

DEFENCE (VISITING FORCES).

No. 5 of 1939.

An Act to make provision, in relation to the Commonwealth or the Defence Force, with respect to the Naval, Military and Air Forces of other parts of His Majesty's Dominions and of Territories administered by His Majesty, and with respect to Members of those Forces, and for other purposes.

[Assented to 20th May, 1939.]

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. This Act may be cited as the *Defence (Visiting Forces) Act 1939*. Short title.
2. This Act shall commence on a date to be fixed by Proclamation. Commencement.
3. This Act shall extend to the Territories of the Commonwealth, and for the purposes of this Act the expression "the Commonwealth" includes those Territories. Application of Act to Territories.
4. This Act shall apply, both within and beyond the Commonwealth, to the Defence Force and every part thereof, and to every member of a Home force or a Dominion force temporarily attached to any part of the Defence Force. Extra-territorial operation of Act.
5. In this Act, unless the contrary intention appears— Definitions.
 - "Colony" means any part of the King's dominions other than the United Kingdom and the Dominions, and includes any territory which is under His Majesty's protection, or in respect of which a mandate on behalf of the League of Nations is being exercised by His Majesty's Government in the United Kingdom ;
 - "court" includes a service Court of Inquiry, and an officer empowered by the law of the United Kingdom or of a Dominion to review the proceedings of a service court, or to investigate charges, or himself to dispose of charges, and the expression "sentence" shall be construed accordingly ;
 - "Dominion" means the Dominion of Canada, the Dominion of New Zealand, the Union of South Africa, Eire or Newfoundland ;

- “ Dominion forces ” means the Naval, Military and Air Forces of a Dominion, and “ Dominion force ” includes any body, contingent or detachment of those forces, or of any of them, wherever serving ;
- “ forces ” includes reserve and auxiliary forces ;
- “ Home forces ” means the Naval, Military and Air Forces of His Majesty raised, whether within or without the United Kingdom, under the law of the United Kingdom, and “ Home force ” includes any body, contingent or detachment of the Home forces, or of any of them, wherever serving ;
- “ internal administration ”, in relation to any visiting force, includes the administration of the property of a deceased member of the force ;
- “ member ”, in relation to a visiting force, being part of the Home forces or of any Dominion forces, includes any person subject by the law of the United Kingdom or of that Dominion, as the case may be, to the naval, military or air force law of the United Kingdom or of that Dominion, who, being a member of another force, is attached to the visiting force, or, being a civilian employed in connexion with the visiting force, entered into his engagement outside the Commonwealth ;
- “ the Air Force Act ” means the *Air Force Act* 1923, and includes the regulations made under that Act, or under that Act as subsequently amended ;
- “ the Defence Act ” means the *Defence Act* 1903–1934, and includes the regulations made under the *Defence Act* 1903, or under that Act as subsequently amended ;
- “ the Defence Force ” means the Naval, Military and Air Forces of the Commonwealth ;
- “ the Naval Defence Act ” means the *Naval Defence Act* 1910–1934, and includes the regulations made under the *Naval Defence Act* 1910, or under that Act as subsequently amended ;
- “ the Naval Discipline Act ” means the Imperial Act called the Naval Discipline Act, as amended from time to time, and includes any Imperial Act for the time being in force in substitution for that Act ;
- “ the United Kingdom ” means the United Kingdom of Great Britain and Northern Ireland ;
- “ visiting force ” means any Home force or Dominion force which is, with the consent of His Majesty’s Government in the Commonwealth, at any time lawfully present in the Commonwealth.

6.—(1.) The naval, military and air force courts and authorities (in this Act referred to as the “service courts” and “service authorities”) of the United Kingdom, or, in the case of a Dominion force, the service courts and service authorities of that Dominion, may exercise within the Commonwealth in relation to members of the visiting force in matters concerning discipline and the internal administration of the force all such powers as are conferred upon them by the law of the United Kingdom or of the Dominion, as the case may be.

Discipline and
internal
administration
of visiting
forces.

(2.) The members of a service court of the United Kingdom or of a Dominion exercising jurisdiction by virtue of this Act, and witnesses appearing before any such court, shall enjoy the like immunities and privileges as are enjoyed by a service court exercising jurisdiction under a law of the Commonwealth, and by witnesses appearing before such a court, or such immunities and privileges as are prescribed.

(3.) Where any sentence has, whether within or without the Commonwealth, been passed upon a member of a visiting force by a service court of the United Kingdom or of a Dominion, then for the purposes of any legal proceedings within the Commonwealth the court shall be deemed to have been properly constituted, and its proceedings shall be deemed to have been regularly conducted, and the sentence shall be deemed to be within the jurisdiction of the court and in accordance with the law of the United Kingdom or of the Dominion, as the case may be, and if executed according to the tenor thereof shall be deemed to have been lawfully executed, and any member of a visiting force who is detained in custody in pursuance of any such sentence, or pending the determination by a service court of the United Kingdom or the Dominion of a charge brought against him, shall for the purposes of any such proceedings be deemed to be in legal custody.

