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Public Service Amendment Regulations 2002 (No. 1)¹

Statutory Rules 2002 No. ²

214

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 *Public Service Act 1999*.

Dated - 5 SEP 2002 2002

PETER HOLLINGWORTH

Governor-General

By His Excellency's Command

TONY ABBOTT
 Minister for Employment and Workplace Relations
 for the Prime Minister

1 Name of Regulations

These Regulations are the *Public Service Amendment Regulations 2002 (No. 2)*. /

2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Public Service Regulations 1999*

Schedule 1 amends the *Public Service Regulations 1999*.

Schedule 1 Amendments

(regulation 3)

[1] After Part 8

insert

Part 8A Attachment of salaries to satisfy judgment debts

8A.1 Definitions

(1) In this Part:

debtor means a Secretary, a Head of an Executive Agency, or an APS employee who owes a judgment debt.

net salary has the meaning given by subregulation (2).

paying officer, in relation to a debtor, means a person appointed under regulation 8A.4 who is responsible for dealing with the debtor.

total gross salary has the meaning given by subregulation (3).

- (2) The *net salary* of a debtor is the debtor's total gross salary, less any amount to be deducted:
- (a) to pay income tax; or
 - (b) to pay child support in accordance with the *Child Support (Assessment) Act 1989*; or
 - (c) as a contribution that:
 - (i) the debtor is required to make to a superannuation fund relating to the debtor's engagement in the Agency; and
 - (ii) is the minimum amount required by law or the rules of the fund.
- (3) The *total gross salary* of a debtor is the amount of:
- (a) the debtor's gross salary as a Secretary, a Head of an Executive Agency or an APS employee (not including any payment of compensation under the *Safety, Rehabilitation and Compensation Act 1988*); and
 - (b) the allowances, in the nature of salary, that are paid regularly to the debtor;
- without any reduction for salary sacrifice arrangements or other arrangements with a similar purpose.

8A.2 Application of Part 8A

This Part does not apply in relation to a debtor:

- (a) whose estate has been sequestrated, either voluntarily or compulsorily, for the benefit of creditors; and
- (b) who has not yet obtained a certificate of discharge.

8A.3 Application of State and Territory law

A law of a State or a Territory that deals with satisfying a judgment debt:

- (a) applies to a debtor's judgment debt to the extent that the law deals with the calculation of interest on the debt; and
- (b) does not apply to the judgment debt for any other purpose.

8A.4 Paying officer

- (1) If an Agency Head believes that the making of deductions from a debtor's salary is required, the Agency Head must appoint 1 or more persons as paying officers for the purpose of making those deductions.
- (2) If a person is appointed as a paying officer:
 - (a) the appointment authorises the person to act as a paying officer only in relation to the debtor to whom the appointment relates; and
 - (b) the person is responsible for making deductions from the debtor's salary to satisfy the judgment debt against the debtor.
- (3) A debtor is not authorised to be the paying officer for himself or herself.

8A.5 Authority to make deductions

- (1) Deductions from a debtor's salary in order to satisfy a judgment debt may be started only if:
 - (a) the paying officer has received a statutory declaration, made by the judgment creditor, that the judgment debt exists and has not been discharged; and
 - (b) the paying officer has received a copy of the judgment to which the judgment debt relates, certified by the Registrar or other appropriate officer of the relevant court; and
 - (c) the paying officer has received the fee (if any) required under regulation 8A.6; and
 - (d) the paying officer has given the debtor a notice in accordance with subregulation (2); and
 - (e) the debtor does not, within the time specified in the notice given under subregulation (2), satisfy the paying officer that the judgment debt has been satisfied.

Note Regulation 8A.7 deals with cases where there are 2 or more judgment debts against a debtor.

- (2) The paying officer must:
 - (a) notify the debtor, as soon as practicable, that it is proposed to make the deductions; and

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- (b) require the debtor to state, in writing, by a time specified in the notice, whether the judgment has been satisfied, and:
- (i) if the judgment debt has been satisfied — to give the paying officer evidence in support of that fact; and
 - (ii) if the judgment debt has not been satisfied — to state the amount due under the judgment at the time the statement is made.
- (3) If the debtor does not give the paying officer evidence that the judgment debt has been satisfied by the time specified in the notice under subregulation (2), the paying officer must deduct from the debtor's salary on each pay day for the debtor an amount equal to:
- (a) the deduction required under regulation 8A.9; or
 - (b) a lesser amount that, in the paying officer's opinion, is needed to satisfy the balance of the judgment debt.
- (4) After making the first deduction, the paying officer is authorised to continue to make deductions only if the paying officer has no reason to believe that the judgment debt has been discharged.
- (5) The paying officer must ensure that the amount of each deduction is paid to the judgment creditor.

