STATUTORY RULES.

1953. No. 1

REGULATIONS UNDER THE DEFENCE ACT 1903-1953.¹

THE GOVERNOR-GENERAL in and over the Commonwealth of Australia, acting with the advice of the Federal Executive Council, hereby make the following Regulations under the Defence Act 1903-1953.

Dated this twenty-fifth day of June, 1953.

W. J. Slim
Governor-General.

By His Excellency's Command,

(Sgd.) P. A. McBride
Minister of State for Defence.

DEFENCE (CERTIFICATION OF DEATHS) REGULATIONS.

1. These Regulations may be cited as the Defence (Certification of Deaths) Regulations.

2. The National Security (War Deaths) Regulations (comprising Statutory Rules 1942, No. 473; Statutory Rules 1943, No. 135; Statutory Rules 1944, Nos. 100 and 150; Statutory Rules 1945, No. 3; and Statutory Rules 1951, No. 68) are repealed.

3.—(1.) Regulation 2 of the Defence Force Regulations is amended by omitting the words—

"Part VII.—Certificates of Death on Service (Regulations 32-38)."

(2.) Part VII. of the Defence Force Regulations is repealed.

4.—(1.) The repeal of the National Security (War Deaths) Regulations effected by regulation 2 of these Regulations and of Part VII. of the Defence Force Regulations effected by the last preceding regulation does not affect the validity of—

(a) a certificate of death on war service issued under, or having effect by virtue of, the National Security (War Deaths) Regulations and uncancelled at the commencement of these Regulations;

(b) a certificate of death on service issued under Part VII. of the Defence Force Regulations and uncancelled at the commencement of these Regulations; or

(c) a certificate issued under regulation 9 of the National Security (War Deaths) Regulations or under regulation 38 of the Defence Force Regulations and uncancelled at the commencement of these Regulations.

¹ Notified in the Commonwealth Gazette on 18.5.1953. — Price 5d. 6/16/53.
(2.) For the purposes of these Regulations—

(a) a certificate to which paragraph (a) or (b) of the last preceding sub-regulation applies shall be deemed to be, and shall have effect as if it were, a certificate of death to which these Regulations apply; and

(b) a certificate to which paragraph (c) of the last preceding sub-regulation applies shall be deemed to be, and shall have effect as if it were, a certificate issued under regulation 13 of these Regulations.

(3.) For the purposes of this regulation, a reference to a certificate of death on war service issued under the National Security (War Deaths) Regulations includes a reference to a certificate issued under these Regulations which, for the purposes of these Regulations, is deemed to be a certificate of death on war service.

5.—(1.) In these Regulations, unless the contrary intention appears—

"certificate of death to which these Regulations apply" means a certificate issued by a competent authority under regulation 7 or 8 of these Regulations, and includes a corrected certificate issued under sub-regulation (3.) of regulation 11 of these Regulations;

"competent authority" means

(a) in relation to the certification, or matters relating to the certification, of the death of a member of the Naval Forces—a person authorized under the next succeeding regulation to issue certificates of death of members of the Naval Forces;

(b) in relation to the certification, or matters relating to the certification, of the death of a member of the Military Forces—a person authorized under that regulation to issue certificates of death of members of the Military Forces;

(c) in relation to the certification, or matters relating to the certification, of the death of a member of the Air Force—a person authorized under that regulation to issue certificates of death of members of the Air Force; and

(d) in relation to the certification, or matters relating to the certification, of the death of a person who is not a member of the Defence Force—a person authorized under that regulation to issue certificates of death of persons who are not members of the Defence Force;

"service" includes service outside Australia;

"war" means a war in which the Commonwealth has been or is engaged, and includes the war-like 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.
(2.) For the purposes of these Regulations—

(a) a member of the Defence Force shall be deemed to be on service while he is a prisoner of war or interned in a place outside Australia; and

(b) a person, not being a member of the Defence Force, who accompanies a part of the Defence Force shall be deemed to be a member of, and on service with, that part of the Defence Force.

6.—(1.) The Minister of State for the Navy may, by notice in the Gazette, authorize a person to issue certificates of death of members of the Naval Forces.

(2.) The Minister of State for the Army may, by notice in the Gazette, authorize a person to issue certificates of death of members of the Military Forces.

(3.) The Minister of State for Air may, by notice in the Gazette, authorize a person to issue certificates of death of members of the Air Force.

(4.) The Attorney-General may, by notice in the Gazette, authorize a person to issue certificates of death of persons who are not members of the Defence Force.

(5.) An authority given to a person under this regulation does not authorize that person to issue a certificate otherwise than in accordance with these Regulations.

7. Where a competent authority is satisfied that, from information available in the Department of the Navy, the Department of the Army, or the Department of Air, as the case may be, a member of the Defence Force, while on service—

(a) died on a particular date;

(b) died on or after a particular date;

(c) died on or before a particular date; or

(d) became missing on a particular date and for official purposes is presumed to have died,

the competent authority may issue a certificate that that person—

(e) died on that date;

(f) died on or after that date;

(g) died on or before that date; or

(h) became missing on that date and is for official purposes presumed to be dead,

as the case may be.

