation; or
- (b) in any other case — when the Inspector-General makes the record of the findings of the inquiry mentioned in subregulation 102 (2).

105 Duration and ending of appointments

- (1) The appointments of:
 - (a) an Inquiry Officer; and
 - (b) an Inquiry Assistant;end when a report of the inquiry in relation to which the appointments were made is given to the Inspector-General under subregulation 100 (4).
- (2) However, if the Inspector-General directs an Inquiry Officer under subregulation 101 (1) to inquire further and make a further report, the appointments of the Inquiry Officer and any Inquiry Assistant who had been appointed in relation to the inquiry:
 - (a) are taken, despite subregulation (1), to continue in force; and
 - (b) end when the further report is given to the Inspector-General.
- (3) A direction given to an Assistant IGADF under regulation 87 in relation to an inquiry ceases to have effect:
 - (a) as specified in the direction; or
 - (b) as otherwise directed by the Inspector-General.

Regulation 106

Division 7 General provisions

106 Protection of submissions

Civil proceedings do not lie against a person for loss, damage or injury of any kind suffered by another person by reason of any of the following acts done in good faith:

- (a) the making of a submission to the Inspector-General;
- (b) the making of a statement to, or the giving of a document or information to, the Inspector-General as a part of, or in connection with, a submission.

**107 Application of general provisions to
Inspector-General, Inquiry Officer, Inquiry Assistant
and Assistant IGADF**

- (1) Regulations 49, 50, 53, 56, 57, subregulations 60 (5) and (6), regulations 61 and 63 and subregulations 64 (1) and (3) apply to and in relation to:

- (a) the Inspector-General; and
- (b) an Inquiry Officer; and
- (c) an Assistant IGADF acting under a direction mentioned in paragraph 87 (1) (a);

in the course of an inquiry as if that person constituted a Court of Inquiry.

- (2) However, a power or function that may be exercised or performed by the President of a Court of Inquiry under a provision mentioned in subregulation (1) may, in relation to an inquiry, be exercised or performed by the Inspector-General, the Inquiry Officer or the Assistant IGADF.

- (3) Subregulation 49 (2), regulations 50, 53, 56, subregulation 57 (1), subregulations 60 (5) and (6), regulations 61 and 63 and subregulations 64 (1) and (3) apply to and in relation to:

- (a) an Inquiry Assistant; or
- (b) an Assistant IGADF acting under a direction mentioned in paragraph 87 (1) (b);

as if that person constituted a Court of Inquiry.

Regulation 109

- (4) However, a power or function that may be exercised or performed by the President of a Court of Inquiry under a provision mentioned in subregulation (3) may, in relation to an inquiry, be exercised or performed by the Inquiry Assistant or the Assistant IGADF.

Part 8 **Chief of the Defence Force Commissions of Inquiry**

108 **Interpretation**

- (1) In this Part, unless the contrary intention appears:
- appointing authority*, for a Commission of Inquiry, means the Chief of the Defence Force.
- summons* means a summons issued under regulation 118.
- (2) For this Part, an inquiry conducted by a Commission of Inquiry is *completed*:
- (a) if the Commission of Inquiry is constituted by only 1 member — when that member prepares a report under subregulation 123 (1); or
- (b) if the Commission of Inquiry is constituted by more than 1 member — when the members agree on a document prepared under subregulation 123 (2) in relation to that inquiry; or
- (c) if the members cannot so agree — when each of the members has prepared, in relation to that inquiry, a statement required by subregulation 123 (3), whether or not in writing and whether or not signed or capable of being signed by the member who prepared it.

