



Defence Reserve Service (Protection) Regulations 2001

Statutory Rules 2001 No. 4¹

325

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

Contents

		Page
Part 1	Introductory	
	1 Name of Regulations	3
	2 Commencement	3
	3 Definitions	3
Part 2	Powers and functions of the Office of Reserve Service Protection	
Division 1	Office and its officeholders	
	4 Establishment of the Office	4
	5 Director of the Office	4
	6 Deputy Director of the Office	5
	7 Evidence of person holding office	5
Division 2	Loans and guarantees to returned call out members	
	8 Amount of loan or guarantee (Act s 67 (1))	6
	9 Indexation of maximum loan amounts	6
	10 Interest on loans	8
	11 Loan application period	8
	12 Information affecting grant of loan	8
Division 3	Complaints and investigations	
	13 Complaints about contraventions of the Act	8
	14 Notification of complaint	9
	15 Considering complaints	10
	16 Investigation of complaints	10
	17 Investigating other matters	11
	18 Power to obtain information and documents	11
	19 Penalty for failure to comply with notice	13
	20 Preservation of the privilege against self-incrimination	13
	21 Documents produced as required	13
	22 Resolving disputes by mediation	14
	23 Giving information about investigation to members affected	15

		Page
Division 4	Miscellaneous	
	24 Other functions of the Office	16
	25 Interest payable on postponed payments under an agreement (Act s 53 (3))	16
	26 Interest payable on payment of postponed rates etc on land (Act s 54 (3))	16

Part 1 **Introductory**

1 Name of Regulations

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.

Regulation 4

**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.

- (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.

Regulation 10

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.

Regulation 18

- (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.

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.

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.

Regulation 24

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.

