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Australian Military Amendment Regulations 2001 (No. 1)¹

Statutory Rules 2001 No. 1²

176

I, WILLIAM PATRICK DEANE, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Defence Act 1903*.

Dated 28 JUN 2001 2001

WILLIAM DEANE
Governor-General

By His Excellency's Command

BRUCE SCOTT
Minister for Veterans' Affairs

1 Name of Regulations

These Regulations are the *Australian Military Amendment Regulations 2001* (No. 1).

2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Australian Military Regulations 1927*

Schedule 1 amends the *Australian Military Regulations 1927*.

Schedule 1 Amendments

(regulation 3)

[1] After regulation 143

insert

143A Limited-tenure promotion of soldiers

- (1) The Chief of Army may, by instrument, promote a soldier to the rank of Warrant Officer Class 1 for the period specified in the instrument.
- (2) The Chief of Army may extend the period.
- (3) Subject to this regulation, at the end of the period (including any extension), the soldier is taken to be discharged from the Army.
- (4) At any time before the end of the period (including any extension), the Chief of Army may give written permission for the soldier, at the end of that period, to revert to the rank he or she held immediately before promotion.

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- (5) If permission is given under subregulation (4), then at the end of the period:
- (a) the soldier is not taken to be discharged from the Army under subregulation (3); and
 - (b) the soldier reverts to the rank that he or she held immediately before promotion.
- (6) At any time before the end of the period (including any extension), the soldier may notify the Chief of Army in writing that the soldier wishes to transfer to the Army Reserve at the end of the period.
- (7) If the soldier notifies the Chief of Army under subregulation (6), then at the end of the period:
- (a) the soldier is not taken to be discharged from the Army under subregulation (3); and
 - (b) the soldier is transferred to the Army Reserve.
- (8) A soldier may decline promotion under this regulation.

[2] Subregulation 176 (3), at the foot

insert

Note A soldier may also be discharged as a result of the operation of regulation 143A.

[3] After regulation 178

insert

179 Offer of special benefits to soldiers

- (1) Subject to regulation 180, the Chief of Army may give a soldier who holds the rank of Warrant Officer Class 1 or Warrant Officer Class 2 a written notice stating that if, within a specified period, the soldier:
- (a) discharges from the Army; or

- (b) notifies the Chief of Army in writing that the soldier wishes to transfer to the Army Reserve; the soldier will be entitled to a special benefit in accordance with a determination under section 58B or 58H of the Defence Act.
- (2) The period to be specified in the notice is a period of 1 month commencing not earlier than the day on which the notice is given to the soldier.
- (3) If a soldier is given a notice under subregulation (1):
 - (a) the soldier may discharge from the Army within the period specified in the notice even though he or she would not otherwise be entitled to discharge; and
 - (b) if the soldier discharges under paragraph (a):
 - (i) the discharge takes effect on the day specified in writing by the Chief of Army, being a day not later than 28 days after the day on which the soldier notified his or her acceptance of the special benefit; and
 - (ii) the soldier is taken for all purposes to have been compulsorily discharged from the Army.
- (4) If a soldier:
 - (a) is given a notice under subregulation (1); and
 - (b) notifies the Chief of Army under paragraph (1) (b);the soldier may transfer to the Army Reserve in the period specified in the notice.

180 Notice of intention to begin discharge or transfer procedures

- (1) The Chief of Army must not give a soldier a notice under subregulation 179 (1) unless the soldier has been given a written notice setting out the matters referred to in subregulation (2) and:
 - (a) the soldier has not given the Chief of Army the statement of reasons referred to in paragraph (2) (c); or
 - (b) having considered a statement of those reasons by the soldier, the Chief of Army is of the opinion that the notice under subregulation 179 (1) should be given.
- (2) The written notice must:
 - (a) inform the soldier that the Chief of Army is considering giving a notice under subregulation 179 (1) to the soldier; and
 - (b) state the reasons why the Chief of Army is considering giving that notice to the soldier; and
 - (c) invite the soldier, within the period specified in the notice, to give to the Chief of Army a written statement of reasons why the soldier should not be discharged from the Army or transferred to the Army Reserve.
- (3) The period specified for the purpose of paragraph (2) (c) must:
 - (a) be a period of at least 14 days; and
 - (b) commence not earlier than the day on which the notice is given to the soldier.

