



Defence Force Amendment Regulations 2008 (No. 1)¹

Select Legislative Instrument 2008 No. 68

I, PROFESSOR MARIE BASHIR, AC, CVO, Administrator of the Government of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Defence Act 1903*.

Dated 1 May 2008

MARIE BASHIR
Administrator

By Her Excellency's Command

WARREN SNOWDON
Minister for Defence Science and Personnel

1 Name of Regulations

These Regulations are the *Defence Force Amendment Regulations 2008 (No. 1)*.

2 Commencement

These Regulations commence on the day after they are registered.

3 Amendment of *Defence Force Regulations 1952*

Schedule 1 amends the *Defence Force Regulations 1952*.

Schedule 1 Amendments

(regulation 3)

[1] Part XV

substitute

Part 15 Redress of grievances

74 Interpretation

In this Part, unless the contrary intention appears:

complaint means a complaint made under regulation 75.

external process includes, but is not limited to, the following:

- (a) proceedings before a civilian court;
- (b) proceedings before a civilian tribunal;
- (c) an investigation by:
 - (i) the Commonwealth Ombudsman; or
 - (ii) the Human Rights and Equal Opportunity Commission; or

- (iii) the Privacy Commissioner; or
- (iv) a State or Territory equivalent of a body referred to in subparagraphs (i) to (iii).

service means service as:

- (a) a member of the Permanent Forces; or
- (b) a member of the Reserves who is:
 - (i) rendering continuous full-time service; or
 - (ii) on duty.

service chief means the Chief of Navy, the Chief of Army, or the Chief of Air Force.

termination decision means a decision, under Part VIIIA of the Act or under the *Defence (Personnel) Regulations 2002*, to terminate a member's service.

75 Making a complaint

- (1) Subject to subregulation (2), a member may make a complaint under this Part if:
 - (a) the member considers that a decision, act or omission in relation to the member's service is adverse or detrimental to him or her; and
 - (b) the adverse or detrimental effect of that decision, act or omission is capable of being redressed by:
 - (i) a member of the Defence Force; or
 - (ii) an employee of the Department; or
 - (iii) an employee of the Defence Material Organisation.
- (2) However, a member may not make a complaint in relation to:
 - (a) a decision, act or omission under this Part; or
 - (b) an action that initiates an administrative process; or
 - (c) the issue of a termination notice under Part VIIIA of the Act or under Division 2 of Part 2 of Chapter 9 of the *Defence (Personnel) Regulations 2002*; or
 - (d) a decision to give, or not to give, a particular assessment, grade or rating as the result of a performance assessment process; or

- (e) a decision, judgment or order made by a civil or criminal court, a service tribunal or the Defence Force Discipline Appeal Tribunal; or
 - (f) a liability arising under section 15 or 42 of the *Financial Management and Accountability Act 1997*.
- (3) If the complaint relates to a termination decision, the member must make the complaint within 14 days after:
 - (a) the day on which the member was notified of the decision; or
 - (b) the day on which the member could reasonably be expected to have known about the decision.
- (4) If subregulation (3) does not apply, the member must make the complaint within 6 months after:
 - (a) the day on which the member was notified of the decision, act or omission; or
 - (b) the day on which the member could reasonably be expected to have known about the decision, act or omission.
- (5) A complaint must be:
 - (a) made in writing; and
 - (b) submitted to the member's commanding officer.

76 Exceptional circumstances — complaints

- (1) Despite regulation 75, a commanding officer may accept a complaint that is made more than 6 months after:
 - (a) the day on which the member was notified of a decision, act or omission; or
 - (b) the day on which the member could reasonably be expected to have known about the decision, act or omission;if:
 - (c) the complaint does not relate to a termination decision; and
 - (d) the commanding officer is satisfied that exceptional circumstances exist.

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- (2) If the commanding officer is not satisfied that exceptional circumstances exist for subregulation (1), the commanding officer must refer the complaint to the member's service chief.
 - (3) If the complaint is referred to a service chief under subregulation (2), the service chief must decide whether or not exceptional circumstances exist for subregulation (1).

77 Inquiry into complaint

- (1) Subject to subregulation (2), if a complaint is:
 - (a) made to a commanding officer under regulation 75; or
 - (b) referred to a service chief under regulation 82; or
 - (c) referred to the Chief of the Defence Force under regulation 87;the commanding officer, the service chief or the Chief of the Defence Force must inquire into the complaint as soon as is reasonably practicable.
- (2) If a complaint:
 - (a) relates to a decision, act or omission by the commanding officer to whom the complaint is made; and
 - (b) contains only information that was inquired into by the commanding officer as part of the decision, act or omission to which the complaint relates;the commanding officer must not inquire into the complaint.
- (3) If subregulation (2) applies:
 - (a) the commanding officer must refer the complaint to the member's service chief; and
 - (b) the member's service chief must inquire into the complaint, as if the complaint were referred under subregulation 82 (1).

