

# RE-ESTABLISHMENT AND EMPLOYMENT.

No. 48 of 1951.

An Act to amend the *Re-establishment and Employment Act 1945*, as amended by certain Acts and Regulations, and for other purposes.

[Assented to 8th December, 1951.]

**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 :—

1.—(1.) This Act may be cited as the *Re-establishment and Employment Act 1951*.

Short title  
and citation.

(2.) The *Re-establishment and Employment Act 1945*<sup>\*</sup>, as amended by the *Commonwealth Public Service Act 1945*<sup>†</sup>, by the *Commonwealth Public Service Act (No. 2) 1945*<sup>‡</sup> and by the amendments which continue to have effect by virtue of section three of this Act<sup>§</sup>, is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Re-establishment and Employment Act 1945–1951*.

<sup>\*</sup> Act No. 11, 1945.

<sup>†</sup> Act No. 29, 1945.

<sup>‡</sup> Act No. 43, 1945.

<sup>§</sup> The amendments referred to were made by Statutory Rules 1945, No. 181, as amended by Statutory Rules 1946, Nos. 14, 57, 85, 130, 165 and 177; 1947, Nos. 12, 52, 87 and 100; 1948, Nos. 9, 57 and 73; 1949, Nos. 72 and 104; and 1950, No. 68.

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

**Repeal of Re-establishment and Employment Regulations and continuance of certain amendments.**

3.—(1.) The Re-establishment and Employment Regulations (being Statutory Rules 1945, No. 181, as amended) are repealed.

(2.) Subject to this Act, the amendments of the *Re-establishment and Employment Act* 1945 effected by the Regulations repealed by this section continue to have effect as if those amendments were enacted by this Act.

**Parts.**

4. Section three of the Principal Act is amended by omitting the words—

“ Part XI.—Miscellaneous.”

and inserting in their stead the words—

“ Part XI.—Provisions relating to Members of the Forces (Korea and Malaya Operations).

Division 1.—General.

Division 2.—Reinstatement in Civil Employment.

Division 3.—Rehabilitation of Disabled Persons.

Part XII.—Miscellaneous.”

**Provision of training facilities.**

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

(a) by omitting from sub-section (1.) the words “ are prescribed ” and inserting in their stead the words “ the Minister determines ” ;

(b) by omitting sub-section (5.) and inserting in its stead the following sub-section :—

“ (5.) Subject to such conditions as the Minister determines, the Commonwealth shall pay such allowances and expenses as the Minister determines and may make loans to persons eligible for, or undergoing, training under this Part.” ;

(c) by omitting from sub-section (5A.) the words “ are prescribed ” and inserting in their stead the words “ the Minister determines ” ;

(d) by omitting from sub-section (6.) the words “ are prescribed ” and inserting in their stead the words “ the Minister determines ” ; and

(e) by omitting from sub-section (7.) the words “ are prescribed ” and inserting in their stead the words “ the Minister determines ” .

(2.) The amendments effected by paragraphs (a), (b), (d) and (e) of the last preceding sub-section shall be deemed to have come into operation on the twenty-seventh day of August, One thousand nine hundred and forty-five.

(3.) The amendment effected by paragraph (c) of sub-section (1.) of this section shall be deemed to have come into operation on the first day of December, One thousand nine hundred and forty-nine.

6.—(1.) Section fifty-eight of the Principal Act is amended by omitting from sub-section (1.) the words “are prescribed” and inserting in their stead the words “the Minister determines”.

Allowances for disabled persons.

(2.) The amendment effected by the last preceding sub-section shall be deemed to have come into operation on the twenty-seventh day of August, One thousand nine hundred and forty-five.

7.—(1.) Section fifty-nine of the Principal Act is amended by omitting the words “the prescribed conditions” and inserting in their stead the words “such conditions as the Minister determines”.

Provision of books, &c., for disabled persons.

