Defence Legislation Amendment Act (No. 2) 2005

No. 142, 2005

An Act to amend legislation relating to defence, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)
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An Act to amend legislation relating to defence, and for related purposes

[Assented to 12 December 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Defence Legislation Amendment Act (No. 2) 2005.
2 Commencement

(1) Each provision of this Act 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.

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<td>Provision(s)</td>
<td>Commencement</td>
<td>Date/Details</td>
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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td>12 December 2005</td>
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<tr>
<td>2. Schedule 1, item 1</td>
<td>A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
<td>12 June 2006</td>
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<td>3. Schedule 1, item 2</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td>12 December 2005</td>
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<td>4. Schedule 1, items 3 to 99</td>
<td>At the same time as the provisions covered by table item 2.</td>
<td>12 June 2006</td>
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<td>5. Schedule 1, items 100 to 105</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td>12 December 2005</td>
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<td>6. Schedule 1, items 106 and 107</td>
<td>At the same time as the provisions covered by table item 2.</td>
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<td>7. Schedule 1, item 108</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td>12 December 2005</td>
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<td>8. Schedule 1, items 109 to 114</td>
<td>At the same time as the provisions covered by table item 2.</td>
<td>12 June 2006</td>
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<td>9. Schedule 1, item 115</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td>12 December 2005</td>
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<td>10. Schedule 2, items 1 and 2</td>
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### Commencement information

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<td>11. Schedule 2, items 3 and 4</td>
<td>A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
<td>12 June 2006</td>
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<tr>
<td>12. Schedule 2, items 5 to 7</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td>12 December 2005</td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

(2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Director of Military Prosecutions and Registrar of Military Justice

Defence Force Discipline Act 1982

1 Subsection 3(1) (definition of appropriate authority)

Omit “a convening authority” (wherever occurring), substitute “the Registrar of Military Justice”.

2 Subsection 3(1)

Insert:

Chief Judge Advocate means the Chief Judge Advocate appointed under section 188A.

3 Subsection 3(1) (definition of convening authority)

Repeal the definition.

4 Subsection 3(1)

Insert:


5 Subsection 3(1)

Insert:

Director of Military Prosecutions means the Director of Military Prosecutions appointed under section 188GF.

6 Subsection 3(1)

Insert:

Registrar of Military Justice means the Registrar of Military Justice appointed under section 188FB.

7 Subsection 3(1)

Insert:
superior authority means a superior authority appointed under section 5A.

8 After section 5

Insert:

5A Appointment of superior authority

The Chief of the Defence Force or a service chief may, by instrument in writing, appoint an officer, or each officer included in a class of officers, to be a superior authority for the purpose of:

(a) representing the interests of the Defence Force in relation to charges that are being considered by the Director of Military Prosecutions for possible trial by a Defence Force magistrate or a court martial; and

(b) exercising the powers and performing the functions conferred on superior authorities by or under this Act or the regulations.

9 At the end of subsection 87(1)

Add:

; or (c) if the authorized member is the Director of Military Prosecutions, do one of the following:

(i) if the charge is a charge that is within the jurisdiction of a superior summary authority or a commanding officer to try—refer the charge to a superior summary authority or a commanding officer for trial under section 106 or 107;

(ii) request the Registrar of Military Justice to refer the charge to a Defence Force magistrate for trial;

(iii) request the Registrar of Military Justice to convene a court martial to try the charge.

Note: A charge referred to a Defence Force magistrate must be referred to the magistrate nominated by the Judge Advocate General: see subsection 129C(1).

10 After subsection 87(1)

Insert:
(1A) To avoid doubt, the powers of the Director of Military Prosecutions under paragraph (1)(c) are in addition to, and not in substitution for, his or her powers under paragraphs (1)(a) and (b).

11 Subsection 87(6)
Repeal the subsection, substitute:

(6) In this section:

authorized member of the Defence Force means:

(a) the Director of Military Prosecutions; or
(b) a member of the Defence Force, or a member of the Defence Force included in a class of members of the Defence Force, authorized, in writing, by a commanding officer for the purposes of this section.

12 Subsection 88(1)
After “authorized officer”, insert “or the Registrar of Military Justice”.

13 After subsection 88(1)
Insert:

(1A) The Registrar of Military Justice may carry out an action under subsection (1) only if a judge advocate or a Defence Force magistrate directs the Registrar of Military Justice to carry out the action.

14 Subsection 95(4)
Omit “a convening authority”, substitute “a superior authority and the Director of Military Prosecutions”.

15 Subsection 95(5)
Omit “a convening authority”, substitute “a superior authority and the Director of Military Prosecutions”.

16 Subsection 95(8)
Omit “convening authority”, substitute “superior authority”.

17 Subsection 95(8)
After “notify”, insert “the Director of Military Prosecutions and”.

6 Defence Legislation Amendment Act (No. 2) 2005 No. 142, 2005
18 **Paragraph 97(5)(a)**
Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

19 **Division 1 of Part VII (heading)**
Repeal the heading, substitute:

*Division 1—Director of Military Prosecutions*

20 **Section 102**
Repeal the section.

21 **Subsection 103(1)**
Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

Note: The heading to section 103 is altered by omitting “convening authority” and substituting “Director of Military Prosecutions”.

22 **Subsection 103(1)**
Before “paragraph 109(b)”, insert “subsection 105A(2),”.

23 **Subsection 103(1)**
Omit “or 130(5)”, substitute “, 130(5) or 131(4)”.

