

STATUTORY RULES.

1942. No. 179

REGULATIONS UNDER THE DEFENCE ACT 1903-1941.*

I, THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Defence Act* 1903-1941.

Dated this *Fourteenth*

day of *April*, 1942.

Governor-General.

By His Excellency's Command,

J. G. G. G.

Minister of State for External Territories
acting for and on behalf of the
The Minister of State for the Army.

AMENDMENTS OF THE AUSTRALIAN MILITARY REGULATIONS.†

1. Regulation 333 of the Australian Military Regulations is repealed and the following regulation inserted in its stead:—

"333. (1) As soon as the proceedings of a court-martial in which the sentence is lower in the scale of punishments than dismissal or discharge are received by an authority having power to confirm the sentence, the authority shall, except in exceptional circumstances or unless the accused is required to be detained for some other offence, immediately order that the accused be released from custody or placed in open arrest.

Release from custody pending confirmation. (Peace and war service.)

(2) Where the sentence of a court-martial is or includes forfeiture of seniority or reduction of rank, and the confirming authority orders that the accused be released and not placed in open arrest, instructions

* Notified in the *Commonwealth Gazette* on _____, 1942.
† Statutory Rules 1927, No. 149, as amended by Statutory Rules 1928, Nos. 28, 28 and 126; 1929, No. 123; 1930, Nos. 26, 67 and 92; 1931, No. 13; 1932, Nos. 80, 87 and 125; 1933, Nos. 40 and 77; 1934, Nos. 26 and 80; 1935, Nos. 99 and 100; 1936, Nos. 21, 44 and 100; 1937, No. 45; 1938, Nos. 75, 90 and 93; 1939, Nos. 31, 51, 58, 115, 123, 134, 160 and 173; 1940, Nos. 2, 16, 29, 59, 150, 183, 184, 185, 186, 199, 287, 252, 272 and 273; and 1941, Nos. 3, 4, 14, 48, 135, 153, 155, 205, 245, 246, 260 and 311; and 1942, Nos. 35, 59, 60, 85 and 114.
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shall be given with the order for release that the accused shall not, unless the exigencies of the services so require, be placed on duty until after promulgation of the sentence.

(3) In cases where the sentence of a court-martial is such that it appears to the president of that court-martial that the period of detention awarded will probably expire before confirmation of the sentence, or the further detention of the accused is unnecessary—

- (a) the president shall advise the C.O. of the accused that the further detention of the accused in respect of the offence tried by that court-martial is unnecessary, and that the accused should be placed in open arrest pending instructions from the confirming authority, and the president shall forward to the confirming authority a memorandum setting out the action that has been taken;
- (b) on receipt of that advice, the C.O. shall, unless the accused is required to be detained for any other offence, release the accused from custody and place him in open arrest accordingly; and
- (c) on receipt of the proceedings of that court-martial, the confirming authority shall, in any case in which it appears to him that the accused has not been released, instruct the C.O. to release the accused from detention or place him in open arrest, as the case requires, unless the accused is required to be detained for any other offence.”.

2. Regulation 334 of the Australian Military Regulations is repealed and the following regulation inserted in its stead:—

“334. (1) Before confirming the finding and sentence of a court-martial, the confirming authority shall, unless the exigencies of the service preclude his so doing, refer the proceedings to the Judge-Advocate-General, a Deputy Judge-Advocate-General or an officer of the Australian Army Legal Department for such report as that person or officer considers necessary as to the legality and propriety of the finding, the legality of the sentence or any other matter arising in the course of those proceedings upon which he is required or considers it desirable to advise or comment.

Examination
of proceedings.
(Peace and
war service.)

(2) Within fourteen days after the date of the signing of the minute of confirmation or the date of acquittal on all charges, as the case may be, the officer having custody of the proceedings of a court-martial for the purpose of promulgation of the finding and sentence, in the first case, or the president or judge-advocate, in the second case, shall—

- (a) if a Deputy Judge-Advocate-General is not attached to the body of the Military Forces with which the accused person was serving at the time of the finding of the court-martial—forward the proceedings to the Military Board, which shall submit them to the Judge-Advocate-General or the Deputy Judge-Advocate-General at the Head-quarters of the Military Forces in the Commonwealth for review and report; or

(b) if a Deputy Judge-Advocate-General is attached to that body—submit the proceedings to him for review and report prior to forwarding them, with that report, to the Military Board.

(3) A report by the Judge-Advocate-General or a Deputy Judge-Advocate-General in pursuance of the last preceding sub-regulation shall contain such advice or comment as he is specifically required by the authority forwarding the proceedings to furnish, or, in the absence of specific instructions, such observations as to the legality and propriety of the finding, the legality of the sentence or any other matter appearing in the proceedings as he considers necessary or desirable.

(4) Unless the Military Board otherwise directs, the proceedings of a court-martial which have been submitted to a Deputy Judge-Advocate-General shall not be submitted to the Judge-Advocate-General before transmission to the Attorney-General.

(5) Copies of any reports furnished pursuant to this regulation shall be attached to the proceedings of courts-martial transmitted to the Attorney-General for record pursuant to section 99 of the Act.

(6) An officer who has acted as the president, a member of the court, the prosecutor or the judge-advocate at a trial by court-martial shall not, either before or after confirmation, advise upon the proceedings of that court-martial.”.

3. Regulation 337 of the Australian Military Regulations is amended by omitting from sub-regulation (4) the words “will, when practicable,” and inserting in their stead the words “pursuant to sub-regulation (2) or the date of the minute made under sub-regulation (3) of this regulation, as the case may be, shall”.