(2.) The amendment effected by the last preceding sub-section shall be deemed to have come into operation on the twenty-seventh day of August, One thousand nine hundred and forty-five.

8.—(1.) Section seventy-six of the Principal Act is amended—

Rate of employment allowance.

(a) by omitting from paragraph (a) of sub-section (1.) the word “Two” and inserting in its stead the word “Three”; and

(b) by omitting from paragraph (b) of sub-section (1.) the word “Two” and inserting in its stead the word “Three”.

(2.) The amendments effected by the last preceding sub-section shall be deemed to have come into operation on the twenty-fifth day of October, One thousand nine hundred and fifty-one.

9.—(1.) Section ninety-three of the Principal Act is amended—

Amount of loans, &c.

(a) by omitting from paragraph (a) of sub-section (1.) the words “Two hundred and fifty” and inserting in their stead the words “Three hundred and seventy-five”;

(b) by inserting in paragraph (b) of sub-section (1.), after the words “One thousand”, the words “five hundred”; and

(c) by omitting from paragraph (c) of sub-section (1.) the words “Five hundred” and inserting in their stead the words “Seven hundred and fifty”.

(2.) The amendments effected by the last preceding sub-section do not apply to a loan or guarantee made to, or given in respect of, a person to whom a loan has been made, or in respect of whom a guarantee has been given, before the commencement of this Act.

10. Section ninety-six of the Principal Act is amended by omitting paragraph (a) of sub-section (1.) and inserting in its stead the following paragraph:—

Conditions to be complied with by applicants.

“(a) an application for the loan or guarantee is made—

(i) within five years after the cessation of hostilities in all the wars in which His Majesty was engaged at the date of commencement of this Division;

- ii) within five years after the date, being not later than the thirtieth day of June, One thousand nine hundred and forty-nine, on which the applicant, or, where the applicant is a widow, her late husband, ceased to be engaged on war service;
- (iii) within five years after the date of the termination or completion of any training which the applicant, or, where the applicant is a widow, the applicant or her late husband, received under Part III. of this Act;
- (iv) within five years after the date of the termination or completion of a contract of apprenticeship of the applicant, or, where the applicant is a widow, of her late husband, being a contract which was revived under Division 3 of Part II. of this Act;
- (v) within five years after the date, being not later than the thirty-first day of December, One thousand nine hundred and fifty-four, of the termination or completion of any vocational training which the applicant, or, where the applicant is a widow, the applicant or her late husband, has undertaken without expense to the Commonwealth; or
- (vi) where the applicant is a widow whose husband has died without making an application in relation to which any of the last five preceding subparagraphs applies before the expiration of the period within which he could have applied if he had lived—before whichever is the later of the date of the expiration of a period of one year after the death of her husband and the date on which the youngest of her children (if any) attains the age of six years,

whichever is the latest;”.

**Date of  
business re-  
establishment  
allowances.**

**11.—(1.)** Section one hundred and one A of the Principal Act is amended—

- (a) by inserting in paragraph (a) of sub-section (1.), after the words “Three pounds”, the words “fifteen shillings”; and
- (b) by inserting in paragraph (b) of sub-section (1.), after the words “Three pounds”, the words “fifteen shillings”.

(2.) The amendments effected by the last preceding sub-section shall be deemed to have come into operation on the twenty-fifth day of October, One thousand nine hundred and fifty-one.

12. Section one hundred and two A of the Principal Act is repealed and the following section inserted in its stead :—

“ 102A.—(1.) Subject to the next succeeding sub-section, a business re-establishment allowance is not payable unless an application for the allowance is made—

Period within which application is to be made.