(4.) For the purposes of any such proceedings, a certificate under the hand of the officer commanding a visiting force that a member of that force is being detained for either of the causes referred to in the last preceding sub-section shall be conclusive evidence of the cause of his detention, but not of his being such a member, and a certificate under the hand of such an officer that the persons specified in the certificate sat as a service court of the United Kingdom or of the Dominion, as the case may be, shall be conclusive evidence of that fact.

(5.) Proceedings in respect of the pay, terms of service or discharge of a member of a visiting force shall not be entertained by any court of the Commonwealth or of a State.

(6.) For the purpose of enabling the service courts and service authorities of the United Kingdom or of a Dominion to exercise more effectively the powers conferred upon them by this section, the Naval Board, the Military Board or the Air Board, or the officer commanding any part of the Defence Force, as the case may be, if so requested by the Government of the United Kingdom or of

the Dominion, or by the officer commanding a visiting force, may, from time to time, by general or special orders to the Defence Force or part thereof, direct the members thereof to arrest members of the visiting force alleged to have been guilty of offences against the law of the United Kingdom or of the Dominion, and to hand over any person so arrested to the appropriate authorities of the visiting force.

Relations of
visiting
forces to the
civil power and
civilians.

7.—(1.) The Governor-General may by order published in the *Gazette* authorize any Department of the Commonwealth or of a State, Minister of State or other person in the Commonwealth, to perform, at the request of such authority of the United Kingdom or of the Dominion in question as is specified in the order, but subject to such limitations as are so specified, any function in relation to a visiting force and members thereof, which that Department, Minister or person, performs or could perform in relation to a part of the Defence Force of like nature to the visiting force, or in relation to members of that part, and for the purpose of the exercise of any such function any power exercisable, by virtue of any law, by the Department, Minister or person, in relation to that part of the Defence Force or members thereof, shall be exercisable by him or them in relation to the visiting force and members thereof :

Provided that nothing in this sub-section shall authorize any interference with the visiting force in matters relating to discipline or to the internal administration of the force.

(2.) For the purposes of this section, the Naval Board, the Military Board and the Air Board shall be deemed to be Departments of the Commonwealth.

(3.) If the Governor-General by order published in the *Gazette* so provides, members of a visiting force if sentenced, whether within or without the Commonwealth, by a service court of the United Kingdom or of a Dominion to penal servitude, imprisonment or detention may, under the authority of a Minister of State given at the request of the officer commanding the visiting force, be temporarily detained in custody in prisons or detention barracks in any part of the Commonwealth, and if so sentenced to imprisonment may, under the like authority, be imprisoned during the whole or any part of the term of their sentences in prisons in any part of the Commonwealth, and the Governor-General may by the same or a subsequent order published in the *Gazette* make provision with respect to any of the following matters, that is to say :—

- (a) the reception of such persons from, and their return to, the service authorities of the United Kingdom or the Dominion, their treatment while in such custody, or while so imprisoned ;
- (b) the circumstances under which they are to be discharged ;
and
- (c) the manner in which they are to be dealt with in the event of their unsoundness of mind while in such custody, or while so imprisoned.

(4.) Any costs incurred in the maintenance and return of, or otherwise in connexion with, any person dealt with in accordance with the provisions of this section shall be defrayed in such manner as is agreed between the Governor-General and the Government of the United Kingdom or of the Dominion, as the case may be.

(5.) Subject to this and the next succeeding sub-section, any law in force in any part of the Commonwealth which—

- (a) exempts, or provides for the exemption of, any vessel, vehicle, aircraft, machine or apparatus of, or employed for the purposes of, the Defence Force or any part thereof from the operation of any law ;
- (b) in virtue of a connexion with the Defence Force or any part thereof, confers a privilege or immunity on any person ;
- (c) in virtue of such a connexion, excepts any property, trade or business, in whole or in part, from the operation of any law, or from any tax, rate, imposition, toll or charge ;
- (d) imposes upon any person or undertaking obligations in relation to the Defence Force, or any part thereof, or any member or service court thereof ;
- (e) penalizes misconduct by any person in relation to the Defence Force or any part thereof, or any member or service court thereof,

shall, with any necessary modifications, apply in relation to a visiting force as it would apply in relation to any part of the Defence Force which is of a like nature to the visiting force :

Provided that the Governor-General may by order published in the *Gazette* either direct that any such law shall not apply, or that it shall apply with such exceptions and subject to such adaptations or modifications as are specified in the order.

(6.) An order under this section may apply either generally, or in relation to any particular visiting force, or in relation to any particular place.

8.—(1.) Subject to this section, the provisions of the Defence Act relating to the arrest and temporary detention of deserters and absentees without leave shall, within the Commonwealth, apply in relation to a deserter or absentee without leave from any Home force or Dominion force (including any member of a reserve or auxiliary force of the United Kingdom or of a Dominion, as the case may be, who having failed to obey a notice calling upon him to appear at any place for service, is, by the law of the United Kingdom, or the Dominion, liable to the same punishment as a deserter, or to the same punishment as an absentee without leave), in like manner as they apply in relation to a deserter or absentee without leave from the Defence Force.

