Statutory Rules.

**1952, No. 29.**

REGULATIONS UNDER THE DEFENCE ACT 1903-1951.\*

I, 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* 1903-1951.

Dated this twenty third

day of April, 1952.

W. J. McKell

Governor-General.

By His Excellency’s Command,

Phillip McBride

Minister of State for Defence

DEFENCE FORCE REGULATIONS.

Part I.—Preliminary.

**Citation.**

**1**. Those Regulations may be cited as the Defence Force Regulations.

**Parts.**

**2.** These Regulations are divided into Parts, as follows :—

Part I.—Preliminary (Regulations 1-3).

Part II.—Command and Discipline of Forces Acting Together (Regulations 4-11).

Part III.—Validity and Effect of Sentences Passed outside Australia (Regulations 12-14).

Part IV.—Administration of Oaths, &c. (Regulations 15-21).

Part V.—Powers of Attorney (Regulations 22-25).

Part VI.—Disposal of Dead Bodies of Members of the Defence Force (Regulations 26-31).

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

**Definitions and Interpretation.**

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

“ affidavit ” includes an affirmation, statutory or other declaration, acknowledgment or examination ;

“ Dominion force ” and “ Home force ” have the same meanings respectively as in the *Defence* (*Visiting Forces*) *Act* 1939-1950 ;

“ oath ” includes an affirmation or declaration ;

“ service court ” and “ service authority ” have the same meanings respectively as in the *Defence* (*Visiting Forces*) *Act* 1939-1950 ;

\* Notified in the *Commonwealth* *Gazette* on 24th April, 1952.

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“ sworn ” includes affirmed or declared ;

“ the Air Force Act ” means the Imperial Act called the Air Force Act, as amended from time to time, and includes an Imperial Act for the time being in force in substitution for that Act ;

“ the Army Act ” means the Imperial Act called the Army Act, as amended from time to time, and includes an Imperial Act for the time being in force in substitution for that Act ;

“ the Defence Force ” means the Defence Force as constituted under the *Defence Act* 1903-1951 ;

“ the Minister ” means—

(*a*)with respect to matters concerning the Naval Forces or members of the Naval Forces, the Minister of State for the Navy ;

(*b*)with respect to matters concerning the Military Forces or members of the Military Forces, the Minister of State for the Army ; and

(*c*)with respect to matters concerning the Air Force or members of the Air Force, the Minister of State for Air ;

“ the Naval Discipline Act ” means the Imperial Act called the Naval Discipline Act, as amended from time to time, and includes an Imperial Act for the time being in force in substitution for that Act.

(2.) In these Regulations, a term used in relation to the Naval Forces, the Military Forces or the Air Force has the same meaning as in the Naval Forces Regulations, the Australian Military Regulations or the Air Force Regulations, as the case may be.

Part II.—Command and Discipline of Forces Acting Together.

**Joint orders.**

**4**. When a body of the Naval Forces, a body of the Military Forces and a body of the Air Force, or a body of one of those forces and a body of another of those forces, are acting together, the respective Chiefs of Staff of the forces concerned may make a joint order declaring that the bodies are acting together.

**Powers of Naval and Military officers when acting with Air Force.**

**5**. When a body of the Naval Forces and a body of the Military Forces, or a body of either of those forces, are or is acting together with a body of the Air Force, elsewhere than on board ship, under a joint order made pursuant to this Fart, an officer or petty officer of that body of the Naval Forces and an officer, warrant officer or noncommissioned officer, not below the rank of sergeant, of that body of the Military Forces shall, in relation to that body of the Air Force, for the purposes of command and discipline, be treated and have all such powers, other than powers of punishment, as if he were an officer, warrant officer or non-commissioned officer, as the case may be, of relative rank in the Air Force.

**Powers of Naval and Air Force officers when acting with Military Forces.**

**6**. When a body of the Naval Forces and a body of the Air Force, or a body of either of those forces, are or is acting together with a body of the Military Forces, elsewhere than on board ship, under a joint order made pursuant to this Part, an officer or petty officer of

that body of the Naval Forces and an officer, warrant officer or non-commissioned office of that body of the Air Force shall, in relation to that body of the Military Forces, for the purposes of command and discipline, be treated and have all such powers, other than powers of punishment, as if he were an officer, warrant officer or non-commissioned officer, as the case may be, of relative rank in the Military Forces.

