



Statutory Rules 1985 No. 2

114/

Defence (Inquiry) Regulations

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Statutory Rules 1985 No. 21

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Defence (Inquiry) Regulations

~~ADMINISTRATOR~~ ^{ADMINISTRATOR of the Government}
I, THE ~~GOVERNOR-GENERAL~~ of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Act 1923*.

Dated 13 June 1985.

James Ramsay

~~Governor-General~~
Administrator

By His Excellency's Command,

K. C. BEAZLEY

Minister of State for Defence

PART I—PRELIMINARY

Citation

1. These Regulations may be cited as the Defence (Inquiry) Regulations.

Commencement

2. These Regulations shall come into operation on 3 July 1985.

Interpretation

3. (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 Investigating Officer, means the officer who appointed the Investigating Officer under sub-regulation 69 (1);

“article” includes any substance;

“Court of Inquiry” means a General Court of Inquiry, a Board of Inquiry or a Combined Board of Inquiry;

“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

(b) if an inquiry conducted by an Investigating 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 sub-regulation 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 sub-regulation 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 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.

(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.

PART II—GENERAL COURTS OF INQUIRY

Interpretation of Part II

4. (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 sub-regulation 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 sub-regulation 18 (4) whether or not in writing and whether or not signed or capable of being signed by the member who prepared it.

Appointment of Courts

5. (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.

(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.

Constitution

6. (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.

President

7. (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.

Assessors

8. 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.

Secretary

9. (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.

Procedure

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

Conduct of inquiries in public or in private

11. (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
- (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.

Summoning of witnesses

12. For the purposes of an inquiry conducted by a General Court of Inquiry, the President may, by writing signed by the President, summon a

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person to appear at the inquiry to give evidence or to produce a document or article.

Manner of taking evidence

13. (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 sub-regulation (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.

Duties of witnesses

14. (1) Where—

- (a) a person is served with a summons to appear before a General Court of Inquiry; and
- (b) there is tendered to the person a reasonable amount for the costs of conveyance of that person to appear before the Court,

the person shall not, without reasonable excuse, fail to appear and report at the time and place specified in the summons and then from day to day, unless excused by the President.

Penalty: \$500 or imprisonment for 3 months.

(2) A person appearing before a General Court of Inquiry shall not, without reasonable excuse, refuse or fail to be sworn or to make an affirmation when called upon to do so by the President.

Penalty: \$500 or imprisonment for 3 months.

(3) A person appearing as a witness before a General Court of Inquiry shall not, without reasonable excuse, refuse or fail to answer a question relevant to the inquiry put to that person by—

- (a) a member of the Court or, if the Court is constituted by one person, by that person;
- (b) a legal practitioner appointed to assist the Court; or
- (c) a person who may examine a witness by virtue of regulation 55, being a question that the witness is required to answer by the President.

Penalty: \$500 or imprisonment for 3 months.

(4) Where a person appearing as a witness before a General Court of Inquiry has been served with a summons to produce a document or article—

- (a) that is in the custody or control of that person; and

(b) that is relevant to the inquiry,
the person shall not, without reasonable excuse, refuse or fail to produce that document or article, as the case may be.

Penalty: \$500 or imprisonment for 3 months.

(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.

(6) Without limiting the circumstances that may constitute a reasonable excuse for the purposes of sub-regulation (3), 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.

(7) Without limiting the circumstances that may constitute a reasonable excuse for the purposes of sub-regulation (4), 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.

Appearances

15. (1) A chief of staff 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.

Copy of evidence affecting a person

16. 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.

Powers in relation to documents or articles produced

17. (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.

Preparation of report

18. (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 sub-regulation (1) shall be furnished to the other member or members of the Court.

(3) Where the member or members referred to in sub-regulation (2) agree on the document transmitted to them under that sub-regulation, 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 sub-regulation (2) cannot agree on the document furnished under that sub-regulation, 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.

Role of assessors in relation to report

19. (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 sub-regulation (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 sub-regulation (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.

Furnishing of report

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

(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 sub-regulation 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.

Dissolution or reconstitution of Court on death, &c., of member

21. (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 sub-paragraph (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 sub-paragraph (5) (a) (ii).

(3) Where—

- (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 sub-regulation 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 sub-regulation 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 is dissolved, or deemed to be dissolved, under sub-regulation 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 sub-regulation 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 sub-regulation 67 (3).

