



Defence (Inquiry) Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 15 March 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Darren Chester
Minister for Defence Personnel

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Part 1—Preliminary

1 Name

This instrument is the *Defence (Inquiry) Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	At the same time as Part 1 of Schedule 1 to the <i>Defence Legislation Amendment (Instrument Making) Act 2017</i> commences.	26 March 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Defence Act 1903*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Purpose of this instrument

For the purposes of paragraph 124(1)(gc) of the Act, this instrument prescribes matters providing for, and in relation to, inquiries concerning the Defence Force.

6 Purpose of inquiries

The purpose of inquiries concerning the Defence Force that are conducted by Commissions or inquiry officers under this instrument is to facilitate the making of decisions relating to the Defence Force.

Section 7

7 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) Chief of the Defence Force;
- (b) Defence Force;
- (c) Member;
- (d) officer;
- (e) The Secretary.

In this instrument:

Act means the *Defence Act 1903*.

appointing authority for a Commission means:

- (a) if the Commission is appointed by the Chief of the Defence Force and the Secretary acting jointly under subsection 8(1)—both of those persons acting jointly; or
- (b) otherwise—the person who appoints the Commission under subsection 8(1).

COI assistant of a Commission means a person appointed under section 9 or subsection 13(2) as an assistant of the Commission.

COI member of a Commission means a person appointed under paragraph 8(3)(a) or subsection 8(4) or 13(2) as a member of the Commission and includes a member appointed as the President of the Commission.

COI official of a Commission means:

- (a) a COI assistant of the Commission; or
- (b) a COI member of the Commission; or
- (c) a legal practitioner appointed under section 10 or subsection 13(2) to assist the Commission.

COI records of a Commission means:

- (a) the transcript or other record of oral evidence given to a COI assistant of the Commission or at a hearing of the Commission; or
- (b) documents produced to a COI assistant or COI member of the Commission or at a hearing of the Commission; or
- (c) documents prepared by a COI official of the Commission that relate to the Commission's inquiry.

COI report of a Commission means a report relating to the Commission's inquiry prepared in accordance with section 24.

Commission means a Commission of Inquiry appointed under subsection 8(1).

engage in conduct includes omitting to perform an act.

inquiry officer means a person appointed under subsection 44(1) or 48(1) as an inquiry officer.

inquiry official means:

- (a) an inquiry officer; or

(b) an IO assistant of the inquiry officer.

IO assistant of an inquiry officer means a person appointed under section 45 or subsection 48(1) as an assistant of the inquiry officer.

IO records of an inquiry officer means:

- (a) the transcript or other record of oral evidence given to the inquiry officer or an IO assistant of the inquiry officer; or
- (b) documents produced to the inquiry officer or the IO assistant of the inquiry officer; or
- (c) documents prepared by the inquiry officer, or the IO assistant of the inquiry officer, that relate to the inquiry officer's inquiry.

IO report of an inquiry officer means a report relating to the inquiry officer's inquiry prepared in accordance with section 57.

President of a Commission means the person appointed under paragraph 8(3)(b) or (c) or subsection 13(2) as the President of the Commission.

Part 2—Commissions of Inquiry

Division 1—Appointment of Commissions etc.

8 Appointment of Commissions of Inquiry etc.

Appointment of Commission of Inquiry

- (1) The Minister, the Chief of the Defence Force, or the Chief of the Defence Force and the Secretary acting jointly, may, by written instrument, appoint a Commission of Inquiry to:
 - (a) inquire into such matters concerning the Defence Force as are specified in the instrument; and
 - (b) prepare the COI report of the Commission of Inquiry by a specified date.
- (2) The appointing authority for the Commission may at any time, by written instrument:
 - (a) amend the matters specified in the instrument made under paragraph (1)(a) relating to the Commission; or
 - (b) specify additional matters concerning the Defence Force for the Commission to inquire into; or
 - (c) amend the date specified in the instrument made under paragraph (1)(b) relating to the Commission.

Appointment of COI members

- (3) If a Commission is appointed under subsection (1), the appointing authority for the Commission must, in the instrument made under that subsection:
 - (a) appoint one or more persons as members of the Commission; and
 - (b) if the Commission has only one member—appoint that person as the President of the Commission; and
 - (c) if the Commission has 2 or more members—appoint one of those persons as the President of the Commission.
- (4) The appointing authority for the Commission may at any time, by written instrument, appoint one or more persons as additional members of the Commission.

9 Appointment of COI assistants

The appointing authority for a Commission may, by written instrument, appoint one or more persons as assistants of the Commission.

10 Appointment of legal practitioners assisting Commissions

The appointing authority for a Commission may, in writing, appoint one or more legal practitioners to assist the Commission.

11 Resignation of COI officials

- (1) A COI official of a Commission (other than a member of the Defence Force) may resign his or her appointment by giving a written resignation to:
 - (a) if the appointing authority for the Commission is the Chief of the Defence Force and the Secretary acting jointly under subsection 8(1)—either of those persons; or
 - (b) otherwise—the appointing authority for the Commission.
- (2) The resignation takes effect on the day it is received by the person to whom it is given or, if a later day is specified in the resignation, on that later day.

12 Termination of appointment of COI officials

The appointing authority for a Commission may, at any time, by written notice given to a COI official of the Commission, terminate the appointment of the COI official with effect on a specified day.

13 Replacement of COI officials

- (1) This section applies if a COI official of a Commission (the *former COI official*):
 - (a) resigns in accordance with section 11; or
 - (b) is given a notice of termination under section 12; or
 - (c) dies.
- (2) The appointing authority for the Commission may, by written instrument, appoint another person as a COI official of the Commission to replace the former COI official with effect from a specified date.
- (3) If a person is appointed as a COI official of a Commission under subsection (2), that person may, for the purposes of exercising his or her powers or performing his or her functions as a COI official of the Commission, have regard to the COI records (if any) of the Commission.