Provisions with respect to deserters from overseas forces.

(2.) No person who is alleged to be a deserter or absentee without leave from a Home force or a Dominion force shall be arrested or dealt with under this section except in compliance with a specific request from the Government of the United Kingdom or of the Dominion,

as the case may be, and a person so dealt with shall be handed over to the authorities of the United Kingdom or of the Dominion, as the case may be, at such place on the coast or frontier of the Commonwealth as is agreed :

Provided that a person who is alleged to be a deserter or absentee without leave from a visiting force may be arrested and dealt with in compliance with a request, whether specific or general, from the officer commanding that force, and shall, if that force is still present in the Commonwealth, be handed over to the officer commanding that force at the place where the force is stationed.

(3.) For the purposes of any proceedings under this section—

- (a) a document purporting to be a certificate under the hand of the Secretary to the Department of Defence or a prescribed officer, that a request has been made under sub-section (2.) of this section shall be admissible without proof as evidence of the making of such a request ; and
- (b) a document purporting to be a certificate under the hand of the officer commanding a unit or detachment of a Home force or a Dominion force that a person named and described in the document was at the date of the certificate a deserter, or absentee without leave, from that force shall be admissible without proof as evidence of the facts so certified.

Attachment of
personnel and
mutual powers
of command.

9.—(1.) The Naval Board, the Military Board, or the Air Board, as the case may be—

- (a) may attach temporarily to any part of the Defence Force any member of a Home force or of a Dominion force who is placed at their disposal for that purpose by the service authorities of the United Kingdom or the Dominion, as the case may be ; and
- (b) subject to anything to the contrary in the conditions applicable to his service, may place any member of the Defence Force at the disposal of the service authorities of the United Kingdom or a Dominion in order that he may be attached temporarily by those authorities to a Home force or a Dominion force.

(2.) While a member of a Home force or a Dominion force is attached temporarily to the Defence Force, he shall be subject, as the case may be, to the Naval Defence Act, or to military law as an officer or soldier, or to Air Force law, as an officer or airman in like manner, and shall be treated, and have the like powers of command and punishment over members of the part of the Defence Force to which he is attached, as if he were a member of that part of relative rank :

Provided that the Governor-General may by order published in the *Gazette* direct that in relation to members of a Home force or a Dominion force specified in the order, the Naval Defence Act, the

Defence Act or the Air Force Act, as the case may be, shall apply with such exceptions and subject to such adaptations and modifications as are so specified.

(3.) When any part of the Defence Force and either a Home force or a Dominion force are serving together, either alone or together with any other force—

- (a) any member of the Home force or the Dominion Force shall be treated, and have over members of that part of the Defence Force the like powers of command, as if he were a member of the Defence Force of relative rank ; and
- (b) if the forces are acting in combination, any officer of the Home force or the Dominion force duly appointed to command the combined force, or any part thereof, shall be treated and shall have over members of the Defence Force the like powers of command and punishment and may be invested with the like authority to convene, and confirm the findings and sentences of, courts martial as if he were an officer of the Defence Force of relative rank and holding the same command.

(4.) For the purposes of this section, forces shall be deemed to be serving together or acting in combination if and only if they are declared to be so serving or so acting by order of the Governor-General or any person acting under the authority of the Governor-General and the relative rank of members of the Defence Force, Home forces and Dominion forces shall, if the forces serving together or acting in combination include a Home force, be such as is prescribed by regulations made by His Majesty, and, if those forces do not include a Home force, be such as is prescribed by regulations made under this Act.

10. This Act shall, subject to such exceptions, adaptations and modifications as are prescribed, apply—

Application of Act to Colony, &c.

- (a) in relation to any Naval, Military and Air Forces raised under the law of a Colony, and in relation to the members of those forces, as if those forces were Dominion forces ; and
- (b) in relation to any Naval, Military and Air Forces raised under the law of any territory administered by His Majesty's Government in a Dominion including any territory in respect of which a mandate on behalf of the League of Nations is being exercised by that Government, and in relation to the members of those forces, as if those forces were forces of that Dominion.

11. So far as regards any naval force, and the members of any such force, the provisions of this Act shall be deemed to be in addition to and not in derogation of such of the provisions of the Naval Discipline Act and of any other Act, whether of the United Kingdom or of any other part of the King's dominions, as are for the time being applicable to that force and the members thereof.

Saving of other enactments.

Limitation of penalties.

12. Nothing in this Act shall be construed to authorize any service court of the United Kingdom or of a Dominion to impose on a member of a visiting force in respect of any offence any penalty exceeding the penalty to which a member of the Defence Force would under the law of the Commonwealth be liable for a similar offence.

Regulations.

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