

## EXPLANATORY STATEMENT

### Select Legislative Instrument 2005 No. 47

#### *Defence Act 1903*

Issued by the authority of the Minister for Veterans' Affairs

Defence (Personnel) Amendment Regulations 2005 (No. 1)

Subsection 124(1) of the *Defence Act 1903* (the Act) provides that the Governor-General may 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, or for carrying out or giving effect to the Act. The *Defence (Personnel) Regulations 2002* (the Principal Regulations), made under the Act provide for, among other things, the enlistment, appointment, promotion, reduction in rank, retirement, transfer and discharge of members of the Defence Force.

Regulations 91, 94 and 98 of the Principal Regulations permit the Service Chiefs, for officers and enlisted members, or the Governor-General, for senior officers, to grant a member's request for resignation from the Defence Force. However, the Principal Regulations do not appear to authorise a revocation of such a decision. It had been assumed, in accordance with established legal principles, in particular subsection 33(3) of the *Acts Interpretation Act 1901*, that the power to grant a request also includes the power to revoke such a decision.

A recent decision of the Federal Court has cast doubt on the power of a Service Chief to revoke a decision to grant an enlisted member's resignation application under the existing legislation. The decision turned on the interpretation of the term "instrument". The meaning of this term appears equivocal, following recent case law, culminating in *Laurence v Chief of Navy*. The amendments to the Principal Regulations remove any such doubts by providing that the decision to grant a member's request for resignation must be made by instrument in writing. This enables such a decision to be revoked prior to the resignation taking effect.

Details of the amendments are outlined in the [Attachment](#).

The Act specifies no condition that must be met before the power to make the Regulations may be exercised.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. They commence on the day after they are registered on the Federal Register of Legislative Instruments

## Attachment

### ***Defence (Personnel) Amendment Regulations 2005 (No. 1)***

**Regulation 1** identifies these Regulations as the *Defence (Personnel) Amendment Regulations 2005 (No. 1)*

**Regulation 2** provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3** provides that the amendments to the *Defence (Personnel) Regulations 2002* (the Principal Regulations) are contained in Schedule 1.

### **Schedule 1**

**Item 1** amends subregulation 91(1) by inserting ",by instrument in writing," after the word "must".

**Item 2** amends subregulation 94(3) by omitting "may:" and inserting the words "may, by instrument in writing:".

**Item 3** amends subregulation 98(1) by inserting ", by instrument in writing, " after the word "must".