

Defence (Parliamentary Candidates)

No. 60 of 1969

An Act to make provision in relation to Members of the Defence Force who desire to become Candidates for election as Members of the Parliament of the Commonwealth or of a State.

[Assented to 5 September 1969]

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

PART I.—PRELIMINARY.

- Short title.** 1. This Act may be cited as the *Defence (Parliamentary Candidates) Act 1969*.
- Commence-ment.** 2. This Act shall come into operation on the day on which it receives the Royal Assent.
- Repeal.** 3. The *Defence (Parliamentary Candidates) Act 1966* is repealed.
- Parts.** 4. This Act is divided into Parts, as follows:—
Part I.—Preliminary (Sections 1–6).
Part II.—Discharge, etc., from Defence Force of Parliamentary Candidates (Sections 7–9).
Part III.—Re-instatement of Unsuccessful Candidates (Sections 10–15).
Part IV.—Miscellaneous (Sections 16–22).
- Interpretation.** 5.—(1) In this Act, unless the contrary intention appears—
“arm of the Defence Force” means the Naval Forces, the Military Forces or the Air Force;
“election” includes general election;
“enlisted member” means a member who is not an officer;
“member” means a member of the Defence Force;
“national serviceman” means an enlisted member who is a national serviceman for the purposes of the National Service Act;
“national service officer” means an officer who is a national service officer for the purposes of the National Service Act;
“officer” means a member who is an officer for the purposes of the Defence Act;
“rank” includes classification;

“ Reserve ” means—

- (a) the reserve of officers of the Naval Forces known as the Emergency List of Officers;
- (b) the Regular Army Reserve; or
- (c) the Air Force Reserve;

“ the Air Force ” means the Air Force of the Commonwealth;

“ the appropriate Reserve ”, in relation to an officer, means the Reserve that is appropriate to him having regard to the arm of the Defence Force of which he is a member;

“ the appropriate Service Board ” means—

- (a) in relation to a person who is or has been a member of the Naval Forces—the Naval Board;
- (b) in relation to a person who is or has been a member of the Military Forces—the Military Board; and
- (c) in relation to a person who is or has been a member of the Air Force—the Air Board;

“ the declared date ”, in relation to an election, means the date on which a notice under section 6 of this Act is published in the *Gazette* in relation to the election;

“ the Defence Act ” means the *Defence Act 1903–1966*;

“ the Defence Force ” means the Defence Force of the Commonwealth;

“ the Defence Forces Retirement Benefits Act ” means the *Defence Forces Retirement Benefits Act 1948–1969*;

“ the Military Forces ” means the Military Forces of the Commonwealth;

“ the National Service Act ” means the *National Service Act 1951–1968*;

“ the Naval Forces ” means the Naval Forces of the Commonwealth.

(2.) In the application of a provision of this Act to a person who has been transferred to a Reserve under section 7 of this Act, to a person who has been discharged from the Defence Force under section 8 of this Act or to a person whose continuous full-time service has been terminated under section 9 of this Act, a reference in that provision to the relevant election shall be read as a reference to the election in relation to which he made the application in pursuance of which he was so transferred or discharged or his continuous full-time service was so terminated.

6.—(1.) Where an officer has been transferred to a Reserve under section 7 of this Act, an enlisted member has been discharged from the Defence Force under section 8 of this Act or the continuous full-time service of a member has been terminated under section 9 of this Act, the Minister shall, when he is satisfied that the result of the relevant election is certain, declare, by notice published in the *Gazette*, that he is so satisfied. Declared date.

(2.) The Minister shall, before making a declaration under the last preceding sub-section in relation to an election, have regard to any dispute, and any proceedings in relation to a dispute, with respect to the election.

(3.) The Minister may, for the purposes of sub-section (1.) of this section, treat the result of an election as being certain if, at the expiration of thirty days after the return of the writ relating to the election, the validity of the election has not been disputed in accordance with law and the Minister has no reason to believe that it will be so disputed.

PART II.—DISCHARGE, ETC., FROM DEFENCE FORCE OF PARLIAMENTARY CANDIDATES.