109 **Appointment of Commission of Inquiry**

- (1) Subject to subregulation (2), the appointing authority:
- (a) must, by instrument in writing, appoint a Commission of Inquiry to inquire into the death or suicide of a member of the Defence Force that appear to have arisen out of, or in the course of, the member's service; and

Regulation 110

- (b) may, by instrument in writing, appoint a Commission of Inquiry to inquire into:
 - (i) the serious injury of a member of the Defence Force, which arose out of, or in the course of, that member's service; or
 - (ii) any other matter concerning the Defence Force that is specified in the instrument.
- (2) The appointing authority is not required to appoint a Commission of Inquiry if the member's death or suicide occurs in circumstances that the Minister has, by written direction, specified as circumstances in which a Commission of Inquiry is not required.
- (3) The appointing authority may, by instrument in writing:
 - (a) add a matter to the matters into which the Commission of Inquiry may inquire; or
 - (b) vary those matters.

110 Power to make recommendations

A Commission of Inquiry is empowered to make recommendations arising from its findings.

111 Constitution

- (1) A Commission of Inquiry may be constituted by 1 or more persons.
- (2) If a Commission of Inquiry is constituted by more than 1 person, the persons constituting the Commission of Inquiry may include 1 or more members of the Defence Force.
- (3) If the Commission of Inquiry is constituted by 1 person, that person must be eligible to be appointed as President under regulation 112.
- (4) The appointing authority must specify in the instrument of appointment the names of the persons who constitute the Commission of Inquiry.

Regulation 114

- (5) Any subsequent appointments of members must be made in separate instruments of appointment.
- (6) The performance of the functions or the exercise of powers of the Commission of Inquiry is not affected by a vacancy in the membership of the Commission of Inquiry, other than the President.

112 President

- (1) The appointing authority must, in the instrument appointing a Commission of Inquiry or by later instrument, appoint 1 of the members of the Commission of Inquiry to be the President.
- (2) The President of the Commission of Inquiry must:
 - (a) have judicial experience; and
 - (b) be a civilian; and
 - (c) not be a Permanent or Reserve member of the Defence Force.

113 Resignation of President

The President of a Commission of Inquiry:

- (a) may resign the office of President by writing signed by the President and delivered to the appointing authority; and
- (b) may resign the office of member by writing signed by the member and delivered to the appointing authority.

Note The President may resign the office of President while remaining as a member of the Commission of Inquiry, or may resign as both the President and a member of the Commission of Inquiry.

114 Resignation of member

If a member of a Commission of Inquiry is not a member of the Defence Force, the member may resign the office of member by writing signed by the member and delivered to the appointing authority.

Regulation 115

115 Procedure

Subject to these Regulations, the procedure of a Commission of Inquiry is the procedure that the appointing authority directs.

116 President may obtain information

The President may inform himself or herself on any matter relevant to an inquiry in such manner as the President thinks fit.

117 Conduct of inquiries in private or in public

- (1) Subject to subregulation (2), a Commission of Inquiry must not conduct an inquiry in public.
- (2) The appointing authority may direct:
 - (a) that a Commission of Inquiry conduct all or part of an inquiry in public; or
 - (b) that a person, or persons included in a class of persons, specified in the direction may be present during all or part of an inquiry.
- (3) If the President of a Commission of Inquiry that is conducting all or part of an inquiry in public is satisfied that it is necessary to do so in the interests of the defence of the Commonwealth or of fairness to a person who the President considers may be affected by the inquiry, the President may:
 - (a) direct that all or part of the inquiry must be conducted in private and give directions as to the persons who may be present; or
 - (b) order that a person, or persons included in a class of persons, specified in the order not be present during the hearing of all or part of the inquiry.
- (4) If the President of a Commission of Inquiry makes an order referred to in paragraph (3) (b), the President may authorize a person to take such reasonable action as is required to give effect to that order.

Regulation 120

118 Summoning of witnesses

For the purposes of an inquiry conducted by a Commission of Inquiry, the President may, by writing signed by the President, summon a person to appear at the inquiry to give evidence or to produce a document or article.

