

Inspector‑General of the Australian Defence Force Amendment Regulations 2021

I, General the Honourable David Hurley AC DSC (Retd), Governor‑General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 13 May 2021

David Hurley

Governor‑General

By His Excellency’s Command

Peter Dutton

Minister for Defence

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1 Name

This instrument is the *Inspector-General of the Australian Defence Force Amendment Regulations 2021*.

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 | The day after this instrument is registered. | 19 May 2021 |

Note: This table relates only to the provisions of this instrument as originally made.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Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Inspector‑General of the Australian Defence Force Regulation 2016

1 Section 4

Insert:

***inquiry‑related information***: see subsection 28K(1).

2 Subsection 27(5)

Omit “If the Minister or the Chief of the Defence Force did not direct the Inspector‑General ADF to conduct the inquiry, the”, substitute “The”.

3 Subparagraphs 27(5)(a)(i) and (ii)

Repeal the subparagraphs, substitute:

(i) if the Minister did not direct the Inspector‑General ADF to conduct the inquiry—the Minister;

(ii) if the Chief of the Defence Force did not direct the Inspector‑General ADF to conduct the inquiry—the Chief of the Defence Force;

4 At the end of subsection 27(5)

Add:

Note: If the Minister or the Chief of the Defence Force directed the Inspector‑General ADF to conduct the inquiry, the Inspector‑General ADF must give the Minister or the Chief of the Defence Force (as the case may be) a report about the inquiry under subsection (3).

5 After subsection 27(5)

Insert:

(5A) However, if the Minister or the Chief of the Defence Force directed the Inspector‑General ADF to conduct the inquiry, the Inspector‑General ADF must consult the Minister or the Chief of the Defence Force (as the case may be) before:

(a) informing a person of the findings in relation to the inquiry under subsection (5); or

(b) giving a person a report about the inquiry under subsection (5).

6 At the end of section 28E

Add:

; (d) subsection 28M(1) (directions regarding disclosure of inquiry‑related information).

7 After Division 4A of Part 4

Insert:

Division 4B—Disclosure of inquiry‑related information

28K Application of this Division

(1) This Division applies in relation to information (***inquiry‑related information***) that relates to the conduct of an inquiry by the Inspector‑General ADF, an Assistant IGADF or an inquiry officer, including:

(a) a report about the inquiry; and

(b) information, documents or other things collected or created in relation to the conduct of the inquiry.

Note: Paragraph (b) would cover, for example:

(a) a copy of the transcript or any other record of oral evidence taken during the inquiry; and

(b) a copy of a document accepted as evidence during the inquiry; and

(c) any non‑evidentiary information or documents that are created in the course of planning the inquiry, or taking action in relation to the inquiry, whether created before, during or after the inquiry.

(2) This Division has effect despite any other provision of this instrument.

28L Disclosure of inquiry‑related information

(1) The Inspector‑General ADF may disclose inquiry‑related information to any of the following:

(a) the Office of the Special Investigator;

(b) the Australian Federal Police or the police force of a State or Territory;

(c) the Director of Public Prosecutions of the Commonwealth or a State or Territory;

(d) the Australian Commission for Law Enforcement Integrity or an integrity agency for a State or Territory (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*);

(e) an AGS lawyer (within the meaning of section 55I of the *Judiciary Act 1903*);

(f) if the Inspector‑General ADF considers that the disclosure is relevant to the performance of another Commonwealth, State or Territory agency or authority’s functions—that agency or authority;

(g) if:

(i) another person (the ***third party***) is providing services to a person or entity mentioned in one of paragraphs (a) to (f); and

(ii) the Inspector‑General ADF considers that the disclosure is relevant to enabling the third party to assist the person or entity in the performance of the person or entity’s functions; and

(iii) the Inspector‑General ADF is satisfied that, in all the circumstances, the disclosure is appropriate;

that third party.

Note: A disclosure of personal information made in accordance with this section is taken to be authorised by this instrument for the purposes of paragraph 6.2(b) of Australian Privacy Principle 6.

(2) Inquiry‑related information given to a person or entity under subsection (1) need not include information that the Inspector‑General ADF considers inappropriate for any of the following reasons:

(a) considerations of privacy;

(b) the person’s responsibilities;

(c) the person’s interest in the matter;

(d) the information is classified or relates to national security;

(e) the relevance of the information to other information considered not appropriate for the person or entity because of paragraph (a), (b), (c) or (d).

28M Directions regarding disclosure of inquiry‑related information

(1) If the Inspector‑General ADF is satisfied that it is necessary to do so in the interests of the defence of the Commonwealth, or of fairness to a person who the Inspector‑General ADF considers may be affected by an inquiry, the Inspector‑General ADF may give a direction restricting the disclosure of inquiry‑related information.

(2) The Inspector‑General ADF may, in writing, authorise an inquiry officer, or an Assistant IGADF, to give a direction under subsection (1) in relation to an inquiry that the inquiry officer has been appointed to conduct, or that the Assistant IGADF has been directed to conduct.

(3) A person commits an offence if the person contravenes a direction given under subsection (1).

Penalty: 10 penalty units.

8 Section 34A

Before “The Chief of the Defence Force may”, insert “(1)”.

9 At the end of section 34A

Add:

(2) The Inspector‑General ADF may, by instrument in writing, delegate the Inspector‑General ADF’s power under section 28L to a member of the staff assisting the Inspector‑General ADF referred to in subsection 110O(1) of the Act who:

(a) is an SES, or acting SES, employee;

(b) is an APS employee who holds, or is acting in, an Executive Level 2 or equivalent position;

(c) is an officer of the Navy who holds a rank not below the rank of Captain;

(d) is an officer of the Army who holds a rank not below the rank of Colonel;

(e) is an officer of the Air Force who holds a rank not below the rank of Group Captain.

10 At the end of Part 6

Add:

38 Amendments made by the *Inspector‑General of the Australian Defence Force Amendment Regulations 2021*

(1) Subsection 27(5), as amended by the *Inspector‑General of the Australian Defence Force Amendment Regulations 2021*, applies in relation an inquiry begun before, on or after the commencement of that instrument.

(2) Division 4B of Part 4, as inserted by the *Inspector‑General of the Australian Defence Force Amendment Regulations 2021*, applies in relation to the disclosure of inquiry‑related information on and after the commencement of that instrument, regardless of whether the information was collected or created before, on or after that commencement.