



# Defence (Inquiry) Amendment Regulation 2013 (No. 1)

## Select Legislative Instrument No. 113, 2013

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I, Professor Marie Bashir AC CVO, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation under the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Act 1923*.

Dated 13 June 2013

Marie Bashir  
Administrator

By Her Excellency's Command

Stephen Smith  
Minister for Defence

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OPC60021 - C



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*No. 113, 2013*                      *Defence (Inquiry) Amendment Regulation 2013 (No. 1)*                      *i*

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## **1 Name of regulation**

This regulation is the *Defence (Inquiry) Amendment Regulation 2013 (No. 1)*.

## **2 Commencement**

This regulation commences on the day after it is registered.

## **3 Authority**

This regulation is made under the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Act 1923*.

## **4 Schedule(s)**

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Defence (Inquiry) Regulations 1985*

#### **1 Subregulation 62(8)**

Omit “authorization under subregulation 63 (3)”, substitute “authorisation under subregulation 63(4) or (6).

#### **2 Subregulation 62(9)**

Omit “authorization under subregulation 63 (3)”, substitute “authorisation under subregulation 63(4) or (6).

#### **3 Regulation 63**

Repeal the regulation, substitute:

#### **63 Disclosure of records or reports of Courts of Inquiry**

##### *Offence relating to disclosure*

- (1) A person to whom this regulation applies commits an offence if:
  - (a) the person does any of the following things:
    - (i) discloses to a person, or makes available to the public generally, information contained in the records or report of a Court of Inquiry;
    - (ii) copies a document, or part of a document, that forms part of the records or report of a Court of Inquiry;
    - (iii) discloses to a person, or makes available to the public generally, a document, part of a document, or a copy of all or part of a document, that forms part of the records or report of a Court of Inquiry; and
  - (b) the information or document referred to in paragraph (a) came to the knowledge, or into the possession, of the person in the course of the person’s employment as a person to whom this regulation applies; and
  - (c) the information or document referred to in paragraph (a) does not relate to oral evidence given in public in the course of an inquiry.

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Penalty: 10 penalty units or imprisonment for 3 months.

*Defence*

- (2) It is a defence to a prosecution for an offence against subregulation (1) that the person:
- (a) is authorised under subregulation (4) or (6) to disclose the information or document; and
  - (b) disclosed the information or document in accordance with the authorisation.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subregulation (2) (see section 13.3 of the *Criminal Code*).

- (3) It is a defence to a prosecution for an offence against subregulation (1) that the information, document, or part of a document has previously been made available to the public generally in accordance with an authorisation under:
- (a) subregulation (4) or (6); or
  - (b) regulation 63 of these Regulations as in force at any time before this paragraph commences.

Note 1: This regulation was repealed and replaced in 2013.

Note 2: A defendant bears an evidential burden in relation to the matters mentioned in subregulation (3) (see section 13.3 of the *Criminal Code*).

*General authority to disclose or copy*

- (4) A person to whom this regulation applies is authorised to:
- (a) disclose to a person, or make available to the public generally, information contained in the records or report of a Court of Inquiry; and
  - (b) copy a document, or part of a document, that forms part of the records or report of a Court of Inquiry; and
  - (c) disclose to a person, or make available to the public generally:
    - (i) a document that forms part of the records or report of a Court of Inquiry; or
    - (ii) a part of a document that forms part of the records or report of a Court of Inquiry; or

(iii) a copy of all or part of a document that forms part of the records or report of a Court of Inquiry;  
in the performance of the person's duties as a person to whom this regulation applies.

*Ministerial directions about duties of person to whom this regulation applies*

(5) For subregulation (4):

- (a) the Minister may, in writing, direct a person to whom this regulation applies as to when doing a thing referred to in subregulation (4) is, or is not, in the performance of the person's duties as a person to whom this regulation applies; and
- (b) a person's authorisation under subregulation (4) applies subject to any direction by the Minister; and
- (c) a direction is not a legislative instrument.

Note: The Minister may give a direction to a person or a class of persons: see subsection 33(3A) of the *Acts Interpretation Act 1901*.

*Ministerial authority to disclose or copy*

(6) The Minister may, in writing, authorise a person to whom this regulation applies to do any of the following:

- (a) disclose to a person or a class of persons, or make available to the public generally, information contained in the records or report of a Court of Inquiry;
- (b) copy a document, or part of a document, that forms part of the records or report of a Court of Inquiry;
- (c) disclose to a person or a class of persons, or make available to the public generally:
  - (i) a document that forms part of the records or report of a Court of Inquiry; or
  - (ii) a part of a document that forms part of the records or report of a Court of Inquiry; or
  - (iii) a copy of all or part of a document that forms part of the records or report of a Court of Inquiry.

(7) An authorisation under subregulation (6):



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- (a) may be expressed to be subject to conditions specified in the authorisation; and
  - (b) may be given whether or not the information or documents to which it relates is or are the subject, in whole or in part, of a direction under subregulation 62(1).
- (8) Subregulation (1) is not to be taken to limit the operation of subregulation (6).
- (9) The Minister may, in writing, delegate his or her powers under subregulation (5) or (6).
- (10) In this regulation:

***person to whom this regulation applies:***

- (a) means a person employed by the Commonwealth; and
- (b) includes a member of the Defence Force.

***records***, in relation to a Court of Inquiry, means:

- (a) the transcript or other record of oral evidence taken during the course of an inquiry by the Court; and
- (b) documents received by the Court and accepted as evidence during the course of an inquiry by the Court; and
- (c) statements made under regulation 52 and received by the Court during the course of an inquiry by the Court, whether or not they are accepted as evidence.

***report:***

- (a) means a report of a Court of Inquiry; and
- (b) in the case of a General Court of Inquiry—includes a statement of an assessor made under subregulation 19(2).

**4 Subregulation 64(2)**

Omit “63 (2)”, substitute “63(1)”.

**5 Subregulation 64(3)**

Omit “63 (2)”, substitute “63(1)”.