119 Manner of taking evidence

- (1) Subject to this regulation, a Commission of Inquiry must not take evidence on oath or affirmation.
- (2) If the appointing authority considers that a person may be affected by an inquiry that is to be made, or that is being made, by a Commission of Inquiry, the appointing authority must direct that all evidence to be given before the Commission or all evidence to be so given after the giving of the direction, as the case may be, must be on oath or affirmation.
- (3) If, under a direction under subregulation (2), the evidence to be given by a witness appearing before a Commission of Inquiry is to be on oath or affirmation, the President must, subject to subregulation (4), administer, or cause to be administered, to the witness an oath or affirmation in accordance with the form in the Schedule.
- (4) For the purposes of giving effect to a direction referred to in subregulation (3), the President may permit a person to take an oath in such form as the person declares to the President to be binding upon the conscience of that person.

120 Duties of witnesses

- (1) A person is guilty of an offence if:
 - (a) the person is served with a summons to appear before a Commission of Inquiry; and
 - (b) a reasonable amount for the costs of the person's travel to appear before the Commission has been tendered to the person; and
 - (c) the person fails to appear and report at the time and place specified in the summons.

Penalty: 5 penalty units or imprisonment for 3 months.

Regulation 120

- (2) A person is guilty of an offence if:
- (a) the person is served with a summons to appear before a Commission of Inquiry; and
 - (b) a reasonable amount for the costs of the person's travel to appear before the Commission has been tendered to the person; and
 - (c) the person fails to appear and report from day to day.

Penalty: 5 penalty units or imprisonment for 3 months.

- (3) An offence against subregulation (1) or (2) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (4) It is a defence to a prosecution for an offence against subregulation (1) or (2) if:
- (a) the person has been excused by the President of the Commission from appearing and reporting at the time and place specified in the summons or from day to day; or
 - (b) the person has a reasonable excuse for failing to so appear and report.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (4) (see section 13.3 of the *Criminal Code*).

- (5) A person is guilty of an offence if the person:
- (a) appears before a Commission of Inquiry; and
 - (b) is called upon by the President of the Commission to be sworn or to make an affirmation; and
 - (c) refuses to be sworn or to make an affirmation.

Penalty: 5 penalty units or imprisonment for 3 months.

- (6) A person is guilty of an offence if the person:
- (a) appears before a Commission of Inquiry; and
 - (b) is called upon by the President of the Commission to be sworn or to make an affirmation; and
 - (c) fails to be sworn or to make an affirmation.

Penalty: 5 penalty units or imprisonment for 3 months.

Regulation 120

- (7) An offence against subregulation (6) is an offence of strict liability.

Note For *strict liability*, see section 6.1 of the *Criminal Code*.

- (8) It is a defence to a prosecution for an offence against subregulation (5) or (6) if the person has a reasonable excuse for refusing or failing to be sworn or to make an affirmation.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (8) (see section 13.3 of the *Criminal Code*).

- (9) A person is guilty of an offence if:
- (a) the person appears as a witness before a Commission of Inquiry; and
 - (b) the person refuses to answer a question relevant to the inquiry put to that person by:
 - (i) a member of the Commission; or
 - (ii) a legal practitioner appointed to assist the Commission; or
 - (iii) a person who may examine a witness under regulation 55; and
 - (c) the President of the Commission requires the person to answer the question.

Penalty: 5 penalty units or imprisonment for 3 months.

- (10) A person is guilty of an offence if:
- (a) the person appears as a witness before a Commission of Inquiry; and
 - (b) the person fails to answer a question relevant to the inquiry put to that person by:
 - (i) a member of the Commission; or
 - (ii) a legal practitioner appointed to assist the Commission; or
 - (iii) a person who may examine a witness under regulation 55; and
 - (c) the President of the Commission requires the person to answer the question.

Penalty: 5 penalty units or imprisonment for 3 months.

Regulation 120

- (11) An offence against subregulation (10) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

- (12) It is a defence to a prosecution for an offence against subregulation (9) or (10) if the person has a reasonable excuse for refusing or failing to answer the question.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (12) (see section 13.3 of the *Criminal Code*).