(a) within five years after—

- (i) the cessation of hostilities in all the wars in which His Majesty was engaged at the date of the commencement of this Division ;
- (ii) the date, being not later than the thirtieth day of June, One thousand nine hundred and forty-nine, on which the applicant, or, where the applicant is a widow, her late husband, ceased to be engaged on war service ;
- (iii) the date of the termination or completion of any training which the applicant, or where the applicant is a widow, the applicant or her late husband, received under Part III. of this Act ;
- (iv) the date of the termination or completion of a contract of apprenticeship of the applicant, or where the applicant is a widow, of her late husband, being a contract which was revived under Division 3 of Part II. of this Act ; or
- (v) the date, being not later than the thirty-first day of December, One thousand nine hundred and fifty-four, of the termination or completion of any vocational training which the applicant, or, where the applicant is a widow, the applicant or her late husband, has undertaken without expense to the Commonwealth ; or

(b) where the applicant is a widow whose husband has died without making an application in relation to which any of the sub-paragraphs of the last preceding paragraph applies before the expiration of the period within which he could have applied if he had lived—before whichever is the later of—

- (i) the date of the expiration of a period of one year after the death of her husband ; and
- (ii) the date on which the youngest of her children (if any) attains the age of six years,

whichever is the latest.

“ (2.) A business re-establishment allowance is not payable to a person engaged in an agricultural occupation unless an application for the allowance is made—

(a) within whichever of the periods referred to in the last preceding sub-section is the latest ; or

(b) within three years after the date on which the applicant commenced full-time working in that occupation,

whichever is the earlier.”

13. Part XI. of the Principal Act is repealed and the following Parts are inserted in its stead :—

“PART XI.—PROVISIONS RELATING TO MEMBERS OF THE FORCES  
(KOREA AND MALAYA OPERATIONS).

*Division 1.—General.*

Extension of  
operation of  
certain  
provisions to  
members of the  
Forces (Korea  
and Malaya  
Operations).

“138.—(1.) Subject to this Part, the operation of the provisions of Part I. (other than sub-sections (2.) and (3.) of section four and section five), Part II. (other than Divisions 1 and 3), Part VI. (other than Division 1), Parts VIII., IX., X. and XII. of this Act extends to, and in relation to, members of the Forces within the meaning of this Part.

“(2.) For the purposes of the operation of the provisions of this Act as extended by the last preceding sub-section—

- (a) a reference in those provisions to a member of the Forces shall be read as a reference to a member of the Forces as defined by the next succeeding section ;
- (b) a reference in those provisions to the war or to hostilities in all the wars in which His Majesty was engaged at the date of commencement of a Division of a Part of this Act shall be read as a reference to the war as defined by the next succeeding section ;
- (c) a reference in those provisions to Part IV. of this Act shall be read as a reference to Division 3 of this Part ;
- (d) section seventy-two of this Act shall be read as if the words ‘not later than the thirtieth day of June, One thousand nine hundred and forty-nine,’ were omitted ;
- (e) section ninety-six of this Act shall be read as if paragraph (a) of sub-section (1.) of that section were omitted and the following paragraph were inserted in its stead :—
  - ‘(a) an application for the loan or guarantee is made within the prescribed period ;’ ; and
- (f) section one hundred and two A of this Act shall be read as if sub-section (1.) were omitted and the following sub-section were inserted in its stead :—
  - ‘(1.) Subject to the next succeeding sub-section, a business re-establishment allowance is not payable unless an application for the allowance is made within the prescribed period.’.

“(3.) The operation of the provisions of Parts II. (other than Division 5) and VI. of this Act, as extended by sub-section (1.) of this section, and Divisions 2 and 3 of this Part, does not apply to or in relation to a member of the Forces who enlisted or enlists for a period exceeding three years unless he was or is discharged within a period of two years after he ceased or ceases to be engaged on war service.

“(4.) For the purposes of the last preceding sub-section, a member of the Forces who, on the expiration of his original enlistment or subsequent re-engagement, re-engages to serve for a further

period, shall, if the aggregate of the period of original enlistment and the period or periods of re-engagement exceeds three years, be deemed to have enlisted for a period exceeding three years.

“139.—(1.) For the purposes of this Part—

Interpretation.