7.—(1.) Where—

- (a) an officer who is a member of the Permanent Naval Forces, the Australian Regular Army, the Regular Army Supplement or the Permanent Air Force makes application to the appropriate Service Board to be transferred to the appropriate Reserve; and
- (b) he satisfies the appropriate Service Board that he intends, if he is so transferred, to become a candidate for election as a member of a House of the Parliament of the Commonwealth or of a State at an election specified by him in the application,

the appropriate Service Board may transfer him to the appropriate Reserve.

(2.) Where a national service officer is transferred to the Regular Army Reserve under the last preceding sub-section, the transfer shall be for a period of service commencing on the date on which the transfer takes effect and ending on the date on which the period of service, or the last of the periods of service, specified in his instrument of appointment as an officer ends and that appointment shall, by force of this sub-section, be deemed to be an appointment that is for a period of service in the Regular Army Reserve equal to the period of service specified in the instrument of transfer.

8. Where—

- (a) an enlisted member who is a member of the Permanent Naval Forces, the Australian Regular Army, the Regular Army Supplement or the Permanent Air Force makes application to the appropriate Service Board to be discharged from the arm of the Defence Force of which he is a member; and
- (b) he satisfies the appropriate Service Board that he intends, if he is so discharged, to become a candidate for election as a member of a House of the Parliament of the Commonwealth or of a State at an election specified by him in the application,

the appropriate Service Board may discharge him accordingly.

Transfer of
officers to
Reserve.

Discharge of
enlisted
members.

9. Where—

- (a) a member of the Naval Emergency Reserve Forces, the Citizen Naval Forces, the Regular Army Emergency Reserve, the Citizen Military Forces, the Citizen Air Force or the Air Force Emergency Force who is rendering continuous full-time service makes application to the appropriate Service Board for the termination of that service; and
- (b) he satisfies the appropriate Service Board that he intends, if that service is so terminated, to become a candidate for election as a member of a House of the Parliament of the Commonwealth or of a State at an election specified by him in the application,

the appropriate Service Board may terminate that service accordingly.

Termination of continuous full-time service.

PART III.—RE-INSTATEMENT OF UNSUCCESSFUL CANDIDATES.

10.—(1.) The appropriate Service Board may, upon application being made in writing to the Board by an officer who has been transferred to a Reserve under section 7 of this Act for his re-instatement in the force of which he was a member immediately before he was so transferred (being application made not later than two months after the date that is the declared date in relation to the relevant election or within such further period as the Board, in special circumstances, allows), transfer the officer to that force with the rank held by him immediately before he was transferred to the Reserve.

Re-instatement of officers.

(2.) Except as provided by section 80 of the Defence Forces Retirement Benefits Act, where an officer is, under the last preceding sub-section, transferred to the force of which he was a member immediately before he was transferred to a Reserve under section 7 of this Act, he shall, upon being transferred to that force, be deemed to have continued to have been a member of that force during the period when he was a member of the Reserve but, subject to the next succeeding sub-section, he shall be deemed to have been absent on leave without pay during that period.

(3.) Where the last preceding sub-section applies in relation to an officer who, immediately before he was transferred to a Reserve, was serving under an appointment for a specified period, the period in respect of which he is, under that sub-section, deemed to have been absent on leave without pay shall not be taken into account in calculating the period that he has served under that appointment.

(4.) Notwithstanding the last preceding sub-section or anything contained in any other law of the Commonwealth, the period in respect of which an officer is, under this section, deemed to have been absent on leave without pay shall be treated as a period of service in calculating the entitlement of the officer to long service leave or furlough.

11.—(1.) The appropriate Service Board may, upon application being made in writing to the Board by a person who has been discharged from an arm of the Defence Force under section 8 of this Act, and was not a

Re-instatement of enlisted members (other than national servicemen).

national serviceman immediately before he was discharged, for his re-instatement in the force of which he was a member immediately before he was discharged (being application made not later than two months after the date that is the declared date in relation to the relevant election or within such further period as the Board, in special circumstances, allows), cause the person to be re-enlisted in that force with the rank held by him immediately before he was discharged.

(2.) Except as provided by section 80 of the Defence Forces Retirement Benefits Act, where a person is re-enlisted in a force by virtue of the last preceding sub-section, he shall, upon re-enlistment, be deemed to have continued to have been a member of that force during the period commencing upon his being discharged and ending upon his re-enlistment but, subject to the next succeeding sub-section, he shall be deemed to have been absent on leave without pay during that period.

