

Naval Defence

No. 24 of 1968

An Act to amend the *Naval Defence Act* 1910–1966 in relation to the Employment of Persons in a Civil Capacity.

[Assented to 22 May 1968]

BE it enacted by the Queen'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 *Naval Defence Act* 1968.

Short title
and citation.

(2.) The *Naval Defence Act* 1910–1966* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Naval Defence Act* 1910–1968.

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

Commence-
ment.

3. Section 2 of the Principal Act is amended by omitting the words—

Parts.

“Part VI.—Special Powers in relation to the Naval Forces (Section 41).”

and inserting in their stead the words—

“Part VI.—Special Powers in relation to Naval Ships, Naval Establishments and Civil Employment (Sections 40–42E).”

4. The heading to Part VI. of the Principal Act is repealed and the following heading and section are inserted in its stead:—

“PART VI.—SPECIAL POWERS IN RELATION TO NAVAL SHIPS, NAVAL ESTABLISHMENTS AND CIVIL EMPLOYMENT.

“40. In this Part, unless the contrary intention appears, ‘determination’ means a determination made by the Naval Board under section forty-two A of this Act.”

Definition.

5.—(1.) Section 41 of the Principal Act is amended—

(a) by adding at the end of paragraph (a) of sub-section (1.) the word “and”;

Power to
build ships and
construct docks,
&c., for
Naval purposes.

(b) by omitting from paragraph (b) of sub-section (1.) the word “and” (last occurring);

(c) by omitting paragraph (c) of sub-section (1.); and

(d) by omitting sub-sections (3.) and (4.).

* Act No. 30, 1910, as amended by No. 16, 1911; No. 21, 1912; No. 45, 1918; No. 45, 1934; No. 35, 1948; No. 72, 1949; No. 14, 1952; No. 93, 1964; No. 53, 1965; and No. 93, 1966.

(2.) Persons employed under section 41 of the Principal Act immediately before the commencement of this Act—

- (a) continue in that employment notwithstanding the amendments made by the last preceding sub-section; and
- (b) shall be deemed to be employed under section 42 of the Principal Act as amended by this Act.

(3.) Notwithstanding the amendments made by sub-section (1.) of this section but subject to the next two succeeding sub-sections, regulations in force under the Principal Act immediately before the commencement of this Act that make provision in relation to persons employed in pursuance of section 41 of the Principal Act continue to have effect in relation to persons employed under section 42 of the Principal Act as amended by this Act.

(4.) Regulations referred to in the last preceding sub-section have effect by virtue of that sub-section subject to any determinations made by the Naval Board under section 42A of the Principal Act as amended by this Act, and may be repealed by regulations under the Principal Act as so amended.

(5.) A regulation referred to in sub-section (3.) of this section that makes provision for the serving of a copy of a judgment of a court and for the making of deductions from the salary of a person for the purpose of satisfying the judgment has effect by virtue of that sub-section only in relation to a judgment a copy of which was served before the commencement of this Act.

(6.) Notwithstanding the amendments made by sub-section (1.) of this section but subject to sub-section (2.) of section 48 of the *Acts Interpretation Act* 1901–1966, regulations may be made under the Principal Act as amended by this Act for the purpose of making provision in relation to the employment before the commencement of this Act of persons under section 41 of the *Naval Defence Act* 1910 or of that Act as amended.

6. After section 41 of the Principal Act the following sections are inserted in Part VI.:—

Employment
of persons in
civil capacity.

“ 42. The Naval Board may, on behalf of the Commonwealth, engage persons for employment in a civil capacity (whether within or without Australia) in or in connexion with a naval establishment or otherwise in connexion with the Naval Forces, except in work that the Public Service Board declares, by notice published in the *Gazette*, to be work of a civil administrative or civil clerical nature for the purposes of this section.

Determination
of conditions
of employment.

“ 42A.—(1.) The Naval Board may, by instrument in writing, determine the terms and conditions (including rates of pay and allowances) applicable to the employment of persons under the last preceding section.

“ (2.) The Naval Board is, in determining a rate or a scale of rates of salary under the last preceding sub-section, subject to the directions of the Public Service Board.

“(3.) A determination takes effect from the date on which it is made or, if it is expressed to take effect from another date specified in the determination, from that other date.

“(4.) A determination—

(a) shall not be expressed to take effect from—

- (i) a date before the date of commencement of this section; or
- (ii) a date more than two years before the date on which the determination is made; and

(b) shall not be expressed to take effect from a date before the date on which the determination is made in any case where, if it so took effect—

- (i) the rights of a person (other than the Commonwealth) existing at the date on which it is made would be affected in a manner prejudicial to that person; or
- (ii) liabilities would be imposed on a person (other than the Commonwealth) in respect of anything done or omitted to be done before the date on which it is made,

and where, in a determination, provision is made in contravention of this sub-section, that provision is void and of no effect.

“(5.) A determination may make provision for or in relation to terms or conditions of employment by applying, adopting or incorporating, with or without modification—

- (a) the provisions of any Act, or of any regulations, as in force at a particular time or as in force from time to time; or
- (b) any matter contained in any other instrument or writing as in force or existing at the time when the determination takes effect.

“(6.) Determinations shall be deemed not to be Statutory Rules within the meaning of the *Rules Publication Act* 1903–1964.

“(7.) Nothing in this section affects the application of the *Public Service Arbitration Act* 1920–1966 in relation to persons employed under the last preceding section.

“42B.—(1.) Where a person employed under section forty-two of this Act (other than a person who is, by reason of sub-section (2.) of section five of the *Naval Defence Act* 1968, to be deemed to be so employed) was, immediately before the commencement of that employment, an officer of the Public Service of the Commonwealth, the Naval Board may, within one month after the commencement of that employment, direct that this section shall apply to him.

Officers' Rights
Declaration
Act to apply.

“(2.) Where this section applies to a person—

- (a) he retains his existing and accruing rights;
- (b) for the purpose of determining those rights, his service in his employment under section forty-two of this Act shall be taken into account as if it were service in the Public Service of the Commonwealth; and

(c) the *Officers' Rights Declaration Act 1928–1959* applies in relation to him as if—

- (i) the Commonwealth in its capacity as employer under section forty-two of this Act were a Commonwealth authority within the meaning of that Act; and
- (ii) this Act and this section were specified in the Schedule to that Act.

Public Service
Act not to
apply.

“42C.—(1.) Subject to the next succeeding sub-section, the *Public Service Act 1922–1967* does not apply to persons employed under section forty-two of this Act.

“ (2.) Section sixty-four of the *Public Service Act 1922–1967* applies in relation to a person employed under section forty-two of this Act as if he were an officer, within the meaning of that Act, employed in the Department of the Navy.

Commonwealth
Employees'
Compensation
Act to apply.

“42D. The *Commonwealth Employees' Compensation Act 1930–1967* applies in relation to a person employed under section forty-two of this Act as if the person were, by reason of that employment, an employee within the meaning of that Act.

Delegation by
Naval Board.

“42E.—(1.) The Naval 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 Part (except this power of 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 Naval Board.

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