PART III—BOARDS OF INQUIRY

Interpretation of Part III

22. (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 sub-regulation 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 sub-regulation 36 (2) whether or not in writing and whether or not signed or capable of being signed by the member who prepared it.

Appointment of Boards

23. (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 Naval Staff, the Chief of the General Staff or the Chief of the Air Staff, as the case requires, 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.

Delegation of power to appoint Boards

24. (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 sub-regulation 23 (1) in respect of the matters referred to in paragraph 23 (1) (b).

(2) A chief of staff other than the Chief of the Defence Force may, by instrument, delegate, either generally or as otherwise provided in the instrument—

- (a)** in the case of the Chief of Naval Staff—to an officer who holds a rank not below that of Commander;
- (b)** in the case of the Chief of the General Staff—to an officer who holds a rank not below that of Lieutenant-Colonel; or
- (c)** in the case of the Chief of the Air Staff—to an officer who holds a rank not below that of Wing Commander,

all or any of the powers of that chief of staff under sub-regulation 23 (1) in respect of the matters referred to in paragraph 23 (1) (c).

(3) A power delegated under sub-regulation (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 sub-regulation (1) or (2) does not prevent the exercise of a power by the person delegating that power.

Power to make recommendations

25. (1) The instrument appointing a 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 Board of Inquiry to inquire into a matter does not empower the Board to make recommendations arising from its findings; or
- (b)** the appointing authority adds a matter to the matters into which a Board of Inquiry is to inquire or varies a matter into which the Board is to inquire,

the appointing authority may, by instrument, empower the Board to make recommendations arising from its findings in relation to that matter.

Constitution

26. (1) A Board of Inquiry shall be constituted by 2 or more persons who include at least one officer.

(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.

President

27. (1) Subject to sub-regulation (2), the appointing authority shall, 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.

(2) A person is not eligible to be the President of a Board of Inquiry unless that person is an officer.

Procedure

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

Conduct of inquiries in private or in public

29. (1) Subject to sub-regulation (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.

Summoning of witnesses

30. 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.

Manner of taking evidence

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

(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

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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 sub-regulation (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 sub-regulation (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 sub-regulation (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.

Duties of witnesses

32. (1) Where—

- (a) a person is served with a summons to appear before a Board of Inquiry; and
- (b) there is tendered to the person a reasonable amount for the costs of conveyance of that person to appear before the Board,

the person shall not, without reasonable excuse, fail to appear and report at the time and place specified in the summons and then from day to day, unless excused by the President.

Penalty: \$500 or imprisonment for 3 months.

(2) Where the evidence of a person appearing as a witness before a Board of Inquiry is to be given on oath or affirmation in accordance with a direction under sub-regulation 31 (2), the person shall not, without reasonable excuse, refuse or fail to be sworn or to make an affirmation when called upon to do so by the President.

Penalty: \$500 or imprisonment for 3 months.

(3) A person appearing as a witness before a Board of Inquiry shall not, without reasonable excuse, refuse or fail to answer a question relevant to the inquiry put to that person by—

- (a) a member of the Board;
- (b) a lawyer appointed to assist the Board; or
- (c) a person who may examine a witness by virtue of regulation 55,

being a question that the witness is required to answer by the President.

Penalty: \$500 or imprisonment for 3 months.

(4) Where a person appearing as a witness before a Board of Inquiry has been served with a summons to produce a document or article—

- (a) that is in the custody or control of that person; and

(b) that is relevant to the inquiry,
the person shall not, without reasonable excuse, refuse or fail to produce that document or article, as the case may be.

Penalty: \$500 or imprisonment for 3 months.

(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.

(6) Without limiting the circumstances that may constitute reasonable excuse for the purposes of sub-regulation (3), 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 sub-regulation (4), 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.

Appearances

33. (1) Where the President of a Board of Inquiry considers that a person may be affected by the inquiry conducted by the Board, the President may authorize that person to appear before the Board.

(2) Subject to sub-regulation (3), a person authorized to appear before a Board 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 Board.

(3) A person authorized to appear before a Board of Inquiry shall not appoint a legal practitioner to represent that person for the purposes of the inquiry except with the approval of—

- (a) where the inquiry has commenced—the President; or
- (b) in any other case—the appointing authority.

