

DEFENCE (VISITING FORCES).

No. 81 of 1963.

An Act to make provision with respect to Naval, Military and Air Forces of other countries visiting Australia, and for other purposes.

[Assented to 31st October, 1963.]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

PART I.—PRELIMINARY.

1. This Act may be cited as the *Defence (Visiting Forces) Act* 1963. Short title.

2. This Act shall come into operation on a date to be fixed by Proclamation. Commencement.

3. This Act is divided into Parts, as follows:— Parts.

Part I.—Preliminary (Sections 1–7).

Part II.—Visiting Forces (Sections 8–18).

Part III.—Deserters and Absentees Without Leave (Sections 19–23).

Part IV.—Attachment of Personnel and Mutual Powers of Command (Sections 24–26).

Part V.—Miscellaneous (Sections 27–30).

Repeal.

4. The *Defence (Visiting Forces) Act* 1939 is repealed.

Interpretation.

5.—(1.) In this Act, unless the contrary intention appears—

“Australia” includes the Territories;

“Australian service law” means the law (including any instrument having the force of law) governing the Defence Force or a part of the Defence Force;

“court” means a federal court or a court of a State or Territory;

“dependant”, in relation to a member of a visiting force or of a civilian component of a visiting force, means a person, not being an Australian citizen or a person ordinarily resident in Australia, who—

(a) is the wife or husband of the member;

(b) is wholly or mainly maintained by the member;

(c) is in the custody, care or charge of the member; or

(d) is one of the family of the member residing with the member;

“forces”, in relation to a country, means the naval, military or air forces of that country;

“service authorities”, in relation to a country, means the naval, military or air force authorities of that country;

“service law”, in relation to a country, means the law (including any instrument having the force of law) governing all or any of the forces of that country;

“service tribunal”, in relation to a country or a visiting force, means a court-martial or other like tribunal established under the service law of that country or of the country sending the visiting force, as the case requires, and includes any authority of that country who or which, by or under the law of that country, is empowered to review the proceedings of such a tribunal or to try or investigate charges brought against persons subject to the service law of that country;

“Territory” means Territory of the Commonwealth;

“the Air Board” means the Board of Administration for the Air Force constituted under the Air Force Regulations;

“the Defence Force” has the same meaning as in the *Defence Act* 1903–1956;

“ the Military Board ” means the Board of Administration for the Military Forces constituted under sub-section (2.) of section twenty-eight of the *Defence Act* 1903–1956;

“ the Minister ” means the Minister of State for Defence;

“ the Naval Board ” means the Board of Administration for the Naval Forces appointed under sub-section (1.) of section seven of the *Naval Defence Act* 1910–1952;

“ the sending country ”, in relation to a visiting force, means the country to whose forces the visiting force belongs;

“ visiting force ” means any body, contingent or detachment of the forces of a country that is for the time being present in Australia by arrangement with the Minister.

(2.) A reference in this Act to a member of a visiting force shall be read as a reference to a person who, in accordance with the law of the country to which the visiting force belongs, is serving as a member of the visiting force.

(3.) A reference in this Act to a member of a civilian component of a visiting force shall be read as a reference to a person who, not being a member of that visiting force, an Australian citizen or a person ordinarily resident in Australia—

(a) is employed by or in the service of—

(i) that visiting force or a part of that visiting force; or

(ii) an organization established for the benefit or welfare of members of that visiting force and recognized by the designated authority of the sending country;

(b) is serving with an organization that, with the approval of the Minister, is accompanying that visiting force; or

(c) is attached to or is accompanying that visiting force and, in accordance with the law of the sending country, is subject to the service law of that country,

but does not include a dependant of a member of that visiting force or of a person referred to in paragraph (a), (b) or (c) of this sub-section.

(4.) A reference in this Act to a person's having at any time a relevant association with a visiting force shall be read as a reference to his being at that time—

(a) a member of that visiting force or of a civilian component of that force; or

(b) a person who, not being an Australian citizen or a person ordinarily resident in Australia, is a dependant of a member of the visiting force or of a member of a civilian component of that force.

(5.) In determining, for the purposes of this Act, whether a person is, or was at any time, ordinarily resident in Australia, account shall not be taken of any period during which that person has been or intends to be present in Australia while being—

- (a) a member of a visiting force or of a civilian component of a visiting force; or
- (b) a dependant of a member of a visiting force or of a member of a civilian component of a visiting force.

(6.) For the purposes of this Act, a member of a force of a country that (by whatever name called) is in the nature of a reserve or auxiliary force shall be deemed to be a member of the forces of that country so long as, but only so long as, he is called into actual service (by whatever expression described) with those forces or is called out for training with those forces, and any references in this Act to a person's becoming a member of the forces of a country shall be construed accordingly.

