



Defence Force Legislation Amendment Regulation 2013 (No. 1)

Select Legislative Instrument No. 92, 2013

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 regulation under the *Defence Act 1903* and the *Air Force Act 1923*.

Dated 30 May 2013

Marie Bashir
Administrator

By Her Excellency's Command

Warren Snowdon
Minister for Defence Science and Personnel

OPC50238 - B

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1 Name of regulation

This regulation is the *Defence Force Legislation Amendment Regulation 2013 (No. 1)*.

2 Commencement

This regulation commences on the day after it is registered.

3 Authority

This regulation is made under the *Defence Act 1903* and the *Air Force Act 1923*.

4 Schedule(s)

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1—Amendments

Defence Force Regulations 1952

1 After Part V

Insert:

Part 5A—Certification of deaths

25A Definitions

(1) In this Part:

competent authority: see subregulation 25B(2).

death certificate:

- (a) means a certificate issued by a competent authority under regulation 25C; and
- (b) includes a corrected certificate issued under subregulation 25F(4).

service includes service outside Australia.

(2) In this Part:

- (a) a reference to a member of the Defence Force includes a reference to a person who, not being a member of the Defence Force, accompanies a part of the Defence Force; and
- (b) a reference to a member of the Defence Force on service outside Australia includes a reference to a member of that Force who is a prisoner of war or interned in a place outside Australia.

25B Authorisation to issue death certificate

- (1) The Minister for Defence may, by notice in the *Gazette*, authorise a person to issue certificates of the death of members of the Defence Force.

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- (2) The authorised person mentioned in subregulation (1) is a *competent authority*.
 - (3) Subregulation (1) does not authorise a competent authority to issue a certificate of the death of a person otherwise than in accordance with this Part.

25C Death certificate

- (1) A competent authority who is satisfied, from information available in the Department, that a member of the Defence Force died on a particular date while on service may issue a certificate that the member died on that date.
- (2) A competent authority who is satisfied, from information available in the Department, that a member of the Defence Force died on or after a particular date while on service may issue a certificate that the member died on or after that date.
- (3) A competent authority who is satisfied, from information available in the Department, that a member of the Defence Force died on or before a particular date while on service may issue a certificate that the member died on or before that date.
- (4) A competent authority who is satisfied, from information available in the Department, that a member of the Defence Force became missing on a particular date, and, for official purposes, is presumed to have died, while on service may issue a certificate that the member became missing on that date and is, for official purposes, presumed to be dead.

25D Effect of death certificate

- (1) A death certificate is evidence, in all courts and before all persons acting judicially, of the death of the member of the Defence Force named in the death certificate, on the date specified as:
 - (a) the date on which the member died; or
 - (b) the date on or after which the member died; or
 - (c) the date on or before which the member died; or
 - (d) the date on which the member became missing and was, for official purposes, presumed to be dead.

- (2) A court or a person acting judicially must, in relation to a death certificate, take judicial notice of the signature of a competent authority and of the fact that he or she is, or has been, a competent authority.
- (3) Subregulation (4) applies if:
 - (a) a competent authority has issued a death certificate in relation to a member of the Defence Force; and
 - (b) the death certificate is in effect; and
 - (c) a second person presumes that the member died in accordance with the date specified in the death certificate; and
 - (d) the second person acts in good faith on the presumption and pays money or transfers property to a third person; and
 - (e) the third person is entitled to receive the money or property on the assumption that the member died or is presumed to be dead.
- (4) For subregulation (3):
 - (a) the second person obtains a good discharge in respect of the money or property; and
 - (b) if the member is, in fact, alive on or after the date specified in the death certificate, the second person is not subject to any civil or criminal liability, in connection with the money or property, to which the second person would not have been subject if the member had died in accordance with the death certificate.

25E No security required in connection with probate or administration

- (1) This regulation applies if:
 - (a) a death certificate has been issued in relation to a member of the Defence Force; and
 - (b) either:
 - (i) probate of the member's will has been granted or proposed to be granted; or
 - (ii) administration of the member's estate has been granted or proposed to be granted; and
 - (c) the death certificate has not been cancelled.

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- (2) Leave of a court is not required for the distribution or administration of the member's estate.
 - (3) A bond, surety or other security must not be required of any person for the restoration, repayment or replacement upon any condition or event of money or other property forming part of the member's estate which would not be required if the member's death had been conclusively proved.