**Powers of Military and Air Force officers when acting with Naval Force.**

**7**. When a body of the Military Forces and a body of the Air Force, or a body of either of those forces, are or is acting together with a body of the Naval Forces, elsewhere than on board ship, under a joint order made pursuant to this Fart, an officer, warrant officer or non-commissioned officer, not below the rank of sergeant, of that body of the Military Forces and an officer, warrant officer or non-commissioned officer of that body of the Air Force shall, in relation to that body of the Naval Forces, for the purposes of command and discipline, be treated and have all such powers, other than powers of punishment, as if he were an officer or petty officer, as the case may be, of relative rank in the Naval Forces.

**Relative ranks.**

**8**. For the purposes of regulations 5, 6 and 7 of these Regulations, the relative ranks of members of the Royal Australian Navy, the Australian Military Forces and the Royal Australian Air Force are as specified in the following table :—

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| Royal Australian Navy. |  | Australian Military Forces. |  | Royal Australian Air Force. |
| Admiral  |  | General  |  | Air Chief Marshal |
| Vice-Admiral  |  | Lieutenant-General  |  | Air Marshal |
| Rear-Admiral  |  | Major-General  |  | Air Vice-Marshal |
| Commodore (1st and 2nd Class) |  | Brigadier  |  | Air Commodore |
| Captain  |  | Colonel  |  | Group Captain |
| Commander  |  | Lieutenant-Colonel  |  | Wing Commander |
| Lieutenant - Commander |  | Major  |  | Squadron Leader |
| Lieutenant  |  | Captain  |  | Flight Lieutenant |
| Sub-Lieutenant  |  | Lieutenant  |  | Flying Officer |
| Acting Sub-Lieutenant |  |  |  |  |
| Senior Commissioned |  | Second Lieutenant  |  | Pilot Officer |
| Officer (Branch List) |  |  |  |  |
| Commissioned Officer (Branch List) |  | Conductor, A.A.O.C. Master Gunner, 1st Class |  | No equivalent |
| Midshipman  |  | Staff-Sergeant-Major, 1st Class |  | No equivalent |
| No Equivalent  |  | All other Warrant Officers, Class 1 |  | Warrant Officer |
| No Equivalent  |  | Warrant Officer, Class II. |  |  |
| Chief Petty Officer  |  | Squadron, Battery or Company Quarter-Master Sergeant Colour Sergeant Staff Sergeant |  | Flight Sergeant |
| Petty Officer  |  | Sergeant  |  | Sergeant |

**Delegation of power to make Joint order.**

**9**.—(1.) The Chief of the Naval Staff, the Chief of the General Staff or the Chief of the Air Staff, respectively, may delegate to any person, either generally or in relation to a particular locality specified in the instrument of delegation, the power conferred upon them, respectively, by this Part, so that the delegated power may be exercised, either generally or in relation to that locality, as the case may be, as fully and effectually by the delegate as by the delegant.

(2.) A delegation under this regulation is revocable at will and does not prevent the exercise by the delegant of the delegated power.

**Joint orders by officers in command.**

**10**.—(1.) When a body of the Naval Forces, a body of the Military Forces and a body of the Air Force, or a body of one of those forces and a body of another of those forces, are acting together, and reference to the appropriate authorities or persons empowered under the preceding provisions of this Part to make a joint order declaring that the bodies are so acting would occasion undue delay, the respective officers in command of each body of theforces may make that order if—

(*a*) in the case of a body of the Naval Forces, the officer in command of that body is not below the rank of Lieutenant-Commander ;

(*b*) in the case of a body of the Military Forces, the officer in command of that body is not below the rank of Major ; and

(*c*) in the case of a body of the Air Force, the officer in command of that body is not below the rank of Squadron-Leader.

(2.) Where an officer makes an order under this regulation, he shall report the fact and the circumstances to the appropriate authority or his delegate, as the case requires, who may confirm, cancel or vary the order.

**Orders and delegations not to lapse.**

**11**. A joint order or a delegation made under this Part does not lapse or become ineffective by reason only that a person who made, or participated in making, the joint order or the delegation has ceased to hold an office by the authority of which he made, or participated in making, the joint order or the delegation.

Part III.—Validity and Effect of Sentences Passed Outside Australia.

