

EXPLANATORY STATEMENT

Select Legislative Instrument 2006 No. 142

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. 2)

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, in part, 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 October 2003 the Senate referred the matter of the effectiveness of Australia's military justice system to the Senate Foreign Affairs, Defence and Trade References Committee (the Committee) for inquiry and report. The Committee tabled its report on 16 June 2005 (the Senate Report).

As part of its response to the Senate Report, the Government indicated that the *Defence (Inquiry) Regulations 1985* (the Principal Regulations) would be amended to provide for an annual report on the operation of the Principal Regulations, which would also fulfil a recommendation of the *Inquiry into Military Justice in the Australian Defence Force, July 2001* ("the Burchett report").

The Regulations give effect to the Government's undertaking to provide an annual report on the operation of the Principal Regulations, which will be included in the Defence Annual Report.

The Regulations also give effect to a recommendation of the Senate Committee on Regulations and Ordinances (the Senate Committee) relating to earlier amendments to subregulations 74(3A) and 96(3) of the Principal Regulations in November 2005. These amendments removed the privilege against self-incrimination for witnesses appearing before inquiry officers or inquiry assistants. The Senate Committee recommended that the amendments to subregulations 74(3A) and 96(3) should be accompanied by a note referring to and summarising the effect of subsection 124(2C) of the *Defence Act 1903*, which made this amendment via the *Defence Legislation Amendment Act (No 1) 2005* and provides that witness statements made to inquiries would not be admissible in civil or criminal proceedings.

The Regulations also insert a similar note to subregulations 14(5) and 32(5) which remove the privilege against self-incrimination for witnesses appearing before General Courts of Inquiry and Boards of Inquiry, respectively.

The Regulations also substitute the term "investigating officer" with "inquiry officer". These amendments are necessary following amendments to subsections 124(1), 124(2A) and 124(2C) of the *Defence Act 1903*, made by the *Defence Legislation Amendment Act (No.1) 2005*. The term "investigating officer" appears in both the *Defence Act 1903* and the *Defence Force Discipline Act 1982* but has different meanings in each Act. The amendment to the *Defence Act 1903* to change the reference from "investigating officer" to "inquiry officer" made it clear that these officers are conducting administrative inquiries rather than criminal investigations.

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 proposed Regulations may be exercised.

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

The Regulations commence on 30 June 2006.

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 the
Naval Defence Act 1910

Section 9 of the
Air Force Act 1923.

Attachment

Details of the Defence (Inquiry) Amendment Regulations 2006 (No. 2)

Regulation [1] identifies these regulations as the *Defence (Inquiry) Amendment Regulations 2006 (No. 2)*.

Regulation [2] provides that the Regulations commence on 30 June 2006.

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] inserts a note at the foot of subregulation 14(5) of the Principal Regulations referring to and summarising the effect of subsection 124(2C) of the *Defence Act 1903*. Subsection 124(2C) of the *Defence Act 1903* provides that evidence given by a witness during the course of a military inquiry is not admissible against the witness in any civil or criminal proceedings, other than proceedings against the witness for perjury.

Item [2] inserts a note at the foot of subsection 32(5) of the Principal Regulations referring to and summarising the effect of subsection 124(2C) of the *Defence Act 1903*.

Item [3] amends the heading to Part 6 of the Principal Regulations by substituting the term " Investigating officers" with the term "Inquiry Officers".

Item [4] amends regulation 69 by substituting the word " Officers" for the word "officers" in the heading to the regulation.

Item [5] inserts a note at the foot of subregulation 74(3A) of the Principal Regulations referring to and summarising the effect of subsection 124(2C) of the *Defence Act 1903*.

Item [6] inserts a note at the foot of subsection 96(3) of the Principal Regulations referring to and summarising the effect of subsection 124(2C) of the *Defence Act 1903*.

Item [7] inserts a new Part 8 titled "Annual Report " after Part 7 of the Principal Regulations. It also inserts a new regulation 108 that provides that the Chief of the Defence Force is to prepare a report on the operation of the Principal Regulations for the financial year ending 30 June 2007 and for each succeeding financial year. Subregulation 108(2) provides that the report is to be included in the Defence Annual Report. This gives effect to the Government response to the Senate Report. It is expressed in broad terms to allow for both flexibility and relevance in respect of the matters that will be included in the Report.