

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 59

Issued by the authority of the Minister for Defence Science and Personnel
Defence Act 1903

Defence (Personnel) Amendment Regulations 2011 (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 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 Australian Defence Force (ADF), or for carrying out or giving effect to the Act.

The *Defence (Personnel) Regulations 2002* (the Principal Regulations) provide for, among other things, the enlistment, appointment, promotion, reduction in rank, retirement, transfer and discharge of members of the ADF.

In 2007 the Principal Regulations were amended to allow the compulsory retirement age (CRA) for permanent members of the ADF up to and including the rank of Brigadier (or equivalent) was increased to 60 years and the compulsory retirement age for reservists was increased to 65 years.

The Regulations provide a corresponding increase in CRA for Major General (or equivalent) to 60 years as part of considerations associated with the introduction of the Star Rank Management Framework (SRMF) in August 2008. Continued military service remains subject to ADF members maintaining their health and physical fitness standards, irrespective of age.

The Regulations amend Schedule 1 to the Principal Regulations to reflect the CRA for Major-General (or equivalent) at 60 years in lieu of the current CRA of 57 years. The Regulations also amend references to the Australian Military Court (AMC) following the High Court's decision in 2009 that the AMC was invalid.

Details of the Regulations 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*.

The Regulations commence on 1 June 2011

ATTACHMENT

Details of the *Defence (Personnel) Amendment Regulations 2011 (No. 1)*

Regulation 1 – Name of Regulations

The regulation provides that the title of the Regulations is the *Defence (Personnel) Amendment Regulations 2011 (No. 1)*

Regulation 2 – Commencement

This regulation provides for the Regulations to commence the 1 June 2011.

Regulation 3 – Amendment of Defence (Personnel) Regulations 2002

This regulation would provide that Schedule 1 amends the *Defence (Personnel) Regulations 2002* (the Principal Regulations).

Schedule 1 – Amendments

Item [1] inserts a new regulation 9A into the Principal Regulations that applies to a member if the member's rank immediately before 1 June 2011 was:

- (a) Rear Admiral in the Permanent Navy; or
- (b) Major General in the Regular Army; or
- (c) Air Vice-Marshal in the Permanent Air Force

This regulation provides that the compulsory retiring age for these members changed on 1 June 2011 from age 57 to age 60 unless the member makes an election to retain the former retiring age that was applicable to the member before 1 June 2011.

Item [2] amends paragraphs 113 (2) (a) and (b) to remove references to the Australian Military Court (AMC) following the High Court's decision that the AMC was invalid.

Item [3] inserts a new retiring age into Schedule 1 to the Principal Regulations for a Rear Admiral in the Permanent Navy from 57 to 60.

Item [4] insert a new retiring age into Schedule 1 to the Principal Regulations for a Major General in the Regular Army from 57 to 60.

Item [5] inserts a new retiring age into Schedule 1 to the Principal Regulations for an Air Vice-Marshal in the Permanent Air Force from 57 to 60.