- (13) A person is guilty of an offence if:

- (a) the person appears as a witness before a Commission of Inquiry; and
- (b) the person has been served with a summons to produce a document or article; and
- (c) the document or article:
 - (i) is in the custody or control of that person; and
 - (ii) is relevant to the inquiry; and
- (d) the person refuses to produce that document or article.

Penalty: 5 penalty units or imprisonment for 3 months.

- (14) A person is guilty of an offence if:

- (a) the person appears as a witness before a Commission of Inquiry; and
- (b) the person has been served with a summons to produce a document or article; and
- (c) the document or article is:
 - (i) in the custody or control of that person; and
 - (ii) relevant to the inquiry; and
- (d) the person fails to produce that document or article.

Penalty: 5 penalty units or imprisonment for 3 months.

- (15) An offence against subregulation (14) is an offence of strict liability.

Note For **strict liability**, see section 6.1 of the *Criminal Code*.

Regulation 120

- (16) It is a defence to a prosecution for an offence against subregulation (13) or (14) if the person has a reasonable excuse for refusing or failing to produce the document or article.

Note A defendant bears an evidential burden in relation to the matters mentioned in subregulation (16) (see section 13.3 of the *Criminal Code*).

- (17) A person appearing as a witness before a Commission of Inquiry is not excused from answering a question, when required to do so, on the ground that the answer to the question may tend to incriminate that person, unless the answer to the question:

- (a) may tend to incriminate that person in respect of an offence with which that person has been charged; and
- (b) the charge has not been finally dealt with by a court or otherwise disposed of.

Note At 1 January 2007, subsection 124 (2C) of the *Defence Act 1903* provided: 'A statement or disclosure made by a witness in the course of giving evidence before a court of inquiry, a board of inquiry, a Chief of the Defence Force commission of inquiry, an inquiry officer or an inquiry assistant is not admissible in evidence against that witness in:

- (a) any civil or criminal proceedings in any federal court or court of a State or Territory; or
- (b) proceedings before a service tribunal;

otherwise than in proceedings by way of a prosecution for giving false testimony at the hearing before the court of inquiry, the board of inquiry, the inquiry officer or the inquiry assistant.'

- (18) Without limiting the circumstances that may constitute reasonable excuse for the purposes of subregulation (12), if a person giving evidence in public before a Commission of Inquiry considers, on reasonable grounds, that the answering of a question in public at the inquiry may:

- (a) disclose a secret process of manufacture; or
- (b) be prejudicial to the defence of the Commonwealth;

that person has a reasonable excuse for not answering that question in public at the inquiry.

Regulation 121

- (19) Without limiting the circumstances that may constitute a reasonable excuse for the purposes of subregulation (16), if a person appearing as a witness before a Commission of Inquiry considers, on reasonable grounds, that the production in public at the inquiry of a document or article may:
- (a) disclose a secret process of manufacture; or
 - (b) be prejudicial to the defence of the Commonwealth;
- that person has a reasonable excuse for not producing that document or article in public at the inquiry.

121 Appearances and representation

- (1) If the President of a Commission of Inquiry considers that a person (*person A*) may be affected by the inquiry conducted by the Commission, person A is authorised to appear before the Commission.
- (2) If the President of a Commission of Inquiry considers that the record or reputation of a person who has died (*person B*) may be affected by the inquiry conducted by the Commission, a single representative of person B is authorised to appear before the Commission.
- (3) Person A, and the representative of person B, may appoint another person (*person C*) (who may be a legal practitioner) to represent him or her for the purposes of the inquiry, and person C is authorised to appear before the Commission.
- (4) If a legal practitioner appointed under subregulation (3) is an officer in the Defence Force, his or her services must be made available at the expense of the Commonwealth.

122 Copy of evidence affecting a person

- (1) This regulation applies if the President of a Commission of Inquiry considers that any evidence given before the Commission may affect a person (*affected person*) who was not present or represented before the Commission when evidence was given.

Regulation 123

- (2) If this regulation applies, the President must:
- (a) forward to the affected person a copy of the relevant evidence; and
 - (b) inform the affected person of his or her right:
 - (i) to appear before the Commission; and
 - (ii) to submit to the Commission any written statement, relevant to the inquiry, that the affected person thinks fit.

