Navy (Canteen) Regulation 2016

I, General the Honourable Sir Peter Cosgrove AK MC (Ret’d), Governor-General of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, make the following regulation.

Dated 15 September 2016

Peter Cosgrove
Governor-General

By His Excellency’s Command

Dan Tehan
Minister for Defence Personnel
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Navy (Canteens) Regulations 1954
Part 1—Introduction

1 Name

This is the Navy (Canteen) Regulation 2016.

2 Commencement

(1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisions</td>
<td>Commencement</td>
<td>Date/Details</td>
</tr>
<tr>
<td>1. The whole of this instrument</td>
<td>1 October 2016.</td>
<td>1 October 2016</td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

(2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the Defence Act 1903.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

5 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

(a) Australian Defence Force;
(b) Chief of the Defence Force;
(c) Navy.

In this instrument:

Act means the Defence Act 1903.

Board means the Royal Australian Navy Central Canteens Board continued in existence by section 6.

Board member means a person appointed under section 11.
Section 5

_Canteens Service_ means the Royal Australian Navy Central Canteens Service referred to in section 25.

_Chair_ means the Chair of the Board.

_Navy Fund_ means the Royal Australian Navy Central Canteens Fund continued in existence by section 32.

_Navy Relief Trust Fund_ means the Royal Australian Navy Relief Trust Fund established by the _Services Trust Funds Act 1947_.

_PGPA Act_ means the _Public Governance, Performance and Accountability Act 2013_.
Part 2—Royal Australian Navy Central Canteens Board

Division 1—Establishment and constitution

6 Establishment

The Royal Australian Navy Central Canteens Board established by subregulation 6(1) of the Navy (Canteens) Regulations 1954, as in force immediately before 1 October 2016, is continued in existence by force of this section.

Note: See also section 25B of the Acts Interpretation Act 1901.

7 Constitution

(1) The Board:
   (a) is a body corporate with perpetual succession; and
   (b) must have a common seal; and
   (c) may acquire, hold and dispose of real and personal property; and
   (d) may sue and be sued in its corporate name.

Note: The PGPA Act applies to the Board. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

(2) The Board’s seal is to be kept in such custody as the Board directs and must not be used except as authorised by the Board.

(3) All courts, judges and persons acting judicially must:
   (a) take judicial notice of the imprint of the Board’s seal appearing on a document; and
   (b) presume that the document was duly sealed.

8 Functions and powers

(1) The Board has the following functions:
   (a) to receive contributions of money to the Navy Fund from canteens trading;
   (b) to accept gifts and donations of money or other property for the purposes of the Navy Fund;
   (c) to make grants of money from the Navy Fund to the Navy Relief Trust Fund for the purposes of that Fund;
   (d) to make grants and loans of money and property from the Navy Fund to persons conducting canteens, clubs, cinemas or other institutions or facilities for the welfare or entertainment of members of the Navy;
   (e) to purchase, lease, hire or otherwise acquire property for the purpose of providing services, entertainment, recreation or other amenities for members of the Navy;
   (f) to dispose of any property acquired by, or vested in, the Board;
   (g) to enter into a contract under which the Board, in consideration of a person rendering assistance in connection with the erection of a building to
Section 9

provide services specified in the contract for members of the Navy, accepts
the liability to pay a sum of money to that person if the building ceases to
be used to provide those services;
(h) to enter into contracts for, or in relation to, the purchase or supply of goods
to be sold in canteens or clubs (whether as agent for, or otherwise on behalf
of, persons conducting canteens or clubs or for the purpose of resale to
those persons);
(i) to sell to persons conducting canteens or clubs goods purchased by the
Board for the purpose of resale;
(j) to do such other things as are incidental to the purposes of the Navy Fund.

Note: The Board may also make recommendations relating to the Canteens Service: see
section 26.

(2) A grant or loan of money or property under paragraph (1)(d) may be made
subject to such conditions as to the application of the money or property as the
Board directs.

(3) The Board must not enter into a contract mentioned in paragraph (1)(g) if the
services specified in the contract are not services:
(a) in respect of which the Board is authorised to make grants or loans of
money or property from the Navy Fund by virtue of paragraph (1)(d); or
(b) for the providing of which the Board is authorised to purchase, lease, hire
or otherwise acquire property by virtue of paragraph (1)(e).

(4) The Board has power to do all things necessary or convenient to be done for and
in connection with performing its functions.

9 Chief of the Defence Force may give orders and instructions to the Board

The Chief of the Defence Force may make orders and give instructions, of either
general or particular application:
(a) relating to the Board’s performance of its functions or the exercise of its
powers; and
(b) subject to Division 3, for the purpose of regulating Board meetings and
procedures.

10 Membership

(1) The Board consists of 7 members.

(2) The Chief of the Defence Force must appoint one member to be the Chair.
Division 2—Terms and conditions of Board members

11 Appointment
A Board member is to be appointed by the Chief of the Defence Force, by written instrument, on a part-time basis.