14 Termination of Commissions

- (1) If the appointing authority for a Commission considers that it is appropriate in all the circumstances to do so, the appointing authority may, at any time, by written notice given to the President of the Commission:
 - (a) terminate the appointment of the Commission; or
 - (b) suspend the appointment of the Commission for a specified period.
- (2) If:
 - (a) a Commission (the *first Commission*) is appointed to inquire into particular matters; and
 - (b) the appointment is terminated under paragraph (1)(a); and
 - (c) after the termination, another Commission (the *second Commission*) is appointed to inquire into the same or similar matters;the second Commission may have regard to the COI records (if any) of the first Commission.

Part 2 Commissions of Inquiry

Division 1 Appointment of Commissions etc.

Section 15

15 Completion of inquiry

The appointing authority for a Commission may, after receiving the COI report of the Commission, determine in writing that the Commission's inquiry has been completed.

Division 2—Conduct of Commissions

16 Procedure generally

- (1) Subject to this Division, the appointing authority for a Commission may specify in writing how the Commission is to conduct its inquiry.
- (2) A Commission:
 - (a) must conduct its inquiry fairly, economically, quickly and informally; and
 - (b) must comply with the rules of procedural fairness; and
 - (c) is not bound by the rules of evidence, legal forms or technicalities; and
 - (d) may inform itself on any matter relevant to its inquiry in such manner as the President of the Commission thinks fit.

17 Times and places for conduct of inquiries

- A Commission may:
- (a) conduct its inquiry at such times, and at such places, as the President of the Commission determines; and
 - (b) conduct its inquiry and exercise its powers in or outside Australia.

18 Notice to produce documents or things relevant to inquiry

- (1) If the President of a Commission reasonably believes that a person has documents or things that are relevant to the Commission's inquiry, the President may, by written notice given to the person, require the person to produce any such documents or things:
 - (a) to a COI member or COI assistant of the Commission at a specified place within a specified period; or
 - (b) at a specified hearing of the Commission.

Note: Failure to comply with the notice is an offence (see section 29).

- (2) The period specified in the notice under paragraph (1)(a) must be a period of at least 14 days after the day the notice is given.
- (3) The hearing specified in the notice under paragraph (1)(b) must be at least 14 days after the day the notice is given.

19 Notice to attend as a witness to give evidence

- (1) If the President of a Commission reasonably believes that a person has information that is relevant to the Commission's inquiry, the President may, by written notice given to the person, require the person:
 - (a) to attend as a witness before a COI assistant of the Commission at a specified time and place to give evidence; or
 - (b) to attend as a witness at a specified hearing of the Commission to give evidence.

Note: Failure to comply with the notice is an offence (see section 30).

Section 20

- (2) The time specified in the notice under paragraph (1)(a) must be at least 14 days after the day the notice is given.
- (3) The hearing specified in the notice under paragraph (1)(b) must be at least 14 days after the day the notice is given.
- (4) If a person is given a notice under subsection (1), the person is entitled to be paid a reasonable allowance for expenses incurred by the person for transport, meals and accommodation in connection with complying with the notice.

20 Evidence to be given on oath or affirmation

All evidence given at a hearing of a Commission, or to a COI assistant of a Commission, must be given on oath or affirmation.

21 Hearings of Commissions

- (1) A hearing of a Commission must be held in private.
- (2) Despite subsection (1), the appointing authority for a Commission may, by written notice given to the President of the Commission, direct:
 - (a) that the Commission hold one or more of its hearings in public; or
 - (b) that a person, or persons included in a class of persons, specified in the notice may be present during all or part of a private hearing of the Commission.
- (3) If the President of a Commission is satisfied that it is necessary to do so in the interests of:
 - (a) the defence, security or international relations of the Commonwealth; or
 - (b) fairness to a person who the President considers may be affected by the Commission's inquiry; or
 - (c) the effective conduct of the Commission's inquiry;the President may:
 - (d) order that a person, or persons included in a class of persons, specified in the order must not be present at all or part of a public or private hearing of the Commission; or
 - (e) order that all or part of a public hearing must be held in private and give directions as to the persons who may be present.
- (4) The President of a Commission may make an order under subsection (3) in relation to a hearing of the Commission despite any direction given under subsection (2) in relation to the hearing.
- (5) If the President of a Commission makes an order under subsection (3), the President may authorise a person to take such reasonable action as is required to give effect to the order.

22 Removal of certain persons from hearings

- (1) The President of a Commission may order that a person be removed from a hearing of the Commission if the President considers that the person has:
 - (a) insulted a COI official of the Commission during the hearing; or

- (b) disturbed or interrupted the hearing; or
 - (c) engaged in conduct during the hearing that would, if a Commission were a court of record, constitute a contempt of that court.
- (2) If the President of a Commission makes an order under subsection (1), the President may authorise a person to take such reasonable action as is required to give effect to the order.

23 Appearance at hearings of Commissions

Person likely to be materially adversely affected

- (1) If the President of a Commission considers that a person is likely to be materially adversely affected by the Commission's inquiry, the President:
- (a) may permit the person, or a representative of the person, to appear at any hearing of the Commission that is held in private; and
 - (b) must permit the person, or a representative of the person, to appear at all or part of a hearing of the Commission that is held in public if all or that part of the hearing is likely to deal with matters that are likely to materially adversely affect the person.
- (2) If:
- (a) the President of the Commission permits a person, or a representative of a person, to appear at a hearing of the Commission under subsection (1); and
 - (b) the President considers that the person is likely to be materially adversely affected by evidence given by a witness at the hearing;
- the President must permit the person, or the representative of the person, to examine the witness at the hearing in relation to that evidence.

Deceased person

- (3) If the President of a Commission considers that the record or reputation of a deceased person is likely to be materially adversely affected by the Commission's inquiry, the President:
- (a) may permit a representative of the person to appear at any hearing of the Commission that is held in private; and
 - (b) must permit a representative of the person to appear at all or part of a hearing of the Commission that is held in public if all or that part of the hearing is likely to deal with matters that are likely to materially adversely affect the person.
- (4) If:
- (a) the President of the Commission permits a representative of a deceased person to appear at a hearing of the Commission under subsection (3); and
 - (b) the President considers that the deceased person's record or reputation is likely to be materially adversely affected by evidence given by a witness at the hearing;
- the President must permit the representative of the deceased person to examine the witness at the hearing in relation to that evidence.

Section 23

Examination questions

- (5) If the President of a Commission considers it proper to do so, the President may disallow any question put in an examination under subsection (2) or (4).

