

AUSTRALIAN SOLDIERS' REPATRIATION.

No. 37 of 1940.

An Act to amend the *Australian Soldiers' Repatriation Act* 1920-1938 for the purpose of providing for the grant of pensions upon the death or incapacity of Members of the Defence Force of the Commonwealth whose death or incapacity arises in connexion with the war which commenced on the third day of September, One thousand nine hundred and thirty-nine, and for other purposes.

[Assented to 4th June, 1940.]

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* 1940. Short title and citation.

(2.) The *Australian Soldiers' Repatriation Act* 1920-1938* 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* 1920-1940.

Commencement. 2. This Act shall be deemed to have come into operation on the third day of September, One thousand nine hundred and thirty-nine.

Parts. 3. Section four of the Principal Act is amended by adding after the words "Division 5.—Service Pensions.", the words "Division 6.—Extension of Application of Provisions of Divisions 1 to 4.".

Duties of Boards. 4. Section twenty-six of the Principal Act is amended by omitting paragraphs (a) and (b) of sub-section (1.) and inserting in their stead the following paragraph :—

"(a) determining whether the death or incapacity of a member of the Forces—

(i) in fact resulted from an occurrence happening during the period he was a member of the Forces ;

(ii) in fact resulted from his employment in connexion with naval or military preparations or operations ;
or

(iii) is directly attributable to his employment as a member,

and in the case of incapacity the nature and extent thereof ;".

Pension payable for limited periods in certain cases. 5. Section thirty-three of the Principal Act is amended by omitting from the proviso to sub-section (4.) the words "six months" and inserting in their stead the words "twelve months".

Pension to de facto wife of member. 6. Section thirty-six of the Principal Act is amended—

(a) by inserting, after the word "Forces" (first occurring), the words "(including a member of the Forces within the meaning of section forty-five AT of this Act)"; and

(b) by adding at the end thereof the following proviso :—

"Provided that a pension shall not be allowed under this section to any such person, by reason of the death or incapacity of a member of the Forces within the meaning of section forty-five AT of this Act, in respect of any period during which a pension is allowed under this Division to the wife or widow of the member."

Pension to divorcee of member. 7. Section thirty-eight of the Principal Act is amended by inserting, after the word "Forces", the words "(including a member of the Forces within the meaning of section forty-five AT of this Act)".

* Act No. 6, 1920, as amended by No. 34, 1921 ; No. 23, 1922 ; No. 14, 1929 ; No. 74, 1930 ; Nos. 10 and 47, 1931 ; No. 17, 1933 ; Nos. 16 and 32, 1934 ; No. 58, 1935 ; Nos. 29 and 67, 1936 ; Nos. 12, 24 and 42, 1937 ; and No. 55, 1938.

8. Section forty-one of the Principal Act is amended by inserting, after the word "Forces" (wherever occurring), the words "(whether a member of the Forces within the meaning of section twenty-two or a member of the Forces within the meaning of section forty-five AT of this Act)".

Children not
entitled to
double pensions.

9. Section forty-five K of the Principal Act is amended—

Appeals.

(a) by inserting in paragraph (a) of sub-section (1.), after the word "operations," the words "or is not directly attributable to his employment as a member,"; and

(b) by inserting after sub-section (7.) the following sub-section :—
 "(7A.) On any submission to an Appeal Tribunal under the proviso to the last preceding sub-section, an appellant may be represented at his own expense in support of his submission by any person other than a legal practitioner."

10. Section forty-five N of the Principal Act is amended by inserting in paragraph (b) of sub-section (1.), after the word "operations," the words "or directly attributable to his employment as a member,".

Appeals to
Assessment
Appeal
Tribunals.

11. Section forty-five W of the Principal Act is amended by adding at the end thereof the following sub-section :—

Consideration
of Appeals.

"(4.) For the purposes of sub-section (2.) of this section an appellant shall be deemed to have made out a *prima facie* case when he avers that the incapacity or death of the member of the Forces resulted from an occurrence happening during the period he was a member of the Forces or from his employment in connexion with naval or military preparations or operations or is directly attributable to his employment as a member of the Forces."

12. After Division 5 of Part III. of the Principal Act, the following Division and sections are inserted :—

"Division 6.—*Extension of Application of Provisions of Divisions 1 to 4.*

"45AS.—(1.) Subject to the provisions of this Division, the provisions of Divisions 1 to 4 (inclusive) of this Part, other than section twenty-three, and of the Schedules to this Act, shall extend to, and in relation to—

Extension of
application of
Divisions 1 to
4 and Schedules.

