

DEPARTMENT OF THE SENATE

FILE NO.

BY

FILED *1* MAY 1979

J. R. V. Agen

Clerk of the Senate

ORDINANCES



TABLED PAPER

700.
1/5/79

DEPARTMENT OF THE SENATE
PAPER No. 542
DATE PRESENTED 11 MAY 1979
J. R. Olsen
Clerk of the Senate

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

SIXTY-FIFTH REPORT

REGULATIONS UNDER THE SUPERANNUATION ACT
DEFENCE FORCE FINANCIAL REGULATIONS

MEMBERS OF THE COMMITTEE

Senator A.J. Missen (Chairman)
Senator N.T. Bonner
Senator the Hon. J.L. Cavanagh
Senator G.J. Evans
Senator G. Georges
Senator D.J. Hamer, D.S.C.
Senator A.W.R. Lewis

PRINCIPLES OF THE COMMITTEE

The Committee scrutinises delegated
legislation to ensure:

Adopted 1932
Amended 1979

- (a) that it is in accordance with the statute;
- (b) that it does not trespass unduly on personal rights and liberties;
- (c) that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
- (d) that it does not contain matter more appropriate for Parliamentary enactment.

STANDING COMMITTEE ON REGULATIONS AND ORDINANCES

SIXTY-FIFTH REPORT

The Standing Committee on Regulations and Ordinances has the honour to present its Sixty-fifth Report to the Senate.

- 2 In its Twenty-fifth Report the Committee gave the following undertaking to the Senate:

"Regulations involving retrospectivity in payment of moneys, if extending beyond two years, will be the subject of report to the Senate, and unless quite exceptional circumstances are established to the Committee's satisfaction, will be the subject of a recommendation for disallowance."

The Committee has adhered to that undertaking since that report was presented in November 1968. Retrospective regulations almost invariably confer entitlements and benefits directly or indirectly involving the payment of moneys. Section 48 of the Acts Interpretation Act prevents regulations from retrospectively prejudicing rights or imposing liabilities.

REGULATIONS UNDER THE SUPERANNUATION
ACT 1976

- 3 In its Sixty-third Report the Committee referred to certain regulations under the Superannuation Act 1976 which are retrospective to 1 July 1976. Since that report was presented in October 1978 a series of other regulations have been made under the Act, dealing with the entitlements of contributors to the new Commonwealth superannuation fund and former contributors to the old superannuation fund, and providing for retrospectivity to 1 July 1976. The regulations in question are contained in Statutory Rules 1978 Nos 227, 253, 280, 281 and 282. In accordance with his undertaking, the Minister for Finance provided the Committee with very detailed explanations of all of these regulations.

- 4 The reasons given for the need to provide this retrospectivity are: the Government wished to bring the new superannuation scheme into operation in 1976 and there was not time to include the matters contained in the regulations in the Act; the regulations are extremely complex, as indeed is the Act itself; they are intended to deal with a great variety of circumstances of Commonwealth employees; and some matters for which the regulations are intended to provide could not be dealt with until the new scheme had been in operation for some time. Section 168 of the Act authorises the making of regulations retrospective to the beginning of the new scheme, and that section, as amended in 1978, imposes a time limit of thirty months after 1 July 1976 within which the regulations must be made. In all the circumstances it seems to the Committee that the explanations given are not unreasonable.
- 5 The other aspect of the regulations which ought to be drawn to the attention of the Senate is that some of them modify the provisions of the Act in the application of those provisions to certain eligible employees and classes of employees. Section 183 of the Act authorises the making of regulations to modify the Act in its application to such eligible employees.
- 6 The enactment of provisions allowing the statute to be modified by regulation is not as unusual as might be thought, but such provisions are usually confined to matters of detail which do not alter the substance of the Act. For example, the Public Service Act allows the names of departments contained in the schedule of the Act to be varied by notice; the Health Insurance Act allows the schedule of medical services contained in the Act to be varied by regulation; the Trade Practices Act allows regulations to be made exempting from the Act bodies concerned with marketing primary products; the Administrative Appeals Tribunal Act allows regulations adding to the matters contained in the schedule of the Act. There are many other such provisions. They are not objectionable in themselves, but the Committee expresses the opinion that the Senate should closely scrutinize such provisions in Bills to ensure that they are granted to governments only where there are good reasons for doing so. In its report on the scrutiny of Bills the Standing Committee on Constitutional and Legal Affairs has drawn attention to the need for the Parliament to ensure that its authority is not unduly delegated.

DEFENCE FORCE FINANCIAL REGULATIONS

- 7 The Committee has examined a number of financial regulations relating to the Defence Force which are retrospective to the extent of two years or more. In accordance with its past practice the Committee has included the explanations of these regulations received from the Minister, together with the regulations themselves, in this report in the form of appendices. The groups of regulations contained in the appendices will be referred to seriatim.
- 8 The regulations contained in Statutory Rules 1978 Nos 232, 234, and 237, which are the subject of Appendix A, are almost three years retrospective. They relate to an education allowance for the children of members of the Defence Force who are relocated within Australia. The rates of this education allowance were "frozen" in 1974 pending the introduction of a new scheme for the Public Service, and an inordinate delay in the introduction of this scheme led to a corresponding delay in the alteration of the rates for the Defence Force scheme.
- 9 The regulations contained in Statutory Rules 1978 No. 235, which are also the subject of Appendix A, are also almost three years retrospective. They relate to an education allowance for the children of members of the Defence Force who are posted overseas. The delay in the making of these regulations was due mainly to the need to align the Defence Force allowance to a determination made in relation to the Public Service in January 1977, which determination was itself one year retrospective.
- 10 The explanations contained in Appendix A reveal that the delays in making the regulations in question were compounded by delays in drafting. While the regulations could be expected to cause drafting problems, it would seem to the Committee that the drafting delays were nevertheless inordinate.
- 11 While the Committee considers that the complexity of the regulations and the delays caused in the Public Service sphere for which the Department of Defence cannot be held responsible amount to exceptional circumstances, the Committee also considers that the explanations in Appendix A reveal unjustified delays in administration and in drafting which ought not to be allowed to occur again.

- 12 The regulations contained in Statutory Rules 1978 No. 226, which are the subject of Appendix B, are retrospective for a period of almost two years. They relate to insurance of the household effects of members of the Defence Force who are posted overseas. The delay in the making of these regulations was caused by a delay of almost one year in the consideration by the Attorney-General's Department of the Defence Department's original instructions, and a further delay of almost a year during which the Attorney-General's Department determined that it was not possible to carry out the Defence Department's further instructions. Although the two-year criterion does not apply to these regulations, the Committee reports to the Senate its opinion that the delays in the making of the regulations were unjustified.
- 13 The regulations contained in Statutory Rules 1978 No. 251, which are contained in Appendix C, are retrospective for a period of almost three years. This is because an incorrect copy of the original regulations was laid before each House of the Parliament and, pursuant to the Acts Interpretation Act, those original regulations were therefore null and void. This mistake was not discovered for some time, and this led to the retrospectivity of the remade regulations. The retrospectivity was therefore unavoidable. The Attorney-General's Department should exercise special care to ensure that copies of regulations laid before each House of the Parliament are true copies of those signed by the Governor-General.
- 14 The regulations contained in Statutory Rules 1979 No. 21, which are the subject of Appendix D, are retrospective for a period of six years. They relate to the provision of furlough for members of the Defence Force. These regulations flow from an announcement of government policy made in 1973 in relation to furlough for public servants. Due to various delays, principally the consideration by the Commonwealth and the States of a proposed national long service scheme, and the change of government at the end of 1975, it was not until the end of 1976 that the announced policy was put into legislation, with retrospectivity to 1973. In fairness to members of the Defence Force the provisions of that legislation had then to be applied to the Defence Force, and there was a further delay of almost two years while this was done.
- 15 The Committee considers that the explanations contained in Appendix D reveal exceptional circumstances leading to the making of these regulations. The Committee also considers, however, that there were unjustified administrative delays in dealing with the regulations, and that circumstances of the type involved should not be allowed to occur again.

Alan Missen
Chairman

APPENDIX A

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COMMONWEALTH OF AUSTRALIA

MINISTER FOR DEFENCE
PARLIAMENT HOUSE
CANBERRA A.C.T. 2600

30 MAR 1979

Dear Senator Missen,

I refer to your letter of 22 February 1979 concerning Statutory Rules 1978, Nos 232, 234, 235 and 237 which amended various regulations dealing with education allowances in the Defence Force.

Although my two letters of 29 December 1978 relate to allowances with similar rates, there are two allowances concerned and they have always been kept distinct and treated separately.

The education allowance for members of the Defence Force posted overseas is called "Child Education Allowance" and is dealt with in Statutory Rules 1978, No 235 while the education allowance for members posted within Australia is called "Education Allowance" and is dealt with in Statutory Rules 1978, Nos 232, 234 and 237.

Until the 1977 school year the Public Service had an education allowance for officers posted overseas corresponding with the Defence Force Child Education Allowance but did not have an education allowance for Public Service officers posted within Australia corresponding with the Defence Force Education Allowance.

For each of the education allowances discussed in this letter, it is normal to calculate the rates for each school year at the end of that year because the rates depend partly on a survey of costs during the school year concerned and thus there is always at least a year's retrospectivity involved.

With regard to your comments relating to Statutory Rules 1978, No 235, the Public Service Board Determination made in January 1977 related to the long established allowance for officers posted overseas and applied in respect of the 1976 school year while the Determination made in December 1977 related to the new allowance for public servants posted within Australia and applied in respect of the 1977 school year.

- 2 -

The amendments relating to Child Education Allowance, contained in Statutory Rules 1978, No 235, represent a flow-on to the Army of rates payable in respect of the 1976 and 1977 school years under the scheme for public servants posted overseas. (As explained in my earlier letter, similar provisions for the Navy and Air Force were effected by determinations made under the Naval Financial Regulations and Air Force Regulations).

Although there was no education allowance until the 1977 school year for public servants posted within Australia, the Education Allowance scheme for members of the Defence Force posted within Australia has operated since 1958. This is the allowance affected by Statutory Rules 1978, Nos 232, 234 and 237.

The rates for Education Allowance followed those for Child Education Allowance until Education Allowance rates were frozen at the level set in respect of the 1974 school year.

The reason for freezing the Education Allowance rates at the end of 1974 was that it was expected that a new Public Service "Education Costs Allowance" for officers posted within Australia would soon be implemented. The intention was to align the Defence Force conditions with those of the Public Service, in accordance with the common employer principle.

There were unforeseen delays with the Public Service Education Costs Allowance for officers posted within Australia and, as stated earlier, that allowance was not introduced until the 1977 school year.

