

TRIPLICA

Administering Departm

copy with documents sent  
Council Secretariat in connection with the  
making of this legislation.**ExCo Secretariat:** Please complete this copy by  
inserting signatures, date of making and instrument  
No. and send to:Legislative Services Unit  
Office of Legislative Drafting  
Attorney-General's Department

2000B00344



## Defence (Inquiry) Amendment Regulations 2000 (No. 1)<sup>1</sup>

Statutory Rules 2000 No. <sup>2</sup>

---

327

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Defence Act 1903*.

Dated            1 DEC 2000    2000

**WILLIAM DEANE**  
Governor-General

By His Excellency's Command

J. MOORE  
Minister for Defence

---

**1 Name of Regulations**

These Regulations are the *Defence (Inquiry) Amendment Regulations 2000 (No. /)*. 1

**2 Commencement**

These Regulations commence on gazettal.

**3 Amendment of Defence (Inquiry) Regulations**

Schedule 1 amends the Defence (Inquiry) Regulations.

**Schedule 1 Amendments**

(regulation 3)

**[1] Regulation 1**

*substitute*

**1 Name of Regulations**

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

**[2] Subregulation 3 (1), definition of *appointing officer***

*substitute*

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

*Note* See Part 6.

[3] **Part VI, heading**  
*substitute*

**Part 6** **Investigating officers and inquiry assistants**

[4] **Regulations 68, 69 and 70**  
*substitute*

**68** **Definitions**

In this Part:

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

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

**69** **Investigating officers and inquiry assistants**

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

**70** **Eligibility to be Investigating Officer or inquiry assistant**

- (1) The following persons are eligible to be appointed as an Investigating Officer or inquiry assistant:
  - (a) an officer;
  - (b) a warrant officer;
  - (c) an ongoing employee in the Australian Public Service who is performing duties at or above the classification of APS Level 4;

- 
- (d) any other person (except an APS employee who does not comply with paragraph (c)).
- (2) However, a person mentioned in paragraph (1) (c) or (d) is not eligible to be appointed unless:
- (a) for a person mentioned in paragraph (1) (c) — the person has agreed in writing to the appointment; and
  - (b) for a person mentioned in paragraph (1) (d):
    - (i) a proposal to appoint the person has been approved in writing by the Chief of the Defence Force or the Chief of an arm of the Defence Force; and
    - (ii) the person has agreed in writing to the appointment.

**70A Appointment of Investigating Officers and inquiry assistants**

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

- 
- (3) An appointment must:
    - (a) be made in writing; and
    - (b) give the name of the Investigating Officer or inquiry assistant to whom the instrument of appointment relates.

#### **70B Power of Investigating Officer**

- (1) This regulation applies if a person is appointed as an Investigating Officer.
- (2) The instrument appointing the person must state whether or not the Investigating Officer is empowered to make recommendations resulting from the findings of the Investigating Officer.
- (3) If the instrument does not empower the Investigating Officer to make recommendations resulting from the findings of the Investigating Officer in relation to a matter, the appointing officer may, in writing, authorise the Investigating Officer to make recommendations in relation to that matter.
- (4) If 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, in writing, authorise the Investigating Officer to make recommendations resulting from the findings of the Investigating Officer in relation to that matter.

#### **70C Power of inquiry assistant**

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

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

**[5] Regulation 73***substitute***73 Manner of taking evidence**

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

**[6] Regulations 74 and 74A***substitute***74 Duty to answer questions**

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

Penalty: 5 penalty units or imprisonment for 3 months.

- (2) Without limiting the circumstances that may constitute a reasonable excuse for subregulation (1), if the member considers, on reasonable grounds, that answering a question may:

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

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

---

**74A Duty to produce document or article**

- (1) If a member of the Defence Force who appears as a witness before an Investigating Officer or an inquiry assistant is ordered by the Officer or assistant to produce a document or an article that:
- (a) is in the custody or control of the member; and
  - (b) is relevant to the inquiry;
- the member must not, without reasonable excuse, refuse or fail to produce the document or article.

Penalty: 5 penalty units or imprisonment for 3 months.

- (2) Without limiting the circumstances that may constitute a reasonable excuse for subregulation (2), if the member considers, on reasonable grounds, that the production of a document or an article may:
- (a) disclose a secret process of manufacture; or
  - (b) be prejudicial to the defence of the Commonwealth;
- the member has a reasonable excuse for not producing the document or article.

**74B Admissibility of statement or disclosure**

- (1) Subject to subregulation (2), a statement or disclosure made by a member of the Defence Force while giving evidence before an Investigating Officer or an inquiry assistant is not admissible in evidence against that person in proceedings before a service tribunal.
- (2) A statement or disclosure mentioned in subregulation (1) is admissible in evidence against the member if the member is prosecuted for an offence against these Regulations.

**[7] After regulation 75***insert***75A Completion of inquiry**

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

**[8] Regulations 77 and 78***substitute***77 Duration and termination of appointment**

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



---

**78 Application of provisions to Investigating Officers and inquiry assistants**

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

---

## Notes

1. These Regulations amend Statutory Rules 1985 No. 114, as amended by 1987 No. 36; 1990 Nos. 10 and 207; 1997 No. 43.
2. Notified in the *Commonwealth of Australia Gazette* on / 2000.

4 December