



Defence Reserve Service (Protection) Regulations 2001

Statutory Rules 2001 No. $\angle 1$

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I, PETER JOHN HOLLINGWORTH, Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following Regulations under the *Defence Reserve Service (Protection) Act 2001*.

Dated - 6 DEC 2001 2001

PETER HOLLINGWORTH

Governor-General

By His Excellency's Command

DANNA VALE Minister for Veterans' Affairs

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Part 1 Introductory

These Regulations are the Defence Reserve Service (Protection) Regulations 2001.

2 Commencement

These Regulations commence on gazettal.

3 Definitions

In these Regulations:

Act means the Defence Reserve Service (Protection) Act 2001.

call out member means a member who has rendered, or is rendering, continuous full-time defence service as a result of a call out.

Deputy Director means the Deputy Director of the Office of Reserve Service Protection.

Director means the Director of the Office of Reserve Service Protection.

Office means the Office of Reserve Service Protection.

Note For the meaning of ADI, Australian education institution, commission agent, contractor, defence service, employment, loan and member, see section 7 of the Act.

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Part 2 Powers and functions of the Office of Reserve Service Protection

Division 1 Office and its officeholders

4 Establishment of the Office

- (1) The Office of Reserve Service Protection is established.
- (2) The Office must be controlled by the Director of the Office in accordance with these Regulations.
- (3) For Part 10 of the Act, the Office is a prescribed authority.

5 Director of the Office

- (1) The office of Director of the Office of Reserve Service Protection is established.
- (2) The Assistant Chief of the Defence Force (Reserves) must appoint a person to be the Director.
- (3) The Assistant Chief of the Defence Force (Reserves) may appoint a person to act as the Director:
 - (a) during a vacancy in the office of the Director; or
 - (b) during any period, or during all periods, when the Director is absent from duty or is, for any other reason, unable to perform the functions of the office.
- (4) The Assistant Chief of the Defence Force (Reserves) must appoint a person to act as the Director during a period when no person is holding the office of, or acting as, the Deputy Director.
- (5) An appointment made under this regulation must be made in writing.
- (6) For Part 11 of the Act, a person holding, or acting in, the office of the Director is a prescribed person.

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Deputy Director of the Office

- (1) The office of Deputy Director of the Office of Reserve Service Protection is established.
- (2) The Assistant Chief of the Defence Force (Reserves) must appoint a person to be the Deputy Director.
- (3) Subject to subregulation (4), the Deputy Director must act as the Director:
 - (a) during a vacancy in the office of the Director; or
 - (b) during any period, or during all periods, when the Director is absent from duty or is, for any other reason, unable to perform the functions of the office.
- (4) The Deputy Director must not act as the Director during a vacancy in the office of Director while a person appointed under subregulation 5 (3) is acting in that office.
- (5) The Assistant Chief of the Defence Force (Reserves) must appoint a person to act as the Deputy Director:
 - (a) during a vacancy in the office of the Deputy Director; or
 - (b) during any period, or during all periods, when the Deputy Director is absent from duty or is, for any other reason, unable to perform the functions of the office.
- (6) An appointment made under this regulation must be made in writing.
- (7) For Part 11 of the Act, a person holding, or acting in, the office of the Deputy Director is a prescribed person.

7 Evidence of person holding office

- (1) In a proceeding mentioned in section 73, 75 or 76 of the Act, a statement in a certificate signed by an authorised person that:
 - (a) a person is the holder of the office of the Director or Deputy Director; or
 - (b) a person has been appointed to act in the office of the Director or Deputy Director;

is presumed to be true.

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(2) In this regulation:

authorised person means the Secretary to the Department, the Chief of the Defence Force, the Vice Chief of the Defence Force or the Assistant Chief of the Defence Force (Reserves).

Division 2 Loans and guarantees to returned call out members

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Amount of loan or guarantee (Act s 67 (1))

For subsection 67 (1) of the Act:

- (a) the maximum amount of a loan that the Office may make, or a guarantee that the Office may give, to a call out member before 1 October 2001 is \$500 000; and
- (b) the maximum amount of a loan that the Office may make, or a guarantee that the Office may give, to a call out member after 1 October 2001 is \$500 000, adjusted in accordance with the indexation scheme set out in regulation 9.

9 Indexation of maximum loan amounts

(1) The maximum loan amount for the indexation period commencing on 1 October 2001 and each succeeding indexation period is:

$$A \times \frac{B}{C}$$

taken (in accordance with subregulation (2)) to the nearest dollar, where:

A is:

- (a) the maximum loan amount for the previous indexation period; or
- (b) if the indexation period is the first indexation period \$500 000.