In view of the historical nexus between the rates of Education Allowance and Child Education Allowance in the Defence Force and because the new structure of Child Education Allowance (following the Public Service scheme for officers posted overseas) was introduced with effect from the 1976 school year, it was decided to apply the new rates for Education Allowance from that year even though there was no comparable Public Service scheme for officers posted within Australia until the 1977 school year.

To allow Education Allowance rates to follow the Child Education Allowance rates during the 1976 school year was regarded as a return to the situation which had prevailed until the end of the 1974 school year and a restoration of a pre-existing condition of service rather than the introduction of a new scheme one year in advance of the equivalent Public Service scheme.

- 3 -

From the 1977 school year onwards the Education Allowance rates can be regarded as a flow-on from Public Service rates for officers posted within Australia.

Yours sincerely

A handwritten signature in black ink, appearing to read 'D. J. Killen', with a stylized flourish at the end.

(D. J. KILLEN)

Senator A.J. Missen
Chairman
Senate Standing Committee on Regulations
and Ordinances
Parliament House CANBERRA ACT 2600

SENATE STANDING COMMITTEE
ON REGULATIONS AND ORDINANCES

22 February 1979

The Hon. D.J. Killen, M.P.,
Minister for Defence,
Parliament House,
CANBERRA, A.C.T. 2600

Dear Minister,

I refer again to your two letters of 29 December 1978 concerning amendments of various Defence Force financial regulations contained in Statutory Rules 1978 Nos 232, 234, 235 and 237.

The Committee has now considered these regulations and the explanation of their retrospectivity contained in your letters. The Committee has encountered some difficulty in interpreting the explanations provided.

It is not clear why Statutory Rules Nos 232, 234 and 237 are retrospective to January 1976 when the corresponding entitlements for public servants were introduced in January 1977. Your letter states that the corresponding Public Service Regulations were retrospective to January 1977, and that in 1976 the entitlement for Defence Force members is similar to that payable to public servants under "the overseas schemes". It is not clear to the Committee whether these statutory rules embody the Public Service Regulations or "the overseas schemes" or both. It appears from the regulations that both of these precedents are embodied, but it is still not clear why the date of 1 January 1976 has been selected, when your letter states that entitlements for members of the Defence Force had been "frozen" in 1974. The Committee has noted that the delay in the production of the regulations from December 1977 to November 1978 was caused mainly by drafting problems.

With regard to the regulations contained in Statutory Rules 1978 No. 235, your letter states that corresponding entitlements for public servants were set in January 1977 with retrospectivity to the beginning of 1976. It is not clear to the Committee how the entitlements

here referred to are related to the "long established scheme for public servants posted overseas" referred to in your other letter. It is not clear to the Committee how it came about that a determination in relation to public servants in connection with one allowance was made in January 1977 while the determination in relation to the other allowance was not forthcoming until December 1977. The Committee has noted that most of the delay in the making of these statutory rules was caused by drafting problems.

The Committee would appreciate your further explanation and elucidation of the matters I have raised.

Some years ago the Committee gave an undertaking to the Senate that it would report upon all cases of regulations with more than two years' retrospectivity. It will therefore be necessary for the Committee to make a report upon all of the regulations discussed in this letter in due course.

Yours sincerely,

(Alan Missen)
Chairman



COMMONWEALTH OF AUSTRALIA

MINISTER FOR DEFENCE
 PARLIAMENT HOUSE
 CANBERRA A.C.T. 2600

Dear Senator Missen,

2 1978

I write in relation to the degree of retrospective operation of Statutory Rules 1978 Nos. 232, 234 and 237, notified in the Commonwealth of Australia Gazette on 30 November 1978.

Those Statutory Rules which take effect from 1 January 1976 amend regulation 122 of the Naval Financial Regulations, regulation 131 of the Military Financial Regulations and regulation 634 of the Air Force Regulations. Under these provisions, an education allowance is payable to certain members of the Navy, Army and Air Force respectively.

The allowance is payable where a member, who is posted from one locality to another in Australia, keeps his child at a secondary school in a locality other than that where the member resides so that the child's schooling is not disrupted.

The amendments prescribe for members of the Defence Force education allowance entitlements similar to those which were introduced in January 1977 for Commonwealth public servants in similar circumstances.

Education Allowance rates for members of the Defence Force had previously been adjusted annually. However, the rates have been frozen at 1974 levels pending introduction of the new Public Service scheme.

Rates for the new Public Service scheme were ultimately set in December 1977 by amendments to the Public Service Regulations with retrospective operation to 1 January 1977 and Education Allowance rates for members of the Defence Force are based on that scheme for the period after 1 January 1977.

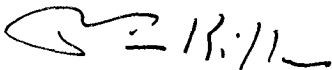
There is a long established scheme for public servants posted overseas, which has hitherto been the pattern for Defence Force schemes of education allowance both within Australia and overseas, and for 1976 the Education Allowance rates for members of the Defence Force posted within Australia are similar to those payable under the overseas schemes.

Instructions for the necessary amendments to the Regulations were sent to Attorney-General's Department in March 1978.

The provisions were complicated and the new Public Service scheme needed to be adapted to existing regulations for the three Services. There were five drafts before a final satisfactory print was received from Attorney-General's Department in September 1978. This was lodged with the Federal Executive Council on 21 November 1978.

Although the new rates generally represent increases in entitlements, provision is made to ensure that there is no retrospective operation if in any particular case a member would thereby have his entitlement reduced.

Yours sincerely,



(D.J. KILLEN)

Senator A.J. Missen
Chairman
Senate Standing Committee on Regulations
and Ordinances
Parliament House
CANBERRA, A.C.T. 2600



Statutory Rules

1978 No. 232

REGULATIONS UNDER THE NAVAL DEFENCE ACT 1910*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Naval Defence Act* 1910.

Dated this twenty-third day of November 1978,

ZELMAN COWEN
Governor-General

By His Excellency's Command,

D. J. KILLEN
Minister of State for Defence

AMENDMENTS OF THE NAVAL FINANCIAL REGULATIONS†

I. Regulation 122 of the Naval Financial Regulations is amended— ^{Education allowance}
(a) by omitting sub-regulation (1) and substituting the following sub-regulation:

“(1) In this regulation—

(a) a reference to a child shall be read as a reference to a child other than a child who—

- (i) has attained 21 years of age; or
- (ii) is enrolled, or is eligible to be enrolled, for a course of study at a University that will lead to being admitted by the University to a degree; and

(b) a reference to a secondary school is a reference to—

- (i) a secondary school within the meaning of section 5 of the *Student Assistance Act* 1973; or
- (ii) a school, other than a secondary school referred to in sub-paragraph (i),

* Notified in the *Commonwealth of Australia Gazette* on 30 November 1978.
† Statutory Rules 1956 No. 88 as amended to date. For previous amendments see footnote † to Statutory Rules 1978 Nos. 21 and see also Statutory Rules 1978 Nos. 21, 62, 70, 85, 161 and 233.
(3384/78) Cof. No. 78 5284 7—Recommended retail price 20c

Naval Financial Regulations

in respect of which there is in force a declaration by the Minister that the school is to be treated as a secondary school for the purposes of this regulation.”;

- (b) by omitting from sub-regulation (2) “Subject to sub-regulation (6), where ” and substituting “Where ”;
- (c) by omitting from sub-regulations (2), (2A) and (2B) “recognized ” (wherever occurring);
- (d) by omitting sub-regulations (3) to (3F) (inclusive) and substituting the following sub-regulations:

“ (3) The amount of education allowance payable to a member in respect of the attendance in a year of his child at a school is—

- (a) where the child boards and resides at the secondary school at which he is undertaking his course of secondary education—the sum of the amount of boarding allowance ascertained in accordance with paragraph (3A) (a) and the amount of tuition allowance ascertained in accordance with sub-regulation (3a); and
- (b) in any other case—the amount of boarding allowance ascertained in accordance with paragraph (3A) (b) or (c), as the case requires.

“ (3A) The amount of boarding allowance is—

- (a) where the child boards and resides at the secondary school at which he is undertaking his course of secondary education—an amount equal to so much of the amount in dollars calculated in accordance with the formula—

$$A - \frac{330B}{C}$$

as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{1300B}{C}$$

where—

- A is the amount to the nearest dollar equal to the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the

Naval Financial Regulations

provision for the child of board and residence at the secondary school (other than so much of those fees and charges as is levied or incurred exclusively in respect of a period in respect of which education allowance is not payable to the member or during which the secondary school is in vacation);

B is the number of weeks (not including any period in respect of which education allowance is not payable to the member or during which the secondary school is in vacation) in the year during which the child boards and resides at the secondary school; and

C is the number of weeks in the year during which tuition is given to secondary students at the secondary school;

- (b) where the child boards and resides at a guest-house, hostel or other commercial boarding establishment—an amount equal to so much of the amount in dollars calculated in accordance with the formula—

$$A - \frac{510B}{C}$$

as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{1470B}{C}$$

where—

A is the amount to the nearest dollar equal to the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the provision for the child of board and residence at the guest-house, hostel or other establishment (other than so much of those fees and charges as is levied or incurred exclusively in respect of a period in respect of which education allowance is not payable to the member or during which the secondary school at which the child is enrolled is in vacation);

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- B is the number of weeks (not including any period in respect of which education allowance is not payable to the member or during which the secondary school at which the child is enrolled is in vacation) in the year during which the child boards and resides at the guest-house, hostel or other establishment; and
- C is the number of weeks in the year during which tuition is given to secondary students at the school at which the child is enrolled; and
- (c) where the child boards and resides, or resides, at a place other than a school or boarding establishment of a kind referred to in paragraph (a) or (b)—so much of the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the provision for the child of board and residence, or residence, at that place as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{790B}{C}$$

where—

- B is the number of weeks (not including any period in respect of which education allowance is not payable to the member or during which the secondary school at which the child is enrolled is in vacation) in the year during which the child boards and resides, or resides, at the place; and
- C is the number of weeks in the year during which tuition is given to secondary students at the school at which the child is enrolled.
- " (3B) The amount of tuition allowance is an amount equal to so much of the amount in dollars calculated in accordance with the formula—

$$A - \frac{100B}{C}$$

Naval Financial Regulations

as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{1460B}{C}$$

where—

- A is the amount to the nearest dollar equal to the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member, in the year in respect of the provision of tuition for the child at the secondary school (other than so much of those fees and charges as is levied or incurred exclusively in respect of tuition provided during a period in respect of which education allowance is not payable to the member);
- B is the number of weeks (not including any period in respect of which education allowance is not payable to the member) in the year during which the child receives tuition at the secondary school; and
- C is the number of weeks in the year during which tuition is given to secondary students at the secondary school.