181 Discharge or transfer of soldiers without special benefits

- (1) This regulation applies to a soldier:
 - (a) to whom a notice has been given under subregulation 179 (1); and

- (b) who does not, within the period specified in the notice:
 - (i) discharge from the Army; or
 - (ii) transfer to the Army Reserve; and
 - (c) in respect of whom the Chief of Army considers it is necessary to take action under this regulation in the interests of the organisational effectiveness of the Army.
- (2) The Chief of Army may, at any time after the period specified in the notice given to the soldier under subregulation 179 (1), give notice to the soldier in accordance with subregulation (3).
 - (3) The notice is to the effect that the Chief of Army proposes to discharge the soldier at the end of a period (the *relevant period*) unless the soldier notifies the Chief of Army in writing in the relevant period that the soldier wishes to transfer to the Army Reserve at or before the end of that period.
 - (4) The relevant period must be not less than 13 months starting on the day on which the notice is given to the soldier.
 - (5) If the soldier does not notify the Chief of Army in accordance with subregulation (3), the Chief of Army may discharge the soldier at the end of the relevant period.
 - (6) For the purposes of subregulation (5), the Chief of Army discharges a soldier by giving notice to the soldier that the soldier is discharged from the Army at the end of the relevant period.
 - (7) A soldier to whom notice is given under subregulation (6) is discharged from the Army at the end of the relevant period.
 - (8) A soldier who is discharged under subregulation (7) is taken for all purposes to have been compulsorily discharged from the Army.

182 Time not to run during certain periods

- (1) In ascertaining when a period referred to in this Division ends in relation to a soldier, any period during which a complaint made by the soldier is being investigated is not to be taken into account.
- (2) Subregulation (1) applies only to a complaint that:
 - (a) is made by the soldier:
 - (i) under the *Defence Force Regulations 1952*;
or
 - (ii) to the Defence Force Ombudsman under the *Ombudsman Act 1976*; and
 - (b) concerns action taken under regulation 179, 180 or 181 in relation to the soldier.

Notes

1. These Regulations amend Statutory Rules 1927 No. 149, as amended by 1928 Nos. 23, 28 and 126; 1929 No. 123; 1930 Nos. 26, 67 and 92; 1931 No. 13; 1932 Nos. 80, 87 and 125; 1933 Nos. 49 and 77; 1934 Nos. 26 and 80; 1935 Nos. 99 and 109; 1936 Nos. 21, 44 and 100; 1937 No. 45; 1938 Nos. 75, 90 and 93; 1939 Nos. 31, 51, 58, 115, 123, 134, 160 and 173; 1940 Nos. 2, 16, 29, 59, 150, 183, 184, 185, 186, 199, 237, 252, 272 and 273; 1941 Nos. 3, 4, 14, 43, 135, 153, 155, 205, 245, 246, 260 and 311; 1942 Nos. 35, 59, 60, 85, 114, 166, 179, 211, 231, 289, 333, 334, 350, 417, 477, 506, 508, 521, 522, 555 and 556; 1943 Nos. 17, 68, 72, 126, 174, 199, 200, 219, 244, 245, 246, 249 and 258; 1944 Nos. 1, 39, 69, 71, 72, 114, 120, 122, 154 and 164; 1945 Nos. 6, 19, 38, 42, 68, 94, 111, 141 and 195; 1946 Nos. 72, 113, 114, 116 and 150; 1947 Nos. 25 and 59; 1948 Nos. 40, 59, 65 and 79; 1949 Nos. 55 and 68; 1950 Nos. 10, 21, 29, 64 and 65; 1951 Nos. 20, 56, 125, 149 and 152; 1952 Nos. 8, 60, 68 and 69; 1953 No. 87; 1954 Nos. 113, 117 and 118; 1955 Nos. 7, 31 and 55; 1956 Nos. 52, 102 and 115; 1957 No. 56; 1958 Nos. 31, 32 and 85; 1959 Nos. 22 and 30; 1960 No. 25; 1961 No. 42; 1962 Nos. 23, 27, 68, 69 and 71; 1963 No. 28; 1964 Nos. 62, 83, 93 and 149; 1965 Nos. 61, 72, 116, 119, 138 and 174; 1966 Nos. 119 and 167; 1967 Nos. 13, 118 and 168; 1968 Nos. 91 and 96; 1969 Nos. 76, 94, 96, 197 and 217; 1970 Nos. 101 and 193; 1971 Nos. 85 and 179; 1972 Nos. 57, 123 and 207; 1973 Nos. 99, 206, 245 and 250; 1974 Nos. 75 and 91; 1975 Nos. 2, 143, 144 and 192; 1976 Nos. 59 and 220; 1977 No. 50; 1978 Nos. 53, 139 and 197; 1979 Nos. 20, 30, 169, 170 and 242; 1980 Nos. 64, 177, 245, 340 and 360; 1981 Nos. 54, 60, 257 and 338; 1982 Nos. 36, 190 and 331; 1983 Nos. 40, 61, 203 and 289; 1984 Nos. 76, 78, 378, 390, 391 and 429; 1985 Nos. 90, 117 and 211; 1986 No. 331; 1987 Nos. 19 and 177; 1988 Nos. 38, 90 and 127; 1990 Nos. 42 and 375; 1991 No. 131; 1993 No. 190; 1995 Nos. 261 and 274; 1997 No. 38; 2000 Nos. 67 and 263.
2. Notified in the *Commonwealth of Australia Gazette* on 2001.

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5 July