

AIR FORCE.

No. 74 of 1939.

An Act to amend the *Air Force Act* 1923, and for other purposes.

[Assented to 15th December, 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.—(1.) This Act may be cited as the *Air Force Act* 1939.

Short title and citation.

(2.) The *Air Force Act* 1923* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Air Force Act* 1923–1939.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

3.—(1.) The *Defence Act* 1903–1934†, as amended by the *Defence Act* 1939‡, the *Defence Act* (No. 2) 1939§ and the *Defence Act* (No. 3) 1939||, is amended as set out in the Schedule to this Act. Amendments of the Defence Act.

(2.) Section one of the *Defence Act* (No. 3) 1939 is amended by omitting sub-section (4.).

(3.) The *Defence Act* 1903–1934, as amended by the *Defence Act* 1939, the *Defence Act* (No. 2) 1939 and the *Defence Act* (No. 3) 1939 and by this Act, may be cited as the *Defence Act* 1903–1939.

4. Section two of the Principal Act is amended—

Definitions.

(a) by inserting after the definition of “ Air Force ” the following definitions :—

“ ‘ Air Force Act ’ means the Imperial Act called the Air Force Act ;

‘ air force service ’ means any service required, by or under this Act, to be performed by any member of the Air Force whether on land or sea or in the air ;” ;

(b) by omitting from the definition of “ Defence Act ” the figures “ 1918 ” and inserting in their stead the figures “ 1939 ” ; and

(c) by adding at the end thereof the following definitions :—

“ ‘ Naval Defence Act ’ means the *Naval Defence Act* 1910–1934 ;

* Act No. 83, 1923.

† Act No. 20, 1903, as amended by No. 12, 1904 ; No. 15, 1909 ; No. 30, 1910 ; No. 37, 1910 ; No. 15, 1911 ; No. 5, 1912 ; No. 36, 1914 ; No. 3, 1915 ; No. 36, 1917 ; No. 16, 1918 ; No. 47, 1918 ; No. 1, 1927 ; No. 50, 1932 ; and No. 45, 1934.

‡ Act No. 13, 1939.

§ Act No. 38, 1939.

|| Act No. 70, 1939.

'this Act' includes all regulations made thereunder or continued in force by the *Air Force Act 1939*."

Establishment
of Air Force
and application
of Defence Act
thereto.

5. Section three of the Principal Act is amended—

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

"(3.) Part I., sections thirty, forty-three, forty-six, forty-seven, fifty-one, fifty-three and fifty-eight and Parts IV. to XIV. (both inclusive) of the Defence Act shall, subject to this Act, continue to apply in relation to the Air Force :

Provided that, in the application of those Parts and sections in relation to the Air Force, any reference to the Minister shall be construed as a reference to the Minister administering this Act :

Provided further that, notwithstanding anything contained in this or any other Act—

(a) a person called upon to serve in the Citizen Forces under section sixty of the Defence Act shall not be required, unless he voluntarily agrees to do so, to enlist or serve in the Air Force ; and

(b) a person who is liable to be trained under Part XII. of the Defence Act shall not be allotted to the Air Force unless—

(i) being under the age of eighteen years, his parents or guardians consent to his being so allotted ; or

(ii) being of the age of eighteen years or more, he consents to be so allotted." ; and

(b) by omitting sub-section (5.).

6. The Principal Act is amended by adding at the end thereof the following sections :—

Limits of
service.

"4.—(1.) Members of the Air Force may be required to serve for training or any air force service either within or beyond the limits of the Commonwealth :

Provided that no member of the Air Force appointed or enlisted for service within the limits of Australia only shall be required to serve beyond those limits unless he voluntarily agrees so to serve.

"(2.) For the purposes of this section the term 'Australia' has the same meaning as in the Defence Act.

Application of
Air Force Act.

"5.—(1.) The Air Force Act in force on the date on which the *Air Force Act 1939* came into operation shall, subject to this Act and to such modifications, adaptations and exceptions (if any) as are prescribed, apply in relation to the Air Force and the members thereof in like manner as it applies to the Royal Air Force.

“(2.) Any amendment made to the Air Force Act after that date may, subject to this Act, be applied by regulations to the Air Force and the members thereof.

“6. Members of the Air Force may, under such conditions (if any) as are prescribed, be attached or loaned to or seconded for service with, the Naval or Military Forces.

Attachment,
&c., of
members of
the Air Force
to Naval and
Military Forces.
Members of
the Air Force
serving on ship
of Australian
Navy.