Copy of evidence affecting a person

34. Where the President of a Board of Inquiry considers that any evidence given before the Board may affect a person who was not present or represented

before the Board when the evidence was given (not being an officer who is higher in rank than the President), 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 Board; and
 - (ii) to submit to the Board any written statement that the person thinks fit relevant to the inquiry.

Senior officer affected by evidence

35. (1) Where the President of a Board of Inquiry is of the opinion that any evidence given before the Board may affect an officer who is higher in rank than the President, the President shall—

- (a) inform the appointing authority, in writing, of that opinion; and
- (b) furnish the appointing authority with a copy of the relevant evidence.

(2) Where information is furnished under sub-regulation (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 sub-regulation 67 (3).

(3) Where the appointing authority receives information under sub-regulation (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 higher 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.

Report of Board

36. (1) Subject to sub-regulation (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) 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 Board of Inquiry cannot agree on a document prepared under sub-regulation (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) 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.

Dissolution or reconstitution of Board on death, &c., of member

37. (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 sub-paragraph (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 an officer; 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 or an officer,

the Board shall be deemed to have been dissolved under sub-regulation 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—

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- (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 sub-regulation 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 and the other member is an officer—
- (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 sub-regulation 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 sub-regulation 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 and the other members of the Board include at least one officer—
- (a) the appointing authority may, by instrument—
 - (i) appoint a member who is an officer to be the President and, in the same instrument, appoint a person to be a member of the Board; or
 - (ii) appoint a member who is an officer 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 sub-regulation 67 (3).

PART IV—COMBINED BOARDS OF INQUIRY

Interpretation of Part IV

38. (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 sub-regulation 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 sub-regulation 47 (2) whether or not in writing and whether or not signed or capable of being signed by the member who prepared it.

Appointment of Boards

39. (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.

Delegation of power to appoint Boards

40. (1) The Minister may, by instrument, delegate, either generally or as otherwise provided in the instrument, to a chief of staff the power of the Minister under sub-regulation 39 (1).

(2) A power delegated under sub-regulation (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 sub-regulation (1) does not prevent the exercise of a power by the Minister.

Power to make recommendations

41. (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.

Constitution

42. (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.

(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.

President

43. (1) Subject to sub-regulation (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.

Persons to assist Board

44. (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 sub-regulation (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.

Procedure, summoning of witnesses, &c.

45. 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.

Conduct of inquiries in private or in public

46. (1) Subject to sub-regulation (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.

Report of Board

47. (1) Subject to sub-regulation (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 sub-regulation (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
- (b) any documents received by the Board and accepted as evidence,

during the course of the inquiry.

Reconstitution of Combined Board of Inquiry on death, &c., of member

48. 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 sub-regulation 67 (3).

**PART V—GENERAL PROVISIONS RELATING TO
COURTS OF INQUIRY**

Times and places for conduct of inquiries

49. (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.

Informal procedures, &c.

50. 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.

Legal practitioner assisting Court of Inquiry

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

Statement by person affected

52. 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.

Evidence by members of the Defence Force

53. (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.

(2) An order under sub-regulation (1) shall not require a member of the Reserve Forces to appear before a Court of Inquiry at a time when the member is not on duty.

(3) For the purposes of sub-regulation (2), a member of the Reserve Forces 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.

Exclusion of prospective witnesses

54. (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 sub-regulation (1), the President may authorize a person to take such reasonable action as is required to give effect to that order.

Examination of witnesses

55. (1) Subject to sub-regulation (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 sub-regulation (1).

False evidence

56. A person shall not give false evidence before a Court of Inquiry.

Penalty: \$500 or imprisonment for 3 months.

Contempt of Courts of Inquiry

57. (1) A person shall not—

- (a) insult a Court of Inquiry;
- (b) interrupt or disturb the proceedings of a Court of Inquiry;
- (c) by writing or speech, use words that are false and defamatory of a Court of Inquiry; or
- (d) by writing or speech, use words calculated—
 - (i) to influence improperly a Court of Inquiry or a witness before a Court of Inquiry; or
 - (ii) to bring a Court of Inquiry or a member of a Court of Inquiry into disrepute.

Penalty: \$500 or imprisonment for 3 months.

(2) Where the President of a Court of Inquiry considers that a person has committed an offence under sub-regulation (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 sub-regulation (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 sub-regulation (2) does not preclude the institution of proceedings against the person for an offence under sub-regulation (1).