24 **Subsection 103(1)**
Omit “the convening authority”, substitute “the Director of Military Prosecutions”.

25 **Paragraph 103(1)(c)**
Before “refer”, insert “request the Registrar of Military Justice to”.

26 **Paragraph 103(1)(d)**
Before “convene”, insert “request the Registrar of Military Justice to”.

27 **Subsection 103(1) (note)**
Repeal the note, substitute:

Note 1: See also paragraph 87(1)(c) for additional powers that may be exercised by the Director of Military Prosecutions in relation to a charge.
Note 2: A charge referred to a Defence Force magistrate must be referred to the magistrate nominated by the Judge Advocate General: see subsection 129C(1).

28 Subsection 103(2)
Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

29 Paragraph 103(2)(d)
Before “refer”, insert “request the Registrar of Military Justice to”.

30 Paragraph 103(2)(e)
Before “convene”, insert “request the Registrar of Military Justice to”.

31 Subsection 103(3)
Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

32 Subsection 103(3)
Omit “the convening authority”, substitute “the Director of Military Prosecutions”.

33 Paragraph 103(4)(b)
Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

34 Subsection 103(4)
Omit “the convening authority”, substitute “the Director of Military Prosecutions”.

35 Paragraph 103(4)(d)
Before “refer”, insert “request the Registrar of Military Justice to”.

36 Paragraph 103(4)(e)
Omit “the authority”, insert “the Director of Military Prosecutions”.

37 Paragraph 103(4)(e)
Before “convene”, insert “request the Registrar of Military Justice to”.

38 Paragraph 103(5)(b)
Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

39 Subsection 103(5)
Omit “the convening authority”, substitute “the Director of Military Prosecutions”.

40 Paragraph 103(5)(d)
Before “convene”, insert “request the Registrar of Military Justice to”.

41 Paragraph 103(6)(b)
Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

42 Subsection 103(6)
Omit “the convening authority”, substitute “the Director of Military Prosecutions”.

43 Paragraph 103(6)(c)
Before “refer”, insert “request the Registrar of Military Justice to”.

44 Paragraph 103(6)(d)
Omit “the authority”, insert “the Director of Military Prosecutions”.

45 Paragraph 103(6)(d)
Before “convene”, insert “request the Registrar of Military Justice to”.

46 Paragraph 103(7)(b)
Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

47 Subsection 103(7)
Omit “the convening authority shall”, substitute “the Director of Military Prosecutions must request the Registrar of Military Justice to”.

48 Subsections 103(8) to (11)
Repeal the subsections.

49 After section 105
Insert:

105A Referral of charge to Director of Military Prosecutions before dealing with charge under section 109, 110 or 111

(1) This section applies if:
   (a) a person has been charged with a service offence; and
   (b) the charge has not yet been dealt with under section 109, 110 or 111.

(2) The person’s commanding officer, or a superior officer in relation to the person’s commanding officer, may refer the charge to the Director of Military Prosecutions.

(3) Subject to paragraph 103(1)(b), if a charge is referred to the Director of Military Prosecutions under this section, the charge must not be dealt with under section 109, 110 or 111.

Note: Under paragraph 103(1)(b), the Director of Military Prosecutions may refer a charge that is referred to him or her under this section to a superior summary authority or a commanding officer for trial.

50 Paragraphs 109(b) and 110(1)(d)

Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

51 Subsection 119(1)

Omit “A convening authority shall”, substitute “The Registrar of Military Justice must”.

52 Subsection 119(1) (note)

Omit “A convening authority must not appoint a person as a member, reserve member or judge advocate”, substitute “The Registrar of Military Justice must not appoint a person as the judge advocate”.

53 Subsections 119(2) and (3)

Repeal the subsections, substitute:

(2) At any time before a court martial assembles to try a charge, the Registrar of Military Justice may:
   (a) vary the order convening the court martial; or
(b) make an order under subsection (1) convening a new court martial.

54 Subsection 120(1)
Omit “A convening authority shall”, substitute “The Registrar of Military Justice must”.

55 Subsection 120(2)
Omit “convening authority shall”, substitute “Registrar of Military Justice must”.

56 Sections 121, 122 and 123
Omit “the convening authority” (wherever occurring), substitute “the Registrar of Military Justice”.

57 Section 123 (note)
Omit “A convening authority must not appoint a person as a member, reserve member or judge advocate”, substitute “The Registrar of Military Justice must not appoint a person as the judge advocate”.

58 Paragraph 124(1)(f)
Omit “convening authority and request that authority”, substitute “Registrar of Military Justice and request the Registrar of Military Justice”.

59 Subsection 124(2)
Omit all the words after “situation”, substitute “to the Registrar of Military Justice and request the Registrar of Military Justice to appoint as many new members or new reserve members, or both, as the Registrar of Military Justice considers necessary.”.

60 Subsection 124(3)
Omit “convening authority and request that authority”, substitute “Registrar of Military Justice and request the Registrar of Military Justice”.

61 Subsection 124(3) (note)
Omit “A convening authority”, substitute “The Registrar of Military Justice”.

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62 **Subsection 125(1)**
   Omit “convening authority”, substitute “judge advocate”.

63 **Subsection 125(1)**
   After “he or she may”, insert “direct the Registrar of Military Justice to”.

64 **Subsection 125(2)**
   Omit “convening authority shall”, substitute “Registrar of Military Justice must”.

