

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2007 No. 301**

Issued by the authority of the Minister for Veterans' Affairs

*Defence Act 1903*

*Defence (Personnel) Amendment Regulations 2007 (No. 3)*

Subsection 124(1) of the *Defence Act 1903* (the Act) provides, in part, 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.

In its Report into Military Justice in the Australian Defence Force in 1999, the Joint Standing Committee on Foreign Affairs, Defence and Trade (the Committee) recommended that the Australian Defence Force (ADF), review its current procedural arrangements to ensure organisational separation between the initiating officer and the decision maker for all administrative action involving the termination of a member's service with the ADF.

The Government accepted this recommendation of the Committee and agreed to amend the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Regulations* as well as the relevant Defence Instruction dealing with, among other matters, the termination of appointment of officers. As a consequence, the termination provisions for the service of members of the ADF in the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Regulations* were deleted and inserted into the Principal Regulations. However, the termination provisions in regulations 85 and 87 of the Principal Regulations did not, on their face, clearly separate the functions of the initiator and decision maker in the termination of a member's service.

The Regulations amend regulations 85 and 87 to clearly separate the functions by providing that the delegate initiating a termination notice cannot be the delegate who terminates the members' service. The powers of delegation are contained in regulation 119 of the Principal Regulations.

A further amendment to the Principal Regulations aligns regulation 85 with regulation 87 by providing that a ground of termination for an officer occurs when a parent or guardian requests the termination of the officer where that officer is under 18 years of age.

At present, subregulation 113(2) provides that a chaplain must not be appointed as a member of a court martial, a court or a board of inquiry. Those bodies have been replaced by recent amendments to Defence legislation. As a result, the Regulations also update the judicial and inquiry offices to which chaplains must not be appointed.

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulations commence on 1 October 2007.

The Military Justice Implementation Team, the Defence Personnel Executive in the Department of Defence and the Office of Best Practice Regulation have been consulted in the making of this instrument.

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