25F Cancellation and correction of death certificate

- (1) If a death certificate:
 - (a) has been wrongly issued; or
 - (b) ceases to be in accordance with the information available in the relevant Department; or
 - (c) is incorrect in a particular;a competent authority may, by notice served on the person who has the death certificate, ask the person to give the death certificate to the competent authority.
- (2) The person commits an offence if the person does not give the death certificate to the competent authority as soon as practicable.

Penalty: 5 penalty units, or imprisonment for 3 months.
- (3) A competent authority who receives a death certificate after a request under subregulation (1) must cancel or correct the death certificate.
- (4) If a death certificate is incorrect in a particular:
 - (a) a competent authority may, in accordance with this Part, issue a corrected certificate even though the incorrect death certificate has not been cancelled; but
 - (b) the issue of a corrected certificate is taken not to affect the rights of a person who acts in reliance on the incorrect death certificate and without knowledge of the issue of the corrected certificate.

25G Death certificate not to be used if competent authority requires certificate

If a competent authority has asked a person to give the competent authority a death certificate, or the person knows that a competent authority intends to ask the person to give the competent authority a death certificate, the person commits an offence if the person:

- (a) gives the death certificate to a person other than the competent authority; or
- (b) otherwise makes use of, or acts in reliance on, the death certificate.

Penalty: 5 penalty units, or imprisonment for 3 months.

25H Proof of life on information available after issue of death certificate

- (1) A competent authority may issue a certificate (a *provisional certificate*) stating that, from information available in the Department, there is reason to believe that a member of the Defence Force named in a death certificate is, or may be, alive.
- (2) Despite:
 - (a) any law of a State or a Territory; or
 - (b) probate or letters of administration granted under a law of a State or a Territory;a provisional certificate is evidence, in all courts and before all persons acting judicially, that the member named in the certificate is alive.
- (3) Subregulation (4) applies if:
 - (a) a competent authority has issued a provisional certificate in relation to a member of the Defence Force; and
 - (b) the provisional certificate is in effect; and
 - (c) a second person presumes that the member is still alive; and
 - (d) the second person acts in good faith on the presumption and pays money or transfers property to a third person; and
 - (e) the third person is entitled to receive the money or property on the assumption that the member is alive.
- (4) For subregulation (3):

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- (a) the second person obtains a good discharge in respect of the money or property; and
 - (b) if the member is, in fact, dead on the date of the payment or transfer, the second person is not subject to any civil or criminal liability, in connection with the money or property, to which the second person would not have been subject if the member were alive.
 - (5) A competent authority may issue a provisional certificate even though the death certificate has not been cancelled.
 - (6) If a competent authority issues a provisional certificate:
 - (a) the death certificate in relation to the member ceases to be in effect; but
 - (b) the issue of a provisional certificate is taken not to affect the rights of a person who acts in reliance on the death certificate and without knowledge of the issue of the provisional certificate.
 - (7) Subject to this regulation, regulations 25F and 25G apply to a provisional certificate in the same way as they apply to a death certificate.
 - (8) A provisional certificate ceases to apply if a competent authority issues another death certificate in relation to the member after the issue of the provisional certificate.

2 Regulations 58E and 58F

Repeal the regulations, substitute:

58E Provision of medical and dental treatment

- (1) The Commonwealth must arrange for the provision of medical and dental treatment that is necessary to keep a member fit for the performance of the member's duties.
- (2) The provision of medical or dental treatment under subregulation (1) is not required to be in accordance with a law of a State or Territory if the provision of the treatment complies with a Defence Instruction (General).

- (3) The Commonwealth must arrange for the supply of pharmaceuticals that is necessary in order to comply with subregulation (1).
- (4) The supply of pharmaceuticals under subregulation (3) is not required to be in accordance with a law of a State or Territory if the supply complies with a Defence Instruction (General).
- (5) In this regulation:

pharmaceuticals includes any ingredient, compound, material or preparation that is mentioned in the current Poisons Standard prepared under subsection 52D(2) of the *Therapeutic Goods Act 1989*.

supply, in relation to pharmaceuticals, includes any activity in relation to pharmaceuticals, such as transport, storage, and possession, that is necessary in order to comply with this regulation.

3 Paragraph 58G(1)(a)

Omit “58F”, substitute “58E”.

Schedule 2—Repeals

Air Force Regulations 1927

1 Part 11

Repeal the Part.

Defence (Certification of Deaths) Regulations 1953

2 The whole of the Regulations

Repeal the Regulations.