

AUSTRALIAN SOLDIERS' REPATRIATION.

No. 14 of 1929.

An Act Relating to the Establishment of Appeal Tribunals to deal with Appeals relating to War Pensions.

[Assented to 25th March, 1929.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1.—(1.) This Act may be cited as the *Australian Soldiers' Repatriation Act 1929*. Short title and citation.

(2.) The *Australian Soldiers' Repatriation Act 1920–1922** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Australian Soldiers' Repatriation Act 1920–1929*.

2. This Act shall commence on a date to be fixed by Proclamation. Commencement.

3. Section four of the Principal Act is amended by inserting after the words "Part III.—Pensions," the words— Divisions of Part III.

"Division 1.—Grant of Pensions.

Division 2.—War Pensions Entitlement Appeals.

Division 3.—War Pensions Assessment Appeals.

Division 4.—General."

4. Part III. of the Principal Act is amended by inserting after the heading "PART III.—PENSIONS." the words "*Division 1.—Grant of Pensions.*" Amendment of heading of Part III.

5. Section twenty-two of the Principal Act is amended— Definitions.

(a) by inserting before the definition of "Child" the following definition:—

" 'Appeal Tribunal' means a War Pensions Entitlement Appeal Tribunal established under this Part ;" ; and

(b) by omitting the words " 'Member of the Forces' means " and inserting in their stead the words " 'Member of the Forces' or 'Returned Soldier' means ".

6. After section forty-five of the Principal Act the following Divisions and sections are inserted in Part III.:-

"Division 2.—War Pensions Entitlement Appeals.

War Pensions
Entitlement
Appeal
Tribunals.

"45A.—(1.) There shall be such War Pensions Entitlement Appeal Tribunals as are established by the Governor-General.

"(2.) An Appeal Tribunal shall consist of a Chairman and two other members all of whom shall be appointed by the Governor-General.

"(3.) The Chairman of an Appeal Tribunal shall be a person who has been admitted to practise as a barrister or solicitor of the High Court or of the Supreme Court of a State.

"(4.) The members other than the Chairman shall be returned soldiers, and one shall be selected for appointment from a list, containing the names of not less than three returned soldiers, submitted to the Minister by any organization representing returned soldiers throughout the Commonwealth.

Acting
members.

"45B. In the case of the illness, or absence from Australia, or suspension, of any member of an Appeal Tribunal, or in the event of the office of a member of an Appeal Tribunal becoming vacant, the Governor-General may appoint a person to act temporarily during the illness, absence or suspension, or until the appointment of a member of the Appeal Tribunal, as the case may be, and the person so acting shall have all the powers and functions and perform all the duties of a member of the Appeal Tribunal.

Deputy
Chairman.

"45C.—(1.) The Governor-General may appoint one of the members of an Appeal Tribunal to be Deputy Chairman.

"(2.) In the absence of the Chairman from any meeting the Deputy Chairman shall preside.

Quorum.

"45D. At any meeting of an Appeal Tribunal two members shall form a quorum.

Remuneration
of members.

"45E. The members of an Appeal Tribunal shall receive such remuneration as the Governor-General determines.

Tenure.

"45F.—(1.) Subject to this Act, the members of an Appeal Tribunal shall be appointed for a term not exceeding five years and shall be eligible for re-appointment for a further term not exceeding five years.

"(2.) Upon the happening of a vacancy in the office of a member of an Appeal Tribunal, the Governor-General may appoint a person to the vacant office and such person shall, subject to this Act, hold office until the expiration of the term for which his predecessor was appointed :

Provided that any person appointed to fill a vacancy in the office of the member selected from a list submitted in pursuance of sub-section (4.) of section forty-five A of this Act shall be selected from a list submitted in accordance with that sub-section.

"45G.—(1.) The Minister may suspend a member of an Appeal Tribunal, or an acting member, from office for inability, inefficiency or misbehaviour or neglect or failure to carry out any of the provisions of this Act or the Regulations. Suspension of member.

"(2.) The Minister shall, within seven days after the suspension, if the Parliament is then sitting, or, if the Parliament is not then sitting, within seven days after the next meeting of the Parliament, cause to be laid before both Houses of the Parliament a full statement of the grounds of suspension, and if within sixty days thereafter an address is presented to the Governor-General by the Senate and the House of Representatives praying for the restoration of the member or acting member, as the case may be, to office he shall be restored accordingly; but if no such address is so presented the Governor-General may confirm the suspension and declare the office of the member or acting member, as the case may be, to be vacant and the office shall thereupon be and become vacant.