(a) members of the Forces within the meaning of section forty-five AT of this Act; and

(b) the dependants of such members.

"(2.) For the purposes of the extension of the provisions of Divisions 1 to 4 (inclusive) of this Part and of the Schedules to this Act as provided in the last preceding sub-section—

(a) any reference in those Divisions or Schedules, or in any Act affecting those Divisions or Schedules, to a member of the Forces or to a member or to a returned soldier shall, except where otherwise expressly provided, be read as a reference to a member of the Forces within the meaning of section forty-five AT of this Act; and

(b) any reference in those Divisions or Schedules, or in any Act affecting those Divisions or Schedules, to dependants shall, except where otherwise expressly provided, be read as a reference to—

- (i) the wife or widow of a member of the Forces who was married to the member before or during his service, or within seven years after his discharge from the Forces or the termination of the war whichever first happens ;
- (ii) the widowed mother of an unmarried member ;
- (iii) the child of a member who is under the age of sixteen years and who is—
 - (1) a son or daughter born to the member of a marriage which took place before or during his service, or within seven years after his discharge from the Forces or the termination of the war, whichever first happens ;
 - (2) a step-son, step-daughter or adopted child of the member (not being, in the case of an adopted child, an ex-nuptial child of the member), who became dependent on the member before or during his service, or within seven years after his discharge from the Forces or the termination of the war, whichever first happens ; or
 - (3) the ex-nuptial child of the member who was born before, or within nine months after, his death or discharge from the Forces or the termination of the war, whichever first happens ;
- (iv) the parent of a deceased member who is at any time without adequate means of support ;
- (v) such other members of the family of a member as were, wholly or in part, dependent upon his earnings at the time of his enlistment or appointment ;
- (vi) the ex-nuptial child (wholly or in part dependent upon the earnings of the member at the time of his enlistment or appointment) of a son or daughter of a member ; and
- (vii) the parents or grand-parents of a member, who is an ex-nuptial child, who were so dependent.

Interpretation.

“ 45AT. For the purposes of this Division—

‘ Active Service outside Australia ’ means—

- (a) as to members of the Naval Forces, active service on a ship of war engaged in seagoing operations beyond the territorial waters of Australia ; and

- (b) as to members of all Forces, any active service after the vessel on which the member proceeded outside Australia had departed from the port at which the member embarked.

'Australia' includes the Territories of the Commonwealth ;

'Member of the Forces' means any person who, during the war, was a member of the Naval, Military, or Air Forces of the Commonwealth, or a member of the Australian Army Nursing Service, and—

(a) was employed on active service outside Australia ; or

(b) although not so employed, was enlisted in or appointed to any of those Forces solely for service for the duration of the war, or enlisted in or appointed to the Permanent Military or Air Forces during the war, or called up for continuous service for the duration of and directly in connexion with the war,

but does not include any person to whom paragraph (b) of this definition applies, who was a member of the Permanent Military or Air Forces of the Commonwealth and was, by reason only of such membership, deemed to be an employee within the meaning of the *Superannuation Act* 1922–1937 ;

'the war' means the war which commenced on the third day of September, One thousand nine hundred and thirty-nine.

" 45AU.—(1.) Upon the incapacity or death—

(a) of any member of the Forces whose incapacity or death is directly attributable to his employment as a member ; or

(b) of any person to whom paragraph (a) of the definition of 'Member of the Forces' applies, whose incapacity or death results from any occurrence happening during the period from the date of his enlistment or appointment for active service outside Australia to the date of the termination of his service in respect of that enlistment or appointment,

Liability of
Commonwealth
to pay pensions.

the Commonwealth shall, subject to this Act, be liable to pay to the member, or his dependants, or both, as the case may be, pensions in accordance with Division I of this Part :

Provided that—

(a) the incapacity or death of the member—

- (i) is not due to the default or wilful act of the member ;
(ii) does not arise from intentionally self-inflicted injuries ; and

(iii) does not arise from, or from any occurrence happening during the commission of any breach of discipline by the member ;

(b) the right of any person to payment by way of pension under this Act shall be substituted for his right to any payment in respect of incapacity or death, which, but for this Act, would have been due under the *Naval Defence Act* 1910–1934, or the *Defence Act* 1903–1939, or the *Air Force Act* 1923–1939, and any right of that person under any of those Acts shall be by force of this Act determined; and

(c) if the member or any of his dependants is entitled under—

(i) the law of any part of the King's dominions other than the Commonwealth; or

(ii) the law of any State,

to receive any payment in respect of incapacity or death resulting from employment in connexion with warlike operations in which His Majesty is or has been engaged, the rate or the amount of that payment shall be taken into account in assessing the rate of pension payable under this Act, so that the total payments to the member, or his dependants, or both, as the case may be, shall not exceed the total payments to which they respectively or collectively would be entitled if eligible solely under this Act.

