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Naval Forces Amendment Regulations 2001 (No. 1)¹

Statutory Rules 2001 No. 1²

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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 *Naval Defence Act 1910*.

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 *Naval Forces Amendment Regulations 2001* (No.).

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2 Commencement

These Regulations commence on gazettal.

3 Amendment of *Naval Forces Regulations 1935*

Schedule 1 amends the *Naval Forces Regulations 1935*.

Schedule 1 Amendments

(regulation 3)

[1] Part I, Division 5, after regulation 34

insert

34A Limited-tenure promotion of sailors

- (1) The Chief of Navy may, by instrument, promote a sailor to the rank of Warrant Officer for the period specified in the instrument.
- (2) The Chief of Navy may extend the period.
- (3) Subject to this regulation, at the end of the period (including any extension), the sailor is taken to be discharged from the Navy.
- (4) At any time before the end of the period (including any extension), the Chief of Navy may give written permission for the sailor, 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 sailor is not taken to be discharged from the Navy under subregulation (3); and
 - (b) the sailor 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 sailor may notify the Chief of Navy in writing that the sailor wishes to transfer to the Australian Naval Reserve at the end of the period.
- (7) If the sailor notifies the Chief of Navy under subregulation (6), then at the end of the period:
- (a) the sailor is not taken to be discharged from the Navy under subregulation (3); and
 - (b) the sailor is transferred to the Australian Naval Reserve.
- (8) A sailor may decline promotion under this regulation.

[2] Paragraph 38 (1) (k), at the foot

insert

Note A sailor may also be discharged as a result of the operation of regulation 34A.

[3] Part I, Division 6, after regulation 40

insert

40A Offer of special benefits to sailors

- (1) Subject to regulation 40AA, the Chief of Navy may give to a sailor who holds the rank of Warrant Officer or Chief Petty Officer a written notice stating that if, within a specified period, the sailor:
- (a) discharges from the Navy; or

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- (b) notifies the Chief of Navy in writing that the sailor wishes to transfer to the Australian Naval Reserve;
- the sailor will be entitled to a special benefit in accordance with a determination under section 58B or 58H of the *Defence Act 1903*.
- (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 sailor.
- (3) If a sailor is given a notice under subregulation (1):
- (a) the sailor may discharge from the Navy within the period specified in the notice even though he or she would not otherwise be entitled to discharge; and
- (b) if the sailor discharges under paragraph (a):
- (i) the discharge takes effect on the day specified in writing by the Chief of Navy, being a day not later than 28 days after the day on which the sailor notified his or her acceptance of the special benefit; and
- (ii) the sailor is taken for all purposes to have been compulsorily discharged from the Navy.
- (4) If a sailor:
- (a) is given a notice under subregulation (1); and
- (b) notifies the Chief of Navy under paragraph (1) (b);
- the sailor may transfer to the Australian Naval Reserve in the period specified in the notice.

40AA Notice of intention to begin discharge or transfer procedures

- (1) The Chief of Navy must not give a sailor a notice under subregulation 40A (1) unless the sailor has been given a written notice setting out the matters referred to in subregulation (2) and:
 - (a) the sailor has not given to the Chief of Navy the statement of reasons referred to in paragraph (2) (c); or
 - (b) having considered a statement of those reasons by the sailor, the Chief of Navy is of the opinion that the notice under subregulation 40A (1) should be given.
- (2) The written notice must:
 - (a) inform the sailor that the Chief of Navy is considering giving a notice under subregulation 40A (1) to the sailor; and
 - (b) state the reasons why the Chief of Navy is considering giving that notice to the sailor; and
 - (c) invite the sailor, within the period specified in the notice, to give to the Chief of Navy a written statement of reasons why the sailor should not be discharged from the Navy or transferred to the Australian Naval 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 sailor.

40AB Discharge or transfer of sailors without special benefits


- (1) This regulation applies to a sailor:
 - (a) to whom a notice has been given under subregulation 40A (1); and

- (b) who does not, within the period specified in the notice:
 - (i) discharge from the Navy; or
 - (ii) transfer to the Australian Naval Reserve; and
 - (c) in respect of whom the Chief of Navy considers it is necessary to take action under this regulation in the interests of the organisational effectiveness of the Navy.
- (2) The Chief of Navy may, at any time after the period specified in the notice given to the sailor under subregulation 40A (1), give notice to the sailor in accordance with subregulation (3).
 - (3) The notice is to the effect that the Chief of Navy proposes to discharge the sailor at the end of a period (the *relevant period*) unless the sailor notifies the Chief of Navy in writing in the relevant period that the sailor wishes to transfer to the Australian Naval 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 sailor.
 - (5) If the sailor does not notify the Chief of Navy in accordance with subregulation (3), the Chief of Navy may discharge the sailor at the end of the relevant period.
 - (6) For the purposes of subregulation (5), the Chief of Navy discharges a sailor by giving notice to the sailor that the sailor is discharged from the Navy at the end of the relevant period.
 - (7) A sailor to whom notice is given under subregulation (6) is discharged from the Navy at the end of the relevant period.
 - (8) A sailor who is discharged under subregulation (7) is taken for all purposes to have been compulsorily discharged from the Navy.

40AC Time not to run during certain periods

- (1) In ascertaining when a period referred to in this Division ends in relation to a sailor, any period during which a complaint made by the sailor is being investigated is not to be taken into account.
- (2) Subregulation (1) applies only to a complaint that:
 - (a) is made by the sailor:
 - (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 40A, 40AA or 40AB in relation to the sailor.

Notes

1. These Regulations amend Statutory Rules 1935 No. 133, as amended by 1936 Nos. 63 and 119; 1938 Nos. 20, 46, 70 and 91; 1939 Nos. 26, 27, 72 and 143; 1940 Nos. 123, 135, 147, 197, 217 and 240; 1941 Nos. 21, 187, 215 and 242; 1942 Nos. 48 and 202; 1943 No. 42; 1944 No. 63; 1946 Nos. 26 and 32; 1947 Nos. 34 and 130; 1948 Nos. 37, 87 and 88; 1950 Nos. 4 and 26; 1951 Nos. 53, 66 and 165; 1953 No. 19; 1954 Nos. 28, 115 and 123; 1955 Nos. 5 and 16; 1956 No. 78; 1958 No. 88; 1959 No. 38; 1961 Nos. 51 and 67; 1963 Nos. 113 and 145; 1964 Nos. 143 and 157; 1965 Nos. 56 and 67; 1967 No. 20; 1968 Nos. 15 and 79; 1969 No. 128; 1970 Nos. 35, 71 and 179; 1971 No. 16; 1972 Nos. 1, 44, 75, 125 and 158; 1973 Nos. 58, 105 and 274; 1974 No. 78; 1975 No. 1; 1976 Nos. 15 and 56; 1978 Nos. 54 and 75; 1979 No. 251; 1980 Nos. 7, 100, 104, 178, 225, 285 and 359; 1981 Nos. 53, 227, 258 and 339; 1982 Nos. 34, 132 and 324; 1983 Nos. 42, 62, 205, 266 and 282; 1984 Nos. 199, 377 and 399; 1985 Nos. 93, 122 and 212; 1986 No. 332; 1987 No. 18; 1988 Nos. 39, 128 and 234; 1990 No. 376; 1991 Nos. 134 and 234; 1992 No. 264; 1993 No. 191; 1995 No. 272; 1996 No. 178; 1997 No. 45; 1998 Nos. 230 and 331; 1999 No. 281.
2. Notified in the *Commonwealth of Australia Gazette* on  2001. 5 July