**Sentences imposed by service court or authority of Home race or Dominion force.**

**12**. Where—

(*a*)a member of the Defence Force is attached or lent to, or seconded for service outside Australia with, a Home force or Dominion force ; and

(*b*) a sentence is passed outside Australia upon, or a punishment is awarded outside Australia to, that member by a service court or service authority of that Home force or Dominion force while he is so attached, lent or seconded,

the sentence or punishment is as valid and effectual and, to the extent to which it has not been executed or enforced outside Australia, may be executed or enforced in Australia, as if it had been passed or awarded by a court martial constituted under or by virtue of a law of the Commonwealth.

**Certificate of Minister.**

**13**. For the purpose of legal proceedings within Australia, a certificate under the hand of the Minister that—

(*a*) on a date specified in the certificate the person named in the certificate was a member of the Defence Force attached or lent to, or seconded for service outside Australia with, the Home force or Dominion force specified in the certificate ;

(*b*) on that date the service court or service authority specified in the certificate, being a service court or service authority of that Home force or Dominion force, passed the sentence, or awarded the punishment, set out in the certificate upon or to the person named in the certificate ; and

(*c*) the sentence or punishment, or such part of it as is specified in the certificate, has not been executed or enforced,

is evidence of the facts so certified.

**Sentence of death.**

**14**. This Part does not authorize the carrying into effect of a sentence of death passed by a service court of a Home force or Dominion force on a member of the Defence Force unless the carrying into effect of that sentence has been approved by the Governor-General.

Part IV.—Administration of Oaths, &c.

**Definitions.**

**15**.—(1.) In this Part, unless the contrary intention appears—

“ competent officer ” means—

(*a*) an officer of the Defence Force, a Dominion force or a Home force who holds a rank, or a rank equivalent to a rank, not below—

(i) in the case of a naval officer—Lieutenant ;

(ii) in the case of a military officer—Captain ; or

(iii) in the case of an air force officer—Flight Lieutenant ;

(*b*)an air force officer who holds a rank below that of Flight Lieutenant while he is in charge of a unit or detachment of the Royal Australian Air Force ; and

(*c*) in relation to a member of the Defence Force who is a prisoner of war or interned in a place outside Australia, a person who is a British subject and is, for the time being, the official representative of prisoners of war or other persons detained or interned in that place.

(2.) For the purposes of this Part—

(*a*)a reference to a member of the Defence Force includes a reference to a person who, not being a member of the Defence Force, accompanies a part of the Defence Force ; and

 (*b*) a reference to a member of the Defence Force on service outside Australia includes a reference to a member of that Force who is a prisoner of war or interned in a place outside Australia.

**Administration of oaths, &c.**

**16**. A competent officer may administer oaths to, take affidavits of, and attest the execution of documents by a member of the Defence Force while on service outside Australia.

**Validity of administration of oaths, &c.**

**17**. The administration of an oath, the taking of an affidavit or the attestation of the execution of a document by a competent officer in pursuance of this Part is valid and effectual for the purposes of a matter arising in or under a law of the Commonwealth or of a State or Territory of the Commonwealth.

**Particulars in *jurat.***

**18**.— (1.) A competent officer who in pursuance of this Part, administers an oath, takes an affidavit or attests the execution of a document, shall legibly write, type or stamp in the *jurat* or attestation of the document in respect of which the power is exercised, after his signature, his name and rank, and, in the case of an officer of an air force below the rank of Flight Lieutenant, the fact that he is in charge of a unit or detachment of the Royal Australian Air Force.

(2.) It is not necessary to state the place where the oath is administered, the affidavit is sworn or the document is attested.

**Compliance with form provided by Commonwealth or State law Sufficient.**

**19**. An affidavit or declaration sworn or made in pursuance of this Part is sufficient in law if it is substantially in accordance with the form provided by a law of the Commonwealth or of the State or Territory of the Commonwealth in which the affidavit or declaration is to be used.

**Affidavit admissible in evidence without proof of rank of officer administering it, &c.**

**20**. Where a document purports to have subscribed to it the signature of a competent officer in testimony of the administration of an oath, the taking of an affidavit or the attestation of the execution of a document by him, it shall be admitted in evidence without proof—

(*a*)of the rank of the officer, and, in the case of an officer of an air force below the rank of Flight Lieutenant, of the fact that he was in charge of a unit or detachment of the Royal Australian Air Force ;

(*b*)that the signature is that of the officer ; or

(*c*)that the person to whom the oath was administered or by whom the affidavit was sworn or the document executed was, at the date of the swearing or execution, a member of the Defence Force.