123 Report of Commission

- (1) If the President of a Commission of Inquiry, constituted by only 1 member, is satisfied that all information relevant to the inquiry that is practicable to obtain has been obtained, the President must prepare and sign a document setting out:
- (a) the findings of the Commission; and
 - (b) any recommendations arising from those findings that the Commission thinks fit to make;
- to be the report of the Commission.
- (2) Subject to subregulation (3), if the President of a Commission of Inquiry, which is constituted by more than 1 member, is satisfied that all information relevant to the inquiry that is practicable to obtain has been obtained, the President must prepare a document, to be signed by each member of the Commission, setting out:
- (a) the findings of the Commission; and
 - (b) any recommendations arising from those findings that the Commission thinks fit to make;
- to be the report of the Commission.
- (3) If the members of a Commission of Inquiry cannot agree on a document prepared under subregulation (2), each member of the Commission must make a statement in writing, to be signed by that member, of:
- (a) the findings made by the member; and
 - (b) any recommendations arising from those findings that the member may think fit to make;
- and those statements constitute the report of the Commission.

Regulation 124

- (4) The report of a Commission of Inquiry must be provided to the appointing authority.
- (5) If a report or a copy of a report of a Commission of Inquiry is provided under this regulation, it must be accompanied by a copy of:
 - (a) the transcript or other record of any oral evidence taken during the course of the inquiry; and
 - (b) any documents received by the Commission and accepted as evidence during the course of the inquiry.

124 Dissolution or reconstitution of Commission on death etc of member

- (1) In this regulation:

2-member Commission means a Commission of Inquiry appointed by an instrument that specifies the names of 2 persons who are to constitute the Commission, and includes a multi-member Commission the membership of which is reduced to 2 persons under a direction referred to in paragraph (5) (a) or (6) (a).

multi-member Commission means a Commission of Inquiry appointed by an instrument that specifies the names of 3 or more persons who are to constitute the Commission.

non-Presidential member means a member of a Commission of Inquiry other than the President.

single-member Commission means a Commission of Inquiry which is comprised only of the President.

- (2) If:
 - (a) the member of a single-member Commission ceases to be a member of the Commission of Inquiry at any time; or
 - (b) a member of a 2-member Commission ceases to be a member of the Commission of Inquiry before the Commission of Inquiry completes its inquiry and the other member of the Commission of Inquiry:
 - (i) is not the President; and
 - (ii) is not eligible to be appointed as President under regulation 112; or

Regulation 124

- (c) a member of a multi-member Commission ceases to be a member of the Commission of Inquiry before the Commission of Inquiry completes its inquiry and the other members of the Commission of Inquiry:
- (i) do not include the President;
 - (ii) are not eligible to be appointed as President under regulation 112;

the Commission of Inquiry is taken to be dissolved under subregulation 67 (3).

- (3) Subject to subregulations (5) and (7), if a member of a 2-member Commission or a multi-member Commission ceases to be a member of the Commission of Inquiry while the inquiry by the Commission of Inquiry is suspended, the Commission of Inquiry is taken to be dissolved under subregulation 67 (3).
- (4) If a member of a 2-member Commission ceases to be a member of the Commission of Inquiry before the Commission of Inquiry completes its inquiry, and the other member is the President, the appointing authority may direct the Commission of Inquiry, constituted by the President alone, to continue the inquiry; or
- (a) the appointing authority may, by instrument, appoint a person to be a member of the Commission of Inquiry; and
 - (b) the inquiry by the Commission of Inquiry is suspended until the appointing authority so appoints, or until the Commission of Inquiry is dissolved, or taken to be dissolved, under subregulation 67 (3).
- (5) If the President of a 2-member Commission ceases to be a member of the Commission of Inquiry before the Commission of Inquiry completes its inquiry, and the other member is eligible to be appointed as President under regulation 112:
- (a) the appointing authority may, by instrument, appoint the other member to be the President and, in the same instrument, appoint a person to be a member of the Commission of Inquiry; and
 - (b) the inquiry by the Commission of Inquiry is suspended until the appointing authority makes those appointments, or until the Commission of Inquiry is dissolved, or taken to be dissolved, under subregulation 67 (3).