(7.) A reference in any provision of this Act to the designated authority of a country shall be read as a reference to such authority as is designated for the purposes of that provision by the appropriate authority or officer of that country.

(8.) A reference in any provision of this Act to trial by a court shall be read as including a reference to hearing and determination by a court of summary jurisdiction of a charge that a person has committed an offence against a law of the Commonwealth or of a State or Territory.

Countries in relation to which provisions of this Act apply or may be applied.

6.—(1.) A reference in this Act to a country in relation to which a provision of this Act applies shall be read as a reference to—

- (a) any country declared by the regulations to be, for the purposes of this Act, a country within the Commonwealth of Nations; and
- (b) any other country declared under this section to be a country in relation to which that provision has effect.

(2.) Where it appears to the Governor-General that it is expedient that any of the provisions of this Act (except subsection (2.) of section twenty-five) should have effect in relation to a country other than a country referred to in paragraph (a) of the last preceding sub-section, the regulations may declare that country to be a country in relation to which such provisions of this Act as are specified in the regulations have effect.

Extension of Act to Territories.

7. This Act extends to every Territory.

PART II.—VISITING FORCES.

8.—(1.) The service tribunals and service authorities of a country in relation to which this section applies may, within Australia, or on board a ship or aircraft belonging to or in the service of the Defence Force or a part of the Defence Force, exercise over persons subject to their jurisdiction in accordance with this section all such powers as are exercisable by them in accordance with the law of that country.

Exercise of powers by service tribunals and authorities of countries sending visiting forces.

(2.) The persons subject to the jurisdiction of the service tribunals and service authorities of a country in accordance with this section are—

- (a) members of any visiting force of that country; and
- (b) all other persons who, being neither Australian citizens nor persons ordinarily resident in Australia, are for the time being subject to the service law of that country otherwise than as members of that country's forces.

(3.) For the purposes of the last preceding sub-section, a person shall be treated as not being a member of a visiting force of a country if he became, or last became, a member of that country's forces at a time when he was in Australia, unless he then became a member of those forces with his consent.

(4.) Where a sentence has, whether within or beyond the territorial limits of Australia, been passed by a service tribunal of a country in relation to which this section applies upon a person who was, immediately before the sentence was passed, subject to the jurisdiction of that tribunal in accordance with this section, then, for the purposes of any proceedings in a court—

- (a) the service tribunal shall be deemed to have been properly constituted;
- (b) the sentence shall be deemed to be within the jurisdiction of the service tribunal and in accordance with the law of that country; and
- (c) the sentence shall, if executed according to its tenor, be deemed to have been lawfully executed.

(5.) Notwithstanding anything in the preceding provisions of this section, a sentence of death passed by a service tribunal of a country in relation to which this section applies shall not be carried out in Australia.

(6.) A person who—

- (a) is detained in custody in pursuance of a sentence with respect to which sub-section (4.) of this section has effect; or

- (b) being subject in accordance with this section to the jurisdiction of the service tribunals of a country in relation to which this section applies, is detained in custody pending or during the trial by a service tribunal of that country of a charge brought against him,

shall, for the purposes of any proceedings in a court, be deemed to be in lawful custody.

(7.) For the purpose of enabling the service tribunals and service authorities of a country in relation to which this section applies to exercise more effectively the powers referred to in sub-section (1.) of this section, the Naval Board, the Military Board or the Air Board, if so requested by the designated authority of that country, may, by general or special orders, direct members of that part of the Defence Force under its administration and control to arrest any person who, being a member of a visiting force of that country, is alleged to have committed an offence punishable under the law of that country and to deliver him to such service authority of that country as is designated by or under any of those orders.

Restriction,
with respect to
certain offences,
of trial by
courts of
offenders
connected with
visiting force.

9.—(1.) Subject to this section, a person charged with an offence against a law of the Commonwealth or of a State or Territory is not liable to be tried for that offence by a court if he was, at the time when the offence is alleged to have been committed, a member of a visiting force or of a civilian component of a visiting force and—

- (a) the alleged offence, if committed by him, arose out of and in the course of his duty as a member of that force or component, as the case may be, or is an offence solely against the security of the sending country;
- (b) the alleged offence is an offence against the person, and the person or, if the act or omission constituting the offence has relation to more than one person, each of the persons in relation to whom the offence is alleged to have been committed had at the time of the alleged commission of the offence a relevant association either with that force or with another visiting force of the same country; or
- (c) the alleged offence is an offence against property, and the whole of the property in relation to which it is alleged to have been committed (or, in a case where different parts of that property were differently owned, each part of the property) was, at the time of the alleged commission of the offence, the property either of the sending country or of an authority of that country or of a person or persons having such an association as is specified in the last preceding paragraph.

