

EXPLANATORY STATEMENT

Issued by the authority of the Judge Advocate General of the Australian Defence Force

Defence Force Discipline Act 1982

Summary Authority 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.

Section 149 of the Act provides that the Judge Advocate General may make rules, to be known as the Summary Authority Rules, providing for the practice and procedure to be followed by summary authorities.

Under section 33(3) of the *Acts Interpretation Act 1901*, where the 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 *Summary Authority Amendment Rules 2022* (the Amendment Rules) is to amend the *Summary Authority Rules 2019* which prescribe the rules and processes that are to be undertaken by a summary authority in conducting a summary authority proceeding under the Act. The Rules consist of eight Parts that address preliminary matters, charging and summoning an accused person, general provisions for summary authority proceedings, evidence before summary authority proceedings, exhibits, procedure for imposing punishment and orders, recording summary proceedings, and general summons provisions.

The Amendment Rules consist of consequential changes as a result of the *Defence Legislation Amendment (Discipline Reform) Act 2021* (the Amendment Act).

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

The Amendment 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 Schedule 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 Judge Advocate General 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: **OBPR22-02340**).

Human Rights Statement

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

ATTACHMENT A

Section 1 – Name

1. This section states that the name of this instrument is the *Summary Authority 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 Schedule 2 to the *Defence Legislation Amendment (Discipline Reform) Act 2021* (the Amendment Act) commences.

Section 3 – Authority

3. This section states that the instrument is made under section 149 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

Summary Authority Rules 2019

Item 1 Subrule 7(2)

5. This item amends subrule 7(2) to remove the reference to hearings before a subordinate summary authority which has been replaced under the Amendment Act by the senior discipline officer.

Item 2 Paragraph 9(4)(c)

6. This item removes the reference in paragraph 9(4)(c) to Section 111 of the Act, which concerns dealing with charge by subordinate summary authority, as section 111 has been repealed by the Amendment Act.

Item 3 Subrule 41(1)

7. This item replaces the term “sentencing” in subrule 41(1) with “the imposition of punishment” to align with the terminology used elsewhere in the Act.

Item 4 Part 9

8. This item inserts a new Part 9 which provides that the amendments made to the *Summary Authority Rules 2019* by the Amendment Rules apply in relation to a service offence

committed, or alleged to have been committed, by a person at or after the commencement of Schedule 2 to the Amendment Act.

Item 5 Paragraph 2 of Schedule 1

9. This item amends the Notice to Accused in Schedule 1 by removing the reference to “/SUBSA” as the subordinate summary authority has been replaced under the Amendment Act by the senior discipline officer.

Item 6 Paragraph 5 of Schedule 1

10. This item amends the Notice to Accused in Schedule 1 by replacing the reference to Schedule 3 of the Act with a reference to sections 69B or 69C to reflect amendments made by the Amendment Act.

Item 7 Paragraph 14 of Schedule 1

11. This item amends the Notice to Accused in Schedule 1 by removing the final two sentences of paragraph 15 which no longer apply as the subordinate summary authority has been replaced under the Amendment Act by the senior discipline officer.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Summary Authority Amendment Rules 2022

The *Summary Authority 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 *Summary Authority Rules 2019* which apply in relation to proceedings relating to a service offence committed, or alleged to have been committed, by a defence member, and apply to summary service tribunals being commanding officers and superior summary authorities under the *Defence Force Discipline Act 1982*. The Amendment Rules consist of consequential changes as a result of the *Defence Legislation Amendment (Discipline Reform) Act 2021* (the Amendment Act).

The amendments are consequential machinery provisions reflecting the commencement of the Amendment Act and include contemporary drafting and language. There are no changes to the substantive provisions of the *Summary Authority Rules 2019*.

Human rights implications

The Judge Advocate General has assessed there are no relevant human rights and freedoms engaged by the legislative instrument.