

## DEFENCE.

No. 71 of 1949.

An Act to amend the *Defence Act* 1903-1948,  
and for other purposes.

[Assented to 28th October, 1949.]

**B**E it enacted by the King's Most Excellent Majesty, the Senate,  
and the House of Representatives of the Commonwealth of  
Australia, as follows:—

Short title  
and citations

1.—(1.) This Act may be cited as the *Defence Act* 1949.

(2.) The *Defence Act* 1903-1948\* 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* 1903-1949.

Commencement.

2. This Act shall come into operation on the first day of January,  
One thousand nine hundred and fifty.

\* 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; No. 45, 1934; No. 13, 1939; No. 38, 1939; No. 70, 1939;  
No. 74, 1939; No. 4, 1941; No. 11, 1945; No. 78, 1947; and No. 35, 1948.

## 3. Section four of the Principal Act is amended—

Interpretation.

(a) by omitting the definition of "Active Service" and inserting in its stead the following definition :—

" 'Active Service'—In relation to a person subject to military law, means the service rendered by that person—

(a) when he is attached to or forms part of a force which—

(i) is engaged in operations against an enemy ;

(ii) is engaged in military operations in a country or place wholly or partly occupied by an enemy ; or

(iii) is in military occupation of a foreign country ; or

(b) during a period or in an area in respect of which the Governor-General, by notice in the *Gazette*, declares that the force to which he is attached or of which he forms part is, or persons serving during that period or in that area are, on active service." ;

(b) by omitting the definition of "Military Decoration" and inserting in its stead the following definition :—

" 'Military Decoration'—Means any order, medal, clasp, good conduct badge or decoration conferred for service in the Naval, Military or Air Forces of any part of the King's dominions or of any ally of His Majesty in any war in which His Majesty is or has been engaged, and includes the ribbon of any such order, medal, clasp, badge or decoration and any colourable imitation, representation or miniature of any such order, medal, clasp, badge or decoration." ;

(c) by inserting in the definition of "Officer", after the words "promoted to", the words "war substantive, local," ; and

(d) by adding at the end thereof the following definition :—

" 'War Substantive Rank'—Means rank conferred in a military force raised in time of war for service during time of war only or for a specified period.".

## 4. Section sixteen A of the Principal Act is repealed and the following section inserted in its stead :—

"16A.—(1.) A member of the Military Forces who has been appointed or promoted to war substantive rank shall, on ceasing to be engaged on war service, revert to his true rank.

Adjustment of ranks after war service.

“(2.) Where a member of the Military Forces has been appointed or promoted to war substantive rank, and has ceased to be engaged on war service, the Governor-General may confer on that member such rank and seniority in the Military Forces as the Military Board recommends.”.

Resignation of  
commission.

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

“(3.) Acceptance of the resignation tendered by an officer of the Australian Regular Army who is on the unattached list or the reserve of officers and, on transfer to the unattached list or the reserve of officers, has been paid gratuity otherwise than under the *War Gratuity Act 1945-1947* or has received payment from the Defence Forces Retirement Benefits Fund established under the *Defence Forces Retirement Benefits Act 1948-1949*, shall be subject to the payment to the Commonwealth of such amount as is prescribed.”.

Promotion of  
officers.

6. Section twenty-one of the Principal Act is amended by omitting from sub-section (1.) the word “lieutenant-colonel” and inserting in its stead the word “major”.

Promotion to  
rank above  
Captain.

7. Section twenty-one A of the Principal Act is amended—

- (a) by omitting from sub-section (1.) the words “the Cadets” and inserting in their stead the words “a prescribed corps”;
- (b) by inserting in sub-section (2.), after the word “Forces”, the words “, other than an officer of a prescribed corps,”; and
- (c) by omitting sub-section (3.).

8. Section thirty-one of the Principal Act is repealed and the following section inserted in its stead :—

Permanent  
Military Forces

“31.—(1.) The Permanent Military Forces shall consist of Active Forces and Reserve Forces.

“(2.) The Active Permanent Military Forces shall consist of officers appointed to, and of soldiers who are bound to continuous military service during the continuance of their engagement in—

- (a) the Australian Regular Army ; or
- (b) a military force raised in time of war for service during time of war only or for a specified period.

“(3.) The Reserve Permanent Military Forces shall consist of officers appointed or transferred to, and of soldiers enlisted for service as prescribed in—

- (a) the Regular Army Reserve ; or
- (b) the Regular Army Special Reserve.

“(4.) A member of those parts of the Active Permanent Military Forces specified in paragraph (b) of sub-section (2.) of this section, or a member of the Reserve Permanent Military Forces enlisted or called up for continuous duty, shall not, by reason only of his membership of either of those forces, be deemed to be—

(a) an employee within the meaning of the *Superannuation Act 1922-1948*; or

(b) a member within the meaning of the *Defence Forces Retirement Benefits Act 1948-1949*.”