65 **Subsection 125(3)**
   Omit “convening authority” (first occurring), substitute “judge advocate”.

66 **Subsection 125(3)**
   Omit “convening authority shall”, substitute “judge advocate must direct the Registrar of Military Justice to”.

67 **Paragraph 125(4)(b)**
   Omit “convening authority”, substitute “judge advocate”.

68 **Subsection 125(4)**
   Omit “the convening authority shall”, substitute “the judge advocate must direct the Registrar of Military Justice to”.

69 **Subsection 125(5)**
   Omit “a convening authority may”, substitute “the Director of Military Prosecutions may request the Registrar of Military Justice to”.

70 **Subsection 125(6)**
   Omit “a convening authority”, substitute “the Registrar of Military Justice”.

71 **Subsection 129A(1)**
   Repeal the subsection, substitute:
   
   (1) If a charge or case has been referred to a Defence Force magistrate under subparagraph 87(1)(c)(ii), section 103 or subsection (4) of
this section, the Registrar of Military Justice must terminate the reference if:

(a) at a time before the Defence Force magistrate commences to try the charge or hear the case, it appears to the Registrar of Military Justice that, by reason of the exigencies of service, or for any other reason, it is desirable to terminate the reference; or

(b) at a time after the Defence Force magistrate commences to try the charge or hear the case:
   (i) it appears to the Defence Force magistrate that it would not be in the interests of justice for the Defence Force magistrate to continue; and
   (ii) the Defence Force magistrate directs the Registrar of Military Justice to terminate the reference.

72 Paragraph 129A(2)(a)
   After “under”, insert “subparagraph 87(1)(c)(ii),”.

73 Subsection 129A(2)
   Omit “a convening authority shall”, substitute “the Registrar of Military Justice must”.

74 Subsection 129A(3)
   Omit “a convening authority”, substitute “the Registrar of Military Justice”.

75 Subsection 129A(3)
   Omit “the convening authority”, substitute “the Director of Military Prosecutions”.

76 Subsection 129A(4)
   Omit “a convening authority”, substitute “the Registrar of Military Justice”.

77 Paragraph 129A(4)(d)
   Omit “the convening authority”, substitute “the Director of Military Prosecutions”.

78 Subsection 129B(1)
Omit “A convening authority”, substitute “The Registrar of Military Justice”.

Note: The heading to section 129B is altered by omitting “Judge Advocate General to nominate” and substituting “Appointment of”.

79 **Subsection 129B(1)**

Omit all the words after paragraph (c), substitute:

if the Registrar of Military Justice believes the person to be:

(d) biased or likely to be biased; or

(e) likely to be thought, on reasonable grounds, to be biased.

80 **Subsection 129B(2)**

Repeal the subsection, substitute:

(2) The Registrar of Military Justice must not appoint a person as a judge advocate of a court martial unless the Judge Advocate General has nominated that person for that position.

(3) The appropriate service chief must make available, for the purposes of a court martial, a defence member who is appointed to be a member of that court martial.

81 **Subsections 129C(1) and (2)**

Omit “A convening authority”, substitute “The Registrar of Military Justice”.

82 **Subsection 130(5)**

Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

83 **Subsection 131(4)**

Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

84 **Subsection 131(5)**

Omit “convening authority”, substitute “Registrar of Military Justice”.

85 **Section 131A**

Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

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14 [Defence Legislation Amendment Act (No. 2) 2005][No. 142, 2005]
Note: The heading to section 131A is altered by omitting "convening authority" and substituting “Director of Military Prosecutions”.

86 **Paragraph 132(3)(a)**
Omit “convening authority”, substitute “Director of Military Prosecutions”.

87 **Paragraph 135(3)(a)**
Omit “convening authority”, substitute “Director of Military Prosecutions”.

88 **Subsection 137(1)**
Omit “convening authority”, substitute “superior authority”.

89 **Subsection 141(8)**
Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

90 **Paragraph 141A(1)(b)**
Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

91 **Subsection 141A(1)**
Omit “, convening authority”, substitute “, Director of Military Prosecutions”.

92 **Subsections 145(1) and (3)**
Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

93 **Subsection 145A(1)**
Omit “a convening authority”, substitute “the Registrar of Military Justice”.

94 **Subsection 145A(1)**
Omit “the convening authority shall”, substitute “the Registrar of Military Justice must”.

95 **Subsection 145A(5)**
Schedule 1  Director of Military Prosecutions and Registrar of Military Justice

Omit “the convening authority concerned”, substitute “the Director of Military Prosecutions and the Registrar of Military Justice”.

96 At the end of paragraphs 149(a) to (fa)
Add “and”.

97 At the end of section 149
Add:
; and (i) the duties of the Registrar of Military Justice.

98 Section 150A
Omit “convening authority”, substitute “superior authority”.

99 Part XI (heading)
Repeal the heading, substitute:

Part XI—Judge Advocate General, Deputy Judge Advocates General, Chief Judge Advocate and Registrar of Military Justice

100 Subsection 180(3)
After “appointed”, insert “as the Judge Advocate General or”.

101 Subsection 185(5)
Repeal the subsection, substitute:

(5) In the case of a defence member who is the Judge Advocate General or a Deputy Judge Advocate General, if the remuneration to which he or she would be entitled as the Judge Advocate General or as a Deputy Judge Advocate General exceeds the pay to which he or she is entitled as a defence member, he or she is to receive, in respect of his or her office as the Judge Advocate General or as a Deputy Judge Advocate General, only an amount equal to the excess.