- (2.) The last preceding sub-section does not apply if—
- (a) at the time when the offence is alleged to have been committed, the alleged offender was a person not subject to the jurisdiction of the service tribunals of the sending country in accordance with the last preceding section; or
 - (b) the alleged offender was at that time a member of a civilian component of a visiting force and the case cannot be dealt with under the service law of the sending country.
- (3.) Sub-section (1.) of this section—
- (a) does not prevent a person from being tried by a court in a case where the Attorney-General certifies in writing, either before or in the course of the trial, that the designated authority of the sending country has notified him that it is not proposed to deal with the case under the law of that country;
 - (b) does not affect anything done or omitted in the course of a trial unless in the course of the trial objection has already been made that, by reason of that sub-section, the court is not competent to deal with the case; and
 - (c) shall not, after the conclusion of a trial, be treated as having affected the validity of the trial, if no such objection was made in the proceedings at any stage before the conclusion of the trial.
- (4.) Where the charge is a charge (by whatever words expressed) of attempting or conspiring to commit an offence, or of aiding, abetting, inciting, procuring or being accessory to the commission of an offence—
- (a) paragraphs (b) and (c) of sub-section (1.) of this section have effect as if references in those paragraphs to the alleged offence were references to the offence that the person charged is alleged to have attempted or conspired to commit or, as the case may be, the offence the commission of which it is alleged that he aided, abetted, incited or procured or to the commission of which he was accessory; and
 - (b) references in those paragraphs to persons in relation to whom, or property in relation to which, the offence is alleged to have been committed shall be construed accordingly.
- (5.) This section does not derogate from any provision of any law that restricts the prosecution of any proceedings or requires the consent of an authority of the Commonwealth or of a State or Territory to the prosecution of any proceedings.

(6.) For the purposes of this section, the expressions "offence against the person" and "offence against property" shall be construed in accordance with the provisions of the Schedule to this Act.

Waiver of
jurisdiction
otherwise
exercisable by
a court.

10.—(1.) Where—

- (a) a service tribunal of a country in relation to which this section applies has jurisdiction to try a person alleged to have committed an offence against the law of the Commonwealth or of a State or Territory; and
- (b) the jurisdiction of a court with respect to the alleged offence is not excluded by virtue of the last preceding section,

the designated authority of that country may request the Attorney-General that jurisdiction be not exercised by a court with respect to the alleged offence and, if the Attorney-General agrees to that request, he shall, by writing under his hand, notify the appropriate authority of the Commonwealth or of a State or Territory, as the case requires, that it is not desirable that the case should be dealt with by a court.

(2.) Upon the Attorney-General notifying an appropriate authority under the last preceding sub-section, the provisions of the last preceding section shall be deemed to apply as if the alleged offence were an offence described in sub-section (1.) of that section.

Courts not to
try offenders
tried by service
tribunals of
visiting forces.

11.—(1.) Where a person has been tried for an offence by a service tribunal of a country in relation to which section eight of this Act applies in the exercise of the powers referred to in sub-section (1.) of that section, he shall not be tried by a court for an offence that is substantially the same offence.

(2.) Where a person who has been convicted of an offence by a service tribunal of such a country in the exercise of those powers is convicted by a court of a different offence, but it appears to the court that the conviction by the service tribunal was wholly or partly in respect of acts or omissions in respect of which he is convicted by the court, the court may, in determining any penalty that may be imposed or order that may be made, have regard to the sentence of the service tribunal.

Arrest, custody,
&c., of
offenders
against
Australian law.

12.—(1.) Neither section nine of this Act nor the last preceding section affects—

- (a) any powers of arrest, search, entry, seizure or custody exercisable under the law of the Commonwealth or

of a State or Territory with respect to offences committed or suspected or believed to have been committed;

- (b) any obligation of a person in respect of a recognisance or bail bond entered into in consequence of his arrest, or the arrest of another person, for such an offence; or
- (c) any power of a court to remand (whether in custody or otherwise) a person brought before the court in connexion with such an offence.

(2.) Where a person is charged with an offence against a law of the Commonwealth or of a State or Territory, and it appears that that person is subject to the jurisdiction of the service tribunals of a country in relation to which section eight of this Act applies, the designated authority of that country shall be notified.

(3.) Where a person is charged with an offence against a law of the Commonwealth or of a State or Territory, and it appears to the court before which he is charged that he is a person subject to the jurisdiction of the service tribunals of a country in relation to which section eight of this Act applies, the court shall determine the period that it considers reasonable to enable inquiries to be made with a view to determining whether he should be dealt with by a court or by a service tribunal of that country, and further proceedings with respect to the offence charged are, by force of this Act, stayed for that period.