“(3C) A reference in paragraph (3A) (a) to a child who boards and resides at the secondary school at which he is undertaking his course of secondary education includes a reference to a child who boards and resides at a hostel maintained by the school for the purpose of providing board and residence for children attending the school.”;

- (e) by omitting sub-regulation (6) and substituting the following sub-regulations:

“(6) Education allowance payable in accordance with this regulation may be paid in 3 instalments, each instalment being—

- (a) payable at the end of a school term; and
- (b) in respect of each of the first 2 instalments—an amount that does not exceed the prescribed amount.

“(7) For the purposes of paragraph (6) (b), the prescribed amount, in respect of the attendance in a year of a child at a school, is an amount equal to one-third of the amount that would be payable in respect of the child in accordance with sub-regulation (3) if the attendance in that

Naval Financial Regulations

year of the child at the school were deemed to be attendance of the child at the school in the year immediately preceding that year."

Application 2. (1) Education allowance is payable in accordance with the provision of regulation 122 of the Naval Financial Regulations, as amended by regulation 1, in respect of the attendance of a child at a school during the year that commenced on 1 January 1976 and during any subsequent year.

(2) In the application of regulation 122 of the Naval Financial Regulations, as amended by regulation 1, to and in relation to the attendance of a child at a school during the year that commenced on 1 January 1976—

- (a) paragraph 122 (3A) (a) shall be read as if there were substituted "295" for "330" and "1230" for "1300";
- (b) paragraph 122 (3A) (b) shall be read as if there were substituted "450" for "510" and "1180" for "1470";
- (c) paragraph 122 (3A) (c) shall be read as if there were substituted "600" for "790"; and
- (d) sub-regulation 122 (3B) shall be read as if there were substituted "50" for "100" and "1300" for "1460".

**Adjustment
in certain
cases**

3. In respect of education allowance payable to a member in respect of the attendance of a child at a school during the period that commenced on 1 January 1976 and ends on the day that is—

- (a) where these Regulations come into operation on a day that is part of a school term for that school—the last day of that school term; or
- (b) in any other case—the last day of the immediately preceding school term,

the amount of education allowance payable to the member shall be the greater of the following amounts:

- (c) the amount payable to the member under the Naval Financial Regulations as in force before the commencement of these Regulations;
- (d) the amount payable to the member under the Naval Financial Regulations as amended by these Regulations.



Statutory Rules

1978 No. 234

REGULATIONS UNDER THE DEFENCE ACT 1903*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Defence Act 1903*.

Dated this twenty-third day of November 1978.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

D. J. KILLEN
Minister of State for Defence

AMENDMENTS OF THE MILITARY FINANCIAL REGULATIONS†

1. Regulation 131 of the Military Financial Regulations is Education
amended—allowance

- (a) by omitting from sub-regulation (1) "recognized";
- (b) by omitting sub-regulations (2) to (2F) (inclusive) and substituting the following sub-regulations:
 - " (2) The amount of education allowance payable to a member in respect of the attendance in a year of his child at a school is—
 - (a) where the child boards and resides at the secondary school at which he is undertaking his course of secondary education—the sum of the amount of boarding allowance ascertained in accordance with paragraph (2A)(a) and the amount of tuition

* Notified in the *Commonwealth of Australia Gazette* on 30 November 1978.
† Statutory Rules 1966 No. 35 as amended to date. For previous amendments see footnote † to Statutory Rules 1978 No. 22 and see also Statutory Rules 1978 No. 22, 40, 69, 76, 87, 207, 224 and 226.

Military Financial Regulations

allowance ascertained in accordance with sub-regulation (2a); and

- (b) in any other case—the amount of boarding allowance ascertained in accordance with paragraph (2A)(b) or (c), as the case requires.

“(2A) The amount of boarding allowance is—

- (a) where the child boards and resides at the secondary school at which he is undertaking his course of secondary education—an amount equal to so much of the amount in dollars calculated in accordance with the formula—

$$A - \frac{330B}{C}$$

as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{1300B}{C}$$

where—

- A is the amount to the nearest dollar equal to the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the provision for the child of board and residence at the secondary school (other than so much of those fees and charges as is levied or incurred exclusively in respect of a period in respect of which education allowance is not payable to the member or during which the secondary school is in vacation);
- B is the number of weeks (not including any period in respect of which education allowance is not payable to the member or during which the secondary school is in vacation) in the year during which the child boards and resides at the secondary school; and
- C is the number of weeks in the year during which tuition is given to secondary students at the secondary school;

Military Financial Regulations

- (b) where the child boards and resides at a guest-house, hostel or other commercial boarding establishment—an amount equal to so much of the amount in dollars calculated in accordance with the formula—

$$A - \frac{510B}{C}$$

as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{1470B}{C}$$

where—

- A is the amount to the nearest dollar equal to the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the provision for the child of board and residence at the guest-house, hostel or other establishment (other than so much of those fees and charges as is levied or incurred exclusively in respect of a period in respect of which education allowance is not payable to the member or during which the secondary school at which the child is enrolled is in vacation);
- B is the number of weeks (not including any period in respect of which education allowance is not payable to the member or during which the secondary school at which the child is enrolled is in vacation) in the year during which the child boards and resides at the guest-house, hostel or other establishment; and
- C is the number of weeks in the year during which tuition is given to secondary students at the school at which the child is enrolled; and
- (c) where the child boards and resides, or resides, at a place other than a school or boarding establishment of a kind referred to in paragraph (a) or (b)—so much of the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the

Military Financial Regulations

provision for the child of board and residence, or residence, at that place as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{790B}{C}$$

where—

B is the number of weeks (not including any period in respect of which education allowance is not payable to the member or during which the secondary school at which the child is enrolled is in vacation) in the year during which the child boards and resides, or resides, at the place; and

C is the number of weeks in the year during which tuition is given to secondary students at the school at which the child is enrolled.

" (2B) The amount of tuition allowance is an amount equal to so much of the amount in dollars calculated in accordance with the formula—

$$A - \frac{100B}{C}$$

as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{1460B}{C}$$

where—

A is the amount to the nearest dollar equal to the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the provision of tuition for the child at the secondary school (other than so much of those fees and charges as is levied or incurred exclusively in respect of tuition provided during a period in respect of which education allowance is not payable to the member);

B is the number of weeks (not including any period in respect of which education allowance is not payable to the member) in the year during which the child receives tuition at the secondary school; and

Military Financial Regulations

C' is the number of weeks in the year during which tuition is given to secondary students at the secondary school.

" (2c) A reference in paragraph (2A) (a) to a child who boards and resides at the secondary school at which he is undertaking his course of secondary education includes a reference to a child who boards and resides at a hostel maintained by the school for the purpose of providing board and residence for children attending the school."

(c) by omitting sub-regulation (4) and substituting the following sub-regulation:

" (4) Where—

(a) education allowance is payable to a member in accordance with paragraph (2) (a) in respect of the attendance of his child at a school;

(b) the member takes up duty, or the member's family takes up residence, in the locality in which the school is situated after the commencement of a school term; and

(c) the child continues to board and reside at the school after the member so takes up duty or the family so takes up residence,

education allowance continues to be payable to the member in respect of the attendance of the child at the school until the child ceases to board and reside at the school or until the end of that school term, whichever first occurs."

(d) by omitting from sub-paragraph (ii) of paragraph (b) of sub-regulation (5) "recognized";

(e) by omitting from sub-regulation (5n) "attending a school as a boarder" and substituting "boarding and residing at a school";

(f) by omitting from that sub-regulation "in respect of the attendance of the child at the school as a boarder" and substituting "in accordance with paragraph (2) (a) in respect of the attendance of the child at the school"; and

(g) by adding at the end thereof the following sub-regulations:

" (8) Education allowance payable in accordance with this regulation may be paid in 3 instalments, each instalment being—

(a) payable at the end of a school term; and

(b) in respect of each of the first 2 instalments—an amount that does not exceed the prescribed amount.

Military Financial Regulations

" (9) For the purpose of paragraph (8) (b), the prescribed amount, in respect of the attendance in a year of a child at a school, is an amount equal to one-third of the amount that would be payable in respect of the child in accordance with sub-regulation (2) if the attendance in that year of the child at the school were deemed to be attendance of the child at the school in the year immediately preceding that year.

" (10) In this regulation, 'secondary school' means—

- (a) a secondary school within the meaning of section 5 of the *Student Assistance Act 1973*; or
- (b) a school, other than a secondary school referred to in paragraph (a), in respect of which there is in force a declaration by the Minister that the school is to be treated as a secondary school for the purpose of this regulation."

Application

2. (1) Education allowance is payable in accordance with the provisions of regulation 131 of the *Military Financial Regulations*, as amended by regulation 1, in respect of the attendance of a child at a school during the year that commenced on 1 January 1976 and during any subsequent year.

(2) In the application of regulation 131 of the *Military Financial Regulations*, as amended by regulation 1, to and in relation to the attendance of a child at a school during the year that commenced on 1 January 1976—

- (a) paragraph 131 (2A) (a) shall be read as if there were substituted "295" for "330" and "1230" for "1300";
- (b) paragraph 131 (2A) (b) shall be read as if there were substituted "450" for "510" and "1180" for "1470";
- (c) paragraph 131 (2A) (c) shall be read as if there were substituted "600" for "790"; and
- (d) sub-regulation 131 (2B) shall be read as if there were substituted "50" for "100" and "1300" for "1460".

Adjustment
in certain
cases

3. In respect of education allowance payable to a member in respect of the attendance of a child at a school during the period that commenced on 1 January 1976 and ends on the day that is—

- (a) where these Regulations come into operation on a day that is part of a school term for that school—the last day of that school term; or

Military Financial Regulations

- (b) in any other case—the last day of the immediately preceding school term,
- the amount of education allowance payable to the member shall be the greater of the following amounts:
- (c) the amount payable to the member under the Military Financial Regulations as in force before the commencement of these Regulations;
 - (d) the amount payable to the member under the Military Financial Regulations as amended by these Regulations.



Statutory Rules

1978 No. 237

REGULATIONS UNDER THE AIR FORCE ACT 1923*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Air Force Act 1923*.

Dated this twenty-third day of November 1978.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

D. J. KILLEN
Minister of State for Defence

AMENDMENTS OF THE AIR FORCE REGULATIONS†

L. Regulation 634 of the Air Force Regulations is amended— Education
allowance

(a) by inserting in sub-regulation (1), after the definition of "child", the following definition:

" 'secondary school' means—

(a) a secondary school within the meaning of section 5 of the *Student Assistance Act 1973*; or

(b) a school, other than a secondary school referred to in paragraph (a), in respect of which there is in force a declaration by the Minister that the school is to be treated as a secondary school for the purposes of this regulation;"

(b) by omitting from sub-regulations (2), (2A) and (2B) "recognized" (wherever occurring); and

* Notified in the *Commonwealth of Australia Gazette* on 30 November 1978.
† Statutory Rules 1927 No. 161 as amended to date. For previous amendments see footnote 1 to Statutory Rules 1978 No. 61 and see also Statutory Rules 1978, Nos. 23, 51, 71, 78, 89, 162, 181, 198 and 225.
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Air Force Regulations

(c) by omitting sub-regulations (3) to (3E) (inclusive) and substituting the following sub-regulations:

" (3) The amount of education allowance payable to a member in respect of the attendance in a year of his child at a school is—

- (a) where the child boards and resides at the secondary school at which he is undertaking his course of secondary education—the sum of the amount of boarding allowance ascertained in accordance with paragraph (3A) (a) and the amount of tuition allowance ascertained in accordance with sub-regulation (3n); and
- (b) in any other case—the amount of boarding allowance ascertained in accordance with paragraph (3A) (b) or (c), as the case requires.