Services of legal officers

- (6) If:
- (a) a representative of a person is permitted to appear at a hearing of the Commission under subsection (1) or (3); and
 - (b) the representative is a legal officer provided by the Director of Defence Counsel Services;

the services of the legal officer must be made available at the expense of the Commonwealth.

Orders under sections 21 and 22

- (7) This section has effect subject to any order made by the President of the Commission under section 21 or 22.

Division 3—Report of Commissions

24 Report of Commissions

- (1) Subject to subsection (2), if the President of a Commission is satisfied that all information relevant to the Commission's inquiry that is practicable to obtain has been obtained, the President must prepare a report, to be signed by the President and any other COI member of the Commission, setting out:
 - (a) the findings of the Commission; and
 - (b) any recommendations of the Commission arising from those findings.
- (2) If a Commission has 2 or more COI members and those COI members cannot agree on a report, each COI member of the Commission must make a statement in writing, to be signed by that member, of:
 - (a) the findings made by the COI member; and
 - (b) any recommendations arising from those findings that the COI member may think fit to make;and those statements constitute the report of the Commission.
- (3) The President of the Commission must give a copy of the report to:
 - (a) if the appointing authority for the Commission is the Chief of the Defence Force and the Secretary acting jointly under subsection 8(1)—both of those persons; or
 - (b) otherwise—the appointing authority for the Commission.
- (4) The report must be accompanied by a copy of the COI records of the Commission.

Division 4—Use, disclosure and copying of information and documents

25 Directions regarding disclosure of evidence

- (1) If the President of a Commission is satisfied that it is necessary to do so in the interests of:
 - (a) the defence, security or international relations of the Commonwealth; or
 - (b) fairness to a person who the President considers may be affected by the Commission's inquiry; or
 - (c) the effective conduct of the Commission's inquiry;the President may give a written direction that prohibits the disclosure of any or all of the following:
 - (d) specified information contained in oral evidence given to a COI assistant or at a hearing of the Commission;
 - (e) specified documents received by a COI member or COI assistant of the Commission and accepted as evidence during the course of the Commission's inquiry;
 - (f) specified documents prepared by a COI official of the Commission that relate to the Commission's inquiry.
- (2) A direction under subsection (1) given by the President of a Commission does not prohibit:
 - (a) the disclosure of information or documents specified in the direction to:
 - (i) a COI official of the Commission; or
 - (ii) a person authorised, in writing, by the President for the purposes of this paragraph; or
 - (b) the inclusion of information or documents specified in the direction in the COI report of the Commission.
- (3) A direction under subsection (1) that prohibits the disclosure of a document also prohibits:
 - (a) the disclosure of part of that document or the disclosure of a copy of all or part of that document; and
 - (b) the disclosure of information contained in that document.

26 Use, disclosure and copying of certain information and documents as an employee of the Commonwealth or member of the Defence Force

- (1) A person who is an employee of the Commonwealth or a member of the Defence Force may do the following things in the performance of the person's duties as such an employee or such a member:
 - (a) use information contained in the COI records or COI report of a Commission;
 - (b) disclose:
 - (i) information contained in the COI records or COI report of a Commission; or

- (ii) a document, a part of a document, or a copy of all or a part of a document, that forms part of the COI records or COI report of a Commission;
 - (c) copy a document, or a part of a document, that forms part of the COI records or COI report of a Commission.
- (2) Subsection (1) applies despite any direction given under subsection 25(1).

27 Minister may authorise use, disclosure and copying of certain information and documents

- (1) The Minister may, in writing, authorise an employee of the Commonwealth or a member of the Defence Force to do any of the following things:
- (a) use information contained in the COI records or COI report of a Commission for a specified purpose;
 - (b) disclose:
 - (i) information contained in the COI records or COI report of a Commission; or
 - (ii) a document, a part of a document, or a copy of all or a part of a document, that forms part of the COI records or COI report of a Commission;
 - (c) copy a document, or a part of a document, that forms part of the COI records or COI report of a Commission.

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

- (2) An authorisation under subsection (1) may be expressed to be subject to conditions specified in the authorisation.
- (3) An authorisation under subsection (1) has effect despite any direction given under subsection 25(1).

28 Minister may use, disclose and copy certain information and documents

Despite any direction given under subsection 25(1), the Minister may:

- (a) use information contained in the COI records or COI report of a Commission for purposes relating to the Defence Force; and
- (b) disclose:
 - (i) information contained in the COI records or COI report of a Commission; or
 - (ii) a document, a part of a document, or a copy of all or a part of a document, that forms part of the COI records or COI report of a Commission; and
- (c) copy a document, or a part of a document, that forms part of the COI records or COI report of a Commission.

Division 5—Offences

29 Failing or refusing to comply with notice to produce documents or things relevant to inquiry

- (1) A person commits an offence if:
- (a) the person is given a notice under section 18; and
 - (b) the person fails or refuses to comply with the notice.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply to the extent that:
- (a) the person believes on reasonable grounds that compliance with the notice is likely to cause damage to the defence, security or international relations of the Commonwealth; or
 - (b) it would be unduly onerous for the person to comply with the notice.

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

30 Failing or refusing to comply with notice to attend as a witness to give evidence

- (1) A person commits an offence if:
- (a) the person is given a notice under section 19; and
 - (b) the person fails or refuses to comply with the notice.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply to the extent that it would be unduly onerous for the person to comply with the notice.

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

31 Refusing to be sworn or to make affirmation

- (1) A person commits an offence if:
- (a) the person appears as a witness at a hearing of a Commission; and
 - (b) the person is called upon by the President of the Commission to be sworn or to make an affirmation; and
 - (c) the person refuses to be sworn or to make an affirmation.

Penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person attends as a witness before a COI assistant of a Commission to give evidence; and
 - (b) the person is called upon by the COI assistant to be sworn or to make an affirmation; and
 - (c) the person refuses to be sworn or to make an affirmation.

Penalty: 20 penalty units.