“7. A member of the Air Force who is borne on the books of any vessel of the Commonwealth Naval Forces or any vessel of the Royal Navy, or of the Naval Forces of any part of the King's dominions transferred to the Commonwealth Naval Forces, shall, in such manner and subject to such modifications (if any) as are prescribed, be subject to the Naval Defence Act as if he were a member of the Naval Forces :

Provided that—

- (a) this section shall not prevent the application of this Act to any person dealing with or having any relations with any such member, or to any such member if found on shore as a deserter or absentee without leave ;
- (b) if any such member is employed on land the senior naval officer present may, if it seems to him expedient, order that he shall during that employment be subject to this Act, and while that order is in force he shall be subject to this Act accordingly ; and
- (c) if any such member commits an offence for which he is not amenable to a Naval court-martial but for which he can be punished under this Act, he may be tried and punished for the offence under this Act.

“8.—(1.) Except as prescribed, an officer or airman appointed or enlisted, on or after the third day of September, One thousand nine hundred and thirty-nine, for service in any such part of the Air Force as is raised in time of war for war service, or an officer or airman appointed or enlisted on or after that date solely for service in time of war, shall not, by reason only of such appointment or enlistment, be deemed to be an officer or employee within the meaning of the *Superannuation Act* 1922-1937.

Certain officers
and airmen
not subject to
Superannuation
Act.

“(2.) In this section, the expressions ‘time of war’ and ‘war service’ have the same meanings as in the Defence Act.

“9. 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 securing the discipline and good government of the Air Force and the members thereof, whether within or beyond the limits of the Commonwealth, or for carrying out or giving effect to this Act.”.

Regulations.

7. All regulations made under the Principal Act which are in force immediately prior to the date on which this Act comes into operation shall, except so far as they are inconsistent with this Act, continue in force, but any such regulation may be amended or repealed by regulations under the Principal Act, as amended by this Act.

Saving of
existing
regulations.

THE SCHEDULE.

Section 3.

CONSEQUENTIAL AMENDMENTS IN THE DEFENCE ACT 1903-1939.

Section.	Extent of Amendment.
2	Omit " or Military " insert " Military or Air Force ".
4	Omit " and Military " insert " Military or Air Force ".
	After the definition of " Active Service " insert the following definitions :— " Air Force Act "—Means the Imperial Act called the Air Force Act.
	" Aircraft "—Includes aeroplanes, seaplanes, balloons, kite balloons, airships and other machines for flying.
	" Aircraft Material "—Includes any engines, fittings, guns, gear, instruments, ammunition, bombs or apparatus for use in connexion with aircraft, and any components or accessories of aircraft, and petrol and any other substance used for providing motive power for aircraft, and lubricating oil.
	" Airman "—Does not include an officer but includes every enlisted person subject to the <i>Air Force Act</i> 1923-1939."
	Omit from the definition of " Member " " and soldier " insert " soldier and airman ".
	Omit from definition of " Military Decoration " " or Military " insert " , Military or Air ".
	Omit the definition of " Naval or Military Offence " insert the following definition :—
	" Naval, Military or Air-force Offence "—Means any offence against this Act, the Army Act, the Naval Discipline Act or the Air Force Act."
	In the definition of " Officer ", after " Military " (wherever occurring), insert " or Air ".
	In the definition of " Officer ", after " probational," insert " temporary,".
	Omit from definition of " War Service " " or military " (wherever occurring) insert " , military or air-force ".
30	Omit " and Military " insert " , Military and Air ".
31	Omit " Aviation," from sub-section (2.).
53	Omit " Forces or " insert " Forces,".
	After " King's Regular Naval Forces " insert " or the King's Regular Air Force ".
58	Omit " corps or " (wherever occurring) insert " corps,".
	After " company " (wherever occurring) insert " or air-force unit or station ".
61	Omit " or military " insert " , military or air-force ".
62	Omit " or Military Forces " from sub-section (2.) and insert " , Military or Air Forces ".
	Omit " or military exercises " from sub-section (2.) insert " , military or air-force exercises ".
	Omit " or military units " from sub-section (2.) insert " , military or air-force units ".
	Add at the end of sub-section (5.) " , and such as are allotted to the Air Force, who shall be under the orders of the officer appointed for that purpose by the Air Board ".
63	Omit " and military " insert " , military and air-force ".
	Omit " or Military Defence " insert " Military or Air Defence ".
	Omit " or Military Forces " insert " Military or Air Forces ".
64	Omit " or military " insert " , military or air-force ".
65	After " baggage " insert " aircraft, aircraft material ".
67	Omit " aerial machine " insert " aircraft, aircraft material ".
	Omit " or military " insert " , military or air-force ".
	Omit " aerial machines " insert " aircraft, aircraft material ".
69	Omit " or military " insert " , military or air-force ".
70	After " landing place," insert " aerodrome,".
	Omit " or military " insert " , military or air-force ".
	After " stores or baggage " insert " , stores, baggage, aircraft or aircraft material ".
73A	After " factory," insert " or air-force aerodrome or establishment ".
	Omit " or military " (wherever occurring) insert " , military or air-force ".

