

Defence

No. 51 of 1965

An Act relating to the Defence Force.

[Assented to 7 June, 1965]

BE it enacted by the Queen'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 *Defence Act 1965*.

Short title
and citation.

(2.) The *Defence Act 1903–1964** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Defence Act 1903–1965*.

2.—(1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.

Commence-
ment.

(2.) The amendment made by paragraph (b) of the next succeeding section, and sections 12, 20 and 23 of this Act, shall come into operation on such dates as are respectively fixed by Proclamation.

3. Section 2 of the Principal Act is amended—

Parts.

(a) by omitting the words—

“ Part IV.—Liability to Serve in the Citizen Forces
in Time of War (Sections 59–61B).”

and inserting in their stead the words—

“ Part IV.—Liability to Serve in the Defence Force
in Time of War (Sections 59–61C).”;

and

(b) by omitting the words—

“ Part XII.—Protection in Relation to Civil Em-
ployment (Sections 125–136).”

* Act No. 20, 1903, as amended by No. 12, 1904; No. 15, 1909; Nos. 30 and 37, 1910; No. 15, 1911; No. 5, 1912; No. 36, 1914; No. 3, 1915; No. 36, 1917; Nos. 16 and 47, 1918; No. 1, 1927; No. 50, 1932; No. 45, 1934; Nos. 13, 38, 70 and 74, 1939; No. 4, 1941; No. 11, 1945; No. 78, 1947; No. 35, 1948; No. 71, 1949; No. 80, 1950; Nos. 19 and 59, 1951; No. 98, 1952; No. 20, 1953; No. 72, 1956; and No. 92, 1964.

Definitions.

4. Section 4 of the Principal Act is amended—

(a) by omitting the definition of “ Military Decoration ”; and

(b) by inserting after the definition of “ Seaman ” the following definition:—

“ ‘ Service Decoration ’—Means any order, medal, badge, clasp, bar or other insignia that was or may be conferred for valour, distinguished conduct or service, long service, good conduct, devotion to duty, efficiency, participation in a campaign or other warlike operation or for any other reason on a member of the Defence Force or of any armed force of any part of the Queen’s dominions or of any Power allied or associated with the Commonwealth in any war or warlike operations in which the Commonwealth is or has been engaged, and includes the ribbon of any such order, medal, badge, clasp or other decoration and any colourable imitation, representation or miniature of any such order, medal, badge, clasp or other decoration.”.

5. Section 10A of the Principal Act is repealed and the following section inserted in its stead:—

Term of appointment.

“ 10A.—(1.) In appointing a person to be an officer of the Military Forces, the Governor-General (or his delegate under section ten c of this Act) shall specify the part of the Military Forces to which the appointment is made and—

(a) may express the appointment to be for a specified period of service in that part of the Military Forces; or

(b) may express the appointment to be for a specified period of service in one part of the Military Forces, to be followed by a specified period of service in another part of the Military Forces.

“ (2.) Upon completion by an officer of the period of service for which he was appointed, or for which the term of his appointment is, under this section, to be deemed to have been extended, the appointment of the officer shall be terminated with all convenient speed, but until the appointment is so terminated he remains an officer of the part of the Military Forces in which he is serving.”

“ (3.) If the period of service in a part of the Military Forces for which an officer was appointed, or for which the term of his appointment is, under this section, to be deemed to have been extended, expires during a time of war, the term of his appointment as an officer of that part of the Military Forces shall be deemed to be extended until the end of the time of war.”

“(4.) If the period of service in the Australian Regular Army or in the Regular Army Supplement for which an officer was appointed, or for which the term of his appointment is, under this section, to be deemed to have been extended, expires during a time of defence emergency or a time for which any part of the Regular Army Emergency Reserve is called out for continuous service, the term of his appointment as an officer of the Australian Regular Army or of the Regular Army Supplement, as the case may be, shall be deemed to be extended until the end of that time.

“(5.) If the period of service in the Regular Army Emergency Reserve, in the Regular Army Reserve or in the Citizen Military Forces for which an officer was appointed, or for which the term of his appointment is, under this section, to be deemed to have been extended, expires during a time of defence emergency or a time for which the part of the force to which he belongs is called out for continuous service, the term of his appointment as an officer of the part of the Military Forces in which he is serving shall be deemed to be extended until the end of that time.