‘member of the Forces’ means a member of the Defence Force who served on war service and includes a member of the naval, military or air forces of a part of the King’s dominions other than the Commonwealth who—

(a) served on war service; and

(b) is *bona fide* resident in Australia or in a Territory of the Commonwealth and satisfies a prescribed authority that he was so resident within the period of twelve months immediately preceding his appointment or enlistment;

‘operational area’ means an area outside Australia that is prescribed to be an operational area for the purposes of the war;

‘port’ includes airport;

‘the war’ means the warlike operations in Korea after the twenty-sixth day of June, One thousand nine hundred and fifty, or in Malaya after the twenty-eighth day of June, One thousand nine hundred and fifty;

‘war service’ means, in relation to a member of the Forces, his service while—

(a) a member of, or attached to a body, contingent, or detachment of the Defence Force allotted for duty in an operational area; or

(b) allotted for duty in an operational area.

“(2.) For the purposes of this section, the war service of a member of the Forces—

(a) shall be deemed to have commenced—

(i) if he was in Australia at the time at which he was allotted for war service—at the time of his departure from the last port of call in Australia for that service; or

(ii) if he was outside Australia at the time at which he was allotted for war service—at the time at which he was so allotted; and

(b) shall be deemed to have ended—

(i) in the case of a member of the Forces who has returned to Australia—at the time of his arrival at the first port of call in Australia; or

(ii) in the case of a member of the Forces who has been allotted for duty in an area outside Australia other than an operational area—at the time of his arrival in that area, or, if he was in that area at the time at which he was so allotted, at that time.

*“ Division 2.—Reinstatement in Civil Employment.*

Modification of  
the Defence  
Act.

“ 140. Sub-section (3.) of section one hundred and eighteen A of the *Defence Act* 1903–1951 is, in so far as it is inconsistent with this Division, inoperative.

Interpretation.

“ 141. In this Division, unless the contrary intention appears—  
‘ employer ’ includes the Crown (whether in right of the Commonwealth or of a State) and an authority constituted by or under the law of the Commonwealth or of a State or Territory of the Commonwealth ;

‘ former employer ’ means, in relation to a member of the Forces, the employer by whom that member of the Forces was employed for not less than twenty-eight days out of the fifty-six days immediately preceding the date upon which he volunteered for war service, and includes a person for the time being—

(a) carrying on an undertaking or service in which the member of the Forces was so employed ; or

(b) carrying on an undertaking or service with which that undertaking or service has been amalgamated or in which that undertaking or service was comprised during those fifty-six days.

Application for  
reinstatement in  
employment.

“ 142.—(1.) A member of the Forces may apply to his former employer for reinstatement in employment.

“ (2.) An application under the last preceding sub-section shall not be made—

(a) earlier than fourteen days before the completion of the period of war service of the member of the Forces ; or

(b) later than—

(i) one month after the completion of that period ; or

(ii) where the member of the Forces has, at the date of the commencement of this section, completed a period of war service—one month after that date.

Notice or date  
on which  
applicant will  
be available for  
employment.

“ 143.—(1.) A member of the Forces making application under the last preceding section may specify in the application a date, not later than two months after the date of making the application, as the date upon which the applicant will be available for employment.

“ (2.) Where the applicant does not so specify a date, he shall, by notice in writing served personally or by post on the former employer, within the period of two months after the date on which the application was made, specify a date during that period as the date upon which the applicant will be available for employment.

Expiration and  
renewal of  
applications.

“ 144.—(1.) An application which is still in force may be renewed from time to time by notice in writing served personally or by post on the former employer.

“(2.) A member of the Forces who renews an application shall specify in the notice a date, not later than two months after the date on which the application is renewed, as the date on which he will be available for employment.

“(3.) An application ceases to have effect at the expiration of a period of three months after the date on which it was made or last renewed, as the case may be.