“(2.) Notwithstanding that, in the case of a member of the Forces, who, after enlistment or appointment for active service outside Australia with those Forces, served in camp in Australia for at least six months or embarked for such active service, the origin of the cause of his incapacity or death existed prior to his enlistment or appointment, then, if in the opinion of the Commission or a Board—

(a) the conditions of his war service contributed to any material degree to his incapacity or death; and

(b) neither the incapacity or death, nor the origin of the cause of the incapacity or death, was due to the default or wilful act of the member,

the Commonwealth shall, subject to this Act, be liable to pay to the member or his dependants, or both, as the case may be, pensions in accordance with Division 1 of this Part.

**Extension of
Division in
respect of other
parts of King's
dominions.**

“45AV. The provisions of this Division shall, in like manner as they extend to a member of the Forces, extend to, and in relation to, any member of the Naval, Military or Air Forces or Army Nursing Services of any part of the King's dominions, other than the Commonwealth, who, during the war, is serving or has served on active service outside that part of the King's dominions, or in a theatre of war, on proof to the satisfaction of the Commission that he was resident in Australia within the period of twelve months prior to being called up, enlisted, or appointed:

Provided that a pension shall not be payable under this section to any person who is not *bona fide* resident in Australia.

"45aw. Notwithstanding anything contained in this Act, the Commonwealth shall not be liable to pay to any person pensions at rates which in the aggregate exceed the rate at which pension would have been payable to that person if the incapacity or death or both in respect of which the pensions are payable were attributable to service in one war only."

Maximum
rates of
pensions.

13. Section forty-six of the Principal Act is amended by adding at the end thereof the following sub-sections :—

Definitions.

"(3.) For the purposes of Parts IV. and V. of this Act, any person who—

- (a) is or has been, during the war which commenced on the third day of September, One thousand nine hundred and thirty-nine, a member of the Naval, Military or Air Forces of the Commonwealth enlisted or appointed for or employed on active service outside Australia ; or
- (b) is or has been, during that war, a member of the Australian Army Nursing Service accepted or appointed by the Director-General of Medical Services for service outside Australia ; or
- (c) is or has been, during that war, a member of the Naval, Military or Air Forces of any part of the King's dominions, other than the Commonwealth, and is serving or has served on active service outside that part of the King's dominions, or in a theatre of war, on proof to the satisfaction of the Commission that he was resident in Australia within the period of twelve months prior to his enlistment or appointment for service ; or
- (d) is or has been, during that war, a member of the Army Nursing Service of any part of the King's dominions, other than the Commonwealth, on proof to the satisfaction of the Commission, that she was resident in Australia within the period of twelve months prior to her acceptance by or appointment to that service,

shall be deemed to be an Australian soldier within the meaning of those Parts.

"(4.) For the purposes of the last preceding sub-section the term 'Australia' includes the Territories of the Commonwealth, and the expression 'served in a theatre of war' has the same meaning as in section twenty-two of this Act."

14. Section fifty-seven of the Principal Act is amended—

Arrangements
with
Governments
of other
dominions.

- (a) by omitting the words "or Military" (wherever occurring) and inserting in their stead the words " , Military or Air " ; and
- (b) by inserting, after the word "war", the words "or the war which commenced on the third day of September, One thousand nine hundred and thirty-nine".

Regulations.

15.—(1.) Section sixty of the Principal Act is amended—

- (a) by inserting, after the word “Act” (fourth occurring), the words “, for providing for the granting of medical treatment and sustenance allowance during treatment, for members of the Forces within the meaning of sections twenty-two and forty-five *AT* of this Act”;
- (b) by omitting from sub-paragraph (ii) of paragraph (c) the word “and”; and
- (c) by adding at the end thereof the following paragraph :—
“; and (e) in the form of allowances to the persons specified in paragraphs (a), (b) and (d) of this section.”.

(2.) This section shall be deemed to have come into operation on the same date as the *Australian Soldiers' Repatriation Act 1920*.

**The Third
Schedule.**

16. The Third Schedule to the Principal Act is amended by omitting from paragraph (a) the words “Second child . . . 15s. per fortnight. Other children . . . 10s. per fortnight each.” and inserting in their stead the words “Other children . . . 15s. per fortnight each.”.