

ACTS OF THE
AUSTRALIAN PARLIAMENT

1901-1973



VOLUME 10



ACTS OF THE AUSTRALIAN PARLIAMENT 1901-1973

Volume 10

RE-ESTABLISHMENT AND EMPLOYMENT
to
SOCIAL WELFARE COMMISSION

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RE-ESTABLISHMENT AND EMPLOYMENT ACT 1945-1973

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RE-ESTABLISHMENT AND EMPLOYMENT ACT 1945-1973

An Act to provide for the Re-establishment in Civil Life of Members of the Forces, for facilitating their Employment, and for other purposes.

PART I—PRELIMINARY

- | | |
|---|---|
| <p>1. This Act may be cited as the <i>Re-establishment and Employment Act</i> 1945-1973.¹</p> | <p>Short title.
Short title amended;
No. 32, 1918,
s. 2.</p> |
| <p>2. The several Parts and Divisions of this Act shall commence on such dates as are respectively fixed by proclamation.¹</p> | <p>Commence-
ment.</p> |
| <p>* * * * *</p> | <p>Section 3
repealed by
No. 216, 1973,
s. 3.</p> |
| <p>4. (1) In this Act, unless the contrary intention appears—
“Australia” includes the external Territories;
“member of the Forces” means—</p> <ul style="list-style-type: none"> (a) a person who is or was, during the war, a member of the Permanent Forces, other than the Australian Imperial Force; (b) a person who is or was, during the war, a member of the Australian Imperial Force; (c) a member of the Citizen Forces who is or was enlisted, appointed or called up for continuous service for the duration of, and directly in connexion with, the war; (d) a person who is or was, during the war, engaged on continuous full-time service as a member of any of the following Services:— <ul style="list-style-type: none"> The Royal Australian Naval Nursing Service; The Women’s Royal Australian Naval Service; The Australian Army Nursing Service; The Australian Women’s Army Service; The Australian Army Medical Women’s Service; The Royal Australian Air Force Nursing