(3.) Where the last preceding sub-section applies in relation to a person, the period in respect of which he is, under that sub-section, deemed to have been absent on leave without pay shall not be taken into account in calculating the period that he has served under the engagement under which he was serving immediately before he was discharged.

(4.) Any form of oath or affirmation that a person is, by any law of the Commonwealth, required to take or make upon enlistment in an arm of the Defence Force may, in respect of a person who is re-enlisted in that arm of the Defence Force by virtue of sub-section (1.) of this section, be modified appropriately.

(5.) Notwithstanding sub-section (3.) of this section or anything contained in any other law of the Commonwealth, the period in respect of which a person is, under this section, deemed to have been absent on leave without pay shall be treated as a period of service in calculating the entitlement of that person to long service leave or furlough.

Re-instatement
of members
rendering
continuous
full-time
service.

12.—(1.) The appropriate Service Board may, upon application being made in writing to the Board by a person whose continuous full-time service has been terminated under section 9 of this Act for his re-instatement as a member rendering continuous full-time service (being application made not later than two months after the date that is the declared date in relation to the relevant election or within such further period as the Board, in special circumstances, allows), cause the person to be accepted for further continuous full-time service in the part of the Defence Force in which he was serving immediately before his continuous full-time service was terminated, for such period as is agreed upon between the Board and the person, with the rank held by him immediately before his continuous full-time service was terminated.

(2.) Except as provided by section 80 of the Defence Forces Retirement Benefits Act, where a person is, under the last preceding sub-section, accepted for further continuous full-time service, he shall be

deemed to have been absent on leave without pay during the period commencing upon the termination of his continuous full-time service and ending on the commencement of the further continuous full-time service.

(3.) Notwithstanding the last preceding sub-section or anything contained in any other law of the Commonwealth, the period in respect of which a person is, under this section, deemed to have been absent on leave without pay shall be treated as a period of service in calculating the entitlement of that person to long service leave or furlough.

13.—(1.) Where—

- (a) an officer has been transferred to a Reserve under section 7 of this Act;
- (b) the appropriate Service Board is satisfied that—
 - (i) he was not nominated in the relevant election; or
 - (ii) having been nominated in the relevant election, he failed to be elected in that election; and
- (c) he has not made application having effect for the purposes of section 10 of this Act for re-instatement in the force of which he was a member immediately before he was transferred to a Reserve,

Compulsory
re-instatement
of officers.

the Service Board may, or, if he is a national service officer, shall, by notice in writing served on him before the expiration of a period of one month after the date that is the declared date in relation to the relevant election, require him to make to the Board, not later than the expiration of a period of two months after the declared date, application in writing for his re-instatement in the force of which he was a member immediately before he was transferred to the Reserve.

(2.) If, at the expiration of the period of two months after the declared date, the officer has not made application in writing to the Board for re-instatement in the force of which he was a member immediately before he was transferred to a Reserve, he shall be deemed to have made such an application on the last day of that period and section 10 of this Act applies in relation to him accordingly.

14.—(1.) Where—

- (a) a person has been discharged from the Defence Force under section 8 of this Act and he was not a national serviceman immediately before he was discharged;
- (b) the appropriate Service Board is satisfied that—
 - (i) he was not nominated in the relevant election; or
 - (ii) having been nominated in the relevant election, he failed to be elected in that election; and

Compulsory
re-instatement
of enlisted
members
(other than
national
servicemen).

- (c) he has not made application having effect for the purposes of section 11 of this Act for re-instatement in the force of which he was a member immediately before he was discharged,

the Service Board may, by notice in writing served on him before the expiration of a period of one month after the date that is the declared date in relation to the relevant election, require him to make to the Board, not later than the expiration of a period of two months after the declared date, application in writing for his re-instatement in the force of which he was a member immediately before his discharge.

(2.) If, at the expiration of the period of two months after the declared date, the person has not made application in writing to the Board for re-instatement in the force of which he was a member immediately before he was discharged, he shall be deemed to have made such an application on the last day of that period and on that day to have been re-enlisted, in accordance with section 11 of this Act, in the force of which he was a member immediately before he was discharged, and that section applies in relation to him accordingly.

(3.) Any requirement of any other law of the Commonwealth that a person enlisting in an arm of the Defence Force shall take an oath or make an affirmation does not apply in relation to the re-enlistment of a person by virtue of the last preceding sub-section.