12 Term of appointment
A Board member holds office for the period specified in the instrument of appointment.

Note: A Board member is eligible for reappointment: see the Acts Interpretation Act 1901.

13 Remuneration
(1) A Board member (other than a member of the Australian Defence Force or an APS employee) is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Board member is to be paid the remuneration that is determined by the Chief of the Defence Force.

(2) Any other Board member is not entitled to be paid in respect of any services performed by the Board member under this instrument.

(3) Nothing in this section:
(a) prevents the reimbursement of any out-of-pocket expenses reasonably incurred in respect of any services performed by a Board member under this instrument; or
(b) affects the right of any member of the Australian Defence Force to receive any salary, pay or allowances due to the member in his or her capacity as a member of the Australian Defence Force.

(4) The Chief of the Defence Force may determine remuneration for the purposes of subsection (1).

14 Leave of absence
(1) The Chief of the Defence Force may grant leave of absence to the Chair on the terms and conditions that the Chief of the Defence Force determines.

(2) The Chair may grant leave of absence to another Board member on the terms and conditions that the Chair determines.

15 Resignation
(1) A Board member may resign his or her appointment by giving the Chief of the Defence Force a written resignation.

(2) The resignation takes effect on the day it is received by the Chief of the Defence Force or, if a later day is specified in the resignation, on that later day.
Section 16

(3) To avoid doubt, a Board member may resign his or her appointment as a Board member without resigning as a member of the Australian Defence Force.

16 Termination of appointment

(1) The Chief of the Defence Force may terminate the appointment of a Board member:
   (a) for misbehaviour; or
   (b) if the member is unable to perform the duties of his or her office.

(2) The Chief of the Defence Force must terminate the appointment of a Board member if:
   (a) the member:
       (i) becomes bankrupt; or
       (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
       (iii) compounds with his or her creditors; or
       (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
   (b) the member is absent, except on leave granted by the Board, from 3 consecutive meetings of the Board otherwise than on business of the Board undertaken with the approval of the Board.

Note: The appointment of a Board member may also be terminated under section 30 of the PGPA Act (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).
Division 3—Board meetings

17 Holding of meetings

(1) The Board is to hold such meetings as are necessary for the performance of the Board’s functions.

(2) The Chair must convene at least one meeting in each quarter of a calendar year.

Note: Section 33B of the Acts Interpretation Act 1901 provides for participation in meetings by telephone etc.

18 Presiding at meetings

(1) The Chair presides at all meetings of the Board at which he or she is present.

(2) If the Chair is not present at a meeting, the Board members present must appoint one of themselves to preside.

19 Quorum

At a meeting of the Board, 4 Board members constitute a quorum.

20 Voting at meetings

(1) All questions before the Board are decided by a majority of votes.

(2) Each Board member present at a Board meeting has a deliberative vote and, if the votes are equal, the person presiding at the meeting also has a casting vote.

21 Chief Executive Officer may attend Board meetings

(1) The Board may invite the Chief Executive Officer to attend, and participate in, meetings of the Board.

(2) If the Chief Executive Officer attends a meeting of the Board, the Chief Executive Officer does not have a vote on any matter before the Board.
Division 4—Secretary to the Board

22 Secretary to the Board

(1) The Chief of the Defence Force may appoint a person to act as Secretary to the Board.

(2) The Secretary is to assist the Board, in accordance with directions by the Board, to perform its functions and exercise its powers.

(3) The Board may give directions to the Secretary for the purposes of subsection (2).

23 Remuneration

(1) The Secretary is not entitled to be paid in respect of any services performed by the Secretary under this instrument.

(2) Nothing in this section:

(a) prevents the reimbursement of any out-of-pocket expenses reasonably incurred in respect of any services performed by the Secretary under this instrument; or

(b) affects the right of any member of the Australian Defence Force to receive any salary, pay or allowances due to the member in his or her capacity as a member of the Australian Defence Force.
Division 5—Delegation

24 Delegation

The Board may, by writing under its seal, delegate any of its powers under this instrument (other than this section) to the Chief Executive Officer.
Part 3—Royal Australian Navy Central Canteens Service

Division 1—Canteens Service

25 How the Canteens Service is to be conducted

The Royal Australian Navy Central Canteens Service is to be managed by the Chief Executive Officer in accordance with:

(a) directions by the Board under this instrument; and
(b) orders and instructions by the Chief of the Defence Force under section 27.

26 Board recommendations

The Board may make recommendations to the Chief of the Defence Force about:

(a) opening, conducting and closing canteens; and
(b) contributions of money to the Navy Fund from canteens trading; and
(c) authorising persons to open, conduct and close clubs, cinemas and other institutions and facilities for the welfare or entertainment of members of the Navy; and
(d) matters incidental to those referred to in the paragraphs set out above.

