

Australian Military Amendment Regulations 2001 (No. 1) 2001 No. 176

EXPLANATORY STATEMENT

STATUTORY RULES 2001 No. 176

Issued by Authority of the Minister for Veterans' Affairs

Defence Act 1903

Australian Military Amendment Regulations 2001 (No. 1)

Naval Defence Act 1910

Naval Forces Amendment Regulations 2001 (No. 1)

Air Force Act 1923

Air Force Amendment Regulations 2001 (No. 3)

Section 124 of the *Defence Act 1903* provides inter alia that the Governor-General may make regulations for the purposes of the Act. Section 45 of the *Naval Defence Act 1910* and section 9 of the *Air Force Act 1923* contain similar provisions.

The Australian Military Regulations 1927, Naval Forces Regulations 1935 and Air Force Regulations 1927, made under the *Defence Act 1903*, *Naval Defence Act 1910* and *Air Force Act 1923* respectively, prescribe various matters relating to the organisation and administration of the Army, Navy and Air Force.

The *Defence Legislation Amendment Act 1995* added a number of provisions to the *Defence Act 1903* and *Naval Defence Act 1910* relating to limited-tenure promotions and management initiated early retirement of officers in the Army and Navy. Statutory Rule 1995 No. 273 made similar changes to the *Air Force Regulations 1927* for officers of the Air Force.

The limited tenure promotion scheme and management initiated early retirement scheme as set out in the *Defence Act 1903*, *Naval Defence Act 1910* and *Air Force Regulations 1927* is currently limited to officers. In order to introduce greater flexibility in the management of senior sailors, soldiers, airmen and airwomen, the Statutory Rules extend the provisions to enable management to initiate the limited-tenure promotion and management initiated early discharge or transfer of those sailors, soldiers, airmen and airwomen.

The purpose of the Statutory Rules is to extend the provisions relating to limited tenure promotions and management initiated early discharge to senior sailors, soldiers, airmen and airwomen. The Statutory Rules amend the Air Force Regulations, the Australian Military Regulations and Naval Forces Regulations to:

- introduce a management initiated early discharge scheme for the ranks of Chief Petty Officer and, Warrant Officer in the Navy; Warrant Officer Class 2 and Warrant Officer, Class 1 in the Army; and Flight Sergeant and Warrant Officer in the Air Force; and
- extend the limited tenure promotion scheme to promotions to the rank of Warrant Officer in the Navy; Warrant Officer, Class 1 in the Army; and Warrant Officer in the Air Force.

Details of the Statutory Rules are contained in the Attachments.

The Statutory Rules commence on gazettal.

ATTACHMENT

DETAILS OF AMENDMENTS TO THE AIR FORCE REGULATIONS 1927

Preliminary

Regulation 1 provides the name of the Statutory Rule.

Regulation 2 provides that the Statutory Rule commences on gazettal.

Regulation 3 provides that schedule 1 amends the *Air Force Regulations 1927*.

Schedule 1 - Amendments

The purpose of the Statutory Rule is outlined below.

Extension of Limited Tenure Promotion Scheme to Airmen

The limited tenure promotion scheme set out in regulation 66 of the Air Force Regulations 1927 ('the Regulations') is currently limited to officers. New regulation 108D (schedule 1, item 1) will establish a similar scheme for airmen.

The new regulation provides for limited tenure promotions to be applied by the Chief of Air Force where an airman is promoted to the rank of Warrant Officer for a set period as specified in the instrument. The provisions also allow the Chief of Air Force to extend the period.

The new regulation provides that an airman may decline a promotion under this scheme. However, where a limited-tenure promotion is accepted, an airman will be discharged from the Air Force on completion of the period, unless offered by the Chief of Air Force an extension of service at the higher rank or a continuation at the original rank level.

The regulation also enables the airman to be transferred to the Reserve on the expiration of their limited tenure promotion, where they request this action.

Regulation 115 of the Regulations deals with reasons for discharge. A secondary consequence of limited tenure promotion is discharge by force of law. Schedule 1, item 2 notes this possibility in regulation 115 of a discharge under the limited tenure promotion scheme.

Airmen and airwomen promoted under the limited tenure promotion provisions are not entitled to the financial benefits of the management initiated early discharge provisions outlined below.