" (3A) The amount of boarding allowance is—

- (a) where the child boards and resides at the secondary school at which he is undertaking his course of secondary education—an amount equal to so much of the amount in dollars calculated in accordance with the formula—

$$A - \frac{330B}{C}$$

as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{1300B}{C}$$

where—

- A is the amount to the nearest dollar equal to the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the provision for the child of board and residence at the secondary school (other than so much of those fees and charges as is levied or incurred exclusively in respect of a period in respect of which education allowance is not payable to the member or during which the secondary school is in vacation);
- B is the number of weeks (not including any period in respect of which education

Air Force Regulations

allowance is not payable to the member or during which the secondary school is in vacation) in the year during which the child boards and resides at the secondary school; and

C is the number of weeks in the year during which tuition is given to secondary students at the secondary school;

- (b) where the child boards and resides at a guest-house, hostel or other commercial boarding establishment—an amount equal to so much of the amount in dollars calculated in accordance with the formula—

$$A - \frac{510B}{C}$$

as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{1470B}{C}$$

where—

- A is the amount to the nearest dollar equal to the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the provision for the child of board and residence at the guest-house, hostel or other establishment (other than so much of those fees and charges as is levied or incurred exclusively in respect of a period in respect of which education allowance is not payable to the member or during which the secondary school at which the child is enrolled is in vacation);
- B is the number of weeks (not including any period in respect of which education allowance is not payable to the member or during which the secondary school at which the child is enrolled is in vacation) in the year during which the child boards and resides at the guest-house, hostel or other establishment; and

Air Force Regulations

C is the number of weeks in the year during which tuition is given to secondary students at the school at which the child is enrolled; and

- (c) where the child boards and resides, or resides, at a place other than a school or boarding establishment of a kind referred to in paragraph (a) or (b)—so much of the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the provision for the child of board and residence, or residence, at that place as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{790B}{C}$$

where—

B is the number of weeks (not including any period in respect of which education allowance is not payable to the member or during which the secondary school at which the child is enrolled is in vacation) in the year during which the child boards and resides, or resides, at the place; and

C is the number of weeks in the year during which tuition is given to secondary students at the school at which the child is enrolled.

"(3B) The amount of tuition allowance is an amount equal to so much of the amount in dollars calculated in accordance with the formula—

$$A - \frac{100B}{C}$$

as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{1460B}{C}$$

where—

A is the amount to the nearest dollar equal to the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect

Air Force Regulations

of the provision of tuition for the child at the secondary school (other than so much of those fees and charges as is levied or incurred exclusively in respect of tuition provided during a period in respect of which education allowance is not payable to the member);

B is the number of weeks (not including any period in respect of which education allowance is not payable to the member) in the year during which the child receives tuition at the secondary school; and

C is the number of weeks in the year during which tuition is given to secondary students at the secondary school.

"(3C) A reference in paragraph (3A) (a) to a child who boards and resides at the secondary school at which he is undertaking his course of secondary education includes a reference to a child who boards and resides at a hostel maintained by the school for the purpose of providing board and residence for children attending the school."

(d) by omitting sub-regulation (5); and

(e) by adding at the end thereof the following sub-regulations:

"(7) Education allowance payable in accordance with this regulation may be paid in 3 instalments, each instalment being—

(a) payable at the end of a school term; and

(b) in respect of each of the first 2 instalments—an amount that does not exceed the prescribed amount.

"(8) For the purposes of paragraph (7) (b), the prescribed amount, in respect of the attendance in a year of a child at a school, is an amount equal to one-third of the amount that would be payable in respect of the child in accordance with sub-regulation (3) if the attendance in that year of the child at the school were deemed to be attendance of the child at the school in the year immediately preceding that year."

2. (1) Education allowance is payable in accordance with the provisions of regulation 634 of the Air Force Regulations, as amended by regulation 1, in respect of the attendance of a child at a school during the year that commenced on 1 January 1976 and during any subsequent year. Application

Air Force Regulations

(2) In the application of regulation 634 of the Air Force Regulations, as amended by regulation 1, to and in relation to the attendance of a child at a school during the year that commenced on 1 January 1976—

- (a) paragraph 634 (3A) (a) shall be read as if there were substituted "295" for "330" and "1230" for "1300";
- (b) paragraph 634 (3A) (b) shall be read as if there were substituted "450" for "510" and "1180" for "1470";
- (c) paragraph 634 (3A) (c) shall be read as if there were substituted "600" for "790"; and
- (d) sub-regulation 634 (3B) shall be read as if there were substituted "50" for "100" and "1300" for "1460".

Adjustment
in certain
cases

3. In respect of education allowance payable to a member in respect of the attendance of a child at a school during the period that commenced on 1 January 1976 and ends on the day that is—

- (a) where these Regulations come into operation on a day that is part of a school term for that school—the last day of that school term; or
- (b) in any other case—the last day of the immediately preceding school term,

the amount of education allowance payable to the member shall be the greater of the following amounts:

- (c) the amount payable to the member under the Air Force Regulations as in force before the commencement of these Regulations;
- (d) the amount payable to the member under the Air Force Regulations as amended by these Regulations.



COMMONWEALTH OF AUSTRALIA

MINISTER FOR DEFENCE
PARLIAMENT HOUSE
CANBERRA A C T 2600

Dear Senator Missen,

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I write in relation to the degree of retrospective operation of Statutory Rules 1978 No. 235, notified in the Commonwealth of Australia Gazette on 30 November 1978.

Those Statutory Rules, which take effect from 1 January 1976, amend regulation 159 of the Military Financial Regulations which provides for an education allowance to be payable where it is necessary for the child of a member of the Army who is serving overseas to begin or continue his secondary education in Australia or, in limited cases, the United Kingdom.

The amendments prescribe for members of the Army education allowance entitlements similar to those which already apply for Commonwealth public servants on overseas postings.

The amendments to the Military Financial Regulations increase the amount of education allowance payable in most cases but regulation 3 of the Statutory Rules ensures that any member who would be disadvantaged by the new provisions will retain his previous entitlement.

Education allowance rates for members of the Defence Force posted overseas are normally adjusted annually to accord with rates determined for public servants. Public Service rates are set at the end of each school year so there is an inevitable period of retrospectivity of one year.

The Public Service education allowance rates for 1976 were set by Public Service Board Determination No. 29 dated 27 January 1977. There was some additional delay because of further consideration by the various Departments affected and the Public Service Board of the adjusted conditions to be applied.

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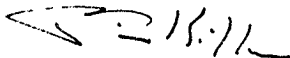
Once the policy was settled for the Defence Force, instructions for the necessary amendments to the Military Financial Regulations were sent to the Attorney-General's Department in July 1977.

Draft statutory rules were received from the Attorney-General's Department in December 1977. These statutory rules required amendment, including incorporation of new rates to apply from 1 January 1977. It was also decided to ask the Attorney-General's Department to redraft the Statutory Rules along the same lines as similar but quite separate provisions for an education allowance applicable to certain members posted within Australia.

These further instructions were sent to the Attorney-General's Department in June 1978 and a revised draft of the Statutory Rules was received in August 1978. Minor revisions were requested and another draft received in September 1978. A further revision was necessary and a final draft received in September 1978.

The signed statutory rules were lodged with the Federal Executive Council on 21 November 1978.

Yours sincerely,



(D. J. KILLEN)

Senator A. J. Missen
Chairman
Senate Standing Committee on
Regulations and Ordinances
Parliament House
CANBERRA, A.C.T. 2600



Statutory Rules

1978 No. 235

REGULATIONS UNDER THE DEFENCE ACT 1903*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Defence Act 1903*.

Dated this twenty-third day of November 1978.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

D. J. KILLEN
Minister of State for Defence

AMENDMENTS OF THE MILITARY FINANCIAL REGULATIONS†

1. Regulation 159 of the Military Financial Regulations is amended— Child
education
allowance

(a) by omitting sub-regulations (2) to (2F) (inclusive) and substituting the following sub-regulations:

" (2) The amount of child education allowance payable to a member in respect of the attendance in a year of his child at a school is—

(a) where the child boards and resides at the school at which he is undertaking his course of education—the sum of the amount of boarding allowance ascertained in accordance with paragraph (2A) (a) and the amount of tuition allowance ascertained in accordance with sub-regulation (2b); and

* Notified in the *Commonwealth of Australia Gazette* on 30 November 1978.

† Statutory Rules 1966 No. 35 as amended to date. For previous amendments see footnotes † to Statutory Rules 1978 No. 22 and see also Statutory Rules 1978 No. 22, 60, 69, 76, 87, 207, 224, 226, and 234.

Military Financial Regulations

(b) in any other case—the amount of boarding allowance ascertained in accordance with paragraph (2A) (b) or (c), as the case requires.

" (2A) The amount of boarding allowance is—

(a) where the child boards and resides at the school at which he is undertaking his course of education—an amount equal to so much of the amount in dollars calculated in accordance with the formula—

$$A - \frac{330B}{C}$$

as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{1300B}{C}$$

where—

A is the amount to the nearest dollar equal to the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the provision for the child of board and residence at the school (other than so much of those fees and charges as is levied or incurred exclusively in respect of a period in respect of which child education allowance is not payable to the member or during which the school is in vacation);

B is the number of weeks (not including any period in respect of which child education allowance is not payable to the member or during which the school is in vacation) in the year during which the child boards and resides at the school; and

C is the number of weeks in the year during which tuition is given to students at the school;

(b) where the child boards and resides at a guest-house, hostel or other commercial boarding establishment—an amount equal to so much of

Military Financial Regulations

the amount in dollars calculated in accordance with the formula—

$$A - \frac{510B}{C}$$

as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{1470B}{C}$$

where—

- A is the amount to the nearest dollar equal to the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the provision for the child of board and residence at the guest-house, hostel or other establishment (other than so much of those fees and charges as is levied or incurred exclusively in respect of a period in respect of which child education allowance is not payable to the member or during which the school at which the child is enrolled is in vacation);
- B is the number of weeks (not including any period in respect of which child education allowance is not payable to the member or during which the school at which the child is enrolled is in vacation) in the year during which the child boards and resides at the guest-house, hostel or other establishment; and
- C is the number of weeks in the year during which tuition is given to students at the school at which the child is enrolled; and
- (c) where the child boards and resides, or resides, at a place other than a school or boarding establishment of a kind referred to in paragraph (a) or (b)—so much of the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the provision for the child of board and residence, or residence, at that place as does not exceed

Military Financial Regulations

the amount in dollars calculated in accordance with the formula—

$$\frac{790B}{C}$$

where—

- B is the number of weeks (not including any period in respect of which child education allowance is not payable to the member or during which the school at which the child is enrolled is in vacation) in the year during which the child boards and resides, or resides, at the place; and
- C is the number of weeks in the year during which tuition is given to students at the school at which the child is enrolled.