“145.—(1.) Where an application has been made under this Division and is still in force, the former employer shall, at the date notified to him, or last notified to him, as the date on which the applicant will be available for employment, or as soon thereafter as is reasonably practicable, make employment available to the applicant in accordance with this section. Reinstatement  
in employment.

Penalty : One hundred pounds.

“(2.) The employment to be made available under this section is employment in the occupation in which the applicant was employed immediately before the commencement of his period of war service and under conditions not less favourable to him than those which would have been applicable to him in that occupation if he had remained in the employment of the former employer, including any increase of remuneration to which he would have become entitled if he had remained in that employment.

“(3.) A former employer shall be deemed not to have made employment available to the applicant unless he has given reasonable notice in writing to the applicant of the availability of that employment.

“(4.) In proceedings for an offence against this section, it is a defence for a former employer to prove—

- (a) that, after having been given reasonable notice by the former employer that employment was available to him, the applicant failed, without reasonable excuse, to present himself at the time and place specified in the notice ; or
- (b) that, by reason of a change of circumstances (other than the employment of some other person to replace the applicant)—
  - (i) it was not reasonable or practicable to reinstate him ; or
  - (ii) it was not reasonably practicable to reinstate him in accordance with sub-section (2.) of this section and that the former employer has offered to reinstate him in the most favourable occupation and under the most favourable conditions reasonably practicable.

Rights of  
reinstated  
employees.

“ 146.—(1.) For the purposes of determining the rights of a member of the Forces who has been reinstated in employment in accordance with the last preceding section in respect of—

- (a) annual leave for recreation ;
- (b) leave on the ground of illness ;
- (c) long service leave or pay in lieu thereof (including pay to dependants on the death of the member of the Forces) ; and
- (d) superannuation or pension (whether for himself or his dependants),

the continuity of the employment of the applicant by the former employer shall be deemed not to have been broken by his absence from employment during a period between the date upon which he left the employment to commence war service and the date upon which he was reinstated in employment.

Termination of  
employment  
after  
reinstatement.

“ 147.—(1.) Where a former employer has reinstated an employee in accordance with this Division, he shall not, without reasonable cause, terminate the employment of that employee or vary it by employing the employee in an occupation, or under conditions, less favourable to the employee than the employment in which the employee was so reinstated.

Penalty : One hundred pounds.

“ (2.) In proceedings for an offence against this section—

- (a) where the employment was terminated or varied within six months after reinstatement—the burden is upon the former employer to prove that he had reasonable cause for terminating or varying the employment ; and
- (b) in any other case—the burden is upon the prosecutor to prove that the former employer terminated or varied the employment without reasonable cause.

Penalty may  
be paid to  
employee.

“ 148. Where an employer is convicted of an offence under this Division—

- (a) the court may order that the whole or a part of the fine imposed shall be paid to the employee or former employee concerned ; and
- (b) whether or not any order has been made under the last preceding paragraph, the court may order that the employer shall pay to the employee or former employee such compensation as the court thinks reasonable.

Special civil  
remedy against  
the Crown.

“ 149.—(1.) Where a member of the Forces considers that his employer or former employer, being the Crown, has failed to comply with a provision of this Division requiring the employer or former employer to reinstate that member of the Forces in his employment under the conditions prescribed by this Division or prohibiting the termination or variation of the employment of that member of the Forces, that member of the Forces may apply to a court of summary jurisdiction constituted by a Police, Stipendiary or Special Magistrate for compensation.

“(2.) The court shall hear the application and, if it finds that there has been a failure to comply with any provision referred to in the last preceding sub-section, the court may order that the employer or former employer shall pay the employee or former employee, as the case may be, such compensation as the court thinks reasonable.

“(3.) Proceedings may be taken upon an order under this section as if the order were a judgment or order of the court in favour of the employee or former employee.