(4.) Where—

- (a) a person referred to in the last preceding sub-section is remanded in custody by order of a court; and
- (b) the Attorney-General, by writing under his hand—

- (i) states that the designated authority of the sending country has requested that that person be delivered into the custody of a service authority of that country pending trial; and

- (ii) requests that that person be so delivered,

the court shall revoke the order and shall order that that person be so delivered.

13. Proceedings shall not be brought in any court with respect to—

- (a) the pay of a person in respect of his service as a member of a visiting force or of a civilian component of a visiting force;

Restriction of proceedings in respect of service of members, &c., of visiting force.

- (b) the terms of a person's service as a member of a visiting force or of a civilian component of a visiting force; or
- (c) a person's discharge from the service of a visiting force or of a civilian component of a visiting force.

Inquests.

14.—(1.) If a coroner having jurisdiction to hold an inquest into the manner and cause of a death is satisfied that the deceased person had, at the time of his death, a relevant association with a visiting force, the coroner—

- (a) shall not hold the inquest; or
- (b) where the inquest has been commenced but is not then completed, shall adjourn the inquest,

and, where a jury has been summoned, shall discharge the jury.

(2.) If, on an inquest into the manner and cause of a death, the coroner is satisfied that—

- (a) a person who in accordance with section eight of this Act is subject to the jurisdiction of the service tribunals of a country in relation to which this section applies has been charged before a service tribunal of that country with the homicide of the deceased person, whether or not that charge has been dealt with; or
- (b) such a person is being detained by an authority of that country with a view to his being so charged,

the coroner shall adjourn the inquest and, where a jury has been summoned, shall discharge the jury.

(3.) The last preceding sub-section does not prevent the coroner from—

- (a) taking evidence of the identity of the deceased person and of the place and date of his death;
- (b) furnishing information to the appropriate authority of the State or Territory concerned for the purpose of registration of the death; or
- (c) authorizing the burial, cremation or other disposal of the body of the deceased person.

(4.) Notwithstanding the preceding provisions of this section, the Attorney-General may notify the appropriate authority of the State or Territory concerned that there are no circumstances connected with the operation of this Act that make it undesirable that an inquest into the manner and cause of a specified death should be held or continued, as the case may be, and, if the

Attorney-General gives such a notification, the inquest may be held or resumed, as the case requires, and in the case of resumption proceed as if it were commenced for the first time.

(5.) Where an inquest is held or resumed as provided by the last preceding sub-section, it is not obligatory that the coroner shall view the body of the deceased person.

(6.) A law in force in any part of Australia that imposes restrictions upon the removal out of Australia, or a part of Australia, of the body of a deceased person does not apply to or in relation to the body of a deceased person who at the time of his death had a relevant association with a visiting force, and the body of such a deceased person may be disposed of as the Attorney-General, having regard to any request by the designated authority of the country concerned, determines.

(7.) In this section, the expression "homicide" includes murder, manslaughter and infanticide and any other offence under the law of the country concerned that is substantially similar to any of those offences.

15.—(1.) Where the designated authority of a country in relation to which this section applies requests the Attorney-General that assistance be given in carrying out a sentence of imprisonment or detention imposed upon a person by a service tribunal of that country, the Attorney-General may, by writing under his hand, authorize the reception of a person so sentenced, and his confinement for the whole or any part of the term of his sentence, in a prison or other place in Australia provided for the confinement of persons accused or convicted of offences against the laws of the Commonwealth or of a State or Territory.

Imprisonment,
&c., of
persons
sentenced
by service
tribunals.

(2.) A person held in custody or under restraint or kept in confinement for the purpose of giving effect to an authority given under the last preceding sub-section shall be deemed to be in lawful custody.

(3.) The regulations may make provision with respect to the circumstances under which the persons imprisoned or detained as provided by this section may be discharged or returned to the service authorities of the country under the service law of which they were sentenced.

16.—(1.) Where, under an enactment, a power is exercisable by an authority or person with respect to—

Application to
visiting forces
of law relating
to Defence
Force.

(a) the Defence Force, a part of that Force, members of that Force or of a part of that Force, service tribunals

of a part of that Force or other persons connected in any way with that Force or a part of that Force;

- (b) any property used or to be used for the purposes of that Force or a part of that Force; or
- (c) taking possession of any property to be so used, or acquiring (whether by agreement or compulsorily) any property so used or to be so used,

the regulations may provide that that power shall, subject to such conditions (if any) as are prescribed, be exercisable by that authority or person with respect to a visiting force, its service tribunals, persons connected with the visiting force or property used or to be used by the visiting force to any extent to which the power would be exercisable if the visiting force were a part of the Defence Force.