" (2b) The amount of tuition allowance is an amount equal to so much of the amount in dollars calculated in accordance with the formula—

$$A - \frac{100B}{C}$$

as does not exceed the amount in dollars calculated in accordance with the formula—

$$\frac{1460B}{C}$$

where—

- A is the amount to the nearest dollar equal to the sum of the fees and compulsory charges (if any) levied on, or incurred by, the member in the year in respect of the provision of tuition for the child at the school (other than so much of those fees and charges as is levied or incurred exclusively in respect of tuition provided during a period in respect of which child education allowance is not payable to the member);
- B is the number of weeks (not including any period in respect of which child education allowance is not payable to the member) in the year during which the child receives tuition at the school; and
- C is the number of weeks in the year during which tuition is given to students at the school.

Military Financial Regulations

" (2C) A reference in paragraph (2A) (a) to a child who boards and resides at the school at which he is undertaking his course of education includes a reference to a child who boards and resides at a hostel maintained by the school for the purpose of providing board and residence for children attending the school."; and

- (b) by omitting sub-regulations (5) and (6) and substituting the following sub-regulations:

" (5) Child education allowance is payable in respect of the attendance of a child at a school during the prescribed period applicable in respect of that child.

" (6) The prescribed period applicable in respect of a child—

- (a) being a child referred to in paragraph (2A) (a)—

(i) in respect of boarding allowance—is the period that commences at the beginning of the school term in which the member proceeds overseas, or on the day on which the child commences to board and reside at the school, whichever is the later; and

(ii) in respect of tuition allowance—is the period that commences at the beginning of the school term in which the member proceeds overseas,

and ends on the relevant day;

- (b) being a child referred to in paragraph (2A) (b) or (c)—is the period that commences on the day on which the member proceeds overseas and ends on the relevant day; and

(c) being a child referred to in sub-regulation (2A) who is overseas with the member—is the period that commences on the day on which the child arrives in Australia or the United Kingdom, as the case requires, for the purpose of attending school and ends on the relevant day.

" (7) The relevant day is—

- (a) in the case of a child who attends a school that is situated in the locality to which the member

Military Financial Regulations

returns, being a child referred to in paragraph (2A) (a)—

- (i) in respect of boarding allowance—the day that is the last day of the school term during which, or immediately after which, the member returns; and
 - (ii) in respect of tuition allowance—the day that is the last day of the school year, being the school year during which, or immediately after which, the member returns;
- (b) in the case of a child who attends a school that is situated in the locality to which the member returns, being a child other than a child referred to in paragraph (2A) (a)—the day on which the member returns to that locality;
- (c) in any other case—
- (i) the day that is the last day of the school year during which the member returns; or
 - (ii) the day that is the last day of the school year during which the child attains the age of 20 years,
- whichever first occurs.

" (8) Notwithstanding the provisions of sub-regulation (7), where at the time the member returns to Australia—

- (a) a child of the member who is attending school in Australia is in the last or second-last year of secondary education; and
 - (b) the child has been attending that school for the 3 school terms immediately preceding the return of the member,
- the relevant day is—

- (c) in the case of a child who attends a school that is situated in the locality to which the member returns, being a child referred to in paragraph (2A) (a)—
 - (i) in respect of boarding allowance—the day that is the last day of the school term during which, or immediately after which, the member returns; and
 - (ii) in respect of tuition allowance—the day on which the child completes his secondary schooling at that school;
- (d) in the case of a child who attends a school that is situated in the locality to which the member returns,

Military Financial Regulations

being a child other than a child referred to in paragraph (2A) (a)—the day on which the member returns to that locality;

- (e) in any other case—the day on which the child completes his secondary schooling at that school.

“(9) Where a child in respect of whom child education allowance is payable is awarded, by the Government of the Commonwealth, a State or a Territory, a scholarship under which—

- (a) a living allowance;
(b) an allowance for the purchase of text books and equipment; and
(c) an allowance towards the cost of the fees for the child's attendance at school,

is payable to a member—

- (d) the child education allowance payable to the member is reduced by an amount equal to the sum of—
(i) one-half of the allowance for the purchase of text books and equipment; and
(ii) the allowance towards the cost of the fees for the child's attendance at the school; and
(e) the member shall notify the Department of the award of the scholarship to the child and give details of the amount payable under the scholarship.

“(10) Where the spouse of a member proceeds oversea after the member, a reference in this regulation to the day on which a member proceeds oversea shall be read as a reference to the day on which the member's spouse proceeds oversea.

“(11) Where the spouse of a member returns to Australia before the member, a reference in this regulation to the return of the member shall be read as a reference to the return of the member's spouse.

“(12) Child education allowance payable in accordance with this regulation may be paid in 3 instalments, each instalment being—

- (a) payable at the end of a school term; and
(b) in respect of each of the first 2 instalments—an amount that does not exceed the prescribed amount.

Military Financial Regulations

"(13) For the purpose of paragraph (12) (b), the prescribed amount, in respect of the attendance in a year of a child at a school, is an amount equal to one-third of the amount that would be payable in respect of the child in accordance with sub-regulation (2) if the attendance in that year of the child at the school were deemed to be attendance of the child at the school in the year immediately preceding that year."

Application 2. (1) Child education allowance is payable in accordance with the provisions of regulation 159 of the Military Financial Regulations, as amended by regulation 1, in respect of the attendance of a child at a school during the year that commenced on 1 January 1976 and during any subsequent year.

(2) In the application of regulation 159 of the Military Financial Regulations, as amended by regulation 1, to and in relation to the attendance of a child at a school year during the year that commenced on 1 January 1976—

- (a) paragraph 159 (2A) (a) shall be read as if there were substituted "295" for "330" and "1230" for "1300";
- (b) paragraph 159 (2A) (b) shall be read as if there were substituted "450" for "510" and "1180" for "1470";
- (c) paragraph 159 (2A) (c) shall be read as if there were substituted "600" for "790"; and
- (d) sub-regulation 159 (2B) shall be read as if there were substituted "50" for "100" and "1300" for "1460".

**Adjustment
in certain
cases**

3. In respect of child education allowance payable to a member in respect of the attendance of a child at a school during the period that commenced on 1 January 1976 and ends on the day that is—

- (a) where these Regulations come into operation on a day that is part of a school term for that school—the last day of that school term; or
- (b) in any other case—the last day of the immediately preceding school term,

the amount of education allowance payable to the member shall be the greater of the following amounts:

- (c) the amount payable to the member under the Military Financial Regulations as in force before the commencement of these Regulations;
- (d) the amount payable to the member under the Military Financial Regulations as amended by these Regulations.

APPENDIX B



COMMONWEALTH OF AUSTRALIA

MINISTER FOR DEFENCE
 PARLIAMENT HOUSE
 CANBERRA A C T 2600

1976

Dear Senator Missen,

I write in relation to the circumstances underlying the retrospective operation of Statutory Rules 1978 NO. 226, notified in the Commonwealth of Australia Gazette on 23 November 1978, which substitute a new regulation 149 in the Military Financial Regulations. The amendments have effect from 19 November 1976.

Regulation 149 of the Military Financial Regulations provides for reimbursement of the cost of insuring household effects where a member of the Defence Force is posted overseas.

The previous entitlement covered only insurance of goods during travel and the new sub-regulation 149(1) extends the entitlement to cover insurance of goods which are in storage or being used at an overseas post.

The new sub-regulation 149(2), which relates to members on short term overseas postings, increases from \$600 to \$1,000 the amount of insurance coverage for which premiums may be reimbursed.

The new sub-regulation 149(3) relates to members on long term overseas postings and substitutes a single provision for the previous separate provisions in which the entitlement depended on whether or not a member was accompanied by his family.

Under the new sub-regulation 149(3), any member on a long term overseas posting is entitled to reimbursement of premiums for insurance coverage up to a maximum amount of \$15,000 at a maximum premium rate of \$2 per \$100.

The Statutory Rules have effect from 19 November 1976, the date upon which similar entitlements were effective for the Commonwealth Public Service.

Instructions for the amendment of regulation 149 of the Military Financial Regulations were originally sent to the Attorney-General's Department on 22 October 1976.

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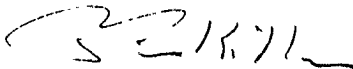
These instructions were overtaken by instructions dated 21 November 1977 to amend the Defence Force (Salaries) Regulations to provide a scheme for determination of allowances and reimbursements related to overseas service. Provision for the determination of reimbursements related to overseas service would have allowed the repeal of regulation 149 of the Military Financial Regulations.

On 19 October 1978 the Attorney-General's Department advised that it would not be possible to provide for determination of overseas allowances and reimbursements in accordance with the instructions of 21 November 1977.

It was therefore necessary to proceed with the amendment of regulation 149 which had been allowed to lapse.

The opinion of the Attorney-General's Department had been anticipated and fresh instructions for the amendment of regulation 149 were sent on 3 August 1978. A first draft was obtained from the Attorney-General's Department on 19 October 1978. A second and final draft was received on 3 November 1978 and the Statutory Rules were gazetted on 23 November 1978.

Yours sincerely,



(D.J. KILLEN)

Senator A.J. Missen,
Chairman,
Senate Standing Committee on
Regulations and Ordinances,
Parliament House,
CANBERRA, A.C.T. 2600



Statutory Rules

1978 No. 226

REGULATIONS UNDER THE DEFENCE ACT 1903*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Defence Act* 1903.

Dated this sixteenth day of November 1978.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

J. E. McLEAY
Minister of State for Construction for and on behalf of the
Minister of State for Defence

AMENDMENT OF THE MILITARY FINANCIAL REGULATIONS†

1. These Regulations shall be deemed to have come into operation on 19 November 1976. Commence-
ment

2. Regulation 149 of the Military Financial Regulations is repealed and the following regulation substituted:

"149. (1) Subject to this regulation, a member posted on duty overseas shall be reimbursed the cost of effecting reasonable insurance cover in respect of his household effects (including furniture)— Insurance of
household
effects
(including
furniture)

- (a) during their transportation—
 - (i) from Australia to that overseas post;
 - (ii) within the country of that overseas post; or
 - (iii) from that overseas post to Australia or another overseas post;
- (b) during their storage in Australia or at that overseas post; or
- (c) during their use at that overseas post.

