

Defence (Inquiry) Amendment Regulations 2000 (No. 1) 2000 No. 327

EXPLANATORY STATEMENT

STATUTORY RULES 2000 No. 327

Issued by the Authority of the Minister for Defence

Defence Act 1903

Defence (Inquiry) Amendment Regulations 2000 (No. 1)

Subsection 124(1) of the *Defence Act 1903* provides that the Governor-General may make Regulations prescribing all matters required or permitted to be prescribed or which are necessary or convenient to be prescribed for the good governance of the Defence Force. Paragraph 124(1)(ge) provides that the Governor-General may make Regulations in relation to the appointment, procedures and powers of courts of inquiry, boards of inquiry and investigating officers.

The *Defence (Inquiry) Regulations 1985* (the Principal Regulations) prescribe the establishment of general Courts of Inquiry and Boards of Inquiry, their membership and the procedures surrounding their operation. These Regulations also provide for the appointment of Investigating officers and their powers and responsibilities in relation to, amongst other things, the manner of taking evidence.

Part VI of the Principal Regulations relates to investigating officers. Subregulation 69(2) provides for the eligibility of a person to be an investigating officer. At present, the person must be an officer, a warrant officer or the holder of an office above an Australian Public Service Level 4 classification.

The purpose of the Defence (Inquiry) Amendment Regulations 2000 (No. 1) is to provide for greater flexibility in the eligibility of a person to be an investigating officer and the introduction of the concept of "inquiry assistants". This allows greater efficiency in the board or court inquiry process relating to Defence Force matters.

The Statutory Rule provides for the process of appointment of investigating officers and inquiry assistants, their powers and the manner of taking evidence.

Details of the amendments are detailed in the attachment.

ATTACHMENT

Details of the Statutory Rule

The purpose of this Statutory Rule is to:

- * Extend the eligibility of a person to be an investigating officer who does not fall within the existing categories of officer, warrant officer or APS Level 4 classification (paragraph 70(1)(d)). This allows greater flexibility in the appointment of an investigating officer, to include for example, a civilian other than an APS employee. Such an appointment must, however, be approved by the Chief of the Defence Force or the Chief of an arm of the Defence Force. The person must also agree to the appointment.
- * Introduce the concept of an "inquiry assistant" who assists the investigating officer to inquire into a matter concerning part of the Defence Force (subregulation 69(2)). The eligibility of an "inquiry assistant" is the same as those for an investigating officer.
- * Provide for the appointment of an investigating officer and inquiry assistants under regulation 70A. The appointment may be made by a commanding officer in the Defence Force, an officer who has the powers of a formation commander under the *Australian Military Regulations 1927* or an officer who holds an appointment superior to that of either of those offices. The appointment must be made in writing and state the name of the Investigating officer or inquiry assistant to whom the instrument of appointment relates.
- * Provide for the powers of both an investigating officer and inquiry assistants under regulation 70B:

-In relation to an **investigating officer**, the instrument of appointment must state whether he or she has the power to make any recommendations from his or her findings. If not then the appointing officer (as defined) may authorise (in writing) the investigating officer to make such recommendations;

-If the appointing officer adds or varies a matter in relation to what the investigating officer may inquire into, the appointing officer may authorise the investigating officer to make recommendations in relation to those additional matters;

-In relation to an **inquiry assistant**, his or her powers include:

-Assisting the investigating officer to gather evidence for the purposes of the inquiry;

-Giving evidence that he or she has collected to the investigating officer.

* Amend regulation 74 and 74A to extend their application to inquiry assistants. Regulation 74 outlines the duties of a member of the Defence Force appearing as a witness before an investigating officer or inquiry assistant. This regulation will cover such matters as the consequences of a member of the Defence Force refusing or failing to answer a question relevant to an inquiry, the production of certain documents in particular circumstances at the request of an investigating officer or inquiry assistant. There are defences for a member refusing or failing to answer a question put to the member. These are covered in subregulation 74(2).

* Require a member of the Defence Force to produce a document or an article that is in the custody or control of the member that is relevant to the inquiry under regulation 74A. Should the member fail to do so, a penalty of 5 units is imposed. Certain defences are provided for in subregulation 74A(2) if the member fails to produce the document or article. For example, a member will have a reasonable excuse for not providing these documents if they might disclose a secret process of manufacture or are prejudicial to the defence of the Commonwealth.

- * Provide for the admissibility of statements or disclosures under regulation 74B. If, while giving evidence before the investigating officer or inquiry assistant, the member makes a statement or disclosure, they are not admissible in evidence against that person in proceedings before a service tribunal. However, if the person is prosecuted for an offence against the Regulations, those statements are admissible in evidence.
- * Provide for the duration of an inquiry. Regulation 75A provides that an inquiry is taken to be complete when a report of an investigating officer has been prepared and given to the appointing officer. The inquiry is complete notwithstanding that an investigating officer has not signed the report.
- * Provide for the duration and termination of appointments of an investigating officer or inquiry assistant. Pursuant to regulation 77, both appointments continue for 2 months after the inquiry is complete. However, where an investigating officer has been directed to prepare a further report, the appointment continues for 2 months after the re-opened inquiry is complete. The appointment of an inquiry assistant continues for 2 months after the re-opened inquiry is completed.
- * Provide for the application of certain provisions to investigating officers and inquiry assistants under regulation 78. The provisions are all contained in Part V that contain the general provisions relating to courts of inquiry. These provisions relate to such matters as the times and places for the conduct of inquiries, procedures during an inquiry, the evidence given by members of the Defence Force, examination of witnesses, contempt of Courts of Inquiry and so on. The exercise of a power or function under this regulation by the President of the Court of Inquiry is exercisable by the Investigating officer. Most of these provisions apply to inquiry assistants under subregulation 78(3);

This Statutory Rule commences on Gazettal.