8A.6 Administration fee

- (1) A judgment creditor (other than the Commonwealth) who requests the payment of a judgment debt must pay a fee of \$38 for the making of the deductions.
- (2) The fee is the price of the supply of a service for the purposes of the *A New Tax System (Goods and Services Tax) Act 1999*.
- (3) If a judgment creditor (other than the Commonwealth) requests the payment of a judgment debt, but does not pay the fee when making the request, the paying officer must notify the judgment creditor that:
 - (a) the fee is payable for making the deductions; and
 - (b) no deductions will be made unless the fee is paid.

8A.7 More than 1 judgment debt

- (1) If more than 1 judgment debt exists against a debtor, the paying officer:
 - (a) must deal with the judgment debts in the order in which requests for deductions were received; and
 - (b) must not make a deduction for the purposes of a particular judgment debt until all judgment debts for which earlier requests were made have been satisfied.
- (2) If the paying officer receives 2 or more requests at the same time for the payment of judgment debts against a debtor, the paying officer must deal with the judgment debts in the order of the dates and times at which judgment was given for each debt, starting with the earliest judgment.

8A.8 Effect of deductions

If an amount is paid to a judgment creditor after a deduction is made from the debtor's salary on a pay day for the debtor:

- (a) an amount equal to that amount is taken to have been paid by the Commonwealth to the debtor on account of salary payable to the debtor on that pay day; and
- (b) an amount equal to that amount is taken to have been paid by the debtor to the judgment creditor for the purposes of the judgment debt.

8A.9 Rate of deductions

- (1) For paragraph 8A.5 (3) (a), the rate at which a deduction is to be made from the debtor's net salary on a pay day for the debtor is 20% unless subregulation (2), (3) or (4) applies.
- (2) If the paying officer is satisfied that the debtor:
 - (a) is suffering serious financial hardship; or
 - (b) would suffer serious financial hardship if the rate of deduction is not reduced;the paying officer may reduce the rate at which deductions are to be made.

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- (3) If the debtor asks the paying officer, in writing, to make deductions at a rate greater than 20% of the debtor's net salary, the paying officer must comply with the request as soon as practicable.
 - (4) If:
 - (a) deductions are being made at a rate greater than 20% of the debtor's net salary; and
 - (b) the debtor asks a paying officer, in writing, to reduce the rate of the deductions;the paying officer must reduce the rate as soon as practicable, but is not required to reduce the rate to less than 20%.

8A.10 Move to another Agency

- (1) If a debtor moves from an Agency (*Agency 1*) to another Agency (*Agency 2*), the debtor's paying officer in Agency 1 must notify the Agency Head of Agency 2 of:
 - (a) the existence of each judgment debt against the debtor; and
 - (b) the arrangements in Agency 1 for making deductions from the debtor's salary; and
 - (c) any deductions made for the purposes of each of those judgment debts.
- (2) If more than 1 judgment debt exists against the debtor:
 - (a) the debtor's paying officer in Agency 1 must advise the Agency Head of the order in which the judgment debts were to have been dealt with in accordance with regulation 8A.7; and
 - (b) the paying officer who is appointed in Agency 2 in relation to the debtor must deal with the judgment debts in that order.
- (3) The paying officer in Agency 2 is taken:
 - (a) to have received the statutory declaration, and copy of the judgment, mentioned in regulation 8A.5; and
 - (b) to have received the fee (if any) required under regulation 8A.6; and

- (c) to have given to the debtor any notice that was given, in respect of the debtor, by a paying officer in another Agency.
- (4) The paying officer in Agency 2 must notify the judgment creditor of the move, and the deductions that the paying officer will make.
- (5) The judgment creditor is not required to pay another fee for the making of deductions.

8A.11 Administration of deductions

- (1) A paying officer in relation to a debtor may:
 - (a) require the judgment creditor to confirm that the judgment debt has not been discharged; and
 - (b) suspend the making of deductions until the paying officer receives the confirmation.
- (2) If a debtor's employment ceases, or is terminated, for any reason (including the debtor's death) the paying officer must notify the judgment creditor of the cessation or termination as soon as practicable.

8A.12 Recovery of overpayment

If a payment made to a judgment creditor for the purposes of a judgment debt exceeds the amount due under the judgment, the excess is repayable by the judgment creditor to the debtor.

[2] Regulation 9.1

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Notes

- 1. These Regulations amend Statutory Rules 1999 No. 300, as amended by 2000 No. 359; 2001 No. 328.
- 2. Notified in the *Commonwealth of Australia Gazette* on *L* 2002. *12 September*