27 Chief of the Defence Force orders and instructions

The Chief of the Defence Force may make orders and give instructions, in writing, of either general or particular application, in relation to the establishment, maintenance, supervision, management, inspection, conduct, control and closing of canteens and clubs for members of the Navy.
Division 2—Chief Executive Officer

28 Chief Executive Officer

There is to be a Chief Executive Officer of the Canteens Service.

29 Appointment

The Chief Executive Officer is to be appointed by the Board, by written instrument, following consultation with the Chief of the Defence Force.

Note: The Chief Executive Officer is eligible for reappointment: see the Acts Interpretation Act 1901.

30 Remuneration

(1) The Chief Executive Officer is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Chief Executive Officer is to be paid the remuneration that is determined by the Board.

(2) The Board may, by written instrument, determine remuneration for the purposes of subsection (1).

31 Other terms and conditions

The Chief Executive Officer holds office on the terms and conditions in relation to matters not covered by this instrument that are determined by the Board.
Division 3—Royal Australian Navy Central Canteens Fund

32 Establishment

The Royal Australian Navy Central Canteens Fund established by subregulation 4(1) of the *Navy (Canteens) Regulations 1954*, as in force immediately before 1 October 2016, is continued in existence by force of this section.

33 Administration

(1) The Navy Fund is to be administered by the Board.

(2) The Navy Fund consists of:

   (a) contributions of money received by the Board from canteens trading; and
   
   (b) gifts and donations of money or property received by the Board for the purposes of the Navy Fund; and
   
   (c) money and investments vested in the Board; and
   
   (d) any other money or property lawfully available for the purposes of the Navy Fund.

(3) Money and property forming part of the Navy Fund may be applied:

   (a) in making grants to the Navy Relief Trust Fund; and
   
   (b) in making grants and loans to persons conducting canteens, clubs, cinemas or other institutions or facilities for the welfare or entertainment of members of the Navy; and
   
   (c) otherwise for the purposes of the Board’s performance of its functions or the exercise of its powers under this instrument.
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Part 4—Miscellaneous

34 Licences

(1) The Chief of the Defence Force may grant a licence to a person to provide a service not catered for in a naval establishment by the Canteen Service.

(2) A licence may be granted on such terms and conditions as the Chief of the Defence Force determines.

35 Delegation

The Chief of the Defence Force may, in writing, delegate any of the Chief of the Defence Force’s powers under this instrument (other than this section) to an officer of the Navy who holds a rank above the rank of Captain.
Part 5—Application, savings and transitional provisions

36 Definitions

In this Part:

*old law* means the *Navy (Canteens) Regulations 1954*, as in force immediately before 1 October 2016.

37 Savings—appointments

Appointment of Board members

(1) A person holding office as a Board member under subregulation 7(1) of the old law immediately before 1 October 2016 is taken to have been duly appointed by the Chief of the Defence Force on 1 October 2016 under section 11 of this instrument:

(a) for the balance of the person’s term of appointment that remained immediately before 1 October 2016; and

(b) on the same terms and conditions as applied to the person immediately before 1 October 2016.

Appointment of Chair

(2) The appointment of a Board member to be the Chair, as in force under the old law immediately before 1 October 2016, has effect, on and from that day, as if it had been made under subsection 10(2) of this instrument.

Appointment of Chief Executive Officer

(3) A person holding office as the Chief Executive Officer under regulation 12 of the old law immediately before 1 October 2016 is taken to have been duly appointed by the Board in consultation with the Chief of the Defence Force on 1 October 2016 under section 29 of this instrument:

(a) for the balance of the person’s term of appointment that remained immediately before 1 October 2016; and

(b) on the same terms and conditions as applied to the person immediately before 1 October 2016.

38 Savings—orders and instructions

An order or instruction given by the Chief of Navy under regulation 3 of the old law immediately before 1 October 2016 is taken to have been made, on 1 October 2016, by the Chief of the Defence Force under section 27 of this instrument.

39 Savings—licences

A licence granted by the Chief of Navy under regulation 18 of the old law and in force immediately before 1 October 2016 is taken to be granted, on 1 October
Section 40

2016, by the Chief of the Defence Force under subsection 34(1) of this instrument on the same terms and conditions that applied immediately before that day.

40 Savings—delegations

Delegation by the Board

(1) A delegation by the Board, as in force under subregulation 13(1) of the old law immediately before 1 October 2016, continues in force on and after that day as if it had been made under section 24 of this instrument.

Delegation by the Chief of Navy

(2) A delegation by the Chief of Navy, as in force under subregulation 2A(2) of the old law immediately before 1 October 2016, continues in force on and after that day as if it had been made by the Chief of the Defence Force under section 35 of this instrument.
Schedule 1—Repeals

*Navy (Canteens) Regulations 1954*

1 The whole of the Regulations

Repeal the Regulations.