“(6.) The last two preceding sub-sections do not apply to or in relation to an officer who, but for his appointment as an officer, would have been liable to render a period of service under the *National Service Act 1951-1965*, but, if the period of service in the Regular Army Supplement of such an officer expires during a time of defence emergency, the term of his appointment as an officer of that force shall be deemed to be extended until the end of the time of defence emergency or until the expiration of five years after the date on which he presented himself, or but for his appointment as an officer would have been required to present himself, for service under that Act, whichever is the shorter period.

“(7.) The preceding provisions of this section do not affect any power expressly or impliedly conferred by any other provision of this Act to transfer an officer from one part of the Military Forces to another part of the Military Forces or to terminate the appointment of an officer before the expiration of the term of his appointment.”.

6. Section 17 of the Principal Act is amended—

(a) by omitting from paragraph (b) of sub-section (2.) the word “ or ” (last occurring); and

(b) by adding at the end of that sub-section the following word and paragraph:—

“ ; or (d) the officer would, but for his appointment as an officer, have been liable to render a period of service under the *National Service Act 1951-1965*.”.

Resignation
of officer.

Permanent
Military Forces.

7. Section 32 of the Principal Act is amended—

(a) by omitting sub-section (3.) and inserting in its stead the following sub-section:—

“(3.) The Regular Army Supplement consists of—

- (a) officers appointed to, and soldiers enlisted in, that force;
- (b) soldiers who, under the *National Service Act 1951-1965*, are to be deemed to have been enlisted in that force; and
- (c) officers transferred to that force from any other part of the Permanent Military Forces or from the Citizen Military Forces.”; and

(b) by omitting sub-section (5.) and inserting in its stead the following sub-section:—

“(5.) The Regular Army Reserve consists of—

- (a) soldiers enlisted in that force;
- (b) soldiers who, under the *National Service Act 1951-1965*, are to be deemed to have been enlisted in that force; and
- (c) such officers as are appointed to that force or transferred to that force from any other part of the Permanent Military Forces.”.

8. Section 32A of the Principal Act is repealed and the following section inserted in its stead:—

Citizen
Military
Forces.

“32A.—(1.) The Citizen Military Forces consist of two forces, namely, the Active Citizen Military Forces and the Reserve Citizen Military Forces.

“(2.) The Active Citizen Military Forces consist of officers appointed to, and of soldiers enlisted in, that force, of officers transferred to that force from any part of the Permanent Military Forces or from the Reserve Citizen Military Forces, and of officers of the Military Forces who have been placed upon an unattached list.

“(3.) The Reserve Citizen Military Forces consist of officers appointed or transferred to that force from any part of the Permanent Military Forces or from the Active Citizen Military Forces.”.

9. Section 39 of the Principal Act is repealed and the following section inserted in its stead:—

Discharge
upon expiration
of period of
engagement.

“39.—(1.) A soldier is entitled to be discharged—

- (a) if he was voluntarily enlisted—upon the expiration of the period for which, on his original enlistment or subsequent re-engagement, he was engaged to serve;

- (b) if he is rendering service in accordance with the *National Service Act 1951-1965*—upon the expiration of the period for which, under that Act, he is to be deemed to have been engaged or re-engaged to render service under that Act; and
- (c) if he is rendering service under Part IV. of this Act—upon the end of the time of war.

“(2.) If the period for which a voluntarily enlisted soldier is engaged to serve, or under this section is to be deemed to have been re-engaged to serve, expires during a time of war or a time of defence emergency, he shall, upon his completion of that engagement, be deemed to have been re-engaged to serve for the duration of that time.

“(3.) If the period for which a soldier of the Australian Regular Army or a voluntarily enlisted soldier of the Regular Army Supplement is engaged to serve, or under this section is to be deemed to have been re-engaged to serve, expires during a period for which any part of the Regular Army Emergency Reserve is called out for continuous service, he shall, upon his completion of that engagement, be deemed to have been re-engaged to serve for the duration of that last-mentioned period.