B is:

(a) for an indexation period commencing on 1 October — the index number for the last preceding June quarter; or

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(b) for an indexation period commencing on 1 April — the index number for the last preceding December quarter.

C is the highest index number for a June or December quarter that occurred:

- (a) earlier than the quarter mentioned in relation to factor B; but
- (b) not earlier than the December 2000 quarter.
- (2) If the maximum loan amount worked out in accordance with the formula in subregulation (1) is an amount of dollars and cents, the amount is to be rounded to the nearest whole dollar and, if the amount to be rounded is 50 cents, rounded down.
- (3) In this regulation, unless the contrary intention appears:

indexation period means the 6-month period starting on 1 October 2001 and each subsequent 6-month period.

index number, for a quarter, means the All Groups Consumer Price Index number (the weighted average of the 8 capital cities) published by the Australian Statistician for that quarter.

maximum loan amount, for an indexation period, means the maximum amount of a loan that the Office may make, or a guarantee that the Office may give, to a call out member under paragraph 8 (b).

- (4) Subject to subregulation (5), if at any time, whether before or after the commencement of this regulation, the Australian Statistician has published or publishes an index number for a quarter in substitution for an index number previously published by the Australian Statistician for that quarter, the publication of the later index number must be disregarded for this regulation.
- (5) If at any time, whether before or after the commencement of this regulation, the Australian Statistician has changed or changes the reference base for the consumer price index, then, for the purposes of the application of this regulation after the change is made, regard must be had only to index numbers published in terms of the new reference base.

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10 Interest on loans

For section 69 of the Act, interest on a loan made under Part 10 of the Act is payable at 2% below the Residential-secured Term Lending Rate for Small Business published by the Reserve Bank for the month occurring immediately before the month in which the loan is made.

11 Loan application period

An application by a call out member must be made:

- (a) while the member is rendering continuous full-time defence service as a result of a call out; or
- (b) within 12 months after the member stops rendering that service.

12 Information affecting grant of loan

- (1) Subregulation (2) applies if the Director reasonably believes that a person is capable of providing information about a matter that might affect the grant of a loan to a particular call out member.
- (2) The Director may give a notice to the person:
 - (a) stating the nature of the information that might affect the grant of a loan to a particular call out member; and
 - (b) asking the person to give the information to the Office, in writing, within 14 days after the person receives the notice.

Note It is an offence to give false or misleading information to a person who is exercising powers or performing functions under a law of the Commonwealth. The penalty for such an offence is imprisonment for 12 months. See Division 137 of the *Criminal Code*.

Division 3 Complaints and investigations

13 Complaints about contraventions of the Act

(1) A person may make a complaint to the Office about an alleged contravention of the Act orally or in writing.

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- (2) If the complaint is made to the Office orally, the Office may record the complaint in writing or require the complainant to record the complaint in writing and give the written complaint to the Office.
- (3) If the Office requires the complainant to give the Office a written complaint, the Office may decline to consider further, or investigate, the complaint until the Office receives the written complaint.
- (4) A written complaint must:
 - (a) state the nature of the complaint; and
 - (b) state the name, postal address, fax number (if any) and e-mail address (if any) of the complainant; and
 - (c) be signed by the complainant; and
 - (d) set out any other relevant information that the Office reasonably requires.
- (5) A written complaint sent to the Office by e-mail must be capable of being printed in the form in which it was created.
- (6) Strict compliance with subregulation (4) or (5) is not necessary and substantial compliance is sufficient.

Note The signature mentioned in paragraph (4) (c) may not be required for a written complaint if the complaint is an electronic communication (see section 10 of the *Electronic Transactions Act 1999*).

14 Notification of complaint

- (1) As soon as practicable after receiving a complaint, the Office must give a notice stating that the complaint has been received to:
 - (a) the complainant; and
 - (b) the person alleged to be responsible for contravening the Act.
- (2) The notice mentioned in subregulation (1) must:
 - (a) give details of the complaint; and

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(b) invite the complainant and the person alleged to be responsible for the contravention to send written submissions to the Office, together with any supporting documents.

15 Considering complaints

- (1) The Office must consider a written complaint and decide whether it is justified.
- (2) The Office may also consider an oral complaint and decide whether it is justified.
- (3) In considering a complaint, the Office must take into account:
 - (a) any written submission to the Office mentioned in paragraph 14 (2) (b); and
 - (b) the results of its investigation (if any) into the complaint.
- (4) At any time after receiving a complaint, the Office may refer the parties involved to its mediation service under subregulation 22 (1).

