

EXPLANATORY STATEMENT

Issued by the authority of the Chief of Air Force

Defence Force Discipline Act 1982

Defence Force Discipline (Chief of Air Force) Determination 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.

Part IA of the Act was inserted by Schedule 1 to the *Defence Legislation Amendment (Discipline Reform) Act 2021* (the Amendment Act) and will commence operation either on proclamation or, if no proclamation is made within 12 months of the Amendment Act receiving the Royal Assent, the day after the expiration of that period.

Part IA of the Act establishes the infringement scheme for prescribed defence members, as defined in section 9CA(1). The infringement scheme is designed to address minor breaches of discipline at the lowest level, within a member's unit.

Section 9CA(2) of the Act will, on commencement, provide that a service chief may, by legislative instrument, determine that any of the following is not a prescribed defence member:

- (a) A specified defence member, or each member of a specified class of defence members, holding the rank of warrant officer;
- (b) A specified defence member, or each member of a specified class of defence members, holding the rank of chief petty officer;
- (c) A specified defence member, or each member of a specified class of defence member, holding the rank of flight sergeant

Pursuant to section 9CA(2) of the Act, this instrument is the determination by the Chief of Air Force, being a service chief, that members of the Royal Australian Air Force of the rank of Warrant Officer are not prescribed defence members.

The effect of this determination is that members of the Royal Australian Air Force of the rank of Warrant Officer may not be dealt with under the infringement scheme. The determination is based on the assessment that members of the rank of Warrant Officer hold such a high level of responsibility and respect within the Australian Defence Force that any breach of discipline committed by those members would be too serious to be dealt with under the infringement scheme.

The rank of Warrant Officer is the highest senior enlisted rank. Warrant Officers at this level are expected to be exemplary in their discipline and behaviour. A breach of discipline by a Warrant Officer is not a minor service discipline matter and is too serious to be dealt with under the infringement scheme.

A breach of discipline by a member of the rank of Warrant Officer will continue to be able to be dealt with by a service tribunal as a service offence under the Act.

The Act specifies no conditions that need to be fulfilled before this Determination can be made.

This Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

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

Commencement

The determination will commence at the same time as Schedule 1 to the Amendment Act.

Consultation

Extensive consultation was conducted in formulating the Amendment Act within Defence, the Australian Government Solicitor, ex-service organisations, academia and interest groups.

Regulatory Impact Statement

The Office of Impact Analysis 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 the instrument is the *Defence Force Discipline (Chief of Air Force) Determination 2022*.

Section 2 - Commencement

2. This section states that the whole of the instrument commences at the same time as Schedule 1 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 9CA(2) of the *Defence Force Discipline Act 1982* (the Act).

Section 4 - Objects of this instrument

4. This section describes the object of the instrument, which is to ensure that breaches of discipline by the most senior enlisted members of the Royal Australian Air Force are not dealt with under the infringement scheme established by Part IA of the Act, which is intended to deal only with minor service discipline matters.

Section 5 - Simplified outline of this instrument

5. This section provides a simplified outline of the instrument. It outlines the context of the instrument within the infringement scheme established under Part IA of the Act and the authority of a service chief to exclude certain specified defence members or members of a specified class of defence members from the definition of prescribed defence member. It explains that this instrument determines that members of the Royal Australian Air Force of the rank of Warrant Officer are not prescribed defence members for the purposes of the infringement scheme.

Section 6 – Definitions

6. The note to the section lists a number of expressions used in the instrument that are defined in the Act.
7. The section also defines the ‘Act’ as meaning the *Defence Force Discipline Act 1982*.

Section 7 - Chief of Air Force Determination

8. This section is the key operative provision of the instrument, and is the determination that each member of the class of defence members in the Royal Australian Air Force holding the rank of Warrant Officer is not a prescribed defence member for the purposes of Part IA of the Act.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Defence Force Discipline (Chief of Air Force) Determination 2022

This Determination is 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 Instrument determines that members of the Royal Australian Air Force of the rank of Warrant Officer are not prescribed defence members for the purposes of the infringement scheme.

The infringement scheme is established under Part IA of the *Defence Force Discipline Act 1982* (the Act) to deal with minor service discipline matters. A prescribed defence member may elect to be dealt with under the infringement scheme for breaches of discipline that are disciplinary infringements.

Subsection 9CA(1) of the Act defines a prescribed defence member. Under subsection 9CA(2) of Act, service chiefs may determine that a specified defence member, or each member of a specified class of defence members, holding the rank of warrant officer, chief petty officer or flight sergeant, is not a prescribed defence member.

The object of the Determination is to ensure that breaches of discipline by the most senior enlisted members of the Royal Australian Air Force are not dealt with under the infringement scheme established by Part IA of the Act, which is intended to deal only with minor service discipline matters.

A breach of discipline by a member of the rank of Warrant Officer will continue to be able to be dealt with by a service tribunal as a service offence under the Act.

Human rights implications

This Determination does not engage any of the applicable rights or freedoms.

Although the Determination discriminates on the basis of rank, this is not an attribute that is protected by equality and non-discrimination.

This Determination does not engage the rights of fair trial and fair hearing rights, as it does not impact the equality of a person before a court or tribunal. In accordance with section 9F of the Act, the exercise of jurisdiction by a discipline officer or senior discipline officer under Part IA is not the exercise of jurisdiction by a service tribunal. The rights of defence members of the rank of Warrant Officer in respect of service offences dealt with by a service tribunal are not altered by this Determination.

Conclusion

This Determination is compatible with human rights as it does not raise any human rights issues.