

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2008 No. 175**

Issues by the authority of the Minister for Defence Science and Personnel

*Defence Act 1903*

*Defence Force Amendment Regulations 2008 (No. 2)*

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 that by the Act are required or permitted to be required, or that are necessary or convenient to be prescribed, for securing the good government of the Australian Defence Force (ADF) or for carrying out or giving effect to the Act.

Part 15 of the *Defence Force Regulations 1952* (the Principal Regulations) provides that a member of the ADF, who has a grievance concerning a decision, act or omission relating to his or her service, may make a complaint to his or her commanding officer in the form of a Redress of Grievance (ROG). The purpose of the ROG process is to ensure that decisions affecting members' rights, working conditions and careers are made fairly, impartially and according to law.

The Regulations correct a minor drafting error to ensure that changes made to the Principal Regulations on 1 May 2008 operate as intended.

The *Defence Force Amendment Regulations 2008 (No. 1)* were made on 1 May 2008 implementing the previous Government's recommended improvements to the ADF ROG system in accordance with its response to the 2003 Senate Foreign Affairs, Defence and Trade References Committee inquiry into *The effectiveness of Australia's military justice system*, delivered on 16 June 2005 (the Senate report). The Government's response to the Senate report endorsed, and sought the implementation of, the accepted recommendations of the *Review of the ADF Redress of Grievance System 2004* (ROG Review), a joint report by the Commonwealth Ombudsman and the Department of Defence.

Recommendation 4 of the ROG review required that '*complaints regarding a process which seeks to anticipate a decision that hasn't yet been made*' be excluded from the ROG process, on the basis that an existing 'show cause' process should be used in the first instance. This was implemented, in part, by the *Defence Force Amendment Regulations 2008 (No. 2)* in relation to:

- a. administrative sanctions;
- b. termination processes under Part VIIIA of the *Defence Act 1903* for all members of the ADF; and
- c. termination processes under Division 2, Part 2 of Chapter 9 of the *Defence (Personnel) Regulations 2002*.

However, the amendment in paragraph (c) as drafted applies only to officers (Division 2, Part 2). It was not the policy intention that the existing 'show cause' process should only apply to officers.

The Regulations ensure that enlisted members (in Division 3 of Part 2) of the ADF are also required to use the 'show cause' process prior to submitting a ROG in relation to the termination process. Paragraph 75(2)(c) of the Principal Regulations have been amended to ensure that paragraph (c) applies to both officers and enlisted members of the ADF (by referring to 'Part 2' only).

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

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

There has been no consultation in the making of this instrument as it relates to the management and service of members of the ADF.

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