“(4.) If the period for which a soldier of the Regular Army Emergency Reserve or a voluntarily enlisted soldier of the Regular Army Reserve is engaged to serve, or under this section is to be deemed to have been re-engaged to serve, expires during a period for which the part of the force to which he belongs is called out for continuous service, he shall, upon his completion of that engagement, be deemed to have been re-engaged to serve for the duration of that last-mentioned period.

“(5.) When a soldier becomes entitled to be discharged, he shall be discharged with all convenient speed, but until he is discharged he remains a soldier of the part of the Military Forces in which he is serving.

“(6.) The preceding provisions of this section do not affect any power expressly or impliedly conferred by any other provision of this Act to discharge a soldier before the expiration of the period for which he is engaged to serve.”.

10. Section 41 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(3.) The preceding provisions of this section do not apply to or in relation to a soldier of the Regular Army Emergency Reserve or of the Regular Army Reserve who is rendering service, or is liable to render service, in either of those forces by virtue of the *National Service Act 1951-1965*.”.

Discharge of
members of
Permanent
Military
Forces at their
own request.

Irregular appointments and enlistments.

11. Section 42A of the Principal Act is amended by omitting from sub-section (1.) the word "branch" and inserting in its stead the words "part of those Forces in which he is serving".

Exemption from jury service.

12. Section 43 of the Principal Act is repealed.

13. Section 44 of the Principal Act is repealed and the following section inserted in its stead:—

Discharge or dismissal of soldiers.

"44. A soldier may at any time be discharged by such authority and for such reasons as are prescribed, notwithstanding—

- (a) that he has not completed the period of service for which he is, or is to be deemed to have been, engaged or re-engaged to serve; or
- (b) that he has not attained the age prescribed for his compulsory retirement."

Service of the Permanent Military Forces.

14. Section 45 of the Principal Act is amended by omitting sub-sections (1.) and (2.) and inserting in their stead the following sub-section:—

"(1.) Members of the Australian Regular Army and of the Regular Army Supplement are bound to render continuous full time military service for the respective terms for which—

- (a) in the case of officers—they hold their appointments in that force; or
- (b) in the case of soldiers—they are, or are to be deemed to have been, engaged or re-engaged to serve in that force,

unless their services are sooner lawfully terminated."

Calling out of the Regular Army Emergency Reserve for continuous service.

15. Section 46 of the Principal Act is amended by inserting after sub-section (4.) the following sub-section:—

"(4A.) The last two preceding sub-sections do not apply to or in relation to continuous full time military service voluntarily rendered by a member of the Regular Army Emergency Reserve as provided by sub-section (4.) of the last preceding section."

16. Section 50c of the Principal Act is repealed and the following section inserted in its stead:—

Territorial limits of service of Military Forces.

"50c. Members of the Military Forces may be required to serve either within or beyond the territorial limits of Australia."

17. Part IV. of the Principal Act is repealed and the following Part inserted in its stead:—

“ PART IV.—LIABILITY TO SERVE IN THE DEFENCE
FORCE IN TIME OF WAR.

“ 59. All male persons (except those who are exempt from service under this Part or to whom this Part does not apply) who—

Persons liable to serve in Defence Force in time of war.

- (a) have resided in Australia for not less than six months;
- (b) are British subjects; and
- (c) have attained the age of eighteen years but have not attained the age of sixty years,

are liable, when called upon under the next succeeding section, to serve in the Defence Force.

“ 60.—(1.) In time of war the Governor-General may, by proclamation, call upon persons specified in the last preceding section to serve in the Defence Force in accordance with this Act for the duration of the time of war.

Proclamation calling upon persons to serve in time of war.

“(2.) A proclamation under this section shall call upon persons in the order in which they are included in the classes of persons set out in the next succeeding sub-section, but a proclamation may divide, according to age, any such class of persons and call upon persons included in those divisions in the order of those divisions.

“(3.) The classes of persons referred to in the last preceding sub-section are as follows:—

Class I.—Persons of the age of eighteen years and upwards, but under thirty-five years, who are unmarried or are widowers without children;

Class II.—Persons of the age of thirty-five years and upwards but under forty-five years, who are unmarried or are widowers without children;

Class III.—Persons of the age of eighteen years and upwards but under thirty-five years, who are married or are widowers with children;

Class IV.—Persons of the age of thirty-five years and upwards, but under forty-five years, who are married or are widowers with children; and

Class V.—Persons of the age of forty-five years and upwards, but under sixty years.

