



Inspector-General of the Australian Defence Force Amendment Regulations 2018

I, General the Honourable Sir Peter Cosgrove AK MC (Ret'd), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulations.

Dated 11 October 2018

Peter Cosgrove
Governor-General

By His Excellency's Command

Christopher Pyne
Minister for Defence

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1 Name

This instrument is the *Inspector-General of the Australian Defence Force Amendment Regulations 2018*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	13 October 2018

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Defence Act 1903*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

Inspector-General of the Australian Defence Force Regulation 2016

1 Section 4

Insert:

judicial officer means a judge, magistrate or justice of a federal court or a court of a State or Territory.

2 Subsection 10(1)

After “Assistant IGADF”, insert “who is not a judicial officer”.

3 After subsection 10(1)

Insert:

(1A) An Assistant IGADF who is a judicial officer:

- (a) must conduct inquiries into matters as directed by the Inspector-General ADF; but
- (b) must not must help the Inspector-General ADF carry out any other function.

Note: For inquiries conducted by Assistant IGADF who are judicial officers, see Division 4A of Part 4.

4 Section 15

Repeal the section, substitute:

15 Change of inquiry personnel—inquiry officer

- (1) This section applies if an inquiry officer (the *original inquiry officer*) is directed to inquire into a matter.
- (2) If the original inquiry officer has not given the Inspector-General ADF a report under section 25 in relation to the inquiry, the Inspector-General ADF may:
 - (a) appoint another person as an inquiry officer (the *new inquiry officer*) to inquire into the matter in place of the original inquiry officer; or
 - (b) direct an Assistant IGADF to inquire into the matter in place of the original inquiry officer; or
 - (c) personally inquire into the matter in place of the original inquiry officer.
- (3) If the original inquiry officer has given the Inspector-General ADF a report under section 25 in relation to the inquiry, the Inspector-General ADF may:
 - (a) appoint another person as an inquiry officer (the *new inquiry officer*) to inquire further into the matter; or
 - (b) direct an Assistant IGADF to inquire further into the matter; or
 - (c) personally inquire further into the matter.
- (4) In inquiring, or further inquiring, into the matter, the new inquiry officer, Assistant IGADF or Inspector-General ADF may have regard to:
 - (a) any record of proceedings made by an inquiry officer or an Assistant IGADF who previously took part in the inquiry; and

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- (b) any evidence collected by an inquiry assistant or Assistant IGADF who previously took part in the inquiry.

15A Change of inquiry personnel—Assistant IGADF who is a judicial officer

- (1) This section applies if an Assistant IGADF who is a judicial officer:
 - (a) is directed to inquire into a matter; and
 - (b) becomes unavailable to continue the inquiry before giving a report to the Inspector-General ADF under section 28F.
- (2) The Inspector-General ADF may:
 - (a) appoint another person as an inquiry officer to inquire into the matter in place of the Assistant IGADF who is unavailable; or
 - (b) direct another Assistant IGADF (the *new Assistant IGADF*) to inquire into the matter in place of the Assistant IGADF who is unavailable; or
 - (c) personally inquire into the matter in place of the Assistant IGADF who is unavailable.
- (3) In inquiring into the matter, the inquiry officer, new Assistant IGADF or Inspector-General ADF may have regard to:
 - (a) any record of proceedings made by an inquiry officer or an Assistant IGADF who previously took part in the inquiry; and
 - (b) any evidence collected by an inquiry assistant or Assistant IGADF who previously took part in the inquiry.

15B Change of inquiry personnel—other Assistant IGADF

- (1) This section applies if an Assistant IGADF who is not a judicial officer (the *original Assistant IGADF*) is directed to inquire into a matter.
 - (2) If the original Assistant IGADF has not given the Inspector-General ADF a report under section 25 in relation to the inquiry, the Inspector-General ADF may:
 - (a) appoint another person as an inquiry officer to inquire into the matter in place of the original Assistant IGADF; or
 - (b) direct another Assistant IGADF (the *new Assistant IGADF*) to inquire into the matter in place of the original Assistant IGADF; or
 - (c) personally inquire into the matter in place of the original Assistant IGADF.
 - (3) If the original Assistant IGADF has given the Inspector-General ADF a report under section 25 in relation to the inquiry, the Inspector-General ADF may:
 - (a) appoint another person as an inquiry officer to inquire further into the matter; or
 - (b) direct another Assistant IGADF (the *new Assistant IGADF*) to inquire further into the matter; or
 - (c) personally inquire further into the matter.
 - (4) In inquiring, or further inquiring, into the matter, the inquiry officer, new Assistant IGADF or Inspector-General ADF may have regard to:
 - (a) any record of proceedings made by an inquiry officer or an Assistant IGADF who previously took part in the inquiry; and
 - (b) any evidence collected by an inquiry assistant or Assistant IGADF who previously took part in the inquiry.
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5 Subsection 25(2) (note)

Repeal the note.

6 Subsection 26(1) (note)

Repeal the note.

7 Subparagraph 27(1)(a)(i)

After “section 25”, insert “or 28F”.

8 Subparagraph 27(5)(a)(vi)

Omit “or”.

9 At the end of paragraph 27(5)(a)

Add:

(vii) any other person; or

10 Subsection 28(2)

After “27(4)”, insert “or paragraph 27(5)(b)”.