78 Delayed inquiries

- (1) If:
 - (a) a complaint has been made to a commanding officer under regulation 75; and

- (b) 90 days have elapsed since the complaint was made; the service chief must decide whether or not the complaint should be referred to himself or herself.
- (2) If a service chief decides, under subregulation (1), that a complaint should be referred to himself or herself:
 - (a) the complaint is taken to be referred to the service chief as if it had been referred under regulation 82; and
 - (b) the service chief must inquire into the complaint under regulation 77; and
 - (c) the commanding officer to whom the complaint was made under regulation 75 is discharged from his or her obligations under this Part to inquire into and make a decision on the complaint.

79 Suspension of consideration of complaint

If:

- (a) a complaint has been made to a commanding officer under regulation 75; and
- (b) the subject matter of the complaint is also subject to an external process, disciplinary action (including a review or appeal under the *Defence Force Discipline Act 1982* or the *Defence Force Discipline Appeals Act 1955*), or an alternative dispute resolution process; and
- (c) the commanding officer is satisfied that it would be appropriate for the external process, disciplinary action or alternative dispute resolution process to be completed before making a decision on the complaint;

the commanding officer may suspend the complaint resolution process until the external process, disciplinary action or alternative dispute resolution process has been completed.

80 Resumption of consideration of complaint

If:

- (a) a complaint resolution process has been suspended under regulation 79; and

- (b) the commanding officer becomes aware that the external process, disciplinary action or alternative dispute resolution process has been completed;

the commanding officer must, as soon as is reasonably practicable, resume consideration of the complaint.

81 Decision on complaints

- (1) A commanding officer who has received a complaint must, as soon as is reasonably practicable after receiving the complaint:
 - (a) inquire into the complaint; and
 - (b) make a decision on the complaint; and
 - (c) take any other action that, in his or her opinion, is necessary.
- (2) The commanding officer must, as soon as is reasonably practicable after the day on which the commanding officer makes a decision under subregulation (1), notify the member who made the complaint of the decision.

82 Referral of complaint if member not satisfied with decision

- (1) Subject to subregulation (2) and (3), if a member is not satisfied with the decision of a commanding officer made in accordance with regulation 81 on a complaint, the member may refer the complaint:
 - (a) in the case of a member of the Navy — to the Chief of Navy; or
 - (b) in the case of a member of the Army — to the Chief of Army; or
 - (c) in the case of a member of the Air Force — to the Chief of Air Force.
- (2) If a complaint relates to a termination decision, the member must refer the complaint to the relevant service chief within 14 days after the day on which the member is notified of the commanding officer's decision under subregulation 81 (2).

- (3) If a complaint relates to a decision other than a termination decision, the member must refer the complaint to the relevant service chief within 28 days after the day on which the member is notified of the commanding officer's decision under subregulation 81 (2).

83 Exceptional circumstances — referred complaints

Despite subregulation 82 (3), a service chief may accept a complaint that is referred more than 28 days from the day on which the member was notified of the commanding officer's decision under subregulation 81 (2), if:

- (a) the complaint does not relate to a termination decision; and
- (b) the service chief is satisfied that exceptional circumstances exist.

84 Suspension of consideration of referred complaints

If:

- (a) a complaint has been referred to a service chief under subregulation 82 (1); and
- (b) the subject matter of the complaint is also subject to an external process, disciplinary action (including a review or appeal under the *Defence Force Discipline Act 1982* or the *Defence Force Discipline Appeals Act 1955*), or an alternative dispute resolution process; and
- (c) the service chief is satisfied that it would be appropriate for the external process, disciplinary action or alternative dispute resolution process to be completed before making a decision on the complaint;

the service chief may suspend the complaint resolution process until the external process, disciplinary action or alternative dispute resolution process has been completed.

85 Resumption of consideration of referred complaints

If:

- (a) a complaint resolution process has been suspended under subregulation 84; and

- (b) the service chief becomes aware that the external process, disciplinary action or alternative dispute resolution process has been completed;

the service chief must, as soon as is reasonably practicable, resume consideration of the complaint.

86 Decision on referred complaints

- (1) A service chief to whom a complaint is referred, under subregulation 82 (1), must, as soon as is reasonably practicable after the complaint is referred to him or her:
 - (a) inquire into the referred complaint; and
 - (b) make a decision on the referred complaint; and
 - (c) take any other action that, in his or her opinion, is necessary.
- (2) The service chief must, as soon as is reasonably practicable after the day on which he or she makes a decision under subregulation (1), notify the member who made the complaint of the decision.

