

# **Defence (Personnel) Amendment Regulations 2003 (No. 1)**

## **2003 No. 246**

### **EXPLANATORY STATEMENT**

#### **Statutory Rules 2003 No. 246**

#### **Defence (Personnel) Amendment Regulations 2003 (No. 1)**

#### **Issued by the authority of the Minister for Veterans' Affairs**

Subsection 124 (1) of the *Defence Act 1903* (the Act) permits the Governor-General to make Regulations, not inconsistent with the Act, prescribing all matters which by the Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for securing the good government of the Defence Force; and amongst other things providing for the enlistment, appointment, promotion, reduction in rank, retirement and discharge of members of the Defence Force.

Subsection 124 (1AA) of the Act provides that regulations may make provision for the appointment or reappointment of a member, the enlistment or re-enlistment of a member or the service of a member.

The intention of regulations 57 and 61 of the *Defence (Personnel) Regulations 2002* (the Principal Regulations), dealing with applications for withdrawal of an application for transfer, is to allow a person with legal authority to consider a withdrawal application at any point prior to the transfer taking effect. A similar intention with regard to applications for withdrawal of an application to resign applies to regulations 89, 93 and 96. Legal advice from the Attorney-General's Department is that the Principal Regulations, as worded, do not have this effect.

The purpose of the proposed regulations is to remove any doubt that a member of the Defence Force can apply to withdraw an application for a transfer, or a resignation, at any time up to the time the transfer or resignation takes effect.

The Act specifies no conditions that need to be met before the power to make the proposed regulations may be exercised.

**Regulation 1** identifies these Regulations as the *Defence (Personnel) Amendment Regulations 2003 (No. 1)*.

**Regulation 2** provides that the Regulations commence on gazettal.

**Regulation 3** identifies the Regulations amended by Schedule 1 as the *Defence (Personnel) Regulations 2002*.

**Schedule 1** makes the substantive amendments to the Regulations.

**Item 1** inserts a new subregulation 57(4) to permit a member of the Defence Force other than a senior officer (a term discussed in item 2) to apply to withdraw an application to transfer at any time before the transfer application is granted or refused, or if the transfer has been granted, at any time before the transfer takes effect.

**Item 2** inserts a new subregulation 61(3) to permit an officer with the rank of Rear-Admiral (or higher), Major-General (or higher) or Air Vice-Marshal or higher ("senior officers") to apply to withdraw an application to transfer at any time before the transfer application is granted or refused, or if the transfer has been granted, at any time before the transfer takes effect.

**Item 3** adds a new subregulation 89(4) to allow an officer other than a senior officer to apply to withdraw an application to resign at any time before the resignation application is granted or refused, or if the resignation application has been granted, at any time before it takes effect.

**Item 4** adds a new subregulation 93(4) to allow a senior officer to apply to withdraw an application to resign at any time before the resignation application is granted or refused, or if the resignation application has been granted, at any time before it takes effect.

**Item 5** adds a new subregulation 96(4) to allow an enlisted member to apply to withdraw an application to resign at any time before the resignation application is granted or refused, or if the resignation application has been granted, at any time before it takes effect.

030613Z