
No. 46, 2015

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 20 May 2015]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Defence Legislation Amendment (Military Justice Enhancements—Inspector-General ADF) Act 2015*. 

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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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<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day this Act receives the Royal Assent.</td>
<td>20 May 2015</td>
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<td>2. Schedule 1</td>
<td>The 28th day after this Act receives the Royal Assent.</td>
<td>17 June 2015</td>
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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

(2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendments relating to the Inspector-General ADF

Part 1—Amendments

Defence Act 1903

1 Section 110A
Before “object”, insert “main”.

2 Paragraph 110A(b)
After “avenue”, insert “, independent of the ordinary chain of command,”.

3 Paragraph 110C(1)(e)
Repeal the paragraph, substitute:

(e) if directed by the Minister to do so—to inquire into or investigate a matter concerning the Defence Force;

(f) if directed by the Chief of the Defence Force to do so—to inquire into or investigate a matter concerning the Defence Force;

(g) such functions as are prescribed by the regulations;

(h) such functions as are conferred on the Inspector-General ADF by or under this Act;

(i) such functions as are conferred on the Inspector-General ADF by or under any other law of the Commonwealth;

(j) to do anything incidental or conducive to the performance of any of the above functions.

Note: Subsection (4) limits the functions that may be prescribed by regulations made for the purposes of paragraph (g).

4 Subsection 110C(2)
Repeal the subsection.

5 At the end of section 110C (before the note)
Add:
(4) Regulations made for the purposes of paragraph (1)(g) must not prescribe a function unless the function relates to:
   (a) the military justice system; or
   (b) complaints made by members of the Defence Force, where the relevant complaint is about a decision, act or omission in relation to the member’s service in the Defence Force; or
   (c) deaths of members of the Defence Force, where the relevant death appears to have arisen out of, or in the course of, the member’s service in the Defence Force.

(5) To avoid doubt, a function prescribed by regulations made for the purposes of paragraph (1)(g) may be to inquire into or investigate a matter mentioned in paragraph (4)(b) or (c).

(6) Subsection (5) does not limit paragraph (1)(g).

6 Section 110D
Repeal the section.

7 At the end of Division 1 of Part VIIIB
Add:

110DA Conduct of inquiry or investigation

Scope

(1) This section applies to an inquiry or investigation by the Inspector-General ADF under:
   (a) paragraph 110C(1)(a); or
   (b) regulations made for the purposes of paragraph 110C(1)(g).

When inquiry or investigation may be conducted

(2) The Inspector-General ADF may conduct an inquiry or investigation:
   (a) on his or her own initiative; or
   (b) at the request of a service chief; or
   (c) at the request of an individual.
110DB Inspector-General ADF may end an inquiry or investigation

(1) The Inspector-General ADF may end an inquiry or investigation conducted by the Inspector-General ADF if the Inspector-General ADF is satisfied that the inquiry or investigation, or the continuation of the inquiry or investigation, is not warranted having regard to all the circumstances.

(2) Subsection (1) does not apply to an inquiry or investigation under paragraph 110C(1)(e).

Note: Paragraph 110C(1)(e) is about inquiries and investigations directed by the Minister.

8 Section 110R

Repeal the section, substitute:

110R Annual report by Inspector-General ADF

(1) As soon as practicable after the end of each financial year, the Inspector-General ADF must prepare and give to the Minister, for presentation to the Parliament, a report on the operations of the Inspector-General ADF during the financial year.

Note: See also section 34C of the Acts Interpretation Act 1901, which contains extra rules about periodic reports.

(2) For this purpose, the operations of the Inspector-General ADF include the operations of persons appointed under section 110P.

9 After subsection 124(2A)

Insert:

(2AA) Subject to subsection (2B), the power to make regulations for the purposes of paragraph (1)(h) includes the power to make regulations requiring a person appearing as a witness before the Inspector-General ADF to answer a question even if the answer to the question may tend to incriminate the person.

(2AB) Subject to subsection (2B), the power to make regulations for the purposes of subsection 110P(3) includes the power to make regulations requiring a person appearing as a witness before a person appointed under section 110P to answer a question even if
the answer to the question may tend to incriminate the first-mentioned person.

10 **Subsection 124(2B)**

Omit “Subsection (2A) does”, substitute “Subsections (2A), (2AA) and (2AB) do”.

11 **Subsection 124(2B)**

Omit “that subsection”, substitute “the subsection concerned”.

12 **After subsection 124(2C)**

Insert:

(2CA) If a witness makes a statement or disclosure in the course of giving evidence before the Inspector-General ADF or a person appointed under section 110P:

(a) the statement or disclosure; and
(b) the making of the statement or disclosure; and
(c) any information, document or thing obtained as a direct or indirect consequence of making the statement or disclosure; are not admissible in evidence against the witness in:

(d) any civil or criminal proceedings in any federal court or court of a State or Territory; or

(e) proceedings before a service tribunal;

other than in proceedings by way of a prosecution for giving false testimony at the hearing before the Inspector-General ADF or person appointed under section 110P.
Part 2—Application and transitional provisions

13 Transitional—conduct of inquiries or investigations

Despite the repeal of section 110D of the *Defence Act 1903* by this Schedule, that section continues to apply, in relation to an inquiry or investigation that started before the commencement of this item, as if the repeal had not happened.

14 Application—conduct of inquiries or investigation

Section 110DA of the *Defence Act 1903* as amended by this Schedule applies in relation to an inquiry or investigation that started at or after the commencement of this item.

15 Application—annual report

Section 110R of the *Defence Act 1903* as amended by this Schedule applies in relation to:

(a) the financial year in which this item commences; and

(b) each later financial year.

[Minister’s second reading speech made in—
Senate on 3 December 2014
House of Representatives on 14 May 2015]