102 Subsection 188A(2)
Omit “3 years”, substitute “5 years”.

103 At the end of subsection 188A(3)
Add “, but must not hold office for a total of more than 10 years”.

104 Paragraph 188C(a)
Repeal the paragraph, substitute:
   (a) an officer holding a rank not lower than the naval rank of commodore or the rank of brigadier or air commodore; and

105 At the end of Division 2 of Part XI
Add:

188E Remuneration

(1) The Chief Judge Advocate is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.

(2) The Chief Judge Advocate is to be paid the allowances that are prescribed.

(3) Subsections (1) and (2) have effect subject to the Remuneration Tribunal Act 1973.

106 At the end of Part XI
Add:

Division 3—The Registrar of Military Justice

188F Registrar of Military Justice

There is to be a Registrar of Military Justice.

188FA Functions of the Registrar of Military Justice

(1) The function of the Registrar of Military Justice is to assist the Judge Advocate General and the Chief Judge Advocate by providing administrative and management services in connection with charges and trials under this Act.

(2) In addition to his or her functions under subsection (1), the Registrar of Military Justice also has:
(a) the functions conferred on the Registrar of Military Justice by or under this Act or any other law of the Commonwealth; and
(b) such other functions as are prescribed by the regulations.

188FB Appointment of the Registrar of Military Justice
(1) The Registrar of Military Justice is to be appointed by the Minister by written instrument.
(2) The Registrar of Military Justice holds office on a full-time basis.
(3) The Registrar of Military Justice holds office on the terms and conditions (if any) in respect of matters not provided for by this Act that are determined by the Minister.

188FC Qualifications for appointment
A person must not be appointed as the Registrar of Military Justice unless:
(a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
(b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force or is a member of the Reserves who is rendering continuous full-time service; and
(c) the person holds a rank not lower than the naval rank of captain or the rank of colonel or group captain.

188FD Tenure
(1) The Registrar of Military Justice holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.
(2) The Registrar of Military Justice is eligible for reappointment.

188FE Resignation
The Registrar of Military Justice may resign his or her appointment by giving the Minister a written resignation.
188FF Oath or affirmation

(1) The Registrar of Military Justice must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.

(2) An oath or affirmation under this section is to be made before:
   (a) the Judge Advocate General; or
   (b) a Deputy Judge Advocate General; or
   (c) the Chief Judge Advocate.

188FG Remuneration

(1) Subject to this section, the Registrar of Military Justice is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.

(2) The Registrar of Military Justice is to be paid the allowances that are prescribed.

(3) Subsections (1) and (2) have effect subject to the Remuneration Tribunal Act 1973.

188FH Leave of absence

(1) The Registrar of Military Justice has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the Registrar of Military Justice leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

188FI Outside employment

The Registrar of Military Justice must not:
   (a) engage in practice as a legal practitioner outside the duties of his or her office; or
   (b) without the approval of the Minister, engage in paid employment outside the duties of his or her office.
188FJ Termination of appointment

(1) The Minister may terminate the appointment of the Registrar of Military Justice for:
   (a) misbehaviour; or
   (b) physical or mental incapacity.

(2) The Minister must terminate the appointment of the Registrar of Military Justice if the Registrar of Military Justice:
   (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
   (b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
   (c) engages in practice as a legal practitioner outside the duties of his or her office; or
   (d) without the approval of the Minister, engages in paid employment outside the duties of his or her office; or
   (e) fails, without reasonable excuse, to comply with his or her obligations under section 188FK.

(3) The Registrar of Military Justice ceases to hold office if:
   (a) he or she ceases to be enrolled as a legal practitioner; or
   (b) he or she is no longer:
      (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or
      (ii) a member of the Reserves who is rendering continuous full-time service.

188FK Standing obligation to disclose interests

(1) The Registrar of Military Justice must disclose any interest that the Registrar of Military Justice has if that interest could conflict with the proper performance of the functions of his or her office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.

(2) Subsection (1) applies to interests:
   (a) whether direct or indirect, and whether or not pecuniary; and
   (b) whether acquired before or after the person’s appointment.
(3) The disclosure must be by notice in writing given to the Minister as soon as practicable after the Registrar of Military Justice becomes aware of the potential for conflict of interest.

188FL Acting appointments

(1) The Minister may appoint a person to act as the Registrar of Military Justice:
   (a) during a vacancy in the office, whether or not an appointment has previously been made to that office; or
   (b) during any period, or during all periods, when the Registrar of Military Justice is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of his or her office.

(2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
   (a) the occasion for the appointment had not arisen; or
   (b) there was a defect or irregularity in connection with the appointment; or
   (c) the appointment had ceased to have effect; or
   (d) the occasion to act had not arisen or had ceased.

(3) The Minister must not appoint a person to act as the Registrar of Military Justice unless:
   (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
   (b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force or is a member of the Reserves who is rendering continuous full-time service; and
   (c) the person holds a rank not lower than lieutenant commander, major or squadron leader.

188FM Delegation

The Registrar of Military Justice may delegate all or any of his or her powers and functions to:
   (a) a defence member holding the rank of lieutenant commander, major or squadron leader; or
(b) a person whose classification level appears in Group 5 or a higher Group of Schedule 1 to the Classification Rules under the Public Service Act 1999; or
(c) a person who is acting in a position usually occupied by a person with a classification level of the kind mentioned in paragraph (b).