11 After Division 4 of Part 4

Insert:

Division 4A—Inquiries conducted by Assistant IGADF who are judicial officers

28A Application of this Division

- (1) This Division applies in relation to the conduct of an inquiry by an Assistant IGADF who is a judicial officer.
- (2) This Division has effect despite any other provision of this instrument.

28B Inspector-General ADF involvement

The Inspector-General ADF must not take part personally in the inquiry.

28C Procedure of inquiry

- (1) The Assistant IGADF must conduct the inquiry in such manner as the Assistant IGADF considers appropriate having regard to the subject matter of the inquiry.
- (2) The Inspector-General ADF must not give directions about:
 - (a) the manner in which the inquiry is to be conducted; or
 - (b) times and places for the conduct of the inquiry; or
 - (c) whether all or any part of the inquiry is to be conducted in public or private; or
 - (d) who can be present at any part of the inquiry conducted in private.

28D Scope of the inquiry

- (1) If the Assistant IGADF thinks it appropriate to do so for the purposes of the inquiry, the Assistant IGADF may:
 - (a) add anything to the matter into which the Assistant IGADF is to inquire; or
 - (b) vary the terms of the inquiry; or
 - (c) consult with any person in relation to the inquiry.
- (2) The Inspector-General ADF must not give a direction:
 - (a) adding anything to the matter into which the Assistant IGADF is to inquire; or
 - (b) varying the terms of the inquiry.

28E Evidence and information gathering powers

The Assistant IGADF may exercise the powers of the Inspector-General ADF under the following provisions without being authorised to do so by the Inspector-General:

- (a) subsection 21(1) (directions regarding disclosure of evidence);
- (b) section 22 (information gathering);
- (c) section 23 (information gathering).

28F Report by Assistant IGADF

- (1) The Assistant IGADF must prepare a report if:
 - (a) the Assistant IGADF is satisfied that all information relevant to the inquiry that is practicable to obtain has been obtained; and
 - (b) a decision has not been made to end the inquiry under subsection 110DB(1) of the Act.
- (2) The report must:
 - (a) set out the findings of the Assistant IGADF in relation to the inquiry; and
 - (b) any recommendations that the Assistant IGADF thinks appropriate to make because of those findings.
- (3) The report must be accompanied by:
 - (a) a copy of the transcript or other record of any oral evidence taken during the inquiry; and
 - (b) a copy of each document accepted as evidence during the inquiry; and
 - (c) a list of all other things that were produced to the inquiry with information about where each thing is located.
- (4) The Assistant IGADF must give the report to the Inspector-General ADF as soon as practicable.

No further inquiry or report

- (5) The Inspector-General ADF must not direct the Assistant IGADF to inquire further into, or prepare a further report in relation to, the matter to which the inquiry relates.

28G Reports to other persons

Reports given by the Inspector-General ADF

- (1) Any report about, including the findings and any recommendations in relation to, the inquiry given by the Inspector-General ADF under subsections 27(3) to (5) must be the report (including the findings and any recommendations) given to the Inspector-General ADF by the Assistant IGADF under section 28F.

Reports given by the Assistant IGADF

- (2) The Assistant IGADF may, if the Assistant IGADF thinks it appropriate to do so:
 - (a) inform one or more of the following persons of the findings in relation to the inquiry:
 - (i) the Minister;
 - (ii) the Chief of the Defence Force;
 - (iii) a service chief;
 - (iv) an employee of the Department;
 - (v) a member of the Defence Force;
 - (vi) a person who is affected by a submission or the inquiry (whether or not the person made a submission);
 - (vii) any other person; or
 - (b) give one or more of those persons a report about the inquiry, including the findings and any recommendations that the Assistant IGADF thinks it appropriate to make.
- (3) A report given under paragraph (2)(b) may be accompanied by a copy of:
 - (a) the transcript or other record of any oral evidence taken during the inquiry; and
 - (b) any document accepted as evidence during the inquiry.
- (4) A report given to a person under paragraph (2)(b) need not include information that the Assistant IGADF considers would be inappropriate to include for any of the following reasons:
 - (a) considerations of privacy;
 - (b) the person's responsibilities;
 - (c) the person's interest in the matter;
 - (d) the information is classified or relates to national security;
 - (e) the relevance of the information to other information considered not appropriate for the person because of paragraph (a), (b), (c) or (d).

28H Public release of reports

- (1) The Inspector-General ADF must not, under subsection 28(3), publicly release all or part of the report about the inquiry unless the Inspector-General ADF has consulted the Assistant IGADF about the release.
- (2) If, under paragraph 28G(2)(b), the Assistant IGADF gives a person a report about the inquiry, the Assistant IGADF may, following consultation with the Chief of the Defence Force, publicly release all or part of the report (including a redacted version of the report).

28J Protection and chain of command

In relation to the inquiry, the Assistant IGADF:

- (a) has the same protection and immunity as a Justice of the High Court; and
- (b) is not subject to the chain of command.

12 At the end of Part 4

Add:

34A Delegation

The Chief of the Defence Force may, by instrument in writing, delegate the functions or powers of the Chief of the Defence Force under this Part to an officer holding a rank not lower than the naval rank of captain or the rank of colonel or group captain.

13 At the end of the instrument

Add:

Part 6—Transitional provisions**37 Amendments made by the *Inspector-General of the Australian Defence Force Amendment Regulations 2018***

The amendments made by the *Inspector-General of the Australian Defence Force Amendment Regulations 2018* apply in relation to the following:

- (a) an inquiry begun but not ended or completed before the commencement of those regulations;
- (b) an inquiry begun on or after that commencement.