National
servicemen.

15.—(1.) Subject to this section, where—

- (a) a person discharged from the Defence Force under section 8 of this Act was, immediately before he was discharged, a national serviceman; and
- (b) he was not nominated in the relevant election or, having been nominated in the relevant election, fails to be elected in that election,

he does not, by virtue of having been so discharged, cease to be liable to render service under the National Service Act and the National Service Act applies to him as if a notice under section 26 of that Act had never been served on him.

(2.) Where—

- (a) application is made in writing to the Military Board by a person referred to in the last preceding sub-section for his re-instatement in the Regular Army Supplement, being application made not later than two months after the date that is the declared date in relation to the relevant election or within such further period as the Board, in special circumstances, allows; and
- (b) notice under section 26 of the National Service Act has not been served on him after he has been discharged under section 8 of this Act,

the Board shall, by notice in writing served on him, direct him to present himself for service with the Military Forces at a time and place, and to

an authority, specified in the notice, and such a notice so served on the person shall be deemed to be a notice served on him under section 26 of the National Service Act calling him up for service with those Forces.

(3.) In the application of the National Service Act in relation to a person referred to in sub-section (1.) of this section, the reference in sub-section (1.) of section 27, and in sub-section (1.) of section 28, of that Act to a period of two years shall be read as a reference to a period equal to the unexpired period of the engagement under which he was serving immediately before his discharge.

(4.) Where, by virtue of section 27 of the National Service Act, a person referred to in sub-section (1.) of this section is, within a period of three months after the date that is the declared date in relation to the relevant election, deemed to be enlisted for service in the Regular Army Supplement—

- (a) his rank upon so being enlisted shall be the rank held by him immediately before he was discharged under section 8 of this Act; and
- (b) except as provided by section 80 of the Defence Forces Retirement Benefits Act, he shall be deemed to have continued to have been a member of the Regular Army Supplement during the period commencing upon his being discharged and ending upon his being deemed to be enlisted but, subject to the next succeeding sub-section, he shall be deemed to have been absent on leave without pay during that period.

(5.) Notwithstanding the last preceding sub-section or anything contained in any other law of the Commonwealth, the period in respect of which a person is, under the last preceding sub-section, deemed to have been absent on leave without pay shall be treated as a period of service in calculating the entitlement of that person to long service leave or furlough.

PART IV.—MISCELLANEOUS.

16.—(1.) Where an officer has been transferred to a Reserve under section 7 of this Act, an enlisted member has been discharged from the Defence Force under section 8 of this Act or the continuous full-time service of a member has been terminated under section 9 of this Act, the appropriate Service Board shall, if he so requests, arrange for him to travel, at the expense of the Commonwealth, from the place where he is serving when he is so transferred or discharged, or his continuous full-time service is terminated, to the place at which he resided immediately before he became a member or to such other place as is agreed upon between him and the appropriate Service Board.

Return of member, family and household effects, &c., to place of enlistment.

(2.) Where—

- (a) at the time a person makes application having effect for the purposes of section 7, 8 or 9 of this Act, he is serving at a place outside Australia;

- (b) members of his family who are dependent upon him are at that time living at or near the place where he is so serving or at or near a place outside Australia at which he previously served; and
- (c) he has been transferred to a Reserve under section 7 of this Act, discharged under section 8 of this Act or his continuous full-time service has been terminated under section 9 of this Act, or the appropriate Service Board proposes so transferring or discharging him or terminating his continuous full-time service under whichever of those sections is applicable,

the Board shall, if the person so requests—

- (d) arrange for those members of his family to travel, at the expense of the Commonwealth, from the place where they are living referred to in paragraph (b) of this section to the place at which the person resided immediately before he became a member or to such other place in Australia as is agreed upon between the person and the Board; and
- (e) arrange for such household furniture and such effects of the person and of those members of his family at the place at which they are so living as the appropriate Service Board approves to be brought from that place to the place at which the person resided immediately before he became a member or to such other place as is agreed upon between the person and the Board.

(3.) For the purposes of this section, a member of the family of a person is dependent upon him if he is wholly or substantially so dependent.

Refund of
gratuity.