Promulgation.
(Peace and war service.)

4. Regulation 338 of the Australian Military Regulations is amended—

- (a) by adding at the end of sub-regulation (2) the words “or to the Judge-Advocate-General or a Deputy Judge-Advocate-General”;
- (b) by omitting from paragraph (b) of sub-regulation (8) the words “; and that a finding or sentence confirmed directly by His Majesty shall not be quashed except by direction of His Majesty”;
- (c) by omitting sub-regulation (9) and inserting in its stead the following sub-regulation:—

Illegal proceedings not to be confirmed or, if confirmed, to be quashed.
(Peace and war service.)

“(9) Unless undue delay will be occasioned thereby, the finding, sentence or part of a sentence of a court-martial shall not be quashed without previous reference to the Judge-Advocate-General or the Deputy Judge-Advocate-General at the Head-quarters of the Military Forces in the Commonwealth, or, if a Deputy Judge-Advocate-General is attached to the body of the Military Forces with which the convicted person was serving at the time of his conviction, to that Deputy Judge-Advocate-General:

Provided that, if the court-martial was held out of the Commonwealth and the exigencies of the service so require, the previous reference may be made to an officer of the Australian Army Legal Department.”; and

- (d) by repealing sub-regulation (10).

5. Regulation 340 of the Australian Military Regulations is amended by omitting from sub-regulation (3) the words "or Adjutant-General,".

Copies of proceedings. (Peace and war service.)

6. Regulation 341 of the Australian Military Regulations is amended—

Petition by person convicted by court-martial. (Peace and war service.)

(a) by omitting the words "or reviewing authority" and inserting in their stead the words "authority, or, if the finding and sentence have been confirmed, to the authority empowered under regulation 338 of these Regulations to quash that finding and sentence,"; and

(b) by omitting sub-regulation (2) and inserting in its stead the following sub-regulation:—

"(2) If a petition raises any question of law, it shall be referred for report to the Judge-Advocate-General or a Deputy Judge-Advocate-General."

7. Regulation 575 of the Australian Military Regulations is amended—

Constitution of A.A.L.D.

(a) by omitting from sub-regulation (1) the words "of the Citizen Forces"; and

(b) by adding at the end thereof the following sub-regulation:—

"(3) No officer shall be appointed a legal staff officer unless he is a member of the Australian Army Legal Department."

8. Regulation 582 of the Australian Military Regulations is repealed and the following regulation is inserted in its stead:—

"582.—(1) All matters relating to any appointment, promotion or transfer to, in or in connexion with the Australian Army Legal Department shall, subject to these Regulations, be under the control of—

Command, &c., of A.A.L.D.

(a) in connexion with any portion of the Military Forces within the Commonwealth—the Adjutant-General; or

(b) in connexion with any body of the Military Forces out of the Commonwealth—the General Officer in Chief Command of that body of the Forces.

(2) A report of the Judge-Advocate-General or a Deputy Judge-Advocate-General on the professional fitness of the person concerned shall be obtained and considered when an appointment or promotion to or in the Australian Army Legal Department is contemplated.

(3) An officer of the Australian Army Legal Department attached to the staff of a formation or other command shall be under the command of the officer commanding the formation or other command, but any officer not so attached shall be under the command of the Adjutant-General.

(4) Notwithstanding anything contained in this regulation—

(a) A Deputy Judge-Advocate-General may be transferred or seconded from his appointment and, if out of the Commonwealth, returned to Australia only by the Governor-General; and

(b) An officer of the Australian Army Legal Department attached to the staff of the Judge-Advocate-General or of

a Deputy Judge-Advocate-General shall not be transferred, removed, suspended or seconded, or, if out of the Commonwealth, returned to Australia, without previous reference to the Judge-Advocate-General or to that Deputy Judge-Advocate-General, as the case may be."

10. Regulation 583 of the Australian Military Regulations is amended— Channel of communication and rulings.

- (a) by omitting from sub-regulation (1) the word "will" (first occurring) and inserting in its stead the word "shall";
- (b) by omitting from that sub-regulation the words "Other officers of the Australian Army Legal Department will communicate" and inserting in their stead the words "Deputy Judge-Advocates-General shall communicate,";
- (c) by omitting from sub-regulation (2) the words "in his absence or if the office of Judge-Advocate-General is vacant, to the Deputy Judge-Advocate-General at the Head-quarters of the Military Forces" and inserting in their stead the words "a Deputy Judge-Advocate-General";
- (d) by adding at the end of sub-regulation (3) the words "in the Commonwealth"; and
- (e) by adding, at the end thereof, the following sub-regulation:—
 - "(4) Subject to the provisions of sub-regulation (3) of this regulation, the rulings, directions and opinions of a Deputy Judge-Advocate-General attached to a body of the Military Forces out of the Commonwealth, on any question of Military law, shall be binding on a legal staff officer attached to that body."

11. Regulation 585 of the Australian Military Regulations is amended— Judge-Advocate-General and Deputies.

- (a) by omitting sub-regulation (2) and inserting in its stead the following sub-regulation:—
 - "(2) The Judge-Advocate-General may be an officer or a civilian.";
- (b) by inserting in paragraph (c) of sub-regulation (5), after the word "Forces", the words "in the Commonwealth";
- (c) by omitting sub-regulation (7); and
- (d) by omitting from sub-regulation (8) the words "the Deputy Judge-Advocate-General at Head-quarters" and inserting in their stead the words "a Deputy Judge-Advocate-General".

By Authority: L. F. JOHNSTON, Commonwealth Government Printer, Canberra.