

EXPLANATORY STATEMENT

Select Legislative Instrument 2007 No. 298

Issued by the authority of the Minister for Veterans' Affairs

Defence Act 1903

Australian Military Amendment Regulations 2007 (No. 1)

Subsection 124(1) of the *Defence Act 1903* (the Act) provides, in part, 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* (the Principal Regulations) made under the Act provide for, among other things, the constitution of the Australian Army Legal Corps and its command and control.

Regulations 583 and 585 of the Principal Regulations provide for the control and command of the Australian Army Legal Corps and the performance of officers within that Corps. To this end the Principal Regulations at present exclude Defence Force magistrates, judge advocates, and certain legal officers appointed to provide legal reports for reviews by reviewing authorities, which review the proceedings of a service tribunal, from the operation of these Regulations. The *Defence Force Discipline Act 1982* (DFD Act) is premised on judicial and other office holders and appointees being independent.

The *Defence Legislation Amendment Act 2006* (the DLA Act) includes provisions that will establish a new permanent Australian Military Court and abolish the current system of reviews for court martial and Defence Force magistrate decisions and the ad hoc courts martial and Defence Force magistrate trials. As a consequence, references throughout primary and subordinate legislation to 'Defence Force magistrate' and 'judge advocate' will be replaced with references to the 'Australian Military Court' and related terminology.

The Regulations align the principal Regulations with the DLA Act by omitting references to 'Defence Force magistrate' and 'judge advocate' and legal officers appointed under paragraph 154(1)(a) of the DFD Act, in regulations 583 and 585. With the removal of courts martial and Defence Force magistrate trials, there will be no longer be a requirement for reports to be provided by paragraph 154(1)(a) legal officers. Reports would still be provided by legal officers performing duties under subsection 154(1) of the DFD Act and a minor drafting change ensures that regulations 583(3) and 585(1) do not apply to such legal officers.

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

The Regulations commence on the commencement of Schedule 1 to the DLA Act (a day to be fixed by Proclamation, or 1 October 2007, whichever is earlier).

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

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Attachment

Details of the proposed Australian Military Amendment Regulations 2007 (No. 1)

Regulation 1 would identify these Regulations as the *Australian Military Amendment Regulations 2007(No. 1)*.

Regulation 2 would provide that the Regulations commence on the commencement of Schedule 1 to the *Defence Legislation Amendment Act 2006*.

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

Schedule 1

Item [1] would amend subregulation 583(4) by substituting a new subregulation that would remove the references to a ‘Defence Force magistrate’ and ‘judge advocate’ and would provide that subregulations 583(1) and (2) do not apply to an appointment, transfer or promotion of a person appointed as a legal officer under subsection 154(1) of the DFD Act. Subregulations 583(1) and (2) relate to Australian Army Legal Corps (AALC) appointments, promotions and transfers. By virtue of new subregulation 583(4), these provisions would not apply to the appointment under the DFD Act of judge advocates, Defence Force magistrates and legal officers appointed under new subsection 154(1) of the DFD Act.

Item [2] would amend subregulation 583(5) by substituting a new subregulation that removes reference to a Defence Force magistrate and judge advocate and would provide that subregulation 583(3) does not apply to the command of a legal officer performing duties under subsection 154 (1) of the DFD Act. Subregulation 583(1) relates to command of Australian Army Legal Corps legal officers. By virtue of current subregulation 583(5), this provision does not apply to the command of AALC legal officers appointed under the DFD Act as a judge advocate, a Defence Force magistrate or a legal officer appointed under paragraphs 154(1)(a) or (b) of the DFD Act, in the performance of their judicial duties. The proposed amendment to subregulation 583(5) recognises the removal of judge advocates, Defence Force magistrates and legal officers appointed under paragraph 154(1) (a) of the DFD Act, but recognises the continued existence of legal officers who are currently appointed under paragraph 154(1) (b), that is, legal officers who will become officers appointed under new subsection 154(1) when the relevant DLA Act provisions come into force.

Item [3] would amend subregulation 585(2) by substituting a new subregulation that provides that subregulation 585(1) does not apply to the duties performed by a legal officer appointed under subsection 154(1) of the *Defence Force Discipline Act 1982*. Subregulation 585(1) relates to AALC legal officer efficiency classifications. By virtue of current subregulation 585(2), this provision does not apply to AALC legal officers appointed under the DFD Act as a judge advocate, a Defence Force magistrate or a legal officer appointed pursuant to paragraph 154(1)(a) or (b) of the DFD Act, in the performance of their judicial duties. The proposed amendment to subregulation 585(2) would recognise the removal of judge advocates, Defence Force

magistrates and legal officers appointed under paragraph 154(1) (a) of the DFD Act, but would recognise the continued existence of legal officers currently appointed under paragraph 154(1) (b) of the DFD Act and who will become legal officers under new subsection 154(1), when the relevant DLA Act provisions come into effect.

These amendments would 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.