

EXPLANATORY STATEMENT

Select Legislative Instrument 2008 No. 186

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

Defence Act 1903

Defence Force Amendment Regulations 2008 (No. 3)

Defence Force Discipline Appeals Act 1955

Defence Force Discipline Appeals Amendment Regulations 2008 (No. 1)

Defence (Visiting Forces) Act 1963

Defence (Visiting Forces) Amendment Regulations 2008 (No. 1)

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.

Section 60 of the *Defence Force Discipline Appeals Act 1955* and section 30 of the *Defence (Visiting Forces) Act 1963* provide, in part, that the Governor-General may make regulations, not inconsistent with those Acts, prescribing all matters required or permitted by those Acts to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to those Acts.

The three sets of Regulations make consequential amendments to the *Defence Force Regulations 1952*, the *Defence Force Discipline Appeals Regulations 1957* and the *Defence (Visiting Forces) Regulations 1963* (the Principal Regulations) required to reflect the amendments made by the *Defence Legislation Amendment Act 2006* (DLAA06) and the *Defence Legislation Amendment Act 2008* (DLAA08).

Following the 2003 Senate Foreign Affairs, Defence and Trade Committee *Inquiry into the Effectiveness of Australia's Military Justice System* and its subsequent report in June 2005, a number of reforms to the military justice system were implemented. Key reforms include the creation of the Australian Military Court (AMC), which replaced the system of trials by court martial or Defence Force magistrate and amendments to the Defence Force Discipline Appeal Tribunal appeals regime. These reforms were included in the *Defence Legislation Amendment Act 2006* (DLAA06).

The amendments contained in the Regulations include –

- replacing redundant references to ‘Court martial’ and ‘Defence Force magistrate’ with ‘Australian Military Court’;
- replacing a reference to ‘convening authority’ with ‘appropriate authority’. This will enable the Registrar of the AMC (in addition to the Chief Military Judge or a Military Judge) to exercise certain powers (power to summon witnesses, to give evidence and produce documents) under the *Defence (Visiting Forces) Act 1963*;
- providing for process requirements in respect of a reference of a question of law to the Defence Force Discipline Appeal Tribunal (the Tribunal) by the Director of Military

Prosecutions, included in the DLAA08 (for example, the requirement for the Registrar of the AMC to furnish records of the AMC to the Tribunal and notifying certain persons of dates and times of proceedings, where a reference has been made);

The *Defence Force Discipline Appeals Regulations 1957* and the *Defence (Visiting Forces) Regulations 1963* are administered by the Attorney-General's Department and as such, any amendments to these Regulations require the Attorney-General's approval. The Attorney-General agreed to the amendments and also agreed that the Minister for Defence Science and Personnel sign them on his behalf.

Details of the Regulations are contained in the Attachment.

The Acts specify no conditions that need to be met before the power to make the Regulations may be exercised.

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

The Regulations commence 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.

ATTACHMENT

Defence Force Amendment Regulations 2008 (No. 3)

Regulations 1 to 3 contain amendment, citation and commencement details for the *Defence Force Regulations 1952* (the Principal Regulations) and the *Defence Force Amendment Regulations 2008 (No. 3)*.

Item [1] amends subregulation 46(1) of the Principal Regulations by replacing the reference to ‘court martial’ with ‘the Australian Military Court’.

Defence Force Discipline Appeals Amendment Regulations 2008 (No. 1)

Regulations 1 to 3 contain amendment, citation and commencement details for the *Defence Force Discipline Appeals Regulations 1957* (the Principal Regulations) and the *Defence Force Discipline Appeals Amendment Regulations 2008 (No. 1)*.

Item [1] substitutes regulation 10 of the Principal Regulations to require the Registrar of the Australian Military Court (AMC) to furnish to the Tribunal AMC records of proceedings and any other documents before the AMC in connection with those proceedings in relation to a reference of a question of law.

Item [2] inserts new paragraph 12(aa) in regulation 12 (notification of a discontinuance of an appeal) so that the requirements of regulation 12 apply to a withdrawal of a referral of a question of law.

Item [3] amends regulation 18 which provides for the notification of a hearing to certain persons. Amended regulation 18 extends the notification requirements in respect of a proposed hearing to determine a question of law.

Item [4] substitutes subregulation 24(1) of the Principal Regulations. Subregulation 24(1) is extended to require the procedures outlined in the subregulation to be followed after a Tribunal decision to a decision on a question of law.

Item [5] extends paragraph 24(3)(b) of the Principal Regulations to require the Registrar of the Tribunal to provide a record of proceeding of the Tribunal’s decision in respect of a question of law to the Registrar of the AMC.

Defence (Visiting Forces) Amendment Regulations 2008 (No. 1)

Regulations 1 to 3 contain amendment, citation and commencement details for *Defence (Visiting Forces) Regulations 1963* (the Principal Regulations) and the *Defence (Visiting Forces) Amendment Regulations 2008 (No. 1)*.

Items [1] and [2] amend paragraph 9(1)(a) and subregulation 9(2) of the Principal Regulations by omitting and substituting the reference to ‘convening authority’ with ‘appropriate authority’. This enables the Registrar of the AMC (in addition to the Chief Military Judge or a Military Judge) to exercise certain powers (to summon witnesses, to give evidence and produce documents) under the *Defence (Visiting Forces) Act 1963*.