17.—(1.) Where—

- (a) an officer has been transferred to a Reserve under section 7 of this Act, an enlisted member has been discharged from the Defence Force under section 8 of this Act or the continuous full-time service of a member has been terminated under section 9 of this Act; and
- (b) sub-section (2.) of section 10, sub-section (2.) of section 11, sub-section (2.) of section 12 or sub-section (4.) of section 15 of this Act has effect in relation to him,

he shall pay to the Commonwealth an amount equal to the amount of any gratuity paid to him upon his being transferred to a Reserve, upon his being discharged or upon his continuous full-time service being terminated and shall be deemed not to have received that gratuity.

(2.) An amount payable by a person to the Commonwealth under this section may be recovered from the person in any court of competent jurisdiction as a debt due to the Commonwealth.

(3.) In this section, “ gratuity ” includes bounty, but does not include a gratuity paid under the Defence Forces Retirement Benefits Act.

18. A notice by the Naval Board, the Military Board or the Air Board under section 13, 14 or 15 of this Act may be served on a person—

Service of notices.

- (a) by delivering the notice to the person; or
- (b) by posting the notice by registered post to the person at the address of the person as shown in the records of the arm of the Defence Force of which he is or was a member.

19.—(1.) The Naval Board, the Military Board or the Air Board may, by instrument in writing, delegate to a person, either generally or otherwise as provided in the instrument of delegation, all or any of its powers or functions under this Act (except this power of delegation).

Delegation.

(2.) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(3.) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the relevant Board.

(4.) A delegation under this section continues in force notwithstanding a change in the membership of the relevant Board.

20.—(1.) This section applies to a person—

- (a) who, being a national service officer, has been transferred to the Regular Army Reserve under section 7 of this Act and subsequently transferred to the Regular Army Supplement under section 10 of this Act;
- (b) who, being a national service officer, has been transferred to the Regular Army Reserve under section 7 of this Act, and, following his transfer to the Regular Army Supplement under section 10 of this Act, has had his appointment terminated on disciplinary grounds and has subsequently presented himself for service in compliance with a notice served on him under section 26 of the National Service Act; or
- (c) who, being a national serviceman, has been discharged from the Defence Force under section 8 of this Act and has subsequently presented himself for service in compliance with a notice served on him under sub-section (2.) of section 15 of this Act or section 26 of the National Service Act.

Application of Defence (Re-establishment) Act.

(2.) Where a person to whom this section applies was not, at any time during the period commencing when he ceased to serve in the Regular Army Supplement and ending when he recommenced to serve in that force, employed under a contract of employment for a period of thirty days or more, Part II. of the *Defence (Re-establishment) Act 1965-1968* applies in relation to him as if he had continued, throughout the whole of that period, to serve in the Regular Army Supplement.

(3.) The last preceding sub-section has effect in relation to a person notwithstanding that the person, during the period referred to in that sub-section, resumed work, or was re-instated in employment, under section 12 of the *Defence (Re-establishment) Act 1965–1968*.

(4.) Where—

(a) a national service officer has been transferred to the Regular Army Reserve under section 7 of this Act or a national serviceman has been discharged from the Defence Force under section 8 of this Act; and

(b) he is elected in the relevant election,

the date that is the declared date in relation to the election shall, for the purposes of the *Defence (Re-establishment) Act 1965–1968*, be deemed to be the date on which he completed his national service.

Transitional provisions.

21.—(1.) Where—

(a) a person was transferred to the Regular Army Reserve under section 4 of the *Defence (Parliamentary Candidates) Act 1966* or discharged from the Military Forces by virtue of an authority given under section 5 of that Act; and

(b) immediately before the commencement of this Act, sub-section (2.) of section 8 of that Act did not operate to prevent the service of a notice on him under section 26 of the National Service Act,

the provisions of that Act continue to apply to and in relation to him notwithstanding the repeal effected by section 3 of this Act.

(2.) Where—

(a) a person was transferred to the Regular Army Reserve under section 4 of the *Defence (Parliamentary Candidates) Act 1966* or discharged from the Military Forces by virtue of an authority given under section 5 of that Act; and

(b) the last preceding sub-section does not apply to him,

this Act shall apply to and in relation to him as if he had been transferred to the Regular Army Reserve under section 7 of this Act or discharged from the Defence Force under section 8 of this Act.

Regulations.

22. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act.