Management Initiated Early Discharge

New regulations 115B, 115C, 115D and 115E (schedule 1, item 3) provide separate procedures for the management initiated early discharge of airmen. The new provisions establish a similar scheme to that established by regulations 83, 84, 85 and 85A of the Regulations in relation to management initiated early retirement of officers in the Air Force.

New regulation 115B empowers the Chief of Air Force to initiate an early discharge or transfer of an airman of the rank of Flight Sergeant or Warrant Officer by giving the airman written notice that the airman is entitled to a special financial benefit if he or she discharges from the Air Force or notifies in writing that he or she wishes to transfer to the Air Force Reserve (within one month commencing not earlier than the day the notice is given). The discharge is to take effect on a

date specified in writing by the Chief of Air Force, being a date no later than 28 days after the acceptance of the offer.

New regulation 115D enables the Chief of Air Force to compulsorily discharge without a special financial benefit an airman who does not discharge or transfer to the Air Force Reserve within the period specified in the notice under regulation 115B, if the Chief of Air Force considers that the airman needs to be removed for organisational effectiveness. The regulation also provides that the discharge of an airman who does not accept an offer of a financial benefit will take effect no earlier than 13 months after the officer is given a notice.

New regulation 115C provides that, before an airman is compulsorily discharged under these provisions, or elects to transfer to the Air Force Reserve, the airman will be given by the Chief of Air Force, in writing, reasons for his or her discharge and an opportunity to show cause why that action should proceed. In addition, new regulation 115E provides that the periods described in new regulation 115B, 115C and 115D will be suspended while any redress of grievance complaint made by an affected airman under the *Defence Force Regulations 1935*, or complaint under the *Ombudsman Act 1976*, is being finalised.

ATTACHMENT

DETAILS OF AMENDMENTS TO THE *AUSTRALIAN MILITARY REGULATIONS 1927*

Preliminary

Regulation 1 provides the name of the Statutory Rule.

Regulation 2 provides that the Statutory Rule commences on gazettal.

Regulation 3 provides that schedule 1 amends the *Australian Military Regulations 1927*.

Schedule 1 - Amendments

The purpose of the Statutory Rule is outlined below:

Extension of Limited Tenure Promotion Scheme to Soldiers

The limited tenure promotion scheme set out in section 10B of the *Defence Act 1903* ('the Act'), is currently limited to officers. New regulation 143A (schedule 1, item 1) will establish a similar scheme for soldiers.

The new regulation provides for limited tenure promotions to be applied by the Chief of Army where a soldier is promoted to the rank of Warrant Officer, Class 1 for a set period as specified in the instrument. The provisions also allow the Chief of Army to extend the period.

The new regulation provides that a soldier may decline a promotion under this scheme. However, where a limited-tenure promotion is accepted, a soldier will be discharged from the Army on completion of the period, unless offered by the Chief of Army an extension of service at the higher rank or a continuation at the original rank level.

The regulation also enables the soldier to be transferred to the Reserve on the expiration of their limited tenure promotion, where they request this action.

Regulation 176 of the Australian Military Regulations 1927 deals with reasons for discharge. A secondary consequence of limited tenure promotion is discharge by force of law. Schedule 1, item 2 notes this possibility in regulation 176 of a discharge under the limited tenure promotion scheme.

Soldiers promoted under the limited tenure promotion provisions are not entitled to the financial benefits of the management initiated early discharge provisions outlined below.

Management Initiated Early Discharge

New regulations 179, 180, 181 and 182 (schedule 1, item 3) provide separate procedures for the management initiated early discharge of soldiers. The new provisions establish a similar scheme to that established by sections 25B to 25E of the Act in relation to management initiated early retirement of officers in the Army.

New regulation 179 empowers the Chief of Army to initiate an early discharge or transfer of a soldier of the rank of Warrant Officer, Class 2 or Warrant Officer, Class 1 by giving the soldier written notice that the soldier is entitled to a special financial benefit if he or she discharges from the Army or notifies in writing that he or she wishes to transfer to the Army Reserve (within one

month commencing not earlier than the day the notice is given). The discharge is to take effect on a date specified in writing by the Chief of Army, being a date no later than 28 days after the acceptance of the offer.