“(4.) In the last preceding sub-section, ‘ widowers ’ includes persons who have obtained a divorce, or have been divorced, and have not subsequently married.

“(5.) If the Parliament is not sitting at the date of publication of a proclamation under this section, it shall be summoned to meet within ten days after that date.

Registration
and allotment
for service.

“ 61.—(1.) The regulations may make provision for and in relation to—

- (a) the registration of persons who are or may become liable to serve in the Defence Force in time of war;
- (b) the deferment of the service of persons, or persons included in classes of persons, who have been called upon under the last preceding section to serve in the Defence Force;
- (c) medical and other examinations of persons who have been so called upon;
- (d) the exemption from liability to serve in the Defence Force of persons whose conscientious beliefs do not allow them to engage in any form of naval, military or air-force service, and the exemption from liability to be required to engage in naval, military or air-force duties of a combatant nature of persons whose conscientious beliefs do not allow them to engage in such duties;
- (e) determination of questions whether persons are exempt from liability to render service on the ground of conscientious beliefs and the investing of any court of a State with federal jurisdiction, and the conferring of jurisdiction on any court of a Territory of the Commonwealth, to determine such questions;
- (f) the choice, by ballot or otherwise, from persons who have been called upon to serve in the Defence Force of those persons who are required so to serve; and
- (g) the allotment of persons required so to serve for service in a part of the Naval Forces, the Military Forces or the Air Force.

“ (2.) For the purposes of this section, a conscientious belief is a conscientious belief whether the ground of the belief is or is not of a religious character and whether the belief is or is not part of the doctrines of a religion.

Persons exempt
from service.

“ 61A.—(1.) The following persons are exempt from service in the Defence Force in time of war so long as the employment, condition or status on which the exemption is based continues:—

- (a) persons subject to a prescribed mental or physical disability;
- (b) members and officers of the Parliament of the Commonwealth or of a State;
- (c) judges of federal or State courts and police, stipendiary or special magistrates of the Commonwealth or of a State;
- (d) ministers of religion;

- (e) members of a religious order who devote the whole of their time to the duties of the order;
- (f) persons who are students at a college maintained solely for training persons to become members of a religious order; and
- (g) persons who are students at a theological college as defined by the regulations or are theological students as prescribed.

“(2.) A person who, in pursuance of section sixty of this Act, has been called upon to serve in the Defence Force and is, by virtue of this section, exempt from service shall, notwithstanding the exemption, do any act that such a person is required, by or under the regulations, to do.

Penalty: Twenty pounds.

“ 61B.—(1.) A person who, in accordance with the regulations, is allotted for service in a part of the Naval Forces, the Military Forces or the Air Force shall, as from the time at which he presents himself for service in that part, be deemed to have been enlisted in that part and to have been engaged to serve in that part for the duration of the time of war. Entry into Defence Force for service.

“(2.) A person who, in pursuance of section sixty of this Act, has been called upon to serve in the Defence Force and fails, when required by or under the regulations, to present himself for examination or service or to do any other act required to be done by persons so called upon remains liable to do that act, notwithstanding that the time originally appointed for the doing of that act has expired or that he has been convicted for failing to do that act.”.

“ 61C. Nothing in this Part applies to—

- (a) a person whose presence in Australia is occasioned solely by his employment in the service of a Government outside Australia;
- (b) an official of the United Nations in a category specified by the Secretary-General of the United Nations under section seventeen of the General Convention on the Privileges and Immunities of the United Nations which was adopted by the General Assembly of the United Nations on the thirteenth day of February, One thousand nine hundred and forty-six;
- (c) an official of a specialized agency as defined by section one of the International Convention on the Privileges and Immunities of the Specialized Agencies of the United Nations which was adopted by the General Assembly of the United Nations on the twenty-first

Part not to apply to certain persons.

day of November, One thousand nine hundred and forty-seven, in a category specified by the specialized agency under section eighteen of that Convention, except such an official who is an Australian citizen, unless his name has been placed on the list compiled and approved under section twenty of the Convention;

- (d) a prescribed official, or an official included in a prescribed class of officials, of any other international organization;
- (e) members of the Defence Force; or
- (f) aboriginal natives of Australia, as defined by the regulations, other than a class of aboriginal natives as so defined that is specified in the regulations.”.