Termination of appointment of member, &c., of Court of Inquiry

58. 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.

Duties of Courts of Inquiry on lifting of suspension

59. 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.

Fees and allowances

60. (1) Subject to sub-regulation (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 sub-regulation (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 sub-regulation (2) is outside Australia during any period in respect of which travelling allowance is payable to that person under that sub-regulation, the Minister may authorize the payment, in addition to the travelling allowance payable to the person under that

sub-regulation, 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 sub-regulation (2) or (3) is in addition to the cost of conveyance.

(5) Subject to sub-regulation (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—

- (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.

Protection of Courts of Inquiry

61. (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.

Directions regarding disclosure of evidence

62. (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.

- (2) A direction under sub-regulation (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 sub-regulation (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 sub-regulation (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 sub-regulation (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 sub-regulation (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 who, without reasonable excuse, contravenes a direction under sub-regulation (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$500 or imprisonment for a period not exceeding 3 months.

(8) Sub-regulation (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 sub-regulation 63 (3).

(9) Sub-regulation (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 sub-regulation 63 (3).

Disclosure of records or reports of Courts of Inquiry

63. (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 sub-regulation 19 (2).

(2) Subject to sub-regulations (6), (7) and (8), a person to whom this regulation applies shall not, except in the performance of the duties of the office of that person—

- (a) disclose to a person or make available to the public generally information contained in the records of, or the report of, a Court of Inquiry;
- (b) copy a document, or part of a document, forming part of the records of, or the report of, a Court of Inquiry; or
- (c) disclose to a person or make 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 of, or the report of, a Court of Inquiry,

being information that comes to the knowledge of that person, or a document or part of a document that comes into the possession of that person, during the course of the employment of that person.

Penalty: \$500 or imprisonment for 3 months.

(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 sub-regulation (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 sub-regulation (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 sub-regulation 62 (1).

(6) Sub-regulation (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 sub-regulation (3).

(7) Sub-regulation (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 sub-regulation (3).

(8) Sub-regulation (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) Sub-regulation (2) shall not be taken to limit the operation of sub-regulation 62 (7).

Protection of certain publications

64. (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 sub-regulation 19 (2).

(2) Subject to sub-regulations 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 sub-regulation 62 (1) or a contravention of sub-regulation 63 (2).

Admissibility of statements, &c., before service tribunals

65. (1) In this regulation, “service tribunal” has the same meaning as in the *Defence Force Discipline Act 1982*.

(2) A statement or disclosure made by a member of the Defence Force before a Court of Inquiry, being a statement or disclosure that is not an answer to which sub-section 124 (2B) of the *Defence Act 1903* applies, is not admissible in evidence against that person in proceedings before a service tribunal except in a prosecution for an offence against these Regulations.

Re-opening of inquiry

66. (1) Where—

- (a) a Court of Inquiry has completed its inquiry; and
- (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 sub-regulation (1) in relation to an inquiry completed by the Court, the inquiry is re-opened.

Duration and dissolution

67. (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 VI—INVESTIGATING OFFICERS

Interpretation of Part VI

68. (1) In this part, unless the contrary intention appears, “the inquiry”, in relation to an Investigating Officer, means the inquiry that the Investigating Officer has been appointed to conduct.

(2) For the purposes of this Part, an inquiry conducted by an Investigating Officer is completed when the report of the Investigating Officer has been prepared (whether or not in writing and whether or not signed by the Investigating Officer) in relation to that inquiry.

Appointment

69. (1) An Investigating Officer may, by instrument, be appointed by—
- (a) in the case of the Navy—a commanding officer;
 - (b) in the case of the Army—a commanding officer or an officer having, under the Australian Military Regulations, the powers of a formation commander;
 - (c) in the case of the Air Force—a commanding officer; or
 - (d) an officer holding an appointment superior to that of an officer mentioned in paragraph (a), (b) or (c),

for the purpose of investigating a matter concerning the part of the Defence Force that is under the appointing officer’s command or, in the case of the Navy, under the appointing officer’s command or control.

(2) A person is not eligible to be appointed to be an Investigating Officer unless the person is an officer.

(3) The instrument of appointment shall specify the name of the Investigating Officer.

(4) The appointing officer may, by instrument, add to or vary the matters into which an Investigating Officer is to inquire.