New regulation 181 enables the Chief of Army to compulsorily discharge without a special financial benefit a soldier who does not discharge or transfer to the Army Reserve within the period specified in the notice under regulation 179, if the Chief of Army considers that the soldier needs to be removed for organisational effectiveness. The regulation also provides that the discharge of a soldier who does not accept an offer of a financial benefit will take effect no earlier than 13 months after the officer is given a notice.

New regulation 180 provides that, before a soldier is compulsorily discharged under these provisions, or elects to transfer to the Army Reserve, the soldier will be given by the Chief of Army, in writing, reason for his or her discharge and an opportunity to show cause why that action should not proceed. In addition, new regulation 182 provides that the periods described in new regulation 179, 180 and 181 will be suspended while any associated redress of grievance complaint made by an affected soldier under the *Defence Force Regulations 1952* or complaint under the *Ombudsman Act 1976* is being finalised.

ATTACHMENT

DETAILS OF AMENDMENTS TO THE *NAVAL FORCES REGULATIONS 1935*

Preliminary

Regulation 1 provides the name of the Statutory Rule.

Regulation 2 provides that the Statutory Rule commences on gazettal.

Regulation 3 provides that schedule 1 amends the *Naval Forces Regulations 1935*.

Schedule 1 - Amendments

The purpose of the Statutory Rule is outlined below:

Extension of Limited Tenure Promotion Scheme to Sailors

The limited tenure promotion scheme set out in section 13A of the *Naval Defence Act 1910* ('the Act'), is currently limited to officers. New regulation 34A (schedule 1, item 1) will establish a similar scheme for sailors.

The new regulation provides for limited tenure promotions to be applied by the Chief of Navy where a sailor is promoted to the rank of Warrant Officer for a set period as specified in the instrument. The provisions also allow the Chief of Navy to extend the period.

The new regulation provides that a sailor may decline a promotion under this scheme. However, where a limited-tenure promotion is accepted, a sailor will be discharged from the Navy on completion of the period, unless offered by the Chief of Navy an extension of service at the higher rank or a continuation at the original rank level.

The regulation also enables the sailor to be transferred to the Reserve on the expiration of their limited tenure promotion, where they request this action.

Regulation 38 of the *Naval Forces Regulations 1935* deals with reasons for discharge. A secondary consequence of limited tenure promotion is discharge by force of law. Schedule 1, item 2 notes this possibility in regulation 38 of a discharge under the limited tenure promotion scheme.

Sailors promoted under the limited tenure promotion provisions are not entitled to the financial benefits of the management initiated early discharge provisions outlined below.

Management Initiated Early Discharge

New regulations 40A, 40AA, 40AB and 40AC (schedule 1, item 3) provide separate procedures for the management initiated early discharge of sailors. The new provisions establish a similar scheme to that established by sections 13K, 13L, 13M and 13N of the Act in relation to management initiated early retirement of officers in the Navy.

New regulation 40A empowers the Chief of Navy to initiate an early discharge or transfer of a sailor of the rank of Chief Petty Officer or Warrant Officer by giving the sailor written notice that the sailor is entitled to a special financial benefit if he or she discharges from the Navy or notifies in writing that he or she wishes to transfer to the Navy Reserve (within one month commencing

not earlier than the day the notice is given). The discharge is to take effect on a date specified in writing by the Chief of Navy, being a date no later than 28 days after the acceptance of the offer.

New regulation 40AB enables the Chief of Navy to compulsorily discharge without a special financial benefit a sailor who does not discharge or transfer to the Navy Reserve within the period specified in the notice under regulation 40A, if the Chief of Navy considers that the sailor needs to be removed for organisational effectiveness. The regulation also provides that the discharge of a sailor who does not accept an offer of a financial benefit will take effect no earlier than 13 months after the officer is given a notice.

New regulation 40AA provides that, before a sailor is compulsorily discharged under these provisions, or elects to transfer to the Naval Reserve, the sailor will be given by the Chief of Navy, in writing, reasons for his or her discharge and an opportunity to show cause why that action should proceed. In addition, new regulation 40AC provides that the periods described in new regulation 40A, 40AA and 40AB will be suspended while any redress of grievance complaint made by an affected sailor under the *Defence Force Regulations 1935*, or complaint under the *Ombudsman Act 1976*, is being finalised.