Regulation 125

- (6) If a non-Presidential member of a multi-member Commission ceases to be a member of the Commission of Inquiry before the Commission of Inquiry completes its inquiry, and the other members of the Commission of Inquiry include the President:
- (a) the appointing authority may, by instrument, appoint a person to be a member of the Commission of Inquiry or direct the Commission of Inquiry to continue the inquiry constituted with its remaining members; and
 - (b) the inquiry by the Commission of Inquiry is suspended until the appointing authority so appoints or directs, or until the Commission of Inquiry is dissolved, or taken to be dissolved, under subregulation 67 (3).
- (7) If:
- (a) the President of a multi-member Commission ceases to be a member of the Commission of Inquiry before the Commission of Inquiry completes its inquiry; and
 - (b) 1 or more of the other members is eligible to be appointed as President under regulation 112;
- the appointing authority may, by instrument:
- (c) appoint a member referred to in paragraph (b) to be the President and, in the same instrument, appoint a person to be a member of the Commission of Inquiry; or
 - (d) appoint a member referred to in paragraph (b) to be the President and direct that person and the other members to constitute the Commission of Inquiry for the purpose of continuing the inquiry; and
- the inquiry by the Commission of Inquiry is suspended until the appointing authority so appoints a member to be the President, or until the Commission of Inquiry is dissolved, or taken to be dissolved, under subregulation 67 (3).

Part 9 Annual report

125 Annual report on operation of these Regulations

- (1) For:
- (a) the financial year ending 30 June 2007; and

Regulation 125

(b) each succeeding financial year;
the Chief of the Defence Force must, at the end of the financial year, prepare a report on the operation of these Regulations during the financial year.

- (2) The report must be included in the annual report of the Department.

Note Section 63 of the *Public Service Act 1999* requires that a report on a Department's activities during the year be prepared for presentation to Parliament.

Schedule

(regulations 13, 31 and 45)

Form of Oath

I swear by Almighty God that the evidence that I shall give in this inquiry shall be the truth, the whole truth and nothing but the truth.

Form of Affirmation

I, (*name in full*), do solemnly sincerely and truly declare and affirm that the evidence that I shall give in this inquiry shall be the truth, the whole truth and nothing but the truth.

Table of Instruments**Notes to the *Defence (Inquiry) Regulations 1985*****Note 1**

The *Defence (Inquiry) Regulations 1985* (in force under the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Act 1923*) as shown in this compilation comprise Statutory Rules 1985 No. 114 amended as indicated in the Tables below.

Under the *Legislative Instruments Act 2003*, which came into force on 1 January 2005, it is a requirement for all non-exempt legislative instruments to be registered on the Federal Register of Legislative Instruments. From 1 January 2005 the Statutory Rules series ceased to exist and was replaced with Select Legislative Instruments (SLI series). Numbering conventions remain the same, ie Year and Number.

Table of Instruments

Year and number	Date of notification in <i>Gazette</i> or FRLI registration	Date of commencement	Application, saving or transitional provisions
1985 No. 114	20 June 1985	3 July 1985	
1987 No. 36	12 Mar 1987	12 Mar 1987	—
1990 No. 10	31 Jan 1990	31 Jan 1990	—
1990 No. 207	4 July 1990	4 July 1990	—
1997 No. 43	12 Mar 1997	12 Mar 1997	—
2000 No. 327	4 Dec 2000	4 Dec 2000	—
2001 No. 278	5 Oct 2001	15 Dec 2001	R. 2 (rs. by Act No. 135, 2003, Sch. 3 (item 1))
2002 No. 278	21 Nov 2002	1 Dec 2002	—
2003 No. 311	11 Dec 2003	11 Dec 2003	—
2005 No. 70	26 Apr 2005 (see F2005L00951)	27 Apr 2005	—
2005 No. 276	28 Nov 2005 (see F2005L03686)	29 Nov 2005	—
2006 No. 66	31 Mar 2006 (see F2006L00978)	1 Apr 2006	—
2006 No. 142	27 June 2006 (see F2006L01947)	30 June 2006	—