16 Investigation of complaints

- (1) The Office may investigate any complaint made under subregulation 13 (1).
- (2) However, the Office need not investigate a complaint if the Office is satisfied on reasonable grounds that the complaint is:
 - (a) frivolous or
 - (b) vexatious; or
 - (c) not made in good faith.
- (3) As soon as practicable after an investigation has been completed, the Office must give a notice that summarises the results of the investigation to:
 - (a) the complainant; and
 - (b) the person alleged to be responsible for contravening the Act.

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Note Principle 11 of the *Privacy Act 1988* sets out limits on disclosure by a Department or other agency of personal information about an individual in the possession or control of the Department or agency.

Under paragraph 1 (a) of Principle 11, the Department or agency may disclose the information to a person (other than the individual concerned) if the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person.

Under paragraph 1 (d) of Principle 11, the Department or agency may disclose the information to a person (other than the individual concerned) if the disclosure is required or authorised by or under law.

17 Investigating other matters

If the Office becomes aware of a possible contravention of the Act (other than by means of a complaint), the Office may investigate the possible contravention.

18 Power to obtain information and documents

- (1) This regulation applies if the Director reasonably believes that a person (*employer*) is capable of providing information, or producing a document, that is relevant to an investigation being conducted under these Regulations in relation to:
 - (a) the employer's refusal or failure to offer to employ a member; or
 - (b) the employee's conduct in relation to a member who is, or was, an employee of the employer.
- (2) This regulation applies if the Director reasonably believes that:
 - (a) a person who proposes to form a partnership (*partner*) is capable of providing information, or producing a document, that is relevant to an investigation being conducted under these Regulations in relation to the partner's refusal or failure to invite a member to become a partner in the partnership; or
 - (b) a person who is or was a partner in a partnership (*partner*) is capable of providing information, or producing a document, that is relevant to an investigation being conducted under these Regulations in relation to the partner's treatment of a member who is, or was, a partner in the partnership.

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- (3) This regulation applies if the Director reasonably believes that a person (*principal*) is capable of providing information, or producing a document, that is relevant to an investigation being conducted under these Regulations in relation to:
 - (a) the principal's refusal or failure to engage a member as a commission agent; or
 - (b) the principal's conduct in relation to a member who is, or was, engaged by the principal as a commission agent.
- (4) This regulation applies if the Director reasonably believes that a person (*principal*) is capable of providing information, or producing a document, that is relevant to an investigation being conducted under these Regulations in relation to:
 - (a) the principal's refusal or failure to engage a member as a contractor; or
 - (b) the principal's conduct in relation to a member who is, or was, engaged by the principal as a contractor.
- (5) This regulation applies if the Director reasonably believes that an Australian education institution is capable of producing a document, or providing information, that is relevant to an investigation being conducted under these Regulations in relation to the institution's treatment of a member mentioned in section 38 of the Act.
- (6) The Director may give a notice to the employer, partner, principal or education institution (*relevant person*):
 - (a) requiring the relevant person to give the document to the Director within 14 days after the notice is received by the person; or
 - (b) stating the nature of the information and requiring the relevant person to give the information to the Director, in writing, within 14 days after the notice is received by the person.
- (7) A relevant person who is given a notice must comply with the notice.
- (8) In this regulation:

employer has a meaning that corresponds with the definition of *employment* in section 7 of the Act.

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member includes a person who may volunteer to render defence service.

19 Penalty for failure to comply with notice

(1) A person to whom a notice is sent under subregulation 18 (6) must not fail to give the information requested in accordance with subregulation 18 (7).

Penalty: 10 penalty units.

(2) If a person fails to comply with a notice, the Director may draw an inference from the failure that is adverse to the person.

Note It is an offence to give false or misleading information to a person who is exercising powers or performing functions under a law of the Commonwealth. The penalty for such an offence is imprisonment for 12 months. See Division 137 of the *Criminal Code*.

20 Preservation of the privilege against self-incrimination

- (1) A person who would, apart from this subregulation, be required to give a document, or information in writing, to the Director under subregulation 18 (7), need not comply with that requirement if so complying would tend to:
 - (a) incriminate the person; or
 - (b) result in further attempts to obtain evidence that would tend to incriminate the person.
- (2) However, subregulation (1) does not apply, and the person must comply with the requirement in subregulation 18 (7), if the person has waived his or her rights under subregulation (1).

21 Documents produced as required

If a document or other information is given to the Office in accordance with subregulation 18 (7) for an investigation, the Office may:

- (a) make copies of, or take extracts from, the documents; and
- (b) retain possession of the document or other information for as long as is necessary for the investigation to which the documents relate.