"45H.—(1.) A member of an Appeal Tribunal or an acting member shall be deemed to have vacated his office if— Vacation of office—disqualification.

- (a) he engages during the term of office in any paid employment outside the duties of his office;
- (b) he becomes bankrupt or insolvent, or applies to take the benefit of any Act for the relief of bankrupt or insolvent debtors, or compounds with his creditors or makes an assignment of his salary for their benefit; or
- (c) he is wilfully absent from duty for a period of fourteen consecutive days except on leave granted by the Governor-General (which leave the Governor-General is hereby authorised to grant).

"(2.) A person who is an uncertificated bankrupt or insolvent shall be incapable of being appointed a member of an Appeal Tribunal.

"45J.—(1.) The members of an Appeal Tribunal shall not be subject to the *Commonwealth Public Service Act 1922-1928*, but if an officer of the Public Service of the Commonwealth is appointed a member of an Appeal Tribunal his service as a member of the Tribunal shall, for the purpose of determining his existing and accruing rights, be taken into account as if it were service in the Public Service of the Commonwealth, and if an officer of the Public Service of a State is appointed a member of an Appeal Tribunal his service as a member of the Tribunal shall, for the purpose of determining his existing and accruing rights, be taken into account as if it were service in the Members of Appeal Tribunal not subject to the Commonwealth Public Service Act 1922-1928.

Public Service of the Commonwealth and as if he had been an officer of a Department transferred to the Commonwealth and were retained in the service of the Commonwealth.

"(2.) If an officer of the Public Service of the Commonwealth is appointed a member of an Appeal Tribunal, the *Officers' Rights Declaration Act* 1928 shall apply as if this Act and section had been specified in the Schedule to that Act.

Appeals.

"45K.—(1.) A person who has claimed, as a member of the Forces, or as a dependant of a member of the Forces, a pension under section twenty-three of this Act, and whose claim has been refused by the Commission on the ground that the death or incapacity of the member has not resulted from any occurrence happening during the period he was a member of the Forces, or from his employment in connection with naval or military preparations or operations, as the case may be, may within twelve months after—

(a) the commencement of this section ; or

(b) the date of the determination by the Commission,

whichever is the later, or within such further time as is allowed by an Appeal Tribunal on special circumstances being shown, lodge with the prescribed person, in the prescribed form, an appeal to an Appeal Tribunal against the determination of the Commission.

"(2.) The person with whom an appeal is lodged under the last preceding sub-section shall forward the appeal to the Commission which shall transmit it to the Appeal Tribunal with the records in the possession of the Commission relating to the appellant.

"(3.) If, upon the consideration of an appeal by an Appeal Tribunal, no further evidence is tendered which, in the opinion of the Tribunal has a substantial bearing upon the appellant's claim, the Tribunal shall decide the appeal.

"(4.) If, upon the consideration of an appeal before an Appeal Tribunal, further evidence is tendered which, in the opinion of the Tribunal, has a substantial bearing upon the appellant's claim, the Tribunal shall refer the case back to the Commission for review.

"(5.) The Commission shall thereupon review the case and notify the Appeal Tribunal of its determination.

"(6.) If the decision of the Commission in pursuance of the last preceding sub-section is adverse to the appellant, the Appeal Tribunal shall consider and decide the appeal upon the records and evidence upon which the determination appealed against and the decision upon the review were given by the Commission.

"(7.) If, at any time after a decision of an Appeal Tribunal made under sub-section (3.) or sub-section (6.) of this section, the appellant submits to the Commission in writing any further evidence which, in the opinion of the Commission, is relevant to the appellant's

claim, the Commission shall reconsider the claim and, if the claim is refused by the Commission, the appellant may, within twelve months of the decision of the Commission, appeal in writing to an Appeal Tribunal which shall consider the further evidence and decide the appeal:

Provided that, where, in the opinion of the Commission, the further evidence is not relevant to the appellant's claim, the appellant may, within twelve months of the submission of such further evidence to the Commission, submit that evidence in writing to an Appeal Tribunal which shall decide whether the evidence is relevant to the appellant's claim and, if it decides that the evidence is so relevant, the appellant may appeal to the Tribunal which upon such appeal shall consider the further evidence and decide the appeal.