Table of Instruments

Year and number	Date of notification in Gazette or FRLI registration	Date of commencement	Application, saving or transitional provisions
2007 No. 155	25 June 2007 (see F2007L01828)	26 June 2007	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part I	
R. 1	rs. 2000 No. 327
R. 3	am. 1987 No. 36; 2000 No. 327; 2005 No. 276; 2007 No. 155
R. 3A.....	ad. 1987 No. 36
R. 3B	ad. 2001 No. 278
Part II	
R. 7A.....	ad. 1987 No. 36
R. 7B.....	ad. 1987 No. 36
R. 14	am. 1987 No. 36; 2001 No. 278
Note to r. 14 (5).....	ad. 2006 No. 142
R. 15	am. 1997 No. 43
R. 20A.....	ad. 2005 No. 276
Part III	
R. 23	am. 1997 No. 43
R. 24	am. 1997 No. 43
R. 25	rs. 2005 No. 276
R. 26	am. 2006 No. 66
R. 27	rs. 2006 No. 66
R. 27A.....	ad. 1987 No. 36
R. 27B.....	ad. 1987 No. 36
R. 32	am. 1987 No. 36; 2001 No. 278
Note to r. 32 (5).....	ad. 2006 No. 142
R. 33	rs. 2005 No. 276 am. 2006 No. 66
R. 34	rs. 2006 No. 66
R. 35	am. 2006 No. 66; 2007 No. 155
R. 36	am. 2005 No. 276
R. 37	am. 2006 No. 66
Part IV	
R. 40	am. 1997 No. 43
R. 43A.....	ad. 1987 No. 36
R. 43B.....	ad. 1987 No. 36
Part V	
R. 53	am. 2002 No. 278
R. 56	rs. 2001 No. 278

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 57	am. 1987 No. 36; 2001 No. 278
R. 62	am. 2001 No. 278
R. 63	am. 2001 No. 278
R. 65	rep. 1987 No. 36
Part 6	
Heading to Part VI..... renamed Part 6	rs. 2000 No. 327; 2006 No. 142
R. 68	rs. 2000 No. 327 am. 2005 No. 276
Heading to r. 69	am. 2005 No. 276 rs. 2006 No. 142
R. 69	am. 1987 No. 36; 1990 Nos. 10 and 207 rs. 2000 No. 327 am. 2005 No. 276
Heading to r. 70	am. 2005 No. 276
R. 70	rs. 2000 No. 327 am. 2005 No. 276
Heading to r. 70A	am. 2005 No. 276
R. 70A	ad. 2000 No. 327 am. 2005 No. 276
R. 70B.....	rs. 2005 No. 276
R. 70C.....	ad. 2000 No. 327 am. 2005 No. 276
R. 71	am. 2005 No. 276
R. 72	am. 2005 No. 276
R. 73	rs. 2000 No. 327 am. 2005 No. 276
R. 74	rs. 2000 No. 327; 2001 No. 278 am. 2005 No. 276
Note to r. 74 (3).....	ad. 2006 No. 142
R. 74A.....	ad. 1987 No. 36 rs. 2000 No. 327; 2001 No. 278 am. 2005 No. 276
R. 74B.....	ad. 2000 No. 327 rep. 2005 No. 276
Heading to r. 75	am. 2005 No. 276
R. 75	am. 2005 No. 276
R. 75A.....	ad. 2000 No. 327 am. 2005 No. 276
R. 76	am. 2005 No. 276
R. 77	rs. 2000 No. 327 am. 2005 No. 276