9. Section thirty-two A of the Principal Act is amended by omitting sub-section (3.) and inserting in its stead the following sub-section:—

Constitution of  
Citizen Military  
Forces.

“(3.) The Reserve Citizen Military Forces shall consist of officers appointed or transferred to those Forces and of all persons who are, in time of war, liable to serve in the Citizen Forces under section fifty-nine of this Act and are not members of the Active Forces, the Citizen Naval Forces, the Reserve Permanent Military Forces or the Air Force Reserve.”

10. Section thirty-nine of the Principal Act is amended by omitting sub-section (2.) and inserting in its stead the following sub-section—

Time of  
discharge.

“(2.) A soldier who would, under paragraph (a) or (c) of the last preceding sub-section, be entitled to be discharged shall not, in time of war, be entitled to be discharged.”

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

“40. A voluntarily enlisted soldier of the Active Citizen Military Forces may, except in time of war, claim his discharge before the expiration of the period of service, for which he engaged, provided he has given not less than three months' notice in writing to his commanding officer of his intention to claim his discharge, and the claim shall with all reasonable speed be allowed.”

Discharge of  
members of  
Citizen Forces.

12. Section forty-one of the Principal Act is repealed and the following section inserted in its stead:—

“41. Except in time of war, a soldier of the Regular Army Reserve, upon payment of such amount as is prescribed, may claim his discharge before the expiration of the period for which he engaged, provided he has given not less than fourteen days' notice in writing to his commanding officer of his intention to claim his discharge, and the claim shall with all reasonable speed be allowed.”

Discharge of  
members of  
Regular Army  
Reserve.

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

“43. Members of the Permanent Naval Forces, the Active Permanent Military Forces, the Regular Army Special Reserve and the Permanent Air Force, and, while called up for war service, members of the Regular Army Reserve and of the Citizen Forces, shall be exempt from serving as jurors.”

Exemption from  
sitting on  
juries.

14. After section sixty-two of the Principal Act the following section is inserted in Part V. :—

Australian  
Cadet Corps.

“ 62A.—(1.) The Military Senior Cadets shall consist of—

- (a) persons required to serve therein under Part XII. of this Act ;  
and
- (b) persons who volunteer and are accepted for training therein

“ (2.) The Military Senior Cadets shall be known as the Australian Cadet Corps.”.

15. Section eighty-three of the Principal Act is repealed and the following section inserted in its stead :—

Unauthorized  
use, possession  
or supply of  
uniforms and  
emblems.

“ 83.—(1.) A person shall not, without lawful authority—

- (a) use, wear or have in his possession ; or
- (b) make, supply or offer to supply,

any uniform or emblem to which this section applies or any colourable imitation, representation or miniature of any such uniform or emblem

Penalty : Fifty pounds.

“ (2.) This section applies to any uniform or emblem of the Naval, Military or Air Forces of the Commonwealth, or any other part of the King's dominions, or, in time of war, of any ally of His Majesty, and to such other uniforms and emblems related to the defence of the Commonwealth in respect of any war in which His Majesty is or has been engaged as are specified by the Minister, by notice in the *Gazette*, to be uniforms or emblems to which this section applies.

“ (3.) An authority for the purpose of sub-section (1.) of this section may be given by the Naval Board, the Military Board or the Air Board, or by a person thereto authorized in writing by any of those Boards, and shall be subject to such limitations (if any) as are specified in the authority.

“ (4.) A person on whose behalf or at whose place of business an article is supplied or offered in contravention of this section, whether contrary to the instructions of that person or not, shall be guilty of an offence, and shall, on conviction, be liable to a fine not exceeding Fifty pounds.

“ (5.) The wearing of a uniform or emblem to which this section applies in the course of a stage play, a music hall or circus performance or a *bona fide* military representation, or in the making of a cinema film, shall not be an offence against this section.

“ (6.) Where an offence against this section has been committed, the court may, if it thinks fit, order the forfeiture of any uniform or emblem in respect of which that offence was committed.

“ (7.) In this section—

- ‘ emblem ’ includes a badge, a regimental or other distinctive mark and an armet ; and
- ‘ uniform ’ includes an accoutrement or other part of a uniform.”.

16. Section one hundred and eleven of the Principal Act is amended by adding at the end thereof the following sub-section :—

“(2.) For the purposes of this section, ‘corps’ includes unit.”.

Subscription,  
arms, &c.,  
vested in  
commanding  
officer.

17. Section one hundred and seventeen A of the Principal Act is amended—

Civilians  
accompanying  
Forces subject  
to Act.

(a) by omitting the words “Military Forces” (first occurring) and inserting in their stead the words “Defence Force”; and

(b) by omitting the words “on active service within the limits of the Commonwealth or those of any Territory under the control of the Commonwealth” and inserting in their stead the words “, whether within or beyond Australia.”.

