

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

Select Legislative Instrument No. 113, 2013

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 Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

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):

 (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)”.