**Penalty for false statements.**

**21**. Without affecting the liability of a person under any other law, a person shall not wilfully make a false statement in an affidavit or declaration sworn or made in pursuance of this Part.

Penalty : Twenty pounds or imprisonment for three months.

Part V.—Powers of Attorney.

**Interpretation.**

**22**. For the purposes of this Part, a reference to a member of the Defence Force includes a reference to a person who, not being a member of the Defence Force, accompanies a part of the Defence Force.

**Powers of attorney executed by members of the Defence Force under twenty-one years.**

**23**. A power of attorney executed, whether before or after the commencement of this regulation, by a person under the age of twenty-one years who was, at the time of the execution, a member of the Defence Force shall, after the commencement of this regulation or the execution of the power, whichever is the later, be and continue as valid and

effectual, notwithstanding that that person may have ceased to be a member of the Defence Force, as if that person had, at the time of the execution of the power, been of the age of twenty-one years or more.

**Attorney’s power limited.**

**24.** This Part does not enable an attorney of a person who has not attained the age of twenty-one years to do anything as the attorney of that person which that person could not validly do personally.

**Effect of revocation, &c.**

**25.** For the pair poses of this Part—

(*a*)the revocation by a person under the age of twenty-one years of a power of attorney to which regulation 23 of these Regulations applies is as valid and effectual as if that person had, at the time of revocation, been of the age of twenty-one years or more ; and

(*b*)a statutory declaration by the donee of a power, made in accordance with a law of the Commonwealth or of a State or Territory of the Commonwealth, that the donor of the power was, at the time of its execution a member of the Defence Force, is conclusive proof of the facts so declared in favour of a person dealing with the donee of the power in good faith.

Part VI.—Disposal of Dead Bodies of Members of the Defence Force.

**Definitions.**

**26.**—(1.) In this Part, unless the contrary intention appears—

“ body ” includes a part of a body ;

“ Registrar of Deaths ”, in relation to a State or Territory of the Commonwealth, means a person or authority charged under the law of that State or Territory with the duty of registering deaths.

(2.) For the purposes of this Part, unless the contrary intention appears—

(*a*)a reference to a member of the Defence Force includes a reference to a person who, not being a member of the Defence Force, accompanies a part of the Defence Force ;

(*b*)a reference to a member of the Defence Force on service includes a reference to a member of that Force on service outside Australia ; and

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

**Disposal of dead bodies of members of the Defence Force.**

**27.** A commissioned officer of the Defence Force may, subject to any direction of the Minister, give such directions for the disposal of the body of a member of the Defence Force who died while on service as he thinks fit.

**State law not to apply.**

**28**. A law of a State or Territory of the Commonwealth relating to coroners or the registration of deaths does not apply in relation to a body with respect to which directions for disposal are given under this Part or in relation to the death of a member of the Defence Force with respect to whose body such directions are given.

***Post mortems* and certificates of death.**

**29.**—(1.) Notwithstanding anything contained in a law of a State or Territory of the Commonwealth, a commissioned medical officer of the Defence Force, who is a duly qualified medical practitioner according to a law of a State or Territory of the Commonwealth, may—

(*a*) if requested so to do by a coroner or deputy coroner of a State or Territory of the Commonwealth, perform in that State or Territory a *post mortem* examination of the body of a member of the Defence Force who died while on service ; and

(*b*)sign a certificate of death in respect of the death of a member of the Defence Force who died while on service.

(2.) A certificate of death so signed, and containing a statement that the deceased person was a member of the Defence Force who died while on service, is of the same force and effect as a certificate signed by a duly qualified medical practitioner of the State or Territory of the Commonwealth in which the death occurred.

**Persons to furnish particulars on request.**

**30**. At the request of the Minister or of a Registrar of Deaths, a person shall furnish to the Registrar of Deaths specified by the Minister in the request or to the Registrar making the request, as the case may be, such particulars as are known to, or can reasonably be ascertained by, that person of the identity of a member of the Defence Force with respect to whose body directions are given under this Part.