18. Section one hundred and twenty-four of the Principal Act is amended—

Regulations.

(a) by inserting in paragraph (a) of sub-section (1.), after the word “appointment,”, the word “promotion,”;

(b) by omitting from paragraph (da) of sub-section (1.) the words “any Expeditionary Force” and inserting in their stead the words “the Military Forces”;

(c) by inserting after paragraph (da) of sub-section (1.) the following paragraph :—

“(db) The suspension, variation or cancellation by the prescribed authority of any allotment of pay made by an officer or member of the Military Forces ;” ;

(d) by inserting after paragraph (ga) of sub-section (1.) the following paragraph :—

“(gb) The validity and effect within Australia of sentences passed outside Australia upon, or punishments awarded outside Australia to, members of the Defence Force who are attached or lent to, or seconded for service outside Australia with, a force which is a Dominion Force or Home Force within the meaning of the *Defence (Visiting Forces) Act 1939* ;” ;

(e) by omitting paragraph (na) of sub-section (1.) and inserting in its stead the following paragraph :—

“(na) The regulation, control or prohibition of the construction or use of buildings, erections or installations, the use of apparatus, machines or vehicles, and the removal in whole or in

part of buildings, erections, installations, apparatus, trees or other natural obstacles, within prescribed areas, being areas in which the regulation, control, prohibition or removal is necessary for the defence of the Commonwealth ;” ;

(f) by inserting after paragraph (o) of sub-section (1.) the following paragraph :—

“(oa) The management and disposal of the funds and property of units of the Military Forces, including the funds and property of messes ;” ;  
and

(g) by inserting after paragraph (q) of sub-section (1.) the following paragraphs :—

“(qa) The certification of death of members of the Defence Force who die while on service ;

“(qb) The *post mortem* examination and disposal of the bodies of members of the Defence Force who die while on service ;

“(qc) Prisoners of war ;

“(qd) The command and discipline of bodies of the Naval, Military and Air Forces, or of any two of those Forces, when acting together ;

“(qe) The administration of oaths to, the taking of affidavits of, and the attestation of the execution of documents by members of the Defence Force, and persons accompanying any part of the Defence Force, when serving outside Australia, including any such members or persons who are prisoners of war or interned in a place outside Australia ;

“(qf) The execution and revocation of powers of attorney by persons under the age of twenty-one years who are members of the Defence Force and the validity and effect of powers of attorney executed by such persons ;”.

19. Section one hundred and forty-eight of the Principal Act is repealed and the following sections are inserted in its stead :—

Appointment  
of officers.

“ 148.—(1.) Subject to this section, a person who is not a graduate of the Military College as prescribed shall not be appointed an officer in the Australian Regular Army.

“(2.) Any of the following persons may, notwithstanding that he is not a graduate of the Military College but subject to the regulations, be appointed as an officer in such position in, or corps of, the Australian Regular Army as is prescribed :—

(a) a member of the Military Forces ;

(b) a person who has served with satisfactory record in time of war in—

- (i) the Defence Force ; or
- (ii) any of His Majesty's Naval, Military or Air Forces ;  
or

(c) a person who possesses the prescribed technical or professional qualifications.

“ 148A. A member of the Defence Force—

- (a) who has not attained the age of twenty-seven years ;
- (b) who has passed the prescribed examination ; and
- (c) is approved by the Governor-General,

may be admitted, as prescribed, to the Military College.”

Admission of  
certain persons  
to Military  
Colleges.

·20.—(1.) Regulations one, one B, six and twelve of the National Security (Military Forces) Regulations, and the National Security (Prisoners of War) Regulations, as in force immediately prior to the commencement of this Act, shall be in force by virtue of this Act but may be amended or repealed by regulations made under the Principal Act as amended by this Act.

Continuance  
of certain  
regulations.

(2.) A person shall not contravene, or fail to comply with, any provision of any regulation in force by virtue of this section.

Penalty : One hundred pounds or imprisonment for six months.

(3.) Each order or other instrument, made, given or issued under any provision of the National Security (Military Forces) Regulations as in force immediately prior to the commencement of this Act shall, if a corresponding provision is in force by virtue of this Act, be in force or subsisting as if made, given or issued, under those Regulations as in force by virtue of this Act and those Regulations as so in force shall apply to it accordingly.

(4.) Each order or other instrument made, given or issued under any provision of the National Security (Prisoners of War) Regulations as in force immediately prior to the commencement of this Act shall be in force or subsisting as if made, given or issued under those Regulations as in force by virtue of this Act and those Regulations shall apply to it accordingly.

(5.) Each order or other instrument in force by virtue of either of the last two preceding sub-sections may be amended or revoked by the authority having power under any Regulations in force by virtue of this Act to make, give or issue orders or instruments with respect to the matter dealt with by that order or instrument.