107 After Part XI
Insert:

Part XIA—Director of Military Prosecutions

Division 1—Establishment and functions of the Director of Military Prosecutions

188G Director of Military Prosecutions

There is to be a Director of Military Prosecutions.

188GA Functions of the Director of Military Prosecutions

(1) The Director of Military Prosecutions has the following functions:
(a) to carry on prosecutions for service offences in proceedings before a Defence Force magistrate or a court martial, whether or not instituted by the Director of Military Prosecutions;
(b) to seek the consent of the Director of Public Prosecutions as required by section 63;
(c) to make statements or give information to particular persons or to the public relating to the exercise of powers or the performance of duties or functions under this Act;
(d) to represent the service chiefs in proceedings before the Defence Force Discipline Appeal Tribunal;
(e) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) In addition to his or her functions under subsection (1), the Director of Military Prosecutions also has:
(a) the functions conferred on the Director of Military Prosecutions by or under this Act or any other law of the Commonwealth; and
Director of Military Prosecutions and Registrar of Military Justice  Schedule 1

(b) such other functions as are prescribed by the regulations.

188GB  Appearances by and on behalf of Director of Military Prosecutions

In a trial of a charge by a court martial or a Defence Force
magistrate, the Director of Military Prosecutions:
(a) may appear in person; or
(b) if the Director of Military Prosecutions so authorises, may be
represented by:
   (i) if the trial is held in Australia—a member of the
       Defence Force or a legal practitioner; or
   (ii) if the trial is held in a place outside Australia—a person
       referred to in subparagraph (i) or a person qualified to
       practise before the courts of that place.

188GC  Right of Director of Military Prosecutions and staff to
practise in their official capacity

The Director of Military Prosecutions, or a person assisting the
Director of Military Prosecutions who is a legal officer, is, in his or
her official capacity:
(a) entitled to practise as a barrister, solicitor, or barrister and
solicitor, in a federal court or in a court of a State or
Territory; and
(b) entitled to all the rights and privileges of a barrister, solicitor,
or barrister and solicitor, as the case may be, in that court;
whether or not he or she would, but for this section, be entitled to
practise in that court.

188GD  Undertakings by the Director of Military Prosecutions

(1) The Director of Military Prosecutions may, if he or she considers it
appropriate to do so, give to a person an undertaking that:
(a) an answer that is given, or a statement or disclosure that is
made, by the person in the course of giving evidence in
proceedings for a service offence; or
(b) the fact that the person discloses or produces a document or
other thing in proceedings for a service offence; or
(c) any information, document or other thing that is obtained as a direct or indirect consequence of an answer that is given, a statement or disclosure that is made, or a document or other thing that is disclosed or produced in proceedings for a service offence; will not be used in evidence against the person in any other proceedings for a service offence.

(2) If the Director of Military Prosecutions gives an undertaking under subsection (1):

(a) an answer that is given, or a statement or disclosure that is made, by the person in the course of giving evidence in the proceedings; or

(b) the fact that the person discloses or produces a document or other thing in the proceedings; or

(c) any information, document or other thing that is obtained as mentioned in paragraph (1)(c); as the case may be, is not admissible in evidence against the person in any other proceedings for a service offence, other than proceedings in respect of the falsity of evidence given by the person.

(3) The Director of Military Prosecutions may, if he or she considers it appropriate to do so, give to a person an undertaking that the person will not be prosecuted:

(a) for a specified service offence; or

(b) in respect of specified acts or omissions that constitute, or may constitute, a service offence.

(4) If the Director of Military Prosecutions gives an undertaking to a person under subsection (3), no prosecution may be instituted against the person in respect of the specified service offence or a service offence in respect of the specified acts or omissions.

(5) An undertaking under subsection (3) may be subject to any conditions that the Director of Military Prosecutions considers appropriate.
188GE  Directions and guidelines by the Director of Military Prosecutions

(1) The Director of Military Prosecutions may, by legislative instrument, give directions, or provide guidelines, in relation to the prosecution of service offences to:
   (a) a person who is an investigating officer within the meaning of Part VI; or
   (b) any other person who institutes or carries on prosecutions for service offences.

(2) Without limiting the generality of subsection (1), directions or guidelines under that subsection may relate to particular cases and may specify:
   (a) a service offence, being an offence a matter relating to which is to be referred to the Director of Military Prosecutions for the institution or carrying on of a prosecution for that offence; or
   (b) a class of service offences, being offences matters relating to which are to be referred to the Director of Military Prosecutions for the institution or carrying on of prosecutions for those offences.

(3) The Director of Military Prosecutions must give to the Minister a copy of each direction given or guideline provided under subsection (1).

Note: The annual report prepared by the Director of Military Prosecutions for a year under section 196B must include a copy of each direction given or guideline provided under this section in the year, and a copy of each direction given or guideline provided under this section as in force at the end of that year.

Division 2—Administrative provisions about the Director of Military Prosecutions

188GF  Appointment of the Director of Military Prosecutions

(1) The Director of Military Prosecutions is to be appointed by the Minister by written instrument.

(2) The Director of Military Prosecutions holds office on a full-time basis.
(3) The Director of Military Prosecutions holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

188GG Qualifications for appointment

A person must not be appointed as the Director of Military Prosecutions unless:

(a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and

(b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force or is a member of the Reserves who is rendering continuous full-time service; and

(c) the person holds a rank not lower than the naval rank of commodore or the rank of brigadier or air commodore.