“ *Division 3.—Rehabilitation of Disabled Persons.*

“ 150.—(1.) Subject to this section, the operation of Part VIII. of the *Social Services Consolidation Act 1947–1951* extends to, and in relation to, disabled persons as defined by sub-section (3.) of this section in the same way as it applies to pensioners, claimants for pensions, beneficiaries and claimants for benefits as defined in that Part.

Extension of Part VIII. of the Social Services Consolidation Act to certain members of the Forces.

“(2.) For the purposes of Part VIII. of the *Social Services Consolidation Act 1947–1951*, in its operation as extended by the last preceding sub-section, a reference in that Part to a pensioner, claimant for a pension, beneficiary or claimant for a benefit shall be read as a reference to a disabled person as defined by the next succeeding sub-section.

“(3.) For the purposes of this Division, the expression ‘disabled person’ means a discharged member of the Forces, or a person who is included in a prescribed class of persons and, by reason of injury, disease or deformity, is substantially handicapped in obtaining, or maintaining himself in employment, or in undertaking work on his own account, of a kind which, but for that injury, disease or deformity, would, in the opinion of the Director-General, be suitable to his age, experience and qualifications.

“ 151. While a disabled person is receiving treatment under Part VIII. of the *Social Services Consolidation Act 1947–1951*, in its operation as extended by this Division, he shall be paid—

Rehabilitation allowance during treatment.

- (a) a rehabilitation allowance at the same rate as the rate of the invalid pension which would for the time being be payable to him under Part III. of that Act if he were qualified to receive that pension; and
- (b) an amount equal to the rate of any wife’s allowance and child’s allowance which would, if he were in receipt of that pension, be payable to his wife under that Part.

“ 152. A disabled person is not entitled to receive any assistance or benefit under this Division if that person is entitled to receive the like assistance or benefit from the Repatriation Commission.

Person not entitled to double benefits.

## "PART XII.—MISCELLANEOUS.

**Regulations.**

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

(a) for or in relation to—

- (i) the payment by the Commonwealth of such allowances and expenses as are prescribed, to such classes of persons as are prescribed;
- (ii) the supply by the Commonwealth of household furniture, not exceeding the prescribed value, to such classes of persons as are prescribed; and
- (iii) the supply of tools of trade, plant and equipment, professional instruments and other articles of personal equipment (other than clothing), not exceeding the prescribed value, to such classes of persons as are prescribed; and

(b) for prescribing penalties not exceeding a fine of Fifty pounds for offences against the regulations."

**Amendments of the Public Service Act.**

14.—(1.) Section seven of the *Public Service Act* 1922–1950, as amended by the *Public Service Act (No. 2)* 1951, is amended by omitting from the definition of "Returned Soldier" the words "the *Re-establishment and Employment Act* 1945" and inserting in their stead the words "section four or section one hundred and thirty-nine of the *Re-establishment and Employment Act* 1945–1951".

(2.) Section seventy-one of the *Public Service Act* 1922–1950, as amended by the *Public Service Act (No. 2)* 1951, is amended by omitting sub-paragraph (ii) of paragraph (b) of sub-section (1.) and inserting in its stead the following sub-paragraph:—

"(ii) to undertake vocational training under Part III. of the *Re-establishment and Employment Act* 1945–1951 or under any other Commonwealth scheme of vocational training; or".

(3.) Section eighty-four of the *Public Service Act* 1922–1950, as amended by the *Public Service Act (No. 2)* 1951, is amended by omitting sub-section (9.) and inserting in its stead the following sub-section:—

"(9.) In this section, 'the war' includes the war within the meaning of section four or section one hundred and thirty-nine of the *Re-establishment and Employment Act* 1945–1951."

1951.

*Re-establishment and Employment.*

No. 48.

(4.) Section one of the *Public Service Act (No. 2) 1951* is amended by omitting sub-section (3.).

(5.) The *Public Service Act 1922-1950*, as amended by the *Public Service Act (No. 2) 1951* and by this Act, may be cited as the *Public Service Act 1922-1951*.

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