**War graves.**

**31**. Notwithstanding the provisions of a law of a State or Territory of the Commonwealth, the Secretary-General of the Anzac Agency of the Imperial War Graves Commission, or an officer of the Defence Force in charge of a unit specifically raised for the purpose of the registration of, or inquiries concerning, the graves of deceased members of the Defence Force—

(*a*) may establish or cause to be established such cemeteries as are required for the burial of bodies of members of the Defence Force who have died while on service ;

(*b*)may authorize and direct the exhumation and the re-interment, cremation or other disposal of the body of a deceased member of the Defence Force who died while on service with that Force ; and

(*c*) may enter, or authorize another person or persons to enter, a cemetery and to inspect, maintain or carry out any work in connexion with the grave of a deceased member of the Defence Force who died while on service which is of has been maintained at the expense of the Commonwealth.

Part VII.—Certificates of Death on Service.

**Definitions.**

**32.**—(1.) In this Part, unless the contrary intention appears—

“ certificate of death on service ” means a certificate issued by a competent authority under regulation 34 of these Regulations ;

“ competent authority ” means a person authorized under regulation 33 of these Regulations to issue certificates of death while on service.

 (2.) For the purposes of this Part—

(*a*) a reference to a member of the Defence Force includes a reference to a person who, not being a member of the Defence Force, accompanies a part of the Defence Force ;

(*b*)a reference to a member of the Defence Force on service includes a reference to a member of that Force on service outside Australia ; and

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

**Minister may authorize persons to issue certificates of death.**

**33.** The Minister may, by notice in the *Gazette,* authorize a person to issue certificates of death while on service.

**Certificates of death.**

**34.** 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 is for official purposes presumed to be dead,

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.

**Effect of certificates.**

**35.**— (1.) A certificate of death while on service 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 while on service, 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 while on service 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*) shall obtain 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, shall not be subject to any liability, civil or criminal, in connexion with that money or property, to which he would not have been subject had the person named in the certificate died on the date so specified.

**No security required in connexion with probate or administration.**

**36**. When probate of the will, or administration of the estate, of a person in respect of whom a certificate of death while on service has been issued, and is uncancelled at the time of the grant, is granted or proposed to be granted, leave of a Court is not required for the distribution or administration of the estate, and a bond or 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.

**Cancellation of certificates.**

**37.**—(1.) Where—

(*a*)a certificate of death while on service has been wrongly issued ;

(*b*)a certificate of death while on service ceases to be in accord with the information available in the relevant Department ; or

(*c*)subsequently to the issue of a certificate of death while on service, 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.

(2.) A competent authority may, on obtaining possession of a certificate of death while on service 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 while on service, it is found that the certificate is incorrect in some particular, a competent authority may, in accordance with these Regulations, issue a corrected certificate of death while on service notwithstanding that the certificate previously issued has not been cancelled, but the issue of the further certificate shall not in any way affect the rights of a person acting, without knowledge of the issue of the further certificate, in reliance on the certificate previously issued.

(4.) A person with knowledge that a competent authority has demanded, or wishes to secure, the delivery up of a certificate of death while on service shall not present the certificate to another person or otherwise make use of, or act in reliance upon, the certificate.

**Proof of life on information available after issue of certificate of death.**

**38**.— (1.) A competent authority may issue a certificate stating 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, there is reason to believe that the person named in a certificate of death while on service is or may be alive.

(2.) A certificate issued under this regulation shall, notwithstanding anything contained in a law of a State or Territory of the Commonwealth or any probate or letters of administration granted under such a law, but 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 be *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, shall obtain a good discharge in respect of that money or property, and, in the event of the person named in the certificate being in fact dead, shall not be subject to any liability, civil or criminal, in connexion with that money or property, to which he would not have been subject had the person named in the certificate been alive at the date of the payment or transfer.

(4.) A certificate may be issued under this regulation notwithstanding that the certificate of death while on service previously issued has not been cancelled, and thereafter the certificate of death while on service is, subject to the next succeeding sub-regulation, of no force or effect.

(5.) A certificate under this regulation docs not affect the rights of a person acting, without knowledge of the issue of the certificate, in reliance on a certificate of death while on service previously issued.

(6.) Subject to this regulation, the last preceding regulation applies to and in relation to a certificate issued under this regulation in the same manner, *mutatis mutandis,* as it applies to and in relation to a certificate of death while on service.

By Authority: L. F. Johnston, Commonwealth Government Printer, Canberra.