188GH Tenure

(1) The Director of Military Prosecutions holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(2) The Director of Military Prosecutions is eligible for reappointment, but must not hold office for a total of more than 10 years.

188GI Resignation

The Director of Military Prosecutions may resign his or her appointment by giving the Minister a written resignation.

188GJ Oath or affirmation

(1) The Director of Military Prosecutions must, before proceeding to discharge the duties of his or her office, make and subscribe an oath or affirmation in accordance with the form in Schedule 4.

(2) An oath or affirmation under this section is to be made before:

(a) the Judge Advocate General; or

(b) a Deputy Judge Advocate General; or

(c) the Chief Judge Advocate.
188GK  Remuneration

(1) The Director of Military Prosecutions is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.

(2) The Director of Military Prosecutions is to be paid the allowances that are prescribed.

(3) Subsections (1) and (2) have effect subject to the Remuneration Tribunal Act 1973.

188GL  Leave of absence

(1) The Director of Military Prosecutions has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant the Director of Military Prosecutions leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.

188GM  Outside employment

The Director of Military Prosecutions must not:

(a) engage in practice as a legal practitioner outside the duties of his or her office; or

(b) without the approval of the Minister, engage in paid employment outside the duties of his or her office.

188GN  Termination of appointment

(1) The Minister may terminate the appointment of the Director of Military Prosecutions for:

(a) misbehaviour; or

(b) physical or mental incapacity.

(2) The Minister must terminate the appointment of the Director of Military Prosecutions if the Director of Military Prosecutions:

(a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with
his or her creditors or makes an assignment of his or her remuneration for their benefit; or
(b) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
(c) engages in practice as a legal practitioner outside the duties of his or her office; or
(d) without the approval of the Minister, engages in paid employment outside the duties of his or her office; or
(e) fails, without reasonable excuse, to comply with his or her obligations under section 188GO.

(3) The Director of Military Prosecutions ceases to hold office if:
(a) he or she ceases to be enrolled as a legal practitioner; or
(b) he or she is no longer:
   (i) a member of the Permanent Navy, the Regular Army or the Permanent Air Force; or
   (ii) a member of the Reserves who is rendering continuous full-time service.

188GO  Standing obligation to disclose interests

(1) The Director of Military Prosecutions must disclose any interest that the Director of Military Prosecutions has if that interest could conflict with the proper performance of the functions of his or her office. Disclosure is required whether or not there is any particular matter under consideration that gives rise to an actual conflict of interest.

(2) Subsection (1) applies to interests:
   (a) whether direct or indirect, and whether or not pecuniary; and
   (b) whether acquired before or after the person’s appointment.

(3) The disclosure must be by notice in writing given to the Minister as soon as practicable after the Director of Military Prosecutions becomes aware of the potential for conflict of interest.

188GP  Acting appointments

(1) The Minister may appoint a person to act as the Director of Military Prosecutions:
(a) during a vacancy in the office, whether or not an appointment has previously been made to that office; or
(b) during any period, or during all periods, when the Director of Military Prosecutions is absent from duty or from Australia, or is, for any other reason, unable to perform the functions of his or her office.

(2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
   (a) the occasion for the appointment had not arisen; or
   (b) there was a defect or irregularity in connection with the appointment; or
   (c) the appointment had ceased to have effect; or
   (d) the occasion to act had not arisen or had ceased.

(3) The Minister must not appoint a person to act as the Director of Military Prosecutions unless:
   (a) the person is enrolled as a legal practitioner and has been so enrolled for not less than 5 years; and
   (b) the person is a member of the Permanent Navy, the Regular Army or the Permanent Air Force or is a member of the Reserves who is rendering continuous full-time service; and
   (c) the person holds a rank not lower than the naval rank of commander or the rank of lieutenant-colonel or wing commander.

188GQ Staff

The staff necessary to assist the Director of Military Prosecutions are to be the following:

(a) defence members made available for the purpose by the appropriate service chief;
(b) persons engaged under the Public Service Act 1999 and made available for the purpose by the Secretary of the Department.
Division 3—Other matters

188GR  Delegation

The Director of Military Prosecutions may delegate all or any of his or her powers to a defence member mentioned in paragraph 188GQ(a) who is a legal officer.

108 After subsection 193(1)

Insert:

(1A) The Judge Advocate General has, in the performance of his or her duties as the Judge Advocate General, the same protection and immunity as a Justice of the High Court.

109 At the end of section 193

Add:

(4) An action, suit or proceeding does not lie against:

(a) the Director of Military Prosecutions or a person assisting the Director of Military Prosecution; or

(b) the Registrar of Military Justice or a person assisting the Registrar of Military Justice;

in relation to an act done or omitted to be done in good faith in the exercise or purported exercise of a power, or the performance or purported performance of a function, conferred by or under this Act or any other law of the Commonwealth.

110 Subsection 194(7)

Omit “a convening authority”, substitute “the Director of Military Prosecutions”.

111 Subsection 194(7)

Omit “the convening authority”, substitute “the Director of Military Prosecutions”.

112 After section 196A

Insert:
196B Annual report relating to the operations of the Director of Military Prosecutions

(1) The Director of Military Prosecutions must, as soon as practicable after each 31 December, prepare and give to the Minister, for presentation to the Parliament, a report relating to the operations of the Director of Military Prosecutions during the year ending on that 31 December.