32 Failing or refusing to answer question

- (1) A person commits an offence if:
- (a) the person appears as a witness at a hearing of a Commission; and
 - (b) the person fails or refuses to answer a question put to that person by:
 - (i) a COI member of the Commission; or
 - (ii) a legal practitioner appointed under section 10 to assist the Commission; or
 - (iii) a person permitted by the President of the Commission under section 23 to examine the person; and
 - (c) the question is relevant to the Commission's inquiry; and
 - (d) the President requires the person to answer the question.

Penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person attends as a witness before a COI assistant of a Commission to give evidence; and
 - (b) the person fails or refuses to answer a question put to that person by the COI assistant; and
 - (c) the question is relevant to the Commission's inquiry; and
 - (d) the COI assistant requires the person to answer the question.

Penalty: 20 penalty units.

- (3) Subsections (1) and (2) do not apply if:
- (a) the person appears as a witness at a hearing of a Commission or attends as a witness before a COI assistant of a Commission to give evidence; and
 - (b) the person fails or refuses to answer a question; and
 - (c) the person believes on reasonable grounds that the answer to the question is likely to cause damage to the defence, security or international relations of the Commonwealth.

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

33 Giving false evidence

- (1) A person commits an offence if the person gives false evidence at a hearing of a Commission.

Penalty: 20 penalty units.

- (2) A person commits an offence if the person gives false evidence to a COI assistant of a Commission.

Penalty: 20 penalty units.

Section 34

34 Contempt etc.

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct insults a COI official of a Commission in the course of the Commission's inquiry.

Penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct disturbs or interrupts a hearing of a Commission.

Penalty: 20 penalty units.

- (3) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct would, if a Commission were a court of record, constitute a contempt of that court.

Penalty: 20 penalty units.

35 Taking reprisals

- (1) A person commits an offence if the person prevents or dissuades another person from:
- (a) giving information to a COI member or a COI assistant of a Commission;
or
 - (b) producing a document or thing to a COI member or a COI assistant of a Commission; or
 - (c) answering questions asked by a COI member or a COI assistant of a Commission.

Penalty: 20 penalty units.

- (2) A person commits an offence if the person causes another person to be victimised, penalised or prejudiced in some way for:
- (a) giving information to a COI member or a COI assistant of a Commission;
or
 - (b) producing a document or thing to a COI member or a COI assistant of a Commission; or
 - (c) answering questions asked by a COI member or a COI assistant of a Commission.

Penalty: 20 penalty units.

- (3) In a prosecution for an offence against subsection (1) or (2), it is not necessary to prove that the other person:
- (a) gave any information to a COI member or a COI assistant of a Commission; or
 - (b) produced any document or thing to a COI member or a COI assistant of a Commission; or

- (c) answered any questions asked by a COI member or a COI assistant of a Commission.

36 Disclosure of information or documents

- (1) A person commits an offence if:
- (a) the person discloses information or all or a part of a document; and
 - (b) the disclosure is prohibited by a direction under subsection 25(1).

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the person is permitted to disclose the information or all or the part of the document under section 26 or 28.

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

- (3) Subsection (1) does not apply if the person is authorised to disclose the information or all or the part of the document under section 27.

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

37 Disclosure of COI records or COI reports of Commissions etc.

- (1) A person commits an offence if:
- (a) the person is an employee of the Commonwealth or a member of the Defence Force; and
 - (b) the person does any of the following things:
 - (i) discloses information contained in the COI records or COI report of a Commission;
 - (ii) discloses a document, a part of a document, or a copy of all or a part of a document, that forms part of the COI records or COI report of a Commission;
 - (iii) copies a document, or a part of a document, that forms part of the COI records or COI report of a Commission; and
 - (c) the information or all or the part of the document mentioned in paragraph (b) came to the knowledge, or into the possession, of the person in the course of the performance of the person's duties as an employee of the Commonwealth or member of the Defence Force; and
 - (d) the information or all or the part of the document mentioned in paragraph (b) does not relate to oral evidence given in public at a hearing of a Commission.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the person is permitted to disclose the information or all or the part of the document mentioned in paragraph (1)(b) under section 26.

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

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- (3) Subsection (1) does not apply if the person is authorised to disclose the information or all or the part of the document mentioned in paragraph (1)(b) under section 27.

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

Division 6—Other matters

38 Self-incrimination

- (1) An individual appearing as a witness at a hearing of a Commission, or attending as a witness before a COI assistant of a Commission, is not excused from answering a question, when required to do so, on the ground that the answer to the question might tend to incriminate the individual.

Note: Subsection 124(2C) of the Act provides that a statement or disclosure made by a witness in the course of giving evidence before an inquiry under this instrument is not admissible in evidence against the witness other than in proceedings relating to the giving of false testimony.

- (2) Despite subsection (1), an individual is not required to answer a question if the answer to the question might tend to incriminate the individual in respect of an offence with which the individual has been charged and in respect of which the charge has not been finally dealt with by a court or otherwise disposed of.

39 Protection of COI officials from civil or criminal proceedings etc.

- (1) A COI official of a Commission is not liable to civil or criminal proceedings for or in relation to an act done, or omitted to be done, in good faith, in the performance or purported performance, or exercise or purported exercise, of the COI official's functions or powers under or in relation to this instrument.
- (2) A COI official of a Commission is not compellable, in any court proceedings or proceedings before a service tribunal, to provide information, or produce a document, that relates to the performance or purported performance, or exercise or purported exercise, of the COI official's functions or powers under or in relation to this instrument unless the court or service tribunal requires the COI official to do so in the interests of justice.

40 Protection of witnesses etc. from civil proceedings

Civil proceedings do not lie against a person (the *first person*) for loss, damage or injury of any kind suffered by another person as a result of the first person doing any of the following things in good faith:

- (a) producing a document or thing:
 - (i) at a hearing of a Commission; or
 - (ii) to a COI assistant or COI member of a Commission;
- (b) disclosing information to a COI assistant or COI member of a Commission;
- (c) giving evidence, or making a submission, at a hearing of a Commission or to a COI assistant of a Commission.

41 Protection of certain publications

- (1) No civil or criminal proceedings (other than proceedings for an offence against subsection 36(1)) lie in respect of the publication of a fair and accurate account of all or part of a hearing of a Commission that is conducted in public.