* Notified in the *Commonwealth of Australia Gazette* on 23 November 1978.
† Statutory Rules 1946 No. 35 as amended to date. For previous amendments of the Military Financial Regulations see Footnote † to Statutory Rules 1978 No. 22 and see also Statutory Rules 1978 Nos. 22, 60, 69, 76, 87, 207 and 224.

Military Financial Regulations

" (2) In the case of a member posted overseas on short term duty, the amount of reimbursement under sub-regulation (1) shall not exceed the premium for insurance cover of \$1,000.

" (3) In the case of a member posted overseas on long term duty, the amount of reimbursement under sub-regulation (1) shall not exceed—

- (a) the premium for insurance cover of \$15,000; or
- (b) an amount calculated at a premium rate of 2 per cent of the amount of insurance cover effected."

APPENDIX C



Statutory Rules

1978 No. 251

REGULATIONS UNDER THE DEFENCE ACT 1903, THE NAVAL DEFENCE ACT 1910 AND THE AIR FORCE ACT 1923*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Act 1923*.

Dated this thirteenth day of December 1978.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

J. E. MCLEAY
Minister of State for Administrative Services for and
on behalf of the Minister of State for Defence

DEFENCE FORCE (RESERVES) (FINANCIAL) (MODIFIED APPLICATION) REGULATIONS

1. These Regulations may be cited as the Defence Force (Reserves) Citation (Financial) (Modified Application) Regulations.

2. In these Regulations, unless the contrary intention appears, ^{Interpretation} "dental officer", "medical officer", "member", "officer" and "reserve service" have the same respective meanings as in the Defence Force (Reserves) (Financial) Regulations.†

3. (1) Where the amount paid under the Defence Force (Reserves) (Financial) Regulations in respect of reserve service during the period that commenced on 22 January 1976 and ended on 29 January 1976 to—

(a) a member who, during that period, performed the duties of an appointment referred to in sub-regulation (2); or

Medical Officers and Dental Officers—rates of pay, 22 January 1976 to 1 September 1977

* Notified in the *Commonwealth of Australia Gazette* on 19 December 1978.
† Statutory Rules, 1976, No. 16 as amended to date. For amendments see footnote † to Statutory Rules 1978, No. 3 and see also Statutory Rules 1978, Nos. 3, 51, 117 and 210.
17054/77 Cat. No. 78 5378 2—Recommended retail price 20c

Defence Force (Reserves) (Financial) (Modified Application) Regulations

(b) a member who, during that period, served as a medical officer or a dental officer in a rank specified in Schedule 1, is less than the amount that would have been paid to that member in respect of that service if he had been paid an amount calculated at the rate—

(c) in the case of a member referred to in paragraph (a)—of \$6,949 per year; or

(d) in the case of a member referred to in paragraph (b)—specified in Schedule 1 in relation to the member's rank and service for the purposes of pay during that period,

the member shall be paid, by way of pay in respect of that service, an additional amount equal to the difference between those 2 first-mentioned amounts.

(2) The Defence Force (Reserves) (Financial) Regulations shall be deemed to have had effect as if the rate at which an officer of the Citizen Military Forces who efficiently performed the duties of the appointment of Consultant Colonel, C.M.F., 2nd Military District, Consultant Colonel, C.M.F., 3rd Military District or Colonel, Medical, 1st Division was to be paid had been—

(a) in respect of any period during which he so performed those duties that commenced after 29 January 1976 and ended before 20 February 1976—\$6,949 per year;

(b) in respect of any period during which he so performed those duties that commenced after 19 February 1976 and ended before 28 May 1976—\$7,394 per year;

(c) in respect of any period during which he so performed those duties that commenced after 27 May 1976 and ended before 20 August 1976—\$7,443 per year;

(d) in respect of any period during which he so performed those duties that commenced after 19 August 1976 and ended before 26 November 1976—\$7,555 per year;

(e) in respect of any period during which he so performed those duties that commenced after 25 November 1976 and ended before 1 April 1977—\$7,721 per year; and

(f) in respect of any period during which he so performed those duties that commenced after 31 March 1977 and ended before 27 May 1977—\$7,795 per year.

(3) The Defence Force (Reserves) (Financial) Regulations shall be deemed to have had effect in relation to a period of service by a medical officer or dental officer in a rank specified in Schedule 1 as if

*Defence Force (Reserves) (Financial) (Modified Application)
Regulations*

the rate of pay applicable to that service had been the rate specified in relation to his rank and service for the purposes of pay during that period in whichever of Schedules 1 to 7 (inclusive) to these Regulations is applicable to that period.

(4) The Defence Force (Reserves) (Financial) Regulations shall be deemed to have had effect in relation to the efficient performance by an officer of the Citizen Military Forces of the duties of an appointment specified in Schedule 8 in the period specified in that Schedule as if the rate of pay applicable to that officer in respect of the period of that performance had been the rate specified in relation to that appointment in that Schedule.

4. References to the Navy or to the Army in the Schedules to these Regulations shall, in respect of any period commencing after 21 January 1976 and ending before 8 February 1976, be read as references respectively to the Naval Forces or to the Military Forces. References to
Navy or
Army

SCHEDULE 1 Sub-regulations 3 (1) and 3 (3)

RATES OF PAY APPLICABLE TO SERVICE BY MEDICAL OFFICERS AND DENTAL OFFICERS, IN RESPECT OF MEMBERS OF THE NAVY OR OF THE ARMY, DURING A PERIOD THAT COMMENCED AFTER 29 JANUARY 1976 AND ENDED BEFORE 20 FEBRUARY 1976, OR, IN RESPECT OF MEMBERS OF THE AIR FORCE, DURING A PERIOD THAT COMMENCED AFTER 29 JANUARY 1976 AND ENDED BEFORE 19 FEBRUARY 1976

Column 1	Column 2	Column 3	Column 4
Navy	Army	Air Force	Amount
			£
Lieutenant	Captain--	Flight Lieutenant--	
Under 2 years	Under 2 years	Under 2 years	38.15
2 years	2 years	2 years	41.54
4 years	4 years	4 years	44.93
Lieutenant-Commander -	Major -	Squadron Leader--	
Under 2 years	Under 2 years	Under 2 years	48.32
2 years	2 years	2 years	50.86
4 years	4 years	4 years	53.41
Commander	Lieutenant-Colonel ..	Wing Commander ..	61.05
Captain	Colonel	Group Captain	66.52

(Remainder of schedules omitted.)

APPENDIX D



COMMONWEALTH OF AUSTRALIA

MINISTER FOR DEFENCE
 PARLIAMENT HOUSE
 CANBERRA A C T 2600

27 February 1979

Dear Senator Missen,

I write in relation to the retrospective operation of Statutory Rules 1979 No. 21, which introduce new Defence Force (Furlough) Regulations. The new regulations consolidate and revise on a tri-service basis the legislative provisions for furlough which previously were contained in the Air Force Regulations, the Australian Military Regulations and the Naval Financial Regulations. The superseded provisions were repealed by Statutory Rules 1979 Nos, 19, 20 and 25.

While much of the content of the Defence Force (Furlough) Regulations is simply a continuation of the former provisions, there are some aspects where new entitlements have been conferred. These additional benefits are as follows:

- recognition of previous Reserve service;
- recognition of prior local government service;
- payment in lieu of furlough as a right;
- payment to a deceased member's estate where there are no dependants;
- payment in lieu of furlough after one year's service on cessation due to age retirement, ill-health, retrenchment or death;

Because of the introduction of these changes, sub-regulation 11(4) of the Defence Force (Furlough) Regulations provides for additional payment in respect of a person who has ceased to be a member since 31 December 1973 and whose furlough entitlements under the previous provisions at the time he ceased to be a member were less than the entitlements that would have applied if the Defence Force (Furlough) Regulations had been in force at that time.

- 2 -

Because of the extremely long period of retrospectivity involved in this transitional provision, I think it is appropriate that I should explain in some detail the history of the additional entitlements which were included in the Defence Force (Furlough) Regulations along with the existing arrangements and which led to the transitional provision being carried back to 1 January 1973.

The furlough entitlements for members of the Defence Force are in principle the same as those for members of the Australian Public Service and other categories of Commonwealth employment, subject to modifications dictated by the circumstances of the Defence Force. The changes implemented in the Defence Force (Furlough) Regulations derive from similar changes introduced to the Australian Public Service.

Changes to long service leave (furlough) entitlements in the Public Service were approved by the then Government in April 1973.

Some of these (for example, reduction in the qualifying period of service from 15 years to 10 years) were implemented by the Public Service Act (No. 4) 1973 in December 1973 and were extended to the Defence Force by regulation amendments in May 1974. The rest were deferred pending examination by Commonwealth and State Ministers of a proposed national long service leave scheme. This examination was protracted and in the result agreement was not achieved.

On 15 May 1975, therefore, the then Government introduced the Long Service Leave (Government Employees) Bill 1975 on the basis that it wished to proceed with such of the further changes as would not prejudice any eventual national scheme. A notable feature of that Bill was provision for an accelerated rate of accrual of long service leave entitlements after the first 10 years service.

This Bill had not been passed when Parliament was dissolved on 11 November 1975 and it accordingly lapsed.

The long service leave changes were taken up again in 1976, with a view to developing a revised Bill. I think it is not unfair to say that some aspects of the previous Government's proposals, notably the accelerated accrual rate and the intended date of effect, occasioned some public controversy, particularly with regard to the cost of the changes and their implications for the private sector.

The Government ultimately agreed in October 1976 to reintroduction of the earlier Bill in modified form. The changes included omission of the provision for accelerated accrual, but retained 1 January 1973 as the date of effect for the new entitlements. In introducing the Long Service

- 3 -

Leave (Commonwealth Employees) Bill on 21 October 1976, the Minister for Employment and Industrial Relations commented with regard to the date of effect that 1 January 1973 had been retained in recognition of legitimate expectations arising from past public announcements and the Bill which had been introduced in 1975.

So far as the Defence Force was concerned, my Department had given instructions in June 1975 for drafting of the amendments to regulations which would have been required to bring the conditions applicable to members of the Defence Force into line with those proposed for the Public Service. As the 1975 Bill lapsed and fresh consideration was being given to the long service leave question those instructions were withdrawn in May 1976.

The development of new instructions for regulation amendments was put in hand as soon as the 1976 Bill was introduced, and instructions were issued to the Attorney-General's Department on 8 February 1977, following Assent to the Long Service Leave (Commonwealth Employees) Act 1976 on 20 December 1976. The instructions requested consolidated and revised regulations dealing with furlough for the Defence Force, based on the provisions of the 1976 Act.