(2) A report under subsection (1) must:
   (a) set out such statistical information as the Director of Military Prosecutions considers appropriate; and
   (b) include:
      (i) a copy of each direction given or guideline provided under subsection 188GE(1) during the year to which the report relates; and
      (ii) a copy of each such direction or guideline as in force at the end of that year.

(3) The first report under subsection (1) is to relate to the period beginning on the day on which this section commences and ending on the next 31 December.

113 Schedule 4 (note to heading)

Omit “Sections 128 and 184”, substitute “Sections 128, 184, 188FF and 188GJ”.

114 Transitional provision—functions and powers of convening authorities

(1) This item applies to a function or power conferred on a convening authority by the old law if:
   (a) the function or power relates to a charge (including a proceeding in respect of a charge); and
   (b) as at the commencement time, the charge or proceeding had not been finally dealt with under the old law.

(2) If:
   (a) the convening authority performed the function or exercised the power before the commencement time; and
   (b) a provision of the new law confers a corresponding function or power upon a designated person;
the new law has effect as if the designated person had performed the function, or exercised the power, under the new law.

(3) If:
   (a) apart from the amendments made by this Schedule, the convening authority would have been required or permitted to perform the function or exercise the power; and
   (b) the new law confers a corresponding function or power upon a designated person;

the designated person may perform the function, or exercise the power, under the new law.

(4) In this item:
   
   **commencement time** means the time at which item 1 of this Schedule commences.

   **designated person** means:
   (a) the Director of Military Prosecutions; or
   (b) the Registrar of Military Justice; or
   (c) a judge advocate; or
   (d) a Defence Force magistrate; or
   (e) a superior authority.

   **new law** means the *Defence Force Discipline Act 1982* as amended by this Schedule.

   **old law** means the *Defence Force Discipline Act 1982* as in force before the commencement time.

115 Regulations

The Governor-General may make regulations in relation to transitional matters arising out of the amendments of the *Defence Force Discipline Act 1982* made by this Schedule.
Schedule 2—Inspector-General of the Australian Defence Force

Defence Act 1903

1 Subsection 4(1)
Insert:

Inspector-General ADF means the Inspector-General of the Australian Defence Force referred to in section 110B.

2 After Part VIII
Insert:

Part VIIIIB—Inspector-General of the Australian Defence Force

Division 1—Establishment and functions of the Inspector-General of the Australian Defence Force

110A Object of Part
The object of this Part is to provide the Chief of the Defence Force with:
(a) a mechanism for internal audit and review of the military justice system independent of the ordinary chain of command; and
(b) an avenue by which failures and flaws in the military justice system can be exposed and examined so that the cause of any injustice (whether systemic or otherwise) may be remedied.

110B Inspector-General of the Australian Defence Force
There is to be an Inspector-General of the Australian Defence Force, to be known as the Inspector-General ADF.
110C Functions of the Inspector-General ADF

(1) The Inspector-General ADF has the following functions:
   
   (a) to inquire into or investigate matters concerning the military justice system;
   
   (b) to conduct performance reviews of the military justice system, including internal audits, at the times and in the manner the Inspector-General ADF considers appropriate;
   
   (c) to advise on matters concerning the military justice system, including making recommendations for improvements;
   
   (d) to promote military justice values across the Defence Force;
   
   (e) to do anything incidental or conducive to the performance of any of the preceding functions.

(2) In addition to his or her functions under subsection (1), the Inspector-General ADF also has:
   
   (a) the functions conferred on the Inspector-General ADF by or under this Act or any other law of the Commonwealth; and
   
   (b) such other functions as are prescribed by the regulations.

(3) The function referred to in paragraph (1)(a) includes the following:
   
   (a) carrying out preliminary assessments as to whether an inquiry or investigation should be conducted by the Inspector-General ADF;
   
   (b) referring matters to other appropriate authorities to be dealt with.

Note: The regulations may make provision in relation to the procedures and powers of the Inspector-General ADF in respect of the performance of the Inspector-General ADF’s functions (see paragraph 124(1)(h)).

110D When the Inspector-General ADF can conduct inquiries or investigations

(1) The Inspector-General ADF may conduct an inquiry or an investigation on his or her own initiative.

(2) The Inspector-General ADF may be directed to conduct an inquiry or an investigation by the Chief of the Defence Force.

(3) The Inspector-General ADF may be requested to conduct an inquiry or an investigation by a service chief, but is not required to comply with the request.
(4) The Inspector-General ADF may be requested to conduct an inquiry or an investigation by any other individual, but is not required to comply with the request.

**Division 2—Administrative provisions about the Inspector-General of the Australian Defence Force**

**110E Appointment**

(1) The Inspector-General ADF is to be appointed by the Minister by written instrument.

(2) In making an appointment under subsection (1), the Minister must have regard to any recommendations made by the Chief of the Defence Force.

(3) The Inspector-General ADF holds office on a full-time basis.

(4) A person holding office as the Inspector-General ADF holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the Minister.

**110F Qualifications for appointment**

A person must not be appointed as the Inspector-General ADF unless the person has knowledge of and experience in relation to military justice issues and an understanding of their relevance to the role of the Defence Force.

**110G Tenure**

(1) The Inspector-General ADF holds office for the period specified in the instrument of appointment. The period must not exceed 5 years.

(2) The Inspector-General ADF is eligible for reappointment.