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- (2) No civil or criminal proceedings lie in respect of the publication of the COI report of a Commission if the COI report was disclosed in accordance with Division 4 of this Part.

42 COI records and COI reports etc. are exempt documents

Section 38 of the *Freedom of Information Act 1982* applies to:

- (a) the COI records of a Commission and information contained in those records; and
- (b) the COI report of a Commission and information contained in that report.

Note: Section 37 of this instrument prohibits, among other things, the disclosure of the things mentioned in paragraphs (a) and (b) of this section.

43 Delegation

- (1) The Chief of the Defence Force, the Secretary or the Minister may, in writing, delegate any or all of his or her powers under this Part to:
- (a) an officer of the Navy who holds a rank not below the rank of Commodore; or
 - (b) an officer of the Army who holds a rank not below the rank of Brigadier; or
 - (c) an officer of the Air Force who holds a rank not below the rank of Air Commodore.
- (2) In exercising powers under a delegation, the delegate must comply with any directions of the Chief of the Defence Force, the Secretary or the Minister (as the case may be).

Part 3—Inquiry officers

Division 1—Appointment of inquiry officers etc.

44 Appointment of inquiry officers etc.

- (1) The Chief of the Defence Force may, by written instrument, appoint a person as an inquiry officer to:
 - (a) inquire into such matters concerning the Defence Force as are specified in the instrument; and
 - (b) prepare the IO report of the inquiry officer by a specified date.
- (2) The Chief of the Defence Force may, by written instrument, authorise the inquiry officer to make recommendations arising from the inquiry officer's findings in relation to one or more of the matters referred to in paragraph (1)(a).
- (3) The Chief of the Defence Force may at any time, by written instrument:
 - (a) amend the matters specified in the instrument made under paragraph (1)(a) relating to the inquiry officer; or
 - (b) specify additional matters concerning the Defence Force for the inquiry officer to inquire into; or
 - (c) amend the date specified in the instrument made under paragraph (1)(b) relating to the inquiry officer.

45 Appointment of IO assistants

The Chief of the Defence Force may, by written instrument, appoint one or more persons as assistants of the inquiry officer.

46 Resignation of inquiry officials

- (1) An inquiry official (other than a member of the Defence Force) may resign his or her appointment by giving a written resignation to the Chief of the Defence Force.
- (2) The resignation takes effect on the day it is received by the Chief of the Defence Force or, if a later day is specified in the resignation, on that later day.

47 Termination of appointment of inquiry officials

- (1) The Chief of the Defence Force may, at any time, by written notice given to an inquiry official terminate the appointment of the inquiry official with effect on a specified day.
- (2) If:
 - (a) an inquiry officer (the *first inquiry officer*) is appointed to inquire into particular matters; and
 - (b) the appointment is terminated under subsection (1); and
 - (c) after the termination, another inquiry officer (the *second inquiry officer*) is appointed to inquire into the same or similar matters;

Part 3 Inquiry officers

Division 1 Appointment of inquiry officers etc.

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the second inquiry officer may have regard to the IO records (if any) of the first inquiry officer.

48 Replacement of inquiry officials

- (1) If an inquiry official (the *previous inquiry official*):
 - (a) resigns in accordance with section 46; or
 - (b) is given a notice of termination under section 47; or
 - (c) dies;

the Chief of the Defence Force may, by written instrument, appoint another person as an inquiry official to replace the previous inquiry official with effect from a specified date.

- (2) If a person is appointed as an inquiry official under subsection (1), the person may, for the purposes of exercising his or her powers or performing his or her functions as an inquiry official, have regard to the IO records (if any) of the relevant inquiry officer.

49 Suspension of appointment of inquiry officials

If the Chief of the Defence Force considers that it is appropriate in all the circumstances to do so, the Chief of the Defence Force may, at any time, by written notice given to an inquiry official, suspend the appointment of the inquiry official for a specified period.

50 Completion of inquiry

The Chief of the Defence Force may, after receiving the IO report of an inquiry officer, determine in writing that the inquiry officer's inquiry has been completed.

Division 2—Conduct of inquiries

51 Procedure generally

- (1) Subject to this Division, the Chief of the Defence Force may specify in writing how an inquiry officer is to conduct his or her inquiry.
- (2) An inquiry officer:
 - (a) must conduct his or her inquiry fairly, economically, quickly and informally; and
 - (b) must comply with the rules of procedural fairness; and
 - (c) is not bound by the rules of evidence, legal forms or technicalities; and
 - (d) may inform himself or herself on any matter relevant to his or her inquiry in such manner as he or she thinks fit.

52 Times and places for conduct of inquiries

An inquiry officer may:

- (a) conduct his or her inquiry at such times, and at such places, as the inquiry officer determines; and
- (b) conduct his or her inquiry and exercise his or her powers in or outside Australia;

unless the Chief of the Defence Force specifies otherwise under subsection 51(1).

53 Ordering members of the Defence Force to give evidence or produce documents or things

An inquiry officer may order a member of the Defence Force to do either or both of the following for the purposes of the inquiry officer's inquiry:

- (a) attend as a witness before the inquiry officer, or an IO assistant of the inquiry officer, at a specified time and place to give evidence;
- (b) to produce a document or thing to the inquiry officer, or an IO assistant of the inquiry officer, at a specified place within a specified period.

Note: Failure to comply with an order is an offence (see section 61).

54 Manner of taking evidence

An inquiry official must not take evidence on oath or affirmation.

55 Inquiries must not be conducted in public

An inquiry officer must not conduct the inquiry officer's inquiry in public.

56 Removal of certain persons from proceedings

- (1) An inquiry officer may order that a person be removed from the place where the proceedings of the inquiry officer's inquiry are being held if the inquiry officer considers that the person has:

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- (a) insulted the inquiry officer, or an IO assistant of the inquiry officer, during the proceedings; or
 - (b) disturbed or interrupted the proceedings; or
 - (c) engaged in conduct during the proceedings that would, if the inquiry officer or an IO assistant of the inquiry officer were a court of record, constitute a contempt of that court.
- (2) If the inquiry officer makes an order under subsection (1), the inquiry officer may authorise a person to take such reasonable action as is required to give effect to the order.