The drafting was complicated by the need to adapt the principles embodied in the Act to the needs of the Defence Force. The time elapsed since February 1977 has been due primarily to the drafting process and the need to resolve policy queries which arose as drafting progressed.

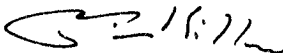
Six drafts of the Statutory Rules were required before a satisfactory draft in final form was completed in January 1979. The Defence Force (Furlough) Regulations and associated amendments to other regulations were lodged with the Federal Executive Council Office on 8 February 1979.

I readily acknowledge that the transitional provisions in the Defence Force (Furlough) Regulations involve retrospectivity for a period extending some four years beyond the limits your Committee normally regards as permissible. But I must say, quite frankly, that I see no alternative. I have already indicated the Government's view that the date of effect recognizes legitimate expectations which have arisen from past public announcements. It would have been unjust and unacceptable to have withheld these benefits from the group concerned, ie, those ex-members of the Defence Force who have concluded their service since 1 January 1973 and the dependants of those who have died.

- 4 -

I hope that your Committee will agree that the quite remarkable sequence of events which has so prolonged the implementation of these changes should not be allowed to affect the application of the Regulations to the persons for whose benefit they have been made.

Yours sincerely,



(D.J. KILLEN)

Senator A.J. Missen,
Chairman,
Senate Standing Committee on
Regulations and Ordinances,
Parliament House,
CANBERRA, A.C.T. 2600



Statutory Rules

1979 No. 21

REGULATIONS UNDER THE DEFENCE ACT 1903, THE NAVAL DEFENCE ACT 1910 AND THE AIR FORCE ACT 1923*

I, THE GOVERNOR-GENERAL of the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the *Defence Act 1903*, the *Naval Defence Act 1910* and the *Air Force Act 1923*.

Dated this fourteenth day of February 1979.

ZELMAN COWEN
Governor-General

By His Excellency's Command,

D. J. KILLEN
Minister of State for Defence

DEFENCE FORCE (FURLOUGH) REGULATIONS

1. These Regulations may be cited as the Defence Force (Furlough) Citation Regulations.

2. (1) In these Regulations, unless the contrary intention appears—

Interpretation

“Chief of Staff” means—

- (a) in relation to a member of the Navy—the Chief of Naval Staff;
- (b) in relation to a member of the Army—the Chief of the General Staff;
- (c) in relation to a member of the Air Force—the Chief of the Air Staff;

* Notified in the *Commonwealth of Australia Gazette* on 21 February 1979.
14177/77 Cat. No. 79 4550 3—Recommended retail price 30c

"furlough" includes long service leave, long leave, extended leave and any other leave in the nature of long service leave (howsoever described);

"leave" means leave of absence;

"member" means a member of the Defence Force rendering continuous full-time service.

(2) A reference in these Regulations to a member who is retrenched shall be read as a reference to a member whose continuous full-time service is terminated—

- (a) in the case of a member of the Navy—because of retrenchment in the Permanent Naval Forces;
- (b) in the case of a member of the Army—because of retrenchment in the Permanent Military Forces; or
- (c) in the case of a member of the Air Force—because of retrenchment in the Permanent Air Force.

(3) In these Regulations, in a reference to a number of months (other than a reference to a number of completed months), the number of months shall be taken to be, where appropriate, a whole number and a fraction.

(4) In these Regulations, in a reference to a number of years (other than a reference to a number of completed years), the number of years shall be taken to be, where appropriate, a whole number and a fraction.

(5) Where an amount payable to or in respect of a member in accordance with these Regulations includes a fraction of a cent, that fraction of a cent shall—

- (a) if the fraction is one-half or greater—be deemed to be one cent; or
- (b) if the fraction is less than one-half—be disregarded.

Delegation
by the
Minister

3. (1) The Minister may, either generally or otherwise as provided in the instrument of delegation, by writing signed by him, delegate to—

- (a) an officer who holds the rank of Captain in the Navy, Colonel in the Army, Group Captain in the Air Force or a higher rank; or
- (b) a person holding or performing the duties of an office in the Australian Public Service the minimum or only rate of salary applicable to which equals or exceeds the minimum rate of salary applicable to an office of Clerk, Class 8, in the Third Division of the Australian Public Service,

any of his powers under these Regulations, other than this power of delegation.

(2) A power delegated under this regulation, when exercised by the delegate, shall, for the purposes of these Regulations, be deemed to have been exercised by the Minister.

(3) A delegation under this regulation does not prevent the exercise of a power by the Minister.

4. (1) A Chief of Staff may, either generally or otherwise as provided in the instrument of delegation, by writing signed by him, delegate to—

Delegation
by a
Chief of Staff

- (a) in the case of the Chief of Naval Staff—an officer who holds a rank in the Navy not below the rank of Lieutenant Commander;
- (b) in the case of the Chief of the General Staff—an officer who holds a rank in the Army not below the rank of Major; or
- (c) in the case of the Chief of the Air Staff—an officer who holds a rank in the Air Force not below the rank of Squadron Leader,

any of his powers under these Regulations, other than this power of delegation.

(2) A power delegated under this regulation, when exercised by the delegate, shall, for the purposes of these Regulations, be deemed to have been exercised by the Chief of Staff.

(3) A delegation under this regulation does not prevent the exercise of a power by the Chief of Staff.

5. The Chief of Staff may grant to a member who has rendered not less than 10 years of relevant service—

Furlough for
10 years* or
longer
service

- (a) furlough on full salary for a period not exceeding the furlough credit applicable to the member on the day of the grant; or
- (b) furlough on half salary for a period not exceeding twice the furlough credit applicable to the member on the day of the grant.

6. The Chief of Staff may grant to a member who—

Furlough for
less than
10 years*
service

- (a) is to cease to be a member on retrenchment or on attaining his compulsory retiring age; and
- (b) has, or will have before he so ceases to be a member, rendered less than 10 years, but not less than 1 year, of relevant service,

furlough on full salary for a period not exceeding the furlough credit that will be applicable to the member immediately before he ceases to be a member.

Payment in
lieu of
furlough

7. (1) Subject to sub-regulation (3), the Minister shall authorize the payment to a member who ceases to be a member otherwise than by reason of death of an amount equal to his salary at the time he ceases to be a member, calculated in accordance with regulation 10, for a period equal to the period of furlough credit applicable to him.

(2) Where a person dies after ceasing to be a member and before the Minister has authorized under sub-regulation (1) the payment of an amount to him, the Minister shall authorize payment to the legal personal representative of the member of an amount equal to the amount the payment of which he would have authorized under sub-regulation (1) if the person had not died.

(3) Sub-regulation (1) does not apply to a member who—

- (a) by notice in writing given to a person authorized in writing by the Minister to receive notices for the purposes of this sub-regulation elects not to receive a payment under that sub-regulation and who has not, by notice in writing given to such a person, withdrawn that election;
- (b) has rendered less than one year of relevant service; or
- (c) has rendered less than 10 years, but not less than one year, of relevant service and who ceases to be a member before attaining his compulsory retiring age for any reason other than—
 - (i) retrenchment; or
 - (ii) ill-health.

(4) Where a member dies, the Minister may authorize the payment to—

- (a) the dependant or dependants of the member; or
- (b) the legal personal representative of the member,

of an amount equal to, or of amounts equal in the aggregate to, the member's salary, at the time of his death, calculated in accordance with regulation 10, for a period equal to the period of furlough credit applicable to him at the time of his death.

(5) Sub-regulation (4) does not apply to a member who has rendered less than one year of relevant service.

(6) Where a member gives notice in writing to a person authorized in writing by the Minister to receive notices for the purpose of this sub-regulation, stating that he wishes the Minister to authorize a payment to him of a specified amount, being an amount less than the amount that would otherwise be payable to him under sub-regulation (1), that sub-regulation does not empower the Minister to authorize a payment to him of an amount greater than the amount so specified.

(7) Where the Minister, after consideration of all the circumstances, directs that, for the purposes of these Regulations, the death of a member whose period of service is at least one year is to be presumed to have occurred on a specified date, these Regulations apply in relation to the member as if he had died on that date.

(8) Where there are 2 or more dependants of a deceased member, the Minister shall, in exercising the powers conferred on him by paragraph (4) (a), have regard to the respective losses suffered by those dependants as a result of the loss of earnings of the member.

(9) In the case of a member to whom sub-regulation (4) applies, the Minister shall, if he has not authorized the payment of an amount under sub-regulation (4)—

- (a) within 12 months of the date of the member's death; or
- (b) within 12 months after the date on which that direction was given where the Minister has given a direction under sub-regulation (7),

authorize payment of that amount to the legal personal representative of the member.

(10) Where an amount is payable under these Regulations to a person, being a member or a dependant of a member, who is under a legal disability, the Minister may, instead of authorizing payment of the amount to the person, authorize payment of the amount to such trustee or trustees as the Minister appoints, to be held by that trustee or those trustees upon such trusts for the benefit of the person as the Minister directs, and, when the amount is paid to that trustee or to those trustees accordingly, the amount shall, for the purposes of these Regulations, other than this regulation, be deemed to have been paid to the person.

(11) Where, upon the death of a member, the amount payable under these Regulations in relation to his death would be *bona vacantia*, these Regulations do not authorize that amount to be paid in relation to the member.

8. (1) Subject to this regulation, a member's relevant service is the aggregate of—

- (a) the periods of continuous full-time service in the Defence Force rendered by the member since he became a member;
- (b) the periods, each consisting of a day on which he rendered, before he became a member, not less than 6 hours service in the Defence Force, other than continuous full-time service, and for which he received a full day's reserve service pay;

Relevant
service

(c) the periods of employment other than the periods referred to in paragraph (a) or (b), that would be included as part of the member's period of service for the purpose of determining his eligibility to be granted long service leave under the *Long Service Leave (Commonwealth Employees) Act 1976*, if he—

- (i) were an employee under that Act; and
- (ii) had become an employee within the meaning of that Act on the date of commencement of these Regulations or the date on which he became a member, whichever is the later.

(2) A period of absence without leave that exceeds 1 day shall be deemed not to be part of a period of continuous full-time service.

(3) A period of leave shall be deemed not to be part of a period of continuous full-time service unless it is—

- (a) a period of leave (including furlough) with full or partial pay; or
- (b) a period of leave without pay granted on account of illness or not exceeding 3 months.

(4) Where a member rendering continuous full-time service is absent without leave for a period exceeding 12 months, the part of the period of that full-time service, and any other period of service or employment, prior to the period of absence without leave shall not be included in that member's relevant service.

(5) Where a period of—

- (a) service or employment; or
- (b) leave referred to in paragraph (3)(a) or (b),

is separated from other later periods of service, employment or leave referred to in paragraph (3) (a) or (b), by a continuous period of more than 12 months, the first mentioned period and any previous period of service, employment or leave shall not be part of the member's relevant service.

