

EXPLANATORY STATEMENT

Issued by the authority of the Chief of the Defence Force

Defence Force Discipline Act 1982

Defence Force Discipline (Consequences of Punishment) Amendment Rules 2022

The *Defence Force Discipline Act 1982* (the Act) makes provision for a mechanism, by creating a discipline system, for the maintenance and enforcement of good order and discipline in the Australian Defence Force.

Subsection 68(2) of the Act, provides that the Chief of the Defence Force or a service chief may, by legislative instrument, make rules with respect to the consequences, in relation to a defence member, that are to flow from the imposition by a service tribunal on that member of any of a number of prescribed punishments.

Subsection 68A(2) of the Act, provides that the Chief of the Defence Force or a service chief may, by legislative instrument, make rules with respect to the consequences, in relation to a defence member who is a detainee, that are to flow from the imposition by a service tribunal on that detainee of any custodial punishment.

Part 1 of Schedule 1 to the *Defence Legislation Amendment (Discipline Reform) Act 2021* (the Amendment Act) will commence operation either on a day fixed by proclamation or, if the provisions do not commence within the period of 12 months beginning on the day the Amendment Act receives Royal Assent, they commence on the day after the end of that period.

Subsection 9J(1) within Part 1 of the Act, when it commences, will provide that the Chief of the Defence Force or a service chief may, by legislative instrument, make rules with respect to the consequences, in relation to a prescribed defence member, that are to flow from the imposition by a discipline officer or senior discipline officer on that member of any of the following punishments: restriction of privileges, stoppage of leave, extra duties, and/or extra drill.

The *Defence Force Discipline (Consequences of Punishment) Amendment Rules 2022* (the Amendment Rules) have been made before the enabling provision in subsection 9J(1) of the Act has commenced in reliance on subsection 4(2) of the *Acts Interpretation Act 1901*. The other enabling provisions in subsections 68(2) and 68A(2) of the Act are not amended by the Amendment Act, other than to make minor consequential amendments that update terminology and insert a note (see items 21 and 22 of Part 2 Schedule 2 to the Amendment Act).

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant, or issue any instrument of a legislative or administrative character (including rules), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, amend or vary such instrument.

The purpose of the Amendment Rules is to amend the *Defence Force Discipline (Consequences of Punishment) Rules 2018* (the Rules), which prescribe the consequences of certain minor disciplinary punishments imposed by service tribunals and discipline officers

under the *Defence Force Discipline Act 1982* (the Act). The Rules consist of the consequences of:

- certain ordinary minor punishments as provided by subsection 68(2) of the Act,
- certain minor custodial punishments as provided by subsection 68A(2) of the Act; and
- certain minor punishments imposed by a discipline officer upon a prescribed defence member as provided by subsection 169FB(1).

The Amendment Rules consist of consequential machinery provisions reflecting the commencement of the Amendment Act, in particular the insertion of the new disciplinary infringement scheme for the Australian Defence Force (which includes new subsection 9J(1)) (Schedule 1, Part 1), and repeal of Part IXA of the Act – Special procedures relating to certain minor disciplinary infringements (Schedule 1, Part 2, clause 14). The amendments reflect that new subsection 9J(1) of the Act provides a rule-making power for the Chief of the Defence Force or a service chief to prescribe the consequences of the punishments imposed on a prescribed defence member by a discipline officer or senior discipline officer in substantially the same terms as subsection 169FB(1) (repealed) previously did, and include contemporary drafting and language.

There are no changes to the substantive consequences of punishments prescribed within the Rules.

The Amendment Rules will enable the continuation of the maintenance and enforcement of good order and discipline in the Australian Defence Force.

The Act specifies no conditions that need to be fulfilled before the Rules can be made.

The Rules are a legislative instrument for the purposes of the *Legislation Act 2003*.

The details of the Amendment Rules are set out in [Attachment A](#).

Commencement

The Amendment Rules commence at the same time as Schedules 1 and 2 to the Amendment Act.

Consultation

Extensive consultation was conducted in formulating the Amendment Act within Defence, the Attorney-General's Department, Australian Government Solicitor, ex-Service Organisations, academia and interest groups. As the Amendment Rules are consequential on the changes made by the Amendment Act, the Chief of Defence Force is satisfied that consultation was undertaken to the extent appropriate and reasonably practicable, in accordance with section 17 of the *Legislation Act 2003*.

Regulatory Impact Statement

The Office of Best Practice Regulation was consulted and advised that no Regulation Impact Statement is required (ID: OBPR22-01997).