(2.) The regulations may, subject to such conditions (if any) as are prescribed—

- (a) exempt a visiting force, its members, its service tribunals or persons in any way connected with a visiting force, or property used or to be used for the purposes of a visiting force, from the operation of any enactment specified in the regulations to any extent to which the force, its members, its service tribunals, such persons or such property would be, or would be capable of being, exempted if the force were a part of the Defence Force; and
- (b) confer on a visiting force, its members, its service tribunals, persons in any way connected with a visiting force or property used or to be used for the purposes of a visiting force any privilege or immunity specified in the regulations, being a privilege or immunity that would be enjoyed by, or would be capable of being conferred on, the force, its members, its service tribunals, such persons or such property if the force were a part of the Defence Force.

(3.) Where by an enactment the doing of anything is prohibited, restricted or required in relation to—

- (a) the Defence Force, a part of that Force, members or service tribunals of a part of that Force or persons in any way connected with a part of that Force; or
- (b) any property used or to be used for the purposes of the Defence Force or a part of that Force,

the regulations may provide that the prohibition, restriction or requirement has effect in the case of a visiting force to any extent to which it would have effect if the visiting force were a part of the Defence Force.

(4.) Regulations made for the purposes of this section may contain such incidental, consequential and supplementary provisions as are expedient for the purposes of any provision of those regulations.

(5.) Any provision of regulations made for the purposes of of this section may be expressed to apply either generally or in relation to a particular visiting force or in relation to a particular place.

(6.) Sub-sections (1.) and (3.) of this section apply whether the power concerned is exercisable, or the prohibition, restriction or requirement concerned is imposed, by a provision expressly relating to the Defence Force or a part of that Force or a more general provision.

(7.) Sub-section (2.) of this section applies whether the exemption, privilege or immunity concerned would subsist, or be capable of being conferred, by virtue of an enactment so providing or by reason that an enactment does not bind the Crown in right of the Commonwealth.

(8.) In this section—

“enactment” means an Act, an Ordinance of a Territory and any regulation, order or other instrument having effect by virtue of an Act or such an Ordinance;

“property” includes both real and personal property;

“service tribunal”, in relation to a part of the Defence Force, means a court-martial, an officer exercising jurisdiction summarily in respect of an offence against the law governing that part of the Defence Force or a court or board of inquiry constituted under such a law.

17.—(1.) Where the Commonwealth has entered into an agreement with another country under which payments of amounts in satisfaction of claims arising out of acts or omissions of members of a visiting force or of persons connected with a visiting force are to be or may be made by the Commonwealth, payment by the Commonwealth of such an amount, being an amount agreed upon, or determined by judicial process, between the Commonwealth and the claimant, is a full discharge from liability of the Commonwealth or other person against whom the claim was made.

Settlement of
claims against
visiting forces.

(2.) The Crown Solicitor for the Commonwealth may act as solicitor for any person referred to in the last preceding sub-section against whom any claim referred to in that sub-section is made, and, for that purpose, is entitled to practise as a solicitor in any court exercising jurisdiction with respect to such a claim and has all the rights and privileges of a solicitor in any State or Territory, whether or not he is enrolled as a solicitor in that State or Territory.

Evidence for
the purposes
of this Part.

18.—(1.) Where the designated authority of a country in relation to which section eight of this Act applies certifies in writing that, at a time specified in the certificate, a person so specified either was or was not a member of a visiting force of that country, that certificate is, in any proceedings in a court, sufficient evidence of the facts so certified, unless the contrary is proved.

(2.) Where, in connexion with a charge against a person of having committed an offence against a law of the Commonwealth or of a State or Territory, the designated authority of a country in relation to which section eight of this Act applies certifies in writing that the case can be dealt with under the service law of that country, that certificate is, in any proceedings in a court with respect to that charge, conclusive evidence, for the purposes of paragraph (b) of sub-section (2.) of section nine of this Act of the matter so certified.

(3.) Where the designated authority of a country in relation to which section eight of this Act applies certifies in writing that a person specified in the certificate—

(a) was, on a date so specified, sentenced by a service tribunal of that country to such punishment as is so specified;

(b) is, or was at a time so specified, detained in custody in pursuance of a sentence passed upon him by a service tribunal of that country, or pending or during the trial by such a service tribunal of a charge brought against him; or

(c) has been tried, at a time and place so specified, by a service tribunal of that country for an offence so specified,

that certificate is, in any proceedings in a court, conclusive evidence of the facts so certified.