8. Where a competent authority is satisfied that, from information available in the Attorney-General's Department, a person, not being a member of the Defence Force, while in the hands of an enemy or in other circumstances which make proof of death difficult (being circumstances arising out of a war)—

(a) died on a particular date;

(b) died on or after a particular date;

(c) died on or before a particular date; or

(d) became missing on a particular date and for official purposes is presumed to have died,
the competent authority may issue a certificate that that person—
(c) died on that date;
(f) died on or after that date;
(g) died on or before that date; or
(h) became missing on that date and is for official purposes
presumed to be dead,
as the case may be.

9.—(1.) A certificate of death to which these Regulations apply is
in all Courts and before all persons acting judicially prima facie
evidence of the death of the person named in the certificate on the date
specified in the certificate as the date on which, or on or after which,
or on or before which, he died or on which he became missing, as the
case may be.

(2.) A Court or a person acting judicially shall, in relation to a
certificate of death to which these Regulations apply, take judicial
notice of the signature of a competent authority and of the fact that he
is or has at any time been a competent authority.

(3.) A person who, acting in good faith on the presumption of the
death of a person in respect of whom a certificate of death to which
these Regulations apply has been issued, and while that certificate is
uncancelled, pays money or transfers property to a person who is
entitled to receive the money or property on the assumption that the
person named in the certificate died or is presumed to be dead as
stated in the certificate—
(a) obtains a good discharge in respect of that money or
property; and
(b) in the event of the person named in the certificate being in
fact alive subsequently to the date so specified, is not
subject to any liability, civil or criminal, in connexion
with that money or property, to which he would not have
been subject if the person named in the certificate had
died on the date so specified.

10. Where probate of the will, or administration of the estate, of a
person in respect of whom a certificate of death to which these Regula-
tions apply has been issued is granted or proposed to be granted and
the certificate is uncancelled at the time of the grant, leave of a Court
is not required for the distribution or administration of the estate, and
a bond, surety or other security shall not be required of any person
for the restoration, repayment or replacement upon any condition
or event of moneys or other property forming part of the
estate which would not be required if the death of the person in
respect of whom the certificate was issued had been conclusively
proved.

11.—(1.) Where—
(a) a certificate of death to which these Regulations apply has
been wrongly issued;
(b) a certificate of death to which these Regulations apply
ceases to be in accord with the information available in
the relevant Department; or
(c) subsequently to the issue of a certificate of death to which
these Regulations apply, it is found that the certificate
is incorrect in some particular,
a competent authority may, by notice in writing served personally or by the post at the last-known place of abode of the person to be served, require a person having possession of the certificate to forward it to the competent authority, and that person shall forthwith comply with the requirement.

Penalty: Twenty pounds or imprisonment for three months.

(2.) A competent authority may, on obtaining possession of a certificate of death to which paragraph (a), (b) or (c) of the last preceding sub-regulation applies, cancel or correct the certificate, as the case requires.

(3.) Where, subsequently to the issue of a certificate of death to which these Regulations apply, it is found that the certificate is incorrect in some particular, a competent authority may, in accordance with these Regulations, issue a corrected certificate notwithstanding that the certificate previously issued has not been cancelled, but the issue of the corrected certificate shall not in any way affect the rights of a person acting, without knowledge of the issue of that certificate, in reliance on the certificate previously issued.

12. A person with knowledge that a competent authority has demanded, or wishes to secure, the delivery up of a certificate of death to which these Regulations apply shall not present the certificate to another person or otherwise make use of, or act in reliance upon, the certificate.

Penalty: Twenty pounds or imprisonment for three months.

13.—(1.) A competent authority may issue a certificate stating that, from information available in the Department of the Navy, the Department of the Army, the Department of Air or the Attorney-General’s Department, as the case may be, there is reason to believe that the person named in a certificate of death to which these Regulations apply is or may be alive.

(2.) Notwithstanding anything contained in a law of a State or a Territory of the Commonwealth or any probate or letters of administration granted under such a law, a certificate issued under this regulation is, subject to the effect of a certificate of death issued subsequently to the issue of the certificate under this regulation, in all Courts and before all persons acting judicially prima facie evidence that the person named in the certificate is alive.

(3.) A person who, acting in good faith in reliance on a certificate issued under this regulation, pays money or transfers property to a person who is entitled to receive the money or property on the assumption that the person named in the certificate is alive—

(a) obtains a good discharge in respect of that money or property; and

(b) in the event of the person named in the certificate being in fact dead, is not subject to any liability, civil or criminal, in connection with that money or property, to which he would not have been subject if the person named in the certificate had been alive at the date of the payment or transfer.
(4.) A certificate may be issued in respect of a person under this regulation notwithstanding that a certificate of death to which these Regulations apply previously issued in respect of that person has not been cancelled, but, after the issue of the certificate under this regulation, the certificate of death is, subject to the next succeeding sub-regulation, of no force or effect.

(5.) A certificate under this regulation does not affect the rights of a person acting, without knowledge of the issue of the certificate, in reliance on a certificate of death to which these Regulations apply previously issued.

(6.) Subject to this regulation, the last two preceding regulations apply to and in relation to a certificate issued under this regulation in the same manner, mutatis mutandis, as they apply to and in relation to a certificate of death to which these Regulations apply.