

EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 45

Defence Act 1903

Issued by the authority of the Minister for Veterans' Affairs

Australian Military Amendment Regulations 2005 (No. 1)

Subsection 124(1) of the *Defence Act 1903* (the Act) provides that the Governor-General may make regulations not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for securing the good government of the Defence Force, or for carrying out or giving effect to the Act. The *Australian Military Regulations 1927* made under the Act provide for, among other things, particulars of service in certain corps and departments.

On 17 November 1995, the then Chief of the Defence Force, General J.S. Baker AC, commissioned Brigadier Abadee, a Justice of the Supreme Court of New South Wales, to investigate and report on whether the Australian Defence Force military discipline system satisfied contemporary standards of judicial independence and impartiality. While Brigadier Abadee's report indicated that the military justice system satisfied legal requirements, he recommended numerous changes that were subsequently accepted by the Committee of Service Chiefs (COSC) on 11 February 1998. One matter of concern relating to the issue of independence was control and authority over legal officers or reporting officers appointed by a service chief under section 154 of the *Defence Force Discipline Act 1982*.

The Regulations amend the *Australian Military Regulations 1927* to ensure that a Defence Force magistrate, a judge advocate or a section 154 reporting officer are not subject to such command and control in respect of the exercise of their "judicial functions", rather only in relation to matters of an administrative nature. These amendments address the concern about judicial independence.

Details of the amendments are outlined in the [Attachment](#).

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Act specifies no condition that must be met before the power to make the Regulations may be exercised.

Details of the Australian Military Amendment Regulations 2005 (No. 1)

Regulation 1 identifies these Regulations as the *Australian Military Amendment Regulations 2005 (No. 1)*.

Regulation 2 provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

Regulation 3 provides that the amendments to the *Australian Military Regulations 1927* (the Principal Regulations) are contained in Schedule 1.

Schedule 1 makes the substantive amendments to the Principal Regulations. The amendments relate to Part VII of the Principal Regulations- "Particulars of service in the Australian Army Legal Corps".

Item 1 amends subregulation 583(1) by omitting the word "connexion" and inserting the word "connection". This amendment reflects modern drafting practice.

Item 2 inserts a new subregulation 583(4), to provide that subregulations 583(1) and (2) do not apply to an officer appointed under the *Defence Force Discipline Act 1982*, as a Defence Force magistrate, a judge advocate or a legal officer for the purposes of paragraph 154(1)(a) of that Act.

Item 2 also inserts a new subregulation 583(5) to provide that subregulation 583(3) does not apply to an officer of the Australian Army Legal Corps, appointed under the *Defence Force Discipline Act 1982* as a Defence Force magistrate, a judge advocate or a legal officer for the purposes of paragraphs 154(1)(a) and (b) of that Act, while performing judicial duties. These amendments ensure independence for these officers in that they are not subject to command and control in respect of either their appointment or performance of their judicial functions.

Item 3 amends regulation 585 by omitting the words "An officer" and inserting " (1) An officer". This amendment is necessary as a result of the insertion of a further subregulation in regulation 585.

Item 4 inserts a new subregulation 585(2) that provides that subregulation 585(1) does not apply to an officer, appointed under the *Defence Force Discipline Act 1982*, in the performance of judicial duties by the officer as a Defence Force magistrate, a judge advocate or a legal officer for the purposes of subsection 154(1) of that Act.