"(8.) Upon any decision being made under this section by an Appeal Tribunal, it shall forthwith give notice, in the prescribed form, to the Commission and to the appellant, of the decision.

"(9.) The Commission may, at any time after a decision by an Appeal Tribunal under sub-section (3.) or sub-section (6.) of this section, appeal in writing to the Tribunal upon any further evidence relating to the appeal which, in the opinion of the Commission, is relevant thereto.

" Division 3.—War Pension Assessment Appeals.

"45L.—(1.) There shall be such Assessment Appeal Tribunals as the Minister, from time to time, determines for the purpose of deciding appeals against assessments by the Commission of the rates of pensions of Members of the Forces. Assessment
Appeal
Tribunals.

"(2.) Each Assessment Appeal Tribunal shall consist of a Chairman appointed by the Minister and of two other members who shall be medical practitioners who have the necessary knowledge of the nature of disability from which the appellant or appellants is or are suffering.

"(3.) The Chairman of an Assessment Appeal Tribunal shall be selected for appointment from a list of returned soldiers who have been admitted to practise as Barristers or Solicitors of the High Court or of the Supreme Court of a State, submitted in the manner provided by sub-section (4.) of section forty-five A, of this Act.

"(4.) The two members of an Assessment Appeal Tribunal, other than the Chairman, shall be selected in the prescribed manner from lists of medical practitioners approved by the Minister.

"(5.) Subject to this Act, the Chairman of an Assessment Appeal Tribunal shall be appointed for a term not exceeding five years and shall be eligible for re-appointment for a further term not exceeding five years.

"(6.) The provisions of sections forty-five G, forty-five H and forty-five J of this Act shall apply to the Chairman of an Assessment Appeal Tribunal as if he were a member of an Appeal Tribunal.

Remuneration
of members of
Assessment
Appeal
Tribunal.
Appeals to
Assessment
Appeal
Tribunals.

"45M. The members of an Assessment Appeal Tribunal shall receive such remuneration as the Minister determines.

"45N.—(1.) Any member of the Forces who is in receipt of a pension under this Act may, within three months after—

(a) the commencement of this section ; or

(b) the date of the notification of the assessment, by the Commission, of his pension or the date of a refusal by the Commission to alter the existing assessment,

whichever is the later, lodge with the prescribed person, in the prescribed form, an appeal against the current assessment of the rate of his pension.

"(2.) The person with whom an appeal is lodged under the last preceding sub-section shall forward the appeal to the Commission, which shall transmit it to an Assessment Appeal Tribunal with all the records relating to the assessment appealed against.

Decision of
appeals.

"45P. An Assessment Appeal Tribunal shall, after considering an appeal lodged by a member of the Forces against an assessment of pension made under this Act, decide the appeal and may increase or continue any assessment of such pension, and the Tribunal shall forthwith give notice in the prescribed form to the Commission and to the appellant of the decision.

Effect of
decision of
Assessment
Appeal
Tribunal.

"45Q.—(1.) The decision of an Assessment Appeal Tribunal shall, subject to this section, be binding upon the appellant and upon the Commission for a period of six months after the date of the decision.

"(2.) Nothing in this section shall prevent the Commission at any time increasing the pension payable as a result of a subsequent increase of the incapacity of the appellant.

"(3.) Where, in the opinion of the Commission, a decision of an Assessment Appeal Tribunal has been affected by evidence which is false in a material particular, the Commission may refer the case to the Assessment Appeal Tribunal with a statement of the grounds of its opinion.

"(4.) An Assessment Appeal Tribunal may, if it thinks fit, upon receipt of a statement referred to it under the last preceding sub-section, rehear the appeal and make such decision as it thinks just.

" Division 4.—General.

Right of
appellant to
appear.

"45R.—(1.) An appellant to an Appeal Tribunal or to an Assessment Appeal Tribunal may attend in person at any sittings at which his appeal is being heard.

"(2.) The Commission may be represented by any person other than a legal practitioner at the hearing of any appeal by an Appeal Tribunal or by an Assessment Appeal Tribunal.