(4.) Where—

(a) a person is charged with an offence against a law of the Commonwealth or of a State or Territory;

(b) at the time when the offence is alleged to have been committed he was a member of a visiting force or a member of a civilian component of a visiting force; and

(c) the Attorney-General certifies in writing that the alleged offence, if committed by that person, arose out of and in the course of his duty as a member of that force or component, as the case may be,

that certificate is, in any proceedings in a court, sufficient evidence of the fact so certified, unless the contrary is proved.

PART III.—DESERTERS AND ABSENTEES WITHOUT LEAVE.

19.—(1.) Where the designated authority of a country in relation to which this section applies, by writing under his hand, requests an authorized officer for assistance in the apprehension of a member of the forces of that country who is a deserter or an absentee without leave from those forces, the authorized officer may, in his discretion, issue a warrant in accordance with the prescribed form authorizing any member of the police force of the Commonwealth or of a State or Territory or any member of the Defence Force to arrest that deserter or absentee.

Apprehension
of deserters
and absentees
without leave.

(2.) In this section, “authorized officer” means an officer of the Defence Force authorized by the Naval Board, the Military Board or the Air Board for the purposes of this Part.

20.—(1.) A member of the police force of the Commonwealth or of a State or Territory may detain—

Detention of
illegal absentee.

(a) any person arrested under the last preceding section; or

(b) any person who surrenders himself as being illegally absent from the forces of a country in relation to which this section applies,

at a police station or at a place provided for the confinement of persons in lawful custody for such time as is reasonably necessary to enable that person to be dealt with in accordance with the next succeeding section.

(2.) A member of the Defence Force may detain—

(a) any person arrested under the last preceding section; or

(b) any person who surrenders himself as being illegally absent from the forces of a country in relation to which this section applies,

at any place provided for the confinement of members of the Defence Force who are accused or convicted of an offence for

such time as is reasonably necessary to enable that person to be dealt with in accordance with the next succeeding section.

Disposal of
person arrested
under this Part.

21.—(1.) Subject to this section, a person held in custody under the last preceding section shall be delivered into the custody of such service authority of the country to which he belongs and at such place in Australia as are specified in the warrant or otherwise directed by the authorized officer.

(2.) If that person claims that there is a good and sufficient reason why he should be released from custody, his claim shall be referred to the authorized officer.

(3.) After such investigation of the matter as the authorized officer considers necessary, the authorized officer may—

(a) if he is satisfied that the person held in custody should be released—direct that that person be released from custody under this Part; or

(b) if he is not so satisfied—

(i) direct that that person be delivered into custody as provided by sub-section (1.) of this section; or

(ii) refer the matter to the Minister.

(4.) Where the matter is referred to the Minister in pursuance of the last preceding sub-section, the Minister may direct that the person held in custody be released from custody under this Part or be delivered into custody as provided by sub-section (1.) of this section.

(5.) Where under this section the Minister or an authorized officer directs that a person be released from custody under this Part, that person shall be so released.

Interpretation.

22. A reference in this Part to the country to which a person belongs shall be read as a reference to the country from whose forces he is suspected of being, or, where he has surrendered himself, appears from his confession to be, a deserter or absentee without leave.

Evidence for
the purposes
of this Part.

23. For the purposes of any proceedings in a court or otherwise arising in connexion with any action taken in pursuance of the provisions of this Part, where the designated authority of a country in relation to which section nineteen of this Act applies certifies in writing that a person named and described in that certificate was, on a specified date, a deserter or an absentee without leave from those forces, that certificate is sufficient evidence of the facts so certified, unless the contrary is proved.

PART IV.—ATTACHMENT OF PERSONNEL AND MUTUAL
POWERS OF COMMAND.

24.—(1.) The Naval Board, the Military Board or the Air Board may, by order in writing—

Attachment to
the Defence
Force of
members of
the forces of
another country
and *vice versa*.

(a) attach temporarily to any part of the Defence Force under the administration and control of the Board a member of the forces of a country in relation to which this section applies who is placed at the disposal of the Board by the service authorities of that country for the purpose of being so attached; and

(b) subject to anything to the contrary in the conditions applicable to his service, place a member of any part of the Defence Force under the administration and control of the Board at the disposal of the service authorities of a country in relation to which this section applies in order that he may be attached temporarily by those authorities to the forces of that country.

(2.) While a member of the forces of a country in relation to which this section applies is attached temporarily to a part of the Defence Force, he shall, subject to the next succeeding sub-section, for the period for which he is so attached, be regarded as a member of that part of the Defence Force to which he is attached, as holding the rank in that part of the Defence Force that corresponds with the rank that he holds in those forces and as having, for the purposes of command and discipline, the same status and powers, including the power to impose punishments, as—

(a) a member of that rank in that part of the Defence Force; and

(b) if he is given an appointment in that part of the Defence Force—a member of that part of the Defence Force holding the like appointment.