Division 3—Report of inquiry officers

57 Report of inquiry officer

- (1) Subject to any direction of the Chief of the Defence Force, if an inquiry officer is satisfied that all information relevant to his or her inquiry that is practicable to obtain has been obtained, the inquiry officer must prepare a report setting out:
 - (a) his or her findings; and
 - (b) if the inquiry officer is authorised under subsection 44(2) to make recommendations arising from any or all of those findings—those recommendations.
- (2) The inquiry officer must give a copy of the report to the Chief of the Defence Force.
- (3) The report must be accompanied by a copy of the IO records of the inquiry officer.

Division 4—Use, disclosure and copying of information and documents

58 Use, disclosure and copying of certain information and documents as an employee of the Commonwealth or member of the Defence Force

A person who is an employee of the Commonwealth or a member of the Defence Force may do the following things in the performance of the person's duties as such an employee or such a member:

- (a) use information contained in the IO records or IO report of an inquiry officer;
- (b) disclose:
 - (i) information contained in the IO records or IO report of an inquiry officer; or
 - (ii) a document, a part of a document, or a copy of all or a part of a document, that forms part of the IO records or IO report of an inquiry officer;
- (c) copy a document, or a part of a document, that forms part of the IO records or IO report of an inquiry officer.

59 Minister may authorise use, disclosure and copying of certain information and documents

- (1) The Minister may, in writing, authorise an employee of the Commonwealth or a member of the Defence Force to do any of the following things:
 - (a) use information contained in the IO records or IO report of an inquiry officer for a specified purpose;
 - (b) disclose:
 - (i) information contained in the IO records or IO report of an inquiry officer; or
 - (ii) a document, a part of a document, or a copy of all or a part of a document, that forms part of the IO records or IO report of an inquiry officer;
 - (c) copy a document, or a part of a document, that forms part of the IO records or IO report of an inquiry officer.

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

- (2) An authorisation under subsection (1) may be expressed to be subject to conditions specified in the authorisation.

60 Minister may use, disclose and copy certain information and documents

The Minister may:

- (a) use information contained in the IO records or IO report of an inquiry officer for purposes relating to the Defence Force; and
- (b) disclose:

- (i) information contained in the IO records or IO report of an inquiry officer; or
- (ii) a document, a part of a document, or a copy of all or a part of a document, that forms part of the IO records or IO report of an inquiry officer; and
- (c) copy a document, or a part of a document, that forms part of the IO records or IO report of an inquiry officer.

Division 5—Offences

61 Failing or refusing to comply with an order to attend as a witness before an inquiry officer etc.

Order to attend as a witness before an inquiry officer etc.

- (1) A person commits an offence if:
 - (a) the person is given an order under paragraph 53(a); and
 - (b) the person fails or refuses to comply with the order.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply to the extent that it would be unduly onerous for the person to comply with the order.

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

Order to produce documents or things to an inquiry officer etc.

- (3) A person commits an offence if:
 - (a) the person is given an order under paragraph 53(b); and
 - (b) the person fails or refuses to comply with the order.

Penalty: 20 penalty units.

- (4) Subsection (3) does not apply to the extent that:
 - (a) the person believes on reasonable grounds that compliance with the order is likely to cause damage to the defence, security or international relations of the Commonwealth; or
 - (b) it would be unduly onerous for the person to comply with the order.

Note: A defendant bears an evidential burden in relation to the matters mentioned in subsection (4) (see section 13.3 of the *Criminal Code*).

62 Failing or refusing to answer question

- (1) A person commits an offence if:
 - (a) the person is a member of the Defence Force; and
 - (b) the person appears as a witness before an inquiry officer or an IO assistant of the inquiry officer; and
 - (c) the person fails or refuses to answer a question put to the person by the inquiry officer or the IO assistant; and
 - (d) the question is relevant to the inquiry officer's inquiry; and
 - (e) the inquiry officer or IO assistant requires the person to answer the question.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the person believes on reasonable grounds that the answer to the question is likely to cause damage to the defence, security or international relations of the Commonwealth.

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

63 Giving false evidence

A person commits an offence if the person gives false evidence to an inquiry official.

Penalty: 20 penalty units.

64 Contempt etc.

- (1) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct insults an inquiry officer, or an IO assistant of the inquiry officer, in the course of the inquiry officer's inquiry.

Penalty: 20 penalty units.

- (2) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct disturbs or interrupts the proceedings of the inquiry of an inquiry officer.

Penalty: 20 penalty units.

- (3) A person commits an offence if:
- (a) the person engages in conduct; and
 - (b) the person's conduct would, if an inquiry official were a court of record, constitute a contempt of that court.

Penalty: 20 penalty units.

65 Taking reprisals

- (1) A person commits an offence if the person prevents or dissuades another person from:
- (a) giving information to an inquiry official; or
 - (b) producing a document or thing to an inquiry official; or
 - (c) answering questions asked by an inquiry official.

Penalty: 20 penalty units.

- (2) A person commits an offence if the person causes another person to be victimised, penalised or prejudiced in some way for:
- (a) giving information to an inquiry official; or
 - (b) producing a document or thing to an inquiry official; or
 - (c) answering questions asked by an inquiry official.

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Penalty: 20 penalty units.

- (3) In a prosecution for an offence against subsection (1) or (2), it is not necessary to prove that the other person:
- (a) gave any information to an inquiry official; or
 - (b) produced any document or thing to an inquiry official; or
 - (c) answered any questions asked by an inquiry official.

66 Disclosure of IO records or IO reports of inquiry officers etc.

- (1) A person commits an offence if:
- (a) the person is an employee of the Commonwealth or a member of the Defence Force; and
 - (b) the person does any of the following things:
 - (i) discloses information contained in the IO records or IO report of an inquiry officer;
 - (ii) discloses a document, a part of a document, or a copy of all or a part of a document, that forms part of the IO records or IO report of an inquiry officer;
 - (iii) copies a document, or a part of a document, that forms part of the IO records or IO report of an inquiry officer; and
 - (c) the information or all or the part of the document mentioned in paragraph (b) came to the knowledge, or into the possession, of the person in the course of the performance of the person's duties as an employee of the Commonwealth or member of the Defence Force.

Penalty: 20 penalty units.