Power to make recommendations

70. (1) The instrument appointing an Investigating Officer shall indicate whether or not the Investigating Officer is empowered to make recommendations arising from the findings of the Investigating Officer.

(2) Where—

(a) the instrument appointing an Investigating Officer to inquire into a matter does not empower the Investigating Officer to make recommendations arising from the findings of the Investigating Officer; or

(b) the appointing officer adds a matter to the matters into which an Investigating Officer is to inquire or varies a matter into which the Investigating Officer is to inquire,

the appointing officer may, by instrument, empower the Investigating Officer to make recommendations arising from the findings of the Investigating Officer in relation to that matter.

Procedure

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

Conduct of inquiries in private

72. An Investigating Officer shall not conduct an inquiry in public.

Manner of taking evidence

73. An Investigating Officer shall not take evidence on oath or affirmation.

Duties of witnesses

74. (1) A member of the Defence Force appearing as a witness before an Investigating Officer shall not, without reasonable excuse, refuse or fail to answer a question relevant to the inquiry put to the member by the Investigating Officer.

Penalty: \$500 or imprisonment for 3 months.

(2) Where a member of the Defence Force appearing as a witness before an Investigating Officer has been ordered by the Investigating Officer to produce a document or article—

(a) that is in the custody or control of the member; and

(b) that is relevant to the inquiry,

the member shall not, without reasonable excuse, refuse or fail to produce that document or article, as the case may be.

Penalty: \$500 or imprisonment for 3 months.

(3) Without limiting the circumstances that may constitute a reasonable excuse for the purposes of sub-regulation (1), where a member of the Defence Force appearing as a witness before an Investigating Officer considers, on reasonable grounds, that the answering of a question may—

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

that member has a reasonable excuse for not answering that question.

(4) Without limiting the circumstances that may constitute a reasonable excuse for the purposes of sub-regulation (2), where a member of the Defence Force appearing as a witness before an Investigating Officer considers, on reasonable grounds, that the production 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 member has a reasonable excuse for not producing that document or article.

Report of Investigating Officer

75. (1) Where an Investigating Officer is satisfied that all information relevant to the inquiry that is practicable to obtain has been obtained, the Investigating Officer shall prepare a report setting out—

- (a) the findings of the Investigating Officer; and
- (b) if the Investigating Officer is empowered to make recommendations—any recommendations arising from the findings of the Investigating Officer that the Investigating Officer thinks fit to make.

(2) The report of an Investigating Officer shall be furnished to the appointing officer.

(3) Where a report of an Investigating 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.

Re-opening of inquiry

76. (1) Where—

- (a) an Investigating Officer has completed the inquiry;
- (b) the appointment of the Investigating Officer in relation to that inquiry continues in existence; and
- (c) the appointing officer considers that the Investigating Officer should re-open the inquiry and make a further report with respect to particular matters,

the appointing officer may direct the Investigating 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 Investigating Officer under sub-regulation (1) in relation to an inquiry completed by the officer, the inquiry is re-opened.

Duration and termination of appointment

77. (1) Subject to this regulation, the appointment of a person to be an Investigating Officer shall continue until the expiration of 2 months after the Investigating Officer has completed the inquiry.

(2) Subject to sub-regulation (3), where an Investigating Officer has been directed under regulation 76 to make a further report, the appointment of the person to be an Investigating Officer shall continue in existence until the expiration of 2 months after the Investigating Officer has completed the re-opened inquiry.

(3) The appointing officer may, at any time, revoke the appointment of a person that the appointing officer has appointed to be an Investigating Officer.

Application of provisions to Investigating Officers

78. (1) Subject to this regulation, regulations 49, 50, 53, 56, 57, sub-regulations 60 (5) and (6), regulations 61 and 63, sub-regulations 64 (1) and (3) and regulation 65 apply to and in relation to an Investigating Officer as if the Investigating Officer constituted a Court of Inquiry.

(2) For the purposes of sub-regulation (1), a reference to the appointing authority in a provision referred to in sub-regulation (1) shall be read as a reference to the appointing officer.

(3) Any power or function that may be exercised or performed by the President of a Court of Inquiry under a provision referred to in sub-regulation (1) may, in relation to an inquiry under this Part, be performed by the Investigating Officer who is conducting that inquiry.

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.

NOTE

1. Notified in the *Commonwealth of Australia Gazette* on L 1985.

20 June/