"(3.) Any appellant shall be entitled—

- (a) if he attends a sitting of a Tribunal—to receive such expenses of his attendance as are prescribed; and
- (b) to be represented, at his own expense, at the hearing by a person other than a legal practitioner.

"(4.) Where the Tribunal is of opinion that an appeal is frivolous, it may declare that the appellant shall not be entitled to receive any of the expenses of his attendance at the hearing of the appeal, and thereupon the appellant shall not be so entitled.

"45s. An Appeal Tribunal and an Assessment Appeal Tribunal may— Summoning of witnesses, &c.

- (a) summon witnesses;
- (b) take evidence on oath; and
- (c) require the production of documents.

"45t. Any person who has been summoned to appear as a witness before an Appeal Tribunal or an Assessment Appeal Tribunal and who, without lawful excuse, and after tender of reasonable expenses, fails to appear in answer to the summons, shall be guilty of an offence. Witness failing to appear.

Penalty: Twenty pounds.

"45u. Any person who appears before an Appeal Tribunal or an Assessment Appeal Tribunal as a witness and who, without lawful excuse, refuses to be sworn, or to make an affirmation, or to produce documents, or to answer questions he is lawfully required to answer, shall be guilty of an offence. Witness refusing to be sworn.

Penalty: Fifty pounds.

"45v. An Appeal Tribunal and an Assessment Appeal Tribunal may appoint any person to hear and receive evidence with respect to any matter pertaining to an appeal under this Part, and such person shall have authority to administer oaths and to hear and receive evidence upon oath and to take affidavits in any part of the Commonwealth. Appointments of persons to take evidence.

"45w.—(1.) As soon as conveniently practicable after the receipt by an Appeal Tribunal or by an Assessment Appeal Tribunal of an appeal and the records relating to the appellant, the Chairman of the Tribunal shall fix a time and place for the consideration of the appeal and shall notify the appellant and the Commission thereof. Consideration of Appeals.

"(2.) Subject to this Act, an Appeal Tribunal and an Assessment Appeal Tribunal shall not, in the hearing of appeals, be bound by any rules of evidence but shall act according to substantial justice and the merits of the case and shall give to an appellant the benefit of the doubt:

Provided too that if the appellant or a representative of the appellant shall make out a *prima facie* case in support of his claim that the incapacity from which he is suffering or from which he has died was caused or aggravated by war service, the onus of proof that such incapacity was not in fact so caused or aggravated shall lie with the Commission.

"(3.) The hearing of any appeal under this Part shall not be open to the public.

Appeal Tribunal may specify date from which decision operates.

"45x. An Appeal Tribunal or an Assessment Appeal Tribunal may specify, in any decision made by it under this Part, the date from which the decision shall operate, and the decision shall operate accordingly :

Provided that an Assessment Appeal Tribunal shall not give to any decision retrospective operation for any period prior to the date of lodgment of the appeal unless it has satisfactory evidence that the condition of the appellant during that period was such as to justify such operation.

Conduct of appeal by representative of deceased or mentally afflicted soldier.

"45y.—(1.) If an appellant dies after the lodgment of his appeal, it may be continued by any person approved by an Appeal Tribunal as a proper representative of the appellant, and the approved person shall, for the purpose of the conduct of the appeal, have all the rights of the appellant.

(2.) In the case of a mentally afflicted returned soldier, any person approved by an Appeal Tribunal as a proper representative of the soldier may lodge an appeal on his behalf, and shall, for the purpose of the conduct of the appeal, have all the rights of the soldier.

Information in records may be made available to appellant.

"45z. An Appeal Tribunal and an Assessment Appeal Tribunal shall, so far as is consistent with the interests of the appellant, and with any obligation to respect information given to the Commission upon a confidential basis, make available to the appellant or his representative information contained in the records relating to the case :

Provided that information given to the Commission on a confidential basis may be disclosed to the appellant or his representative in any case if the person who has provided the information consents in writing.

Salaries and expenses of Tribunals.

"45AA. The salaries and expenses of members of Appeal Tribunals and of Assessment Appeal Tribunals shall be paid out of moneys provided by the Parliament for the purpose.

Reports.

"45AB.—(1.) Appeal Tribunals shall furnish to the Minister an annual report, which the Minister shall present to the Parliament.

"(2.) The Commission shall include in its report under section fifty-eight of this Act, statistics of cases dealt with by Assessment Appeal Tribunals."