Furlough
credit

9. (1) For the purposes of these Regulations the furlough credit applicable to a member on a particular day shall be the number of months calculated in accordance with the formula—

$$\frac{3A}{10} + \left\{ \frac{3B}{10} \times \frac{C}{36.75} \right\} - D$$

where—

A is equal to the number of years of relevant service of the member before the prescribed day, excluding periods of

employment described in paragraph 8 (1) (c) that were periods of employment in a part-time capacity;

B is equal to the number of years of relevant service of the member comprised in the periods of employment described in paragraph 8 (1)(c) that were periods of employment in a part-time capacity;

C is equal to the average number of hours of service a member was required to render each week, during the number of years to which B is equal; and

D is equal to the number of months in a period, or in the aggregate of any periods, of furlough granted to and taken by the member, under these Regulations or otherwise, in respect of relevant service before that day.

(2) In sub-regulation (1), "prescribed day" means—

(a) in relation to the furlough credit of a member on the day on which he ceases to be a member—the day immediately following the last day of the last completed month of the member's relevant service; or

(b) in relation to the furlough credit of a member on any other day—the day immediately following the last day of the last completed year of the member's relevant service.

(3) Where a member is—

(a) unfit for duty on account of illness; or

(b) recalled for duty,

for a period of not less than one day during a period of furlough granted to the member, the member shall be deemed, for the purpose of determining his furlough credit, not to have been granted furlough in respect of that first mentioned period.

(4) Where, in respect of a period of relevant service, a member has been granted a period of furlough on half pay or half salary, as the case may be, either before or after the coming into effect of these Regulations, the period of that furlough shall, for the purpose of this regulation, be deemed to have been a period equal to half that period.

(5) Where, in respect of a period of relevant service, a member has been paid an amount, either before or after the coming into effect of these Regulations, the member shall, for the purpose of this regulation, be deemed to have been granted, on the day on which that payment was made to him, a period of furlough in respect of that period of relevant service equal to the period of furlough on full salary in lieu of which that payment was made to him.

Salary of
a member

10. (1) For the purposes of these Regulations, the salary of a member who is granted furlough shall be deemed to be—

- (a) salary at the rate from time to time applicable to the substantive rank of the member under regulation 7, 8 or 9 of the Defence Force (Salaries) Regulations or under a determination made by the Remuneration Tribunal in pursuance of sub-section 7 (3) of the *Remuneration Tribunals Act 1973*;
- (b) where the member held, immediately before the prescribed day, a temporary or an acting rank higher than his substantive rank, and he held that temporary or acting rank or such temporary or acting ranks—
 - (i) during the whole of the period of 12 months immediately preceding the prescribed day; or
 - (ii) in the case of a member who is to cease to be a member after the expiry of the period of furlough granted to him—during the period referred to in sub-paragraph (i) or during a period of, or periods amounting to, 3 of the 5 years immediately preceding the prescribed day,
 salary at the rate from time to time applicable to that temporary or acting rank, or, where the member held more than 1 such temporary or acting rank during that period or those periods, the lower or lowest of those ranks; or
- (c) salary at the rate referred to in paragraph (a) or (b), as the case may be, and—
 - (i) subject to sub-regulation (4), an allowance payable to the member, immediately before the prescribed day, under a regulation specified in sub-regulation (3); and
 - (ii) an increment payable under regulation 38 of the Naval Financial Regulations, regulation 13 of the Military Financial Regulations or regulation 552 of the Air Force Regulations.

(2) For the purposes of these Regulations, the salary of a member to whom or in respect of whom a payment in lieu of furlough is made shall be deemed to be—

- (a) salary at the rate applicable to the substantive rank of the member, immediately before the prescribed day, under regulation 7, 8 or 9 of the Defence Force (Salaries) Regulations or under a determination made by the Remuneration Tribunal in pursuance of sub-section 7 (3) of the *Remuneration Tribunals Act 1973*;

- (b) where the member held immediately before the prescribed day a temporary or an acting rank higher than his substantive rank, and he held that temporary or acting rank or such temporary or acting ranks—

- (i) during the whole period of the 12 months immediately preceding the prescribed day; or
(ii) during a period of, or periods amounting to, 3 of the 5 years immediately preceding the prescribed day,

salary at the rate applicable to that temporary or acting rank, immediately before the prescribed day, or, where the member held more than 1 such temporary or acting rank during that period or those periods, the lower or lowest of those ranks; or

- (c) salary at the rate referred to in paragraph (a) or (b), as the case may be, and—

- (i) subject to sub-regulation (4), an allowance payable to the member, immediately before the prescribed day, under regulation 10 or 16 of the Defence Force (Salaries) Regulations or a regulation specified in paragraph (3) (b) or (d); and
(ii) an increment payable to the member, immediately before the prescribed day, under regulation 38 of the Naval Financial Regulations, regulation 13 of the Military Financial Regulations or regulation 552 of the Air Force Regulations.

(3) Subject to this regulation, an allowance shall be included in the salary of a member for the purposes of these Regulations, if it is an allowance payable under—

- (a) regulation 10, sub-regulation 11 (8), regulation 14 or regulation 16 of the Defence Force (Salaries) Regulations;
(b) regulation 18, 24, 40 or 76A of the Naval Financial Regulations, regulation 33, 33A or 34 of the Military Financial Regulations or regulation 553, 553A, 553B or 553C of the Air Force Regulations;
(c) regulation 9A of the Defence Force (Salaries) Regulations, regulation 107, 108, 110 or 111 of the Naval Financial Regulations, regulation 614, 615 or 615A of the Air Force Regulations or regulation 41, 43, 44, 46 or 47 of the Military Financial Regulations; or
(d) regulation 113 of the Naval Financial Regulations, regulation 28 of the Military Financial Regulations or regulation 556J of the Air Force Regulations.

(4) An allowance referred to in sub-regulation (3) shall not be included in a member's salary for the purposes of these Regulations unless—

- (a) in respect of an allowance payable under a regulation referred to in paragraph (3) (b)—the allowance would have continued to be payable to the member but for the occurrence of the prescribed day;
- (b) in respect of an allowance payable under a regulation referred to in paragraph (3) (c)—the member remains in the locality in respect of which that allowance is payable or, if the member is married, the member's family remains in that locality; or
- (c) in respect of an allowance payable under a regulation specified in paragraph (3) (d)—that allowance was payable—
 - (i) during the whole of the period of 12 months immediately preceding the prescribed day; or
 - (ii) in the case of a member who is to cease to be a member after the expiry of the period of furlough granted to him, or to whom or in respect of whom a payment in lieu of furlough is to be made—during the period referred to in sub-paragraph (i) or during a period of, or periods amounting to, 3 of the 5 years immediately preceding the prescribed day.

(5) Where—

- (a) for the purposes of these Regulations, an allowance payable under a regulation specified in paragraph (3) (d) is to be included in a member's salary; and
- (b) during the qualifying period or periods required by virtue of paragraph (4) (c), the member performed the duties of 2 or more positions,

the rate at which the allowance is to be included in the member's salary shall be determined by reference to the lower or lowest of the ranks for those positions.

(6) Notwithstanding any provision in the Naval Financial Regulations, the Military Financial Regulations, the Air Force Regulations or the Defence Force (Salaries) Regulations, an allowance that would otherwise accrue due from day to day under such a provision shall not be payable to a member in respect of a period of furlough, except to the extent that it may be included in the member's salary for the purposes of these Regulations.

(7) In this regulation—

“prescribed day” means—

- (a) where the member is granted furlough—the day on which the period of furlough begins; or
- (b) where a payment in lieu of furlough is to be made to, or in respect of, a member—the day on which the member commences resettlement training, is transferred to a discharge centre, commences a period of recreation leave or furlough preparatory to ceasing to be a member or ceases to be a member, whichever first occurs.

11. (1) Notwithstanding any other provision of these Regulations, Transitional where the period in respect of which a member is eligible for the grant of furlough under these Regulations in respect of his relevant service would, but for this sub-regulation, be shorter than the period in respect of which he would have been eligible for the grant of furlough in respect of that service if these Regulations had not been made, the furlough credit of that member in respect of that service shall be that longer period.

(2) A grant of leave in the nature of furlough made to a member before the commencement of these Regulations in respect of a period after the commencement of these Regulations shall be as valid and effectual for the purposes of these Regulations as if it had been made after the commencement of these Regulations by the Chief of Staff.

(3) Notwithstanding sub-regulation (2), where a member is on furlough at the commencement of these Regulations, and the amount that would, but for this sub-regulation, be payable to the member in respect of that part of his furlough that occurs after that commencement is less than the amount that would have been payable to him in respect of that period if these Regulations had not been made, the member shall be paid the greater amount in respect of that period.

(4) Where—

- (a) a member ceased to be a member after 31 December 1972 but before the commencement of these Regulations; and
- (b) if these Regulations had been in force during that period, the furlough credit applicable to that member at the time he ceased to be a member would have exceeded the period of furlough (if any) to which he was entitled under the relevant Service Regulations,

the Minister may authorize payment of an amount in respect of the excess of the period of furlough credit that would have been applicable to him over the period of furlough (if any) to which he was entitled,

being an amount equal to the amount that the member would have received as pay under the relevant Service Regulations, had he been entitled, at the time he ceased to be a member, to a period of furlough equal to that part of the period of furlough credit in respect of which the amount is payable.

(5) The Minister may authorize payment of the amount referred to in sub-regulation (4)—

- (a) if the member ceased to be a member by reason of his death—
 - (i) subject to sub-regulation (6), to the dependant or dependants of the member;
 - (ii) if the Minister has not authorized payment under sub-paragraph (i)—to the legal personal representative of the member;
 - (iii) if the Minister has not authorized payment under sub-paragraph (i) or (ii) within 12 months after the commencement of these Regulations or, if he has given a direction under sub-regulation 7 (7), within 12 months after the date on which that direction was given—to the legal personal representative of the member;
- (b) if the member has died after ceasing to be a member—to the legal personal representative of the member; or
- (c) in any other case—to the member.

(6) Where the Minister authorizes, by virtue of sub-paragraph (5) (a) (i), payment of an amount to 2 or more dependants of a member, he shall apportion that amount between or among those dependants, having regard to the respective losses suffered by those dependants as a result of the loss of earnings of the member.

(7) In this regulation—

“relevant Service Regulations” means—

- (a) in the case of a former member of the Navy—Part XIII of the Naval Financial Regulations;
 - (b) in the case of a former member of the Army—Division VII of Part VI of the Australian Military Regulations; and
 - (c) in the case of a former member of the Air Force—Part VA of the Air Force Regulations,
- as in force at the time he ceased to be a member.