- (2) Subsection (1) does not apply if the person is permitted to disclose the information or all or the part of the document mentioned in paragraph (1)(b) under section 58.

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

- (3) Subsection (1) does not apply if the person is authorised to disclose the information or all or the part of the document mentioned in paragraph (1)(b) under section 59.

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

Division 6—Other matters

67 Self-incrimination

- (1) An individual attending as a witness before an inquiry official is not excused from answering a question, when required to do so, on the ground that the answer to the question might tend to incriminate the individual.

Note: Subsection 124(2C) of the Act provides that a statement or disclosure made by a witness in the course of giving evidence before an inquiry under this instrument is not admissible in evidence against the witness other than in proceedings relating to the giving of false testimony.

- (2) Despite subsection (1), an individual is not required to answer a question if the answer to the question might tend to incriminate the individual in respect of an offence with which the individual has been charged and in respect of which the charge has not been finally dealt with by a court or otherwise disposed of.

68 Protection of inquiry officials from civil or criminal proceedings etc.

- (1) An inquiry official is not liable to civil or criminal proceedings for or in relation to an act done, or omitted to be done, in good faith, in the performance or purported performance, or exercise or purported exercise, of the inquiry official's functions or powers under or in relation to this instrument.
- (2) An inquiry official is not compellable, in any court proceedings or proceedings before a service tribunal, to provide information, or produce a document, that relates to the performance or purported performance, or exercise or purported exercise, of the inquiry official's functions or powers under or in relation to this instrument unless the court or service tribunal requires the inquiry official to do so in the interests of justice.

69 Protection of witnesses etc. from civil proceedings

Civil proceedings do not lie against a person (the *first person*) for loss, damage or injury of any kind suffered by another person as a result of the first person doing any of the following things in good faith:

- (a) producing a document or thing to an inquiry official;
- (b) disclosing information to an inquiry official;
- (c) giving evidence, or making a submission, to an inquiry official.

70 Protection of publication of IO report

No civil or criminal proceedings lie in respect of the publication of the IO report of an inquiry officer if the IO report was disclosed in accordance with Division 4 of this Part.

71 IO records and IO reports etc. are exempt documents

Section 38 of the *Freedom of Information Act 1982* applies to:

- (a) the IO records of an inquiry officer and information contained in those records; and

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(b) the IO report of an inquiry officer and information contained in that report.

Note: Section 66 of this instrument prohibits, among other things, the disclosure of the things mentioned in paragraphs (a) and (b) of this section.

72 Delegation

- (1) The Chief of the Defence Force may, in writing, delegate any or all of his or her powers under this Part to:
 - (a) an officer of the Navy who holds a rank not below the rank of Lieutenant;
or
 - (b) an officer of the Army who holds a rank not below the rank of Captain; or
 - (c) an officer of the Air Force who holds a rank not below the rank of Flight Lieutenant.
- (2) The Minister may, in writing, delegate any or all of his or her powers under this Part to:
 - (a) an officer of the Navy who holds a rank not below the rank of Commodore;
or
 - (b) an officer of the Army who holds a rank not below the rank of Brigadier; or
 - (c) an officer of the Air Force who holds a rank not below the rank of Air Commodore.
- (3) In exercising powers under a delegation, the delegate must comply with any directions of the Chief of the Defence Force or Minister (as the case may be).

Part 4—Annual report

73 Annual report on operation of this instrument

- (1) As soon as practicable after the end of a financial year, the Chief of the Defence Force must prepare a report on the operation of this instrument during the financial year.
- (2) For the purposes of subsection (1), the period that begins on the day this instrument commences and ends on 30 June 2019 is taken to be a financial year.
- (3) The report must be included in the annual report of the Department.

Part 5—Transitional, application and saving provisions

74 Definitions

In this Part:

commencement means the commencement of this instrument.

Court of Inquiry has the same meaning as in the old regulations, as in force immediately before commencement.

IGADF inquiry means an inquiry referred to in regulation 126 of the old regulations, as in force immediately before commencement.

inquiry assistant means an inquiry assistant appointed under subregulation 69(2) of the old regulations.

Inquiry Officer means an Inquiry Officer appointed under subregulation 69(1) of the old regulations.

old inquiry means an inquiry under the old regulations (other than an IGADF inquiry).

old regulations means the *Defence (Inquiry) Regulations 1985*.

75 Continuation of incomplete old inquiries

- (1) This section applies in relation to an old inquiry if:
 - (a) the old inquiry started before commencement; and
 - (b) immediately before commencement, the old inquiry has not been completed.
- (2) Despite the repeal of the old regulations:
 - (a) the old inquiry may continue after commencement as if the repeal had not happened; and
 - (b) the old regulations, as in force immediately before commencement, continue to apply in relation to the old inquiry after commencement as if the repeal had not happened; and
 - (c) any written instrument relating to the old inquiry:
 - (i) that was made under the old regulations before commencement; and
 - (ii) that was in force immediately before commencement;continues in force, and may be dealt with, after commencement as if the repeal had not happened; and
 - (d) anything done in relation to the inquiry:
 - (i) that was done under the old regulations before commencement; and
 - (ii) that had effect immediately before commencement;continues to have effect, and may be dealt with, after commencement as if the repeal had not happened.

76 Continued application of certain protection and immunity provisions in old regulations

Despite the repeal of the old regulations, the following provisions continue to apply, after commencement, in relation to an old inquiry that was completed before commencement as if the repeal had not happened:

- (a) regulations 61 and 64 of the old regulations;
- (b) regulation 78 of the old regulations to the extent that regulation relates to the application of regulations 61 and 64 of those regulations to, and in relation to, an Inquiry Officer or an inquiry assistant.

77 Saving of directions relating to the disclosure of certain evidence etc.

- (1) This section applies in relation to a direction if:
 - (a) the direction was given under subregulation 62(1) of the old regulations before commencement; and
 - (b) the direction related to an old inquiry that was completed before commencement; and
 - (c) the direction was in effect immediately before commencement.
- (2) Despite the repeal of the old regulations:
 - (a) the direction continues to have effect, and may be dealt with, after commencement as if the repeal had not happened; and
 - (b) any authorisation given under subregulation 62(3) or paragraph 62(4)(c) of the old regulations before commencement:
 - (i) that relates to the direction; and
 - (ii) that was in effect immediately before commencement;
 continues to have effect, and may be dealt with, after commencement as if the repeal had not happened; and
 - (c) subregulations 62(7) to (9) of the old regulations continue to apply, after commencement, in relation to a contravention of the direction that occurs after commencement as if the repeal had not happened.