Table of Amendments

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Provision affected	How affected
Heading to r. 78	am. 2005 No. 276
R. 78	am. 1987 No. 36 rs. 2000 No. 327 am. 2005 No. 276
Part 7	
Part 7	ad. 2003 No. 311
Division 1	
Div. 1 of Part 7	ad. 2003 No. 311
R. 80	ad. 2003 No. 311 am. 2005 No. 276
R. 81	ad. 2003 No. 311
Heading to r. 82	am. 2005 No. 276
R. 82	ad. 2003 No. 311 am. 2005 No. 276
Heading to r. 83	am. 2005 No. 276
R. 83	ad. 2003 No. 311 am. 2005 No. 276
Heading to r. 84	am. 2005 No. 276
R. 84	ad. 2003 No. 311 am. 2005 No. 276
R. 85	ad. 2003 No. 311
R. 86	ad. 2003 No. 311 am. 2005 No. 276
R. 87	ad. 2003 No. 311 am. 2005 No. 276
Division 2	
Div. 2 of Part 7	ad. 2003 No. 311
R. 88	ad. 2003 No. 311 am. 2005 No. 276
R. 89	ad. 2003 No. 311 am. 2005 No. 276
R. 90	ad. 2003 No. 311 am. 2005 No. 276
Division 3	
Div. 3 of Part 7	ad. 2003 No. 311
R. 91	ad. 2003 No. 311 am. 2005 No. 276
R. 92	ad. 2003 No. 311
R. 93	ad. 2003 No. 311 am. 2005 No. 276
R. 94	ad. 2003 No. 311 am. 2005 No. 276

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 95	ad. 2003 No. 311 am. 2005 No. 276
R. 96	ad. 2003 No. 311 am. 2005 No. 276
Note. to r. 96 (3).....	ad. 2006 No. 142
R. 97	ad. 2003 No. 311 am. 2005 No. 276
R. 98	ad. 2003 No. 311 rep. 2005 No. 276
Division 4	
Div. 4 of Part 7	ad. 2003 No. 311
R. 99	ad. 2003 No. 311 am. 2005 No. 276
Heading to r. 100	am. 2005 No. 276
R. 100	ad. 2003 No. 311 am. 2005 No. 276
Note to r. 100	am. 2005 No. 276
R. 101	ad. 2003 No. 311 am. 2005 No. 276
Note to r. 101	am. 2005 No. 276
R. 102	ad. 2003 No. 311 am. 2005 Nos. 70 and 276
Division 5	
Div. 5 of Part 7	ad. 2003 No. 311
R. 103	ad. 2003 No. 311 am. 2005 No. 276
Division 6	
Div. 6 of Part 7	ad. 2003 No. 311
R. 104	ad. 2003 No. 311
R. 105	ad. 2003 No. 311 am. 2005 No. 276
Division 7	
Div. 7 of Part 7	ad. 2003 No. 311
R. 106	ad. 2003 No. 311
Heading to r. 107	am. 2005 No. 276
R. 107	ad. 2003 No. 311 am. 2005 No. 276
Part 8	
Part 8	ad. 2006 No. 142 rs. 2007 No. 155

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
R. 108	ad. 2006 No. 142 rs. 2007 No. 155
R. 109	ad. 2007 No. 155
R. 110	ad. 2007 No. 155
R. 111	ad. 2007 No. 155
R. 112	ad. 2007 No. 155
R. 113	ad. 2007 No. 155
R. 114	ad. 2007 No. 155
R. 115	ad. 2007 No. 155
R. 116	ad. 2007 No. 155
R. 117	ad. 2007 No. 155
R. 118	ad. 2007 No. 155
R. 119	ad. 2007 No. 155
R. 120	ad. 2007 No. 155
R. 121	ad. 2007 No. 155
R. 122	ad. 2007 No. 155
R. 123	ad. 2007 No. 155
R. 124	ad. 2007 No. 155
Part 9	
Part 9	ad. 2007 No. 155
R. 125	ad. 2007 No. 155