87 Further referral of officer's complaints

- (1) Subject to subregulations (2) and (3), if an officer is not satisfied with a decision under subregulation 86 (1), the officer may refer the matter to the Chief of the Defence Force.
- (2) If a complaint relates to a termination decision, the officer must refer the complaint to the Chief of the Defence Force within 14 days after the day on which the officer is notified of the decision of the relevant service chief under subregulation 86 (2).
- (3) If a complaint relates to a decision other than a termination decision, the officer must refer the complaint to the Chief of the Defence Force within 28 days after the day on which the officer is notified of the decision of the relevant service chief under subregulation 86 (2).
- (4) In this regulation, ***officer*** includes:
 - (a) chief petty officer; and

- (b) flight sergeant; and
- (c) warrant officer.

88 Exceptional circumstances — complaints referred to Chief of the Defence Force

Despite subregulation 87 (3), the Chief of the Defence Force may accept a complaint that is referred more than 28 days from the day on which the officer was notified of the service chief's decision under subregulation 86 (2) if:

- (a) the complaint does not relate to a termination decision; and
- (b) the Chief of the Defence Force is satisfied that exceptional circumstances exist.

89 Suspension of consideration of complaints referred to Chief of the Defence Force

If:

- (a) a complaint has been referred to the Chief of the Defence Force under subregulation 87 (1); and
- (b) the subject matter of the complaint is also subject to an external process, disciplinary action (including a review or appeal under the *Defence Force Discipline Act 1982* or the *Defence Force Discipline Appeals Act 1955*), or an alternative dispute resolution process; and
- (c) the Chief of the Defence Force is satisfied that it would be appropriate for the external process, disciplinary action or alternative dispute resolution process to be completed before making a decision on the complaint;

the Chief of the Defence Force may suspend the complaint resolution process until the external process, disciplinary action or alternative dispute resolution process has been completed.

90 Resumption of consideration of complaints referred to Chief of the Defence Force

If:

- (a) a complaint resolution process has been suspended under regulation 89; and

- (b) the Chief of the Defence Force becomes aware that the external process, disciplinary action or dispute resolution process has been completed;

the Chief of the Defence Force must, as soon as is reasonably practicable, resume consideration of the complaint.

91 Decision on complaints referred to Chief of the Defence Force

- (1) The Chief of the Defence Force must, as soon as is reasonably practicable after the complaint is referred to him or her:
 - (a) inquire into the referred complaint; and
 - (b) make a decision on the referred complaint; and
 - (c) take any other action that, in his or her opinion, is necessary.
- (2) The Chief of the Defence Force must, as soon as is reasonably practicable after making a decision under subregulation (1), notify the officer who made the complaint of the decision.

92 Offences in relation to complaints

- (1) A member is guilty of an offence if he or she prevents or dissuades another member from:
 - (a) making a complaint; or
 - (b) requesting the referral of a complaint; or
 - (c) inquiring into a complaint; or
 - (d) referring a complaint; or
 - (e) redressing a grievance; or
 - (f) taking any other action in relation to this Part.

Penalty: 5 penalty units or imprisonment for 3 months.

- (2) A member is guilty of an offence if he or she causes another member to be victimised, penalised or prejudiced in any way for:
 - (a) making a complaint; or
 - (b) requesting the referral of a complaint.

Penalty: 5 penalty units or imprisonment for 3 months.

93 Delegations

- (1) The Chief of the Defence Force may, in writing, delegate all or any of his or her powers under this Part, other than this power of delegation, to any of the following officers:
 - (a) an officer of the Navy not below the rank of Commodore;
 - (b) an officer of the Army not below the rank of Brigadier;
 - (c) an officer of the Air Force not below the rank of Air Commodore.
- (2) The Chief of Navy may, in writing, delegate all or any of his or her powers under this Part, other than this power of delegation, to an officer of the Navy who holds a rank not below the rank of Commodore.
- (3) The Chief of Army may, in writing, delegate all or any of his or her powers under this Part, other than this power of delegation, to an officer of the Army who holds a rank not below the rank of Brigadier.
- (4) The Chief of Air Force may, in writing, delegate all or any of his or her powers under this Part, other than this power of delegation, to an officer of the Air Force who holds a rank not below the rank of Air Commodore.

Note In accordance with the *Acts Interpretation Act 1901*, if a power is delegated:

- (a) the exercise of the power by the delegate is taken to be the exercise of the power by the person who delegated the power; and
- (b) the delegation does not prevent the exercise of power by the person who delegated the power.

[2] Regulations 83 and 84 in Part XVI

renumber as regulations 94 and 95

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.