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22 Resolving disputes by mediation

- (1) The Office may operate a mediation service to which it may refer parties to a dispute arising between persons whose interests are affected by a provision of the Act or these Regulations.
- (2) The Office must ensure that a person working for the service as a mediator has appropriate qualifications as a mediator.
- (3) A mediation conference must be conducted as a structured process in which the mediator assists the parties to a dispute by encouraging and facilitating discussion between the parties so that they communicate effectively with each other about the dispute and devise strategies for resolving the dispute.
- (4) When conducting a mediation conference, a mediator:
 - (a) must not give legal advice (except advice about procedural matters) to any party to the dispute; and
 - (b) must terminate the mediation process if requested to do so by a party or if satisfied that the mediation process is no longer appropriate.

Note If mediation fails to resolve a dispute, the matter may be resolved in any of the following ways:

The Office may refer a complaint about an alleged contravention of the Act that involves an offence to a member of:

- (a) the Australian Federal Police; or
- (b) the police force of a State or Territory.

Under section 73 of the Act, a person who suffers loss because another person contravenes, or was involved in contravening, a provision of the Act may bring an action for damages against the other person in a court, even if the other person did not commit an offence. The action may be brought by a prescribed person on behalf of the aggrieved person.

Under section 75 of the Act, on application from an interested person (or a prescribed person acting on behalf of the interested person), a court may grant an injunction restraining another person from engaging in conduct constituting an offence or other contravention of the Act.

Under section 76 of the Act, on application from an interested person (or a prescribed person acting on behalf of the interested person), a court may make any other order it thinks fit if a person enters a transaction, or brings a proceeding, in contravention of the Act.

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Under subregulations 5 (6) and 6 (7), the prescribed persons for sections 73, 75 and 76 of the Act are the Director and the Deputy Director.

23 Giving information about investigation to members affected

- (1) The Office may give to a member, or his or her legal representative, a copy of extracts from an investigation report about a possible contravention of the Act that affects the interests of the member (whether or not the contravention is an offence) that are reasonably necessary for the purpose of:
 - (a) the member deciding whether to apply to a court of competent jurisdiction under section 73, 75 or 76 of the Act; or
 - (b) an application to a court of competent jurisdiction under section 73, 75 or 76 of the Act.
- (2) In subregulation (1):

member includes a person who may volunteer to render defence service.

Note Principle 11 of the *Privacy Act 1988* sets out limits on disclosure by a Department or other agency of personal information about an individual in the possession or control of the Department or agency.

Under paragraph 1 (a) of Principle 11, the Department or agency may disclose the information to a person (other than the individual concerned) if the individual concerned is reasonably likely to have been aware, or made aware under Principle 2, that information of that kind is usually passed to that person.

Under paragraph 1 (d) of Principle 11, the Department or agency may disclose the information to a person (other than the individual concerned) if the disclosure is required or authorised by or under law.

Under paragraph 1 (e) of Principle 11, the Department or agency may disclose the information to a person (other than the individual concerned) if the disclosure is reasonably necessary for the enforcement of the criminal law or of a law imposing a pecuniary penalty.

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Division 4 Miscellaneous

24 Other functions of the Office

(1) The Office also has the following functions:

- (a) responding to inquiries about the Act or these Regulations;
- (b) monitoring compliance with the Act and these Regulations;
- (c) conducting training about the provisions of the Act and these Regulations for the benefit of interested persons;
- (d) preparing and distributing information about the Act and these Regulations to members, employers and other members of the public;
- (e) making recommendations for enhancing the protection provided by the Act and for improving the Act or these Regulations in other respects to the Minister.
- (2) The Office may also give financial or other support to members applying to a court under section 73, 75 or 76 of the Act for a remedy.

25 Interest payable on postponed payments under an agreement (Act s 53 (3))

For paragraph 53 (3) (b) of the Act, the rate of interest on a postponed payment under an agreement is payable at 2% below the Residential-secured Term Lending Rate for Small Business published by the Reserve Bank for the month occurring immediately before the month in which the loan is made.

26 Interest payable on payment of postponed rates etc on land (Act s 54 (3))

For subsection 54 (3) of the Act, the rate of interest on a postponed payment under an agreement is payable at 2% below the Residential-secured Term Lending Rate for Small Business published by the Reserve Bank for the month occurring immediately before the month in which the loan is made.

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			Note		
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1.	Notified in the Commonwealth of Australia Gazette on	1	2001.	13 December	

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