(3.) The Naval Board, the Military Board or the Air Board may, by order in writing, direct, in relation to a person or persons to whom the last preceding sub-section applies, that the law governing the Naval Forces, the Military Forces or the Air Force, as the case may be, of the Commonwealth shall apply to and in relation to that person or those persons with such exceptions and subject to such modifications and adaptations as are specified in the order.

(4.) A member of the Defence Force referred to in paragraph (b) of sub-section (1.) of this section does not cease

to be subject to the law governing that part of the Defence Force to which he belongs by reason only of his being temporarily attached as provided by that paragraph.

(5.) This section applies to and in relation to a part of the Defence Force serving either within or beyond the territorial limits of Australia.

(6.) Where, at the commencement of this Act, a member of the Defence Force is serving with the forces of a country in relation to which the Act repealed by section four of this Act applied, that member shall be deemed to have been placed at the disposal of the service authorities of that country in accordance with this section.

(7.) Where, at the commencement of this Act, a member of the forces of a country in relation to which the Act repealed by section four of this Act applied is serving with a part of the Defence Force, having been attached to that part of the Defence Force in pursuance of section nine of the repealed Act—

(a) that member of those forces shall be deemed to have been attached to that part of the Defence Force in accordance with this section; and

(b) unless and until an order with respect to him is made in pursuance of sub-section (3.) of this section, any order made in relation to him in pursuance of sub-section (2.) of section nine of the repealed Act and in force at the commencement of this Act continues in force.

Forces serving together.

25.—(1.) Whenever a part of the Defence Force and a part of the forces of a country in relation to which this section applies are serving together, either within or beyond the territorial limits of Australia, and either alone or together with any other force, a member of the force of that country has the same powers of command over members of that part of the Defence Force as a member of the Defence Force holding the rank in that Force that corresponds with the rank that he holds in the force of the country to which he belongs.

(2.) Whenever a part of the Defence Force and a part of the the forces of another country, being the United Kingdom, Canada or New Zealand, are acting in combination, either within or beyond the territorial limits of Australia, an officer of the forces of that other country who is duly appointed to command the combined force, or any part of the combined force, has over members of the Defence Force serving in that combined force or part of that force the same powers of command and discipline, including the power to impose punishments, and may be invested with the same authority to convene, and confirm the findings and

sentences of, courts-martial, as if he were an officer of the Defence Force holding that appointment and the rank in that Force corresponding with the rank that he holds in the force to which he belongs.

(3.) Where a part of the Defence Force and a part of the forces of a country in relation to which this section applies are serving together beyond the territorial limits of Australia, the officer in command of that part of the Defence Force, or an officer authorized in writing by the Naval Board, the Military Board or the Air Board for the purpose of this sub-section, may request the appropriate service authority of that country to direct, by general or special orders, members of the forces of that country to arrest any person who, being a member of that part of the Defence Force, is alleged to have committed, or is reasonably suspected of having committed, an offence punishable under Australian service law and to deliver him into the custody of such service authority of the Defence Force as is designated by or under the orders.

(4.) A member of the Defence Force arrested and held in custody in pursuance of the last preceding sub-section shall be deemed to have been arrested and held in custody in accordance with Australian service law.

(5.) For the purposes of this section, forces shall be deemed to be serving together or acting in combination if and only if they are declared, by order of the Governor-General or of any person authorized by the Governor-General to make such orders, to be so serving or acting.

26.—(1.) For the purposes of this Part, the Governor-General may, by order, determine the ranks in the several parts of the Defence Force that are to be regarded as corresponding with specified ranks in the forces of any other specified country.

Corresponding ranks.

(2.) References to ranks in the last preceding sub-section shall be read as including references to ratings in naval forces and, generally, as not restricted to the ranks of officers.

PART V.—MISCELLANEOUS.

27.—(1.) Where the designated authority of a country certifies in writing that a body, contingent or detachment of the forces of that country is, or was at a time specified in the certificate, present in Australia, that certificate is, in any proceedings in a court, conclusive evidence of the fact stated in the certificate.

Proof of facts by certificate.

(2.) Where in any proceedings in a court it is admitted or proved (whether by means of a certificate under the last preceding sub-section or otherwise) that a body, contingent or detachment of the forces of a country is or was at a certain time present in Australia, then, for the purposes of those proceedings, that body, contingent or detachment shall be deemed to be or to have been at that time present in Australia by arrangement with the Minister, unless the contrary is proved.

(3.) Where in a certificate given for the purposes of this Act reference is made to a person by name and that certificate includes a description of the person named by reference to his physical characteristics and a court is satisfied that a person before it is a person having that name and answering to the description in the certificate, the certificate shall be deemed to refer to that person, unless the contrary is proved.