**110H Resignation**

The Inspector-General ADF may resign his or her appointment by giving the Minister a written resignation.
110I Remuneration

(1) The Inspector-General ADF is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, he or she is to be paid the remuneration that is prescribed.

(2) The Inspector-General ADF is to be paid the allowances that are prescribed.

(3) This section has effect subject to the Remuneration Tribunal Act 1973.

110J Leave of absence

(1) The Inspector-General ADF has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Chief of the Defence Force may grant the Inspector-General ADF leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Chief of the Defence Force determines.

110K Engaging in other paid work

The Inspector-General ADF must not engage in paid employment outside the duties of his or her office without the Minister’s consent.

110L Termination of appointment

(1) The Minister must terminate the appointment of the Inspector-General ADF if the Inspector-General ADF:
   (a) becomes bankrupt; or
   (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
   (c) compounds with his or her creditors; or
   (d) assigns his or her remuneration for the benefit of his or her creditors; or
   (e) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
(f) fails, without reasonable excuse, to comply with section 110M.

(2) The Minister may terminate the appointment of the Inspector-General ADF on the ground of:
   (a) misbehaviour; or
   (b) physical or mental incapacity.

(3) The Minister may terminate the appointment of the Inspector-General ADF if the Inspector-General ADF engages in paid employment outside the duties of his or her office other than with the Minister’s consent.

110M Disclosure of interests

The Inspector-General ADF must give written notice to the Minister of all interests (financial or otherwise) that the Inspector-General ADF has or acquires that could conflict with the proper performance of the functions of his or her office.

110N Acting appointments

(1) The Minister may appoint a person to act as the Inspector-General ADF:
   (a) during a vacancy in the office of Inspector-General ADF (whether or not an appointment has previously been made to that office); or
   (b) during any period, or during all periods, when the Inspector-General ADF is absent from duty or from Australia, or is, for any other reason, unable to perform the duties of the office.

(2) Anything done by or in relation to a person purporting to act under an appointment under this section is not invalid merely because:
   (a) the occasion for the appointment had not arisen; or
   (b) there was a defect or irregularity in connection with the appointment; or
   (c) the appointment had ceased to have effect; or
   (d) the occasion to act had not arisen or had ceased.

(3) The Minister must not appoint a person to act as the Inspector-General ADF unless the person has knowledge of and
experience in relation to military justice issues and an understanding of their relevance to the role of the Defence Force.

(4) In making an appointment under subsection (1), the Minister must have regard to any recommendations made by the Chief of the Defence Force.

110O Staff

(1) The staff necessary to assist the Inspector-General ADF are to be the following:
   (a) members of the Defence Force made available for the purpose by the appropriate service chief;
   (b) persons engaged under the Public Service Act 1999 and made available for the purpose by the Secretary of the Department.

(2) The Inspector-General ADF may engage persons having suitable qualifications and experience as consultants to, or to perform services for, the Inspector-General ADF.

(3) An engagement under subsection (2) is to be made:
   (a) on behalf of the Commonwealth; and
   (b) by written agreement.

Division 3—Other matters

110Q Protection from civil actions

(1) This section applies to the following persons (protected persons):
   (a) the Inspector-General ADF;
   (b) a person acting under the authority of the Inspector-General ADF.

(2) A protected person is not liable to civil proceedings for loss, damage or injury of any kind suffered by another person as a result of the performance or exercise, in good faith, of the protected person’s functions, powers or duties under or in relation to this Act.
110R Reports

The Inspector-General ADF must prepare and give to the Chief of the Defence Force such reports on the operations of the Inspector-General ADF as the Chief of the Defence Force directs.

3 After section 110O

Insert:

110P Inquiry officers, inquiry assistants and Assistants IGADF

(1) The Inspector-General ADF may appoint a person as:
   (a) an inquiry officer; or
   (b) an inquiry assistant; or
   (c) an Assistant IGADF.

(2) The Inspector-General ADF must not appoint a person under subsection (1) unless the person is eligible to be so appointed under the regulations.

(3) The regulations may prescribe matters relating to the roles, functions and powers of a person appointed under subsection (1).

4 After section 110R

Insert:

110S Delegation

The Inspector-General ADF may, by instrument in writing, delegate his or her power under section 110P to an officer holding a rank not lower than the naval rank of captain or the rank of colonel or group captain.

5 After paragraph 124(1)(gc)

Insert:

(h) the procedures, powers and reporting obligations of the Inspector-General ADF in respect of the performance of the Inspector-General ADF’s functions, including in relation to any matter connected with inquiries, investigations and performance reviews;
6 Saving provision in relation to certain regulations

(1) Part 7 of the Defence (Inquiry) Regulations 1985, as in force immediately before the commencement of Part VIIIIB of the Defence Act 1903, continues in force, on and after that commencement, as if it had been made under paragraph 124(1)(h) of the Defence Act 1903.

(2) Any inquiry that, immediately before the commencement of Part VIIIIB of the Defence Act 1903, was being conducted under Part 7 of the Defence (Inquiry) Regulations 1985, is taken after that commencement to continue under the regulations continued in force by subitem (1).

(3) Subitem (1) does not prevent the amendment or repeal of Part 7 of the Defence (Inquiry) Regulations 1985.

7 Transitional regulations

The Governor-General may make regulations in relation to transitional matters arising out of the amendments of the Defence Act 1903 made by this Schedule.

[Minister’s second reading speech made in—
Senate on 12 October 2005
House of Representatives on 30 November 2005]