78 Continued application of prohibition against disclosure of records or reports of Courts of Inquiry

- (1) This section applies in relation to the following:
 - (a) information contained in the records or report of a Court of Inquiry (the *protected CI information*);
 - (b) a document, a part of a document, or a copy of all or a part of a document, that forms part of the records or reports of a Court of Inquiry (the *protected CI document*);
 whether the inquiry of the Court of Inquiry is completed before or after commencement.
- (2) Despite the repeal of the old regulations, regulation 63 of those regulations continues to apply, after commencement, in relation to protected CI information or a protected CI document as if the repeal had not happened.

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- (3) Section 38 of the *Freedom of Information Act 1982* applies, after commencement, to protected CI information and protected CI documents in relation to which regulation 63 of the old regulations continues to apply under subsection (2) of this section.

Note: Regulation 63 of the old regulations prohibits, among other things, the disclosure of protected CI information and protected CI documents.

79 Continued application of prohibition against disclosure of records or reports of Inquiry Officers

- (1) This section applies in relation to the following:
- (a) information contained in the records or report of an Inquiry Officer (the *protected IO information*);
 - (b) a document, a part of a document, or a copy of all or a part of a document, that forms part of the records or reports of an Inquiry Officer (the *protected IO document*);

whether the inquiry of the Inquiry Officer is completed before or after commencement.

- (2) Despite the repeal of the old regulations:
- (a) regulation 78 of the old regulations (to the extent that regulation relates to the application of regulation 63 of those regulations to, and in relation to, an Inquiry Officer or an inquiry assistant) continues to apply, after commencement, in relation to the inquiry of the Inquiry Officer as if the repeal had not happened; and
 - (b) regulation 63 of the old regulations continues to apply, after commencement, in relation to protected IO information or a protected IO document as if the repeal had not happened.

- (3) Section 38 of the *Freedom of Information Act 1982* applies, after commencement, to protected IO information and protected IO documents in relation to which regulation 63 of the old regulations continues to apply under paragraph (2)(b) of this section.

Note: Regulation 63 of the old regulations prohibits, among other things, the disclosure of protected IO information and protected IO documents.

80 Saving of instruments made under regulation 63 of the old regulations

- (1) This section applies in relation to a written instrument (the *old instrument*) if:
- (a) the old instrument was made under regulation 63 of the old regulations before commencement; and
 - (b) the old instrument was in force immediately before commencement.
- (2) Despite the repeal of the old regulations, the old instrument continues in force, and may be dealt with, after commencement for the purposes of sections 78 and 79 of this instrument as if the repeal had not happened.

81 Continued application of provisions in the old regulations relating to reopening etc. of old inquiries by Courts of Inquiry

- (1) This section applies in relation to an old inquiry that is an inquiry by a Court of Inquiry if:
 - (a) the old inquiry was completed before commencement; and
 - (b) the Court of Inquiry was in existence immediately before commencement.
- (2) Despite the repeal of the old regulations:
 - (a) regulations 66 and 67 of the old regulations continue to apply, after commencement, in relation to the old inquiry as if the repeal had not happened; and
 - (b) any direction relating to the old inquiry:
 - (i) that was given under subregulation 66(1) of the old regulations before commencement; and
 - (ii) that had effect immediately before commencement;continues to have effect, and may be dealt with, after commencement as if the repeal had not happened.

82 Continued application of provisions in the old regulations relating to reopening etc. of old inquiries by Inquiry Officers

- (1) This section applies in relation to an old inquiry that is an inquiry by an Inquiry Officer if:
 - (a) the old inquiry was completed before commencement; and
 - (b) the appointment of the Inquiry Officer was in existence immediately before commencement.
- (2) Despite the repeal of the old regulations:
 - (a) regulations 76 and 77 of the old regulations continue to apply, after commencement, in relation to the old inquiry as if the repeal had not happened; and
 - (b) any direction relating to the old inquiry:
 - (i) that was given under subregulation 76(1) of the old regulations before commencement; and
 - (ii) that had effect immediately before commencement;continues to have effect, and may be dealt with, after commencement as if the repeal had not happened.

83 Last annual report under old regulations

Despite the repeal of regulation 125 of the old regulations, that regulation continues to apply, in relation to a report on the operation of those regulations during the financial year beginning on 1 July 2017, as if:

- (a) that repeal had not happened; and
- (b) that financial year ended at the end of the day before commencement.

Section 84

84 Continued application of provisions in the old regulations relating to IGADF inquiries

- (1) Despite the repeal of the old regulations:
- (a) regulation 126 of those regulations continues to apply, after commencement, in relation to an IGADF inquiry as if the repeal had not happened; and
 - (b) regulations 61 and 64 of the old regulations (to the extent they apply to, and in relation to, an IGADF inquiry because of paragraph (a) of this subsection) continue to apply, after commencement, in relation to an IGADF inquiry as if the repeal had not happened; and
 - (c) regulation 63 of the old regulations (to the extent it applies to, and in relation to, an IGADF inquiry because of paragraph (a) of this subsection) continues to apply, after commencement, in relation to the following as if the repeal had not happened:
 - (i) information contained in the records or report of an IGADF inquiry (the *protected IGADF information*);
 - (ii) a document, a part of a document, or a copy of all or a part of a document, that forms part of the records or reports of an IGADF inquiry (the *protected IGADF document*).
- (2) Section 38 of the *Freedom of Information Act 1982* applies, after commencement, to protected IGADF information and protected IGADF documents in relation to which regulation 63 of the old regulations continues to apply under paragraph (1)(c) of this section.

Note: Regulation 63 of the old regulations prohibits, among other things, the disclosure of protected IGADF information and protected IGADF documents.

Schedule 1—Repeals

Defence (Inquiry) Regulations 1985

1 The whole of the instrument

Repeal the instrument.