(4.) A document purporting to be a certificate, request or notification given or made for the purposes of a provision of this Act, and to be signed by an authority or person specified in the document, shall, upon its production in any proceedings in a court, be received in evidence and shall, unless the contrary is proved, be deemed to be a certificate, request or notification given or made by that authority or person.

(5.) Where under a provision of this Act a certificate, request or notification is required or permitted to be given or made by the designated authority of a country, and a certificate, request or notification purports to be signed by a person described in that document as the designated authority of a country, that person shall, in any proceedings in a court, be deemed to be the designated authority of that country for the purposes of that provision, unless the contrary is proved.

Delegation of
powers and
functions.

28.—(1.) Subject to the next succeeding sub-section, the Attorney-General may, in relation to a matter or class of matters, or to a State, Territory or other part of Australia, by writing under his hand, delegate any of his powers and functions, under this Act, except this power of delegation.

(2.) The Attorney-General shall not delegate any of his powers and functions in relation to a State except to the person occupying from time to time the office of Secretary to the Attorney-General's Department, Crown Solicitor for the Commonwealth or Deputy Crown Solicitor for the Commonwealth in that State.

(3.) Subject to the next succeeding sub-section, the Naval Board, the Military Board or the Air Board may, in relation to a matter or class of matters, or to a State, Territory, other part of Australia, another country or part of another country, by writing, delegate any of its powers and functions under this Act, except this power of delegation, to a member of the Board or to an officer who holds a rank not below the rank of Captain in the Naval Forces, Colonel in the Military Forces or Group Captain in the Air Force.

(4.) A Board shall not delegate—

- (a) its power to make general orders for the purposes of sub-section (7.) of section eight of this Act;
 - (b) its power to authorize an officer of the Defence Force for the purposes of Part III. of this Act ;
 - (c) its powers under sub-section (3.) of section twenty-four of this Act; or
 - (d) its power to authorize an officer for the purposes of sub-section (3.) of section twenty-five of this Act,
- except to a member of that Board.

(5.) A power or function delegated under this section may be exercised or performed by the delegate in accordance with the instrument of delegation.

(6.) 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 Attorney-General or a Board, as the case may be.

(7.) A delegation under this section continues in force notwithstanding a change in the occupancy or a vacancy in the office of Attorney-General or in the membership of a Board.

(8.) A document purporting to be a copy of—

- (a) a delegation signed by the Attorney-General or a written authority signed by the Attorney-General or a delegate of the Attorney-General; or
- (b) a delegation by a Board, or an order or written authority, made or given by a Board or by a delegate of a Board and bearing the signature or a facsimile of the signature of the Secretary to a Board or of a delegate of a Board,

with an endorsement in writing that the delegation, order or written authority is, or was on a specified date, in force, is, upon its production in a court or otherwise for any purpose arising under this Act, without proof of the signature on the document

or of the authority to give or make the delegation, order, written authority or endorsement, sufficient evidence, unless the contrary is proved, that the delegation, order or written authority was duly given or made in the terms set out in the document and is, or was on the date specified, in force.

(9.) In this section, a reference to a Board shall be read as a reference to the Naval Board, the Military Board or the Air Board, as the case requires.

Orders.

29. Orders made in pursuance of a provision of this Act shall be deemed not to be statutory rules within the meaning of the *Rules Publication Act 1903-1939*.

Regulations.

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

THE SCHEDULE.

Section 9.

OFFENCES AGAINST THE PERSON.

1. For the purposes of section nine of this Act, the expression "offence against the person" means any offence that is punishable under the law of the Commonwealth or of a State or Territory and an essential element of which is an act or omission that causes, or tends to cause, death, danger to life, bodily harm or apprehension of harm.

2. Without limiting the generality of the last preceding paragraph, the expression "offence against the person" includes murder, manslaughter, infanticide, any other form of unlawful homicide, unlawful wounding, assault, robbery with violence or threat of violence, rape and other offences against women and girls, unnatural or indecent acts or conduct, unlawful abortion, incest, abduction, kidnapping and false imprisonment, as provided by the law in force in that part of Australia in which the offence is committed.

OFFENCES AGAINST PROPERTY.

3. For the purposes of section nine of this Act, the expression "offence against property" includes, without prejudice to the generality of the expression, burglary, housebreaking, stealing, larceny, embezzlement, any form of wrongful taking or appropriation of property, obtaining property by extortion, fraud or false pretences and any form of malicious damage to property, as provided by the law in force in that part of Australia in which the offence is committed.

GENERAL.

4. A reference in the preceding paragraphs of this Schedule to a particular offence shall be read as including a reference to any offence (by whatever name called or however described in the law of the Commonwealth or of the State or Territory concerned) that is substantially similar to that offence.