

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 360

Issued by the authority of the Minister for Defence for the Attorney-General

Defence Force Discipline Appeals Act 1955
Defence Force Discipline Appeals Amendment Regulations 2009 (No. 1)

Section 60 of the *Defence Force Discipline Appeals Act 1955* (the Act) provides, in part, that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Act.

On 26 August 2009, the High Court declared that the provisions in the *Defence Force Discipline Act 1982* (the Discipline Act) establishing the Australian Military Court (AMC) were invalid. The Discipline Act was amended by the *Military Justice (Interim Measures) Act (No.1) 2009* (Interim Measures Act) to return to the service tribunal system that existed before the creation of the AMC. To re-establish an effective military justice system, the pre-2007 Discipline Act has been largely reinstated.

These measures include reinstating:

- courts martial and Defence Force magistrates trials;
- the positions of Chief Judge Advocate, Judge Advocates and the Registrar of Military Justice; and
- automatic command review and petitions in respect of summary authority, courts martial or Defence Force magistrate trials.

To reflect amendments made by the Interim Measures Act discussed above, the *Defence Force Discipline Appeals Regulations 1957* (the Principal Regulations) were identified as requiring amendment, to enable the Defence Force Discipline Appeal Tribunal to deal with appeals from courts martial or Defence Force magistrate convictions.

The Regulations make the necessary amendments to the Principal Regulations.

The Principal Regulations are administered by the Attorney-General and, as such, any amendments require the Attorney-General's approval. The Attorney-General agreed to the amendments and also agreed that the Minister for Defence sign them on his behalf.

Details of the Regulations are contained in the Attachment.

The Act specifies 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 purpose of the *Legislative Instruments Act 2003*.

The Regulations commenced on the day after they were 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 and service of members of the ADF.

ATTACHMENT

Details of the *Defence Force Discipline Appeals Amendment Regulations 2009 (No. 1)*

Regulation 1 – Name of Regulations

This regulation provides that the title of the Regulations is the *Defence Force Discipline Appeals Amendment Regulations 2009 (No. 1)*.

Regulation 2 – Commencement

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

Regulation 3 - Amendment

This regulation provides that Schedule 1 amends the Principal Regulations.

Items [1] omits the definition of ‘Director of Military Prosecutions’ from regulation 2 of the Principal Regulations.

Items [2] and [3] substitute the definition of, and the reference to, ‘Registrar of the Australian Military Court’ in regulation 2 and paragraph 9 (1) (ab) of the Principal Regulations with ‘Registrar of Military Justice’.

Item [4] substitutes regulation 10 of the Principal Regulations so that the ‘Registrar of Military Justice’ (rather than the ‘Registrar of the Australian Military Court’) must furnish to the Defence Force Discipline Appeal Tribunal (the Tribunal), court martial or Defence Force magistrate records of proceedings and any other documents before the court martial or Defence Force magistrate in connection with those proceedings.

Items [5] to [10] omit and substitute references to ‘Director of Military Prosecutions’, ‘offender appellant’ and ‘Registrar of the Australian Military Court’ in the Principal Regulations. As mentioned above, these amendments reflect how the Tribunal will deal with appeals from courts martial or Defence Force magistrate convictions and the return to the pre-2007 system of trials.

Item [11] omits references throughout the Principal Regulations to ‘offender appellant’ and substitutes a reference to ‘appellant’. Again, this reflects the system as it existed prior to the 2007 amendments to the Discipline Act.