Human Rights Statement

A Statement of Compatibility with Human Rights is at [Attachment B](#).

Section 1 – Name

1. This section states that the name of this instrument is the *Defence Force Discipline (Consequences of Punishment) Amendment Rules 2022* (the Amendment Rules).

Section 2 – Commencement

2. This section states that the whole of the instrument commences at the same time as the provisions covered by table item 2 of subsection 2(1) of the Amendment Act commence.

Section 3 – Authority

3. This section states that the instrument is made under subsections 9J(1), 68(2) and 68A(2) of the *Defence Force Discipline Act 1982* (the Act).

Section 4 – Schedules

4. This section provides that each instrument that is specified in a Schedule to the Amendment Rules is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments

Defence Force Discipline (Consequences of Punishment) Rules 2018

Item 1 Section 3

5. This item amends section 3 to reflect the change to one of the authorising provisions under which the *Defence Force Discipline (Consequences of Punishment) Rules 2018* (the Rules) are made. The item omits the reference to subsection 169FB(1), which was repealed by the Amendment Act, and replaces it with new subsection 9J(1). Subsections 68(2) and 68A(2) are unaffected by the Amendment Rules.

Item 2 Section 5 (note)

6. This item repeals and substitutes the note to section 5 to list additional expressions that are defined in the Act, including *defence member* and *prescribed defence member*.

Item 3 Section 5 (definition of *member*)

7. This item repeals and substitutes the definition of *member*. It is consequential on a number of amendments to the Act, made by the Amendment Act, which replace references to a “member of the Defence Force” with “defence member”.

Item 4 Section 5 (definition of *prescribed defence member*)

8. This item repeals the definition of *prescribed defence member*, which signposted the definition in section 169A of the Act. It is consequential on the repeal of Part IXA of the Act (which included section 169A) and the insertion of a new definition of *prescribed defence member* in section 3 of the Act by section 9CA of Part 1 of Schedule 1 to the Amendment Act.

Item 5 Part 2 (heading)

9. This item amends the heading of Part 2 to reflect the new authorising provision under which particular sections in Part 2 are made. The item omits the reference to subsection 169FB, which was repealed by the Amendment Act, and replaces it with sections 9J and 68.

Item 6 Sections 8, 9 and 10

10. This item amends sections 8, 9 and 10 to reflect the change to one of the authorising provisions under which those sections are made. The item omits the reference to subsection 169FB(1), which was repealed by the Amendment Act, and replaces it with new subsection 9J(1).

Item 7 Before section 16

11. This item inserts a new Division 1 heading into Part 5 to clarify that the transitional provisions contained in existing sections 16, 17 and 18 apply in relation to the commencement of the Rules as originally made.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Defence Force Discipline (Consequences of Punishment) Amendment Rules 2022

The *Defence Force Discipline (Consequences of Punishment) Amendment Rules 2022* (the Amendment Rules) are compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the Amendment Rules is to amend the *Defence Force Discipline (Consequences of Punishment) Rules 2018* (the Rules), which prescribe the consequences of certain minor disciplinary punishments imposed by service tribunals and discipline officers under the *Defence Force Discipline Act 1982* (the Act). The Rules consist of the consequences of:

- certain ordinary minor punishments as provided by subsection 68(2) of the Act,
- certain minor custodial punishments as provided by subsection 68A(2) of the Act; and
- certain minor punishments imposed by a discipline officer upon a prescribed defence member as provided by subsection 169FB(1).

The Amendment Rules consist of consequential machinery provisions reflecting the commencement of the *Defence Legislation Amendment (Discipline Reform) Act 2021* (the Amendment Act), in particular the insertion of the new disciplinary infringement scheme for the Australian Defence Force (Schedule 1, Part 1) and repeal of Part IXA of the Act – *Special procedures relating to certain minor disciplinary infringements* (Schedule 1, Part 2, clause 14). The amendments reflect that new subsection 9J(1) of the Act provides a rule-making power for the Chief of the Defence Force or a service chief to prescribe the consequences of the punishments imposed on a prescribed defence member by a discipline officer or senior discipline officer in substantially the same terms as subsection 169FB(1) (repealed) previously did, and include contemporary drafting and language.

There are no changes to the substantive consequences of punishments prescribed within the Rules.

Human rights implications

The Chief of the Defence Force has assessed there are no relevant human rights and freedoms engaged by the legislative instrument.