

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 66

Issued by the authority of the Minister for Veterans' Affairs

Defence Act 1903
Naval Defence Act 1910
Air Force Act 1923

Defence (Inquiry) Amendment Regulations 2006 (No. 1)

Subsection 124(1) of the *Defence Act 1903*, subsection 45(1) of the *Naval Defence Act 1910* and section 9 of the *Air Force Act 1923* (the Acts) provide that the Governor-General may make regulations not inconsistent with the Acts, prescribing all matters which by the Acts are required or permitted to be required, 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 Acts. In particular, paragraph 124(1)(gc) of the *Defence Act 1903* provides for the appointment, procedures and powers of courts of inquiry, boards of inquiry, inquiry officers and inquiry assistants.

The Senate Foreign Affairs, Defence and Trade References Committee, in its report on "*The Effectiveness of Australia's Military Justice System*", delivered on 16 June 2005 recommended, inter alia, that all notifiable incidents including suicide, accidental death or serious injury should be referred to a tribunal known as the Australian Defence Force Administrative Review Board, for investigation/inquiry. The government did not agree with this recommendation and instead proposed amendments to legislation to create a Chief of Defence Force Commission of Inquiry. The Chief of the Defence Force would appoint a mandatory Commission of Inquiry into suicide by ADF members and deaths in service. The proposed Commission would consist of one or more persons, with one being a civilian with judicial experience. Where the Commission consists of more than one person, the civilian with judicial experience would be the President.

The Regulations amend the *Defence (Inquiry) Regulations 1985*, (the Principal Regulations) to give interim effect to this recommendation prior to legislating the establishment of the new Chief of Defence Force Commission of Inquiry. They allow the Chief of the Defence Force to appoint a civilian, with judicial experience, as the President of a Board of Inquiry into suicide by ADF members and deaths in service. The appointment of a civilian President of a Board of Inquiry would be in addition to the existing arrangements for the appointment of a Military Officer as President of a Board of Inquiry.

The Regulations also:

- allow a representative of a deceased person to appear before a Board if the President considered that the record or reputation of that person may be affected by an inquiry; and
- if evidence is given regarding an officer or civilian, allow that person access to the Board and the relevant evidence.

Details of the Regulations are outlined in the Attachment.

The Acts specify no conditions that need to be met before the power to make the Regulations may be exercised.

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

The Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

There has been no consultation in the making of this instrument as it relates to the management of and the service of members of the Australian Defence Force.

Authority: Subsection 124(1) of the
Defence Act 1903

Subsection 45(1) of *Naval
Defence Act 1910*

Section 9 of the *Air
Force Act 1923*

0520361-A

ATTACHMENT

Details of the *Defence (Inquiry) Amendment Regulations 2006 (No. 1)*

Regulation [1] identifies these regulations as the *Defence (Inquiry) Amendment Regulations 2006 (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 Defence (Inquiry) Regulations 1985* (the Principal Regulations) are contained in Schedule 1.

Schedule 1 makes the substantive amendments to the Principal Regulations.

Item [1] substitutes a new regulation for the existing regulation 27 to permit the appointment of a civilian to be the President of a Board of Inquiry.

Item [2] substitutes a new subregulation for the existing subregulation 33(2). The amendment ensures that where the President of the Board of Inquiry considers that the record or reputation of a deceased person may be affected by an inquiry conducted by the Board, a single representative of that person is authorised to appear before the Board.

Item [3] substitutes a new regulation for the existing regulation 34. This regulation applies where the President of a Board of Inquiry considers that evidence given before the Board may affect a person who was not present or represented when the evidence was given and the President is either a civilian or an officer not lower in rank than the affected person.

Where such a situation exists, the President must provide an affected person with a copy of the relevant evidence and advise the person of his or her right to appear before the Board and submit any written statement to the Board, the person considers relevant.

Item [4] substitutes a new subregulation for the existing subregulation 35(1). It provides for situations where the President of a Board of Inquiry is an officer and considers that evidence given before the Board may affect an officer, higher in rank than the President, who was not present or represented before the Board when the evidence was given. In such situations, the President must so advise the appointing authority in writing, as well as providing the appointing authority with a copy of the relevant evidence.

Item [5] makes the necessary consequential amendments to regulations 26 and 37 to reflect the amendment to regulation 27 permitting the appointment of a civilian as president of a Board of Inquiry. The amendments also amend subregulation 33(1) to ensure that a person who may be affected by an inquiry conducted by a Board of Inquiry is authorised to appear before the Board.