Refusal to
take oath.

18. Section 76 of the Principal Act is repealed.

19. Sections 80B to 80I (inclusive) of the Principal Act are repealed and the following section is inserted in their stead:—

Making and
disposal of
service
decorations.

“ 80B.—(1.) Except as provided by or under this section, a person shall not—

- (a) make, sell, supply, offer to sell or supply or display for sale or supply a service decoration;
- (b) exchange, pledge or otherwise dispose of a service decoration; or
- (c) buy, receive in exchange or by way of pledge or otherwise, or have in his possession a service decoration.

Penalty: Fifty pounds.

“ (2.) Nothing in the last preceding sub-section prevents—

- (a) the disposal of a service decoration to the Commonwealth;
- (b) the disposition by will, or the acquisition by devolution in the case of an intestacy, of a service decoration; or
- (c) a member of the family of a person upon whom a service decoration has been conferred, or a banker or other person to whom the decoration has been entrusted for safe-keeping, having the decoration in his possession.

“ (3.) A person on whose behalf or at whose place of business a service decoration is sold, supplied or offered or displayed for sale or supply in contravention of sub-section (1.) of this section is, unless he proves that the sale, supply, offer or display was contrary to his instructions, guilty of an offence punishable, upon conviction, by a fine not exceeding Fifty pounds.

“(4.) The Minister, or a person or an authority authorized in writing by the Minister to grant permits under this sub-section, may grant permits in writing—

- (a) to specified persons to make and sell or otherwise dispose of service decorations; or
- (b) to public institutions and *bona fide* collectors to acquire, retain and dispose of service decorations,

subject to and in accordance with such conditions and restrictions as the Minister or the authorized person or authority thinks fit to impose.

“(5.) A person shall not—

- (a) unless he is lawfully entitled to wear a service decoration (proof of which lies upon him), buy, wear or make use of that decoration;
- (b) falsely represent himself to be a person who is entitled to wear or to have in his possession a service decoration; or
- (c) deface or destroy, by melting or otherwise, a service decoration.

Penalty: Fifty pounds.

“(6.) Where a person has committed an offence against this section, any service decoration in respect of which the offence was committed is forfeited.”.

20. Section 118A of the Principal Act is amended by omitting from sub-section (6.) the words “Part XII. of this Act” and inserting in their stead the words “Part II. of the *Defence (Re-establishment) Act 1965*”.

Employer not to prevent an employee from serving.

21. Section 123A of the Principal Act is repealed and the following section inserted in its stead:—

“123A. In or at a military camp, unit, mess, canteen or other military establishment, or at a gathering of members of the Military Forces (with or without guests) approved by the Military Board, or by an officer authorized by the Military Board to give such an approval, it is lawful, notwithstanding any provision of the law of a State or Territory of the Commonwealth, for—

Intoxicating liquor.

- (a) a person to have in his possession, sell or supply intoxicating liquor; or
- (b) a person, being a member of the Military Forces or of a mess or a guest of such a member, to consume, buy or have in his possession intoxicating liquor,

in accordance with such conditions as the Military Board determines.”.

Regulations.

22. Section 124 of the Principal Act is amended—

- (a) by omitting paragraph (c) of sub-section (1.); and
- (b) by omitting paragraph (gb) of that sub-section and inserting in its stead the following paragraph:—

“(gb) The validity and effect within Australia of sentences passed outside Australia upon, or punishments imposed outside Australia upon, members of the Defence Force who have been placed at the disposal of the service authorities of a country in relation to which section twenty-four of the *Defence (Visiting Forces) Act 1963* applies;”.

Repeal of
Part XII.

23. Part XII. of the Principal Act is repealed.

Appointment
of officers.

24. Section 148 of the Principal Act is repealed.

Existing
Military
Forces.

25.—(1.) Members of the Military Forces who are serving immediately before the day on which this Act receives the Royal Assent shall continue to serve in accordance with the Principal Act as amended by this Act.

(2.) The Citizen Military Forces in existence immediately before the day on which this Act receives the Royal Assent shall be deemed to have been composed and organized in accordance with the Principal Act as amended by this Act.