THE SCHEDULE—*continued.*

Section.	Extent of Amendment.
73A— <i>contd.</i>	After "work," (second occurring) in sub-section (2.) insert "or air-force aerodrome or establishment."
78	After "Military" insert "or Air".
79	After "Army Act" insert "or the Air Force Act, as the case may be". Omit "or military" from sub-section (1.) insert "military or air-force". After "corps," in sub-section (1.) insert "unit or station,". Omit "or military" from sub-section (1A.) insert "military or air-force". After "corps" in sub-section (1A.) insert "unit or station".
80A	Omit "or sailor" from sub-section (1.) insert "sailor or airman". Omit "and" from paragraph (a) of sub-section (2.). Add the following paragraph at end of sub-section (2.) :— " ; and (c) 'returned airman' means a person who has served abroad during any war as a member of any Air Force, air service or flying corps raised in Australia or in any other part of the British Empire or as a member of the air forces of any Ally of Great Britain." Omit from sub-section (3.) "or sailor" insert "sailor or airman".
81	Omit "or military" insert "military or air-force".
82	After "fortification" (first and second occurring) insert "aircraft air-force establishment aircraft material". Omit "or military" (wherever occurring) insert "military or air-force". After "fortification" (third occurring) insert "air-force establishment". After "Force," in sub-section (3.) insert "or any aircraft,".
86	After "military" in paragraph (c) of sub-section (1.) insert "or air-force". After "Naval Forces" in sub-section (2.) insert "or the Air Force Act in regard to the Air Force".
87	After "cases," in sub-section (1.) insert "or to any locality, place or district,".
88	Omit "and" (seventh occurring). Add at the end thereof "and the like laws and regulations in relation to the King's Regular Air Force shall apply in the case of the Air Force".
90	After "Naval Discipline Act" insert "or of the Air Force Act".
96	After "military" insert "or air-force".
97	Omit "or military" insert "military or air-force".
98	After "boat," insert "or aircraft,".
103	Omit "or the Naval Discipline Act" insert "the Naval Discipline Act or the Air Force Act". Omit "or military offence" insert "military or air-force offence".
106	Omit "or the Naval Discipline Act" insert "the Naval Discipline Act or the Air Force Act".
107	Omit "or military" insert "military or air-force".
108	Omit "or ship" insert "ship, unit or air-force station". Omit "and the Naval Discipline Act" insert "the Naval Discipline Act and the Air Force Act".
109	Add at the end of sub-section (2.) "unit or air-force station"
110	After sub-section (3.) insert the following sub-section :— "(3A.) A civil prosecution against an officer of the Air Force shall be brought by or by the authority of the Air Board." After "District Naval Officer" in sub-section (4.) insert "or the Air Board". After "seaman," (first occurring) in sub-section (5.) insert "airman". After "belongs," (second occurring) in sub-section (5.) insert "or by the commanding officer or adjutant of the unit to which the airman belongs,".
110A	After "Company" (wherever occurring) insert "or Flight".
111	After "ship's company or part thereof," (wherever occurring) insert "or air-force unit or station or part thereof". After "ship's company" (third and fourth occurring) insert "or air-force unit or station, as the case may be". After "District Naval Officer" (first occurring) insert "or the Air Board".
112	Omit "or soldier" (wherever occurring) insert "soldier or airman".
113	Omit "or military" insert "military or air-force".
	Omit "or ship's company" insert "ship's company or air-force unit".
116	Omit "or military" insert "military or air-force".

THE SCHEDULE—*continued.*

Section.	Extent of Amendment.
116	Omit " or military " insert ", military or air-force ".
118	Omit " or Military " insert ", Military or Air ".
123A	Omit " or military " (wherever occurring) insert ", military or air-force ".
123E	Omit " Military uniforms " insert " Uniforms ".
124	Omit " naval or military operation " insert " naval, military or air-force operation ".
Heading to Part XII.	Omit " OR MILITARY " insert ", MILITARY OR AIR FORCE ".
127	After " arms " (second occurring) insert " and to the Air Force ".
134	After " Military District " insert " or by the Air Board ".
137	After " vessels " (first and second occurring) insert " or upon aircraft ".
138	After " waters " insert " or upon such aircraft within the territorial limits of the Commonwealth ".
138	Omit " or military " (first and second occurring) insert ", military or air-force ".
Heading to Part XIV.	Omit " or Military " from paragraph (d) of sub-section (1.) insert ", Military or Air ".
142A	Omit " AND MILITARY " insert ", MILITARY OR AIR FORCE ".
143	Omit " or military " insert ", military or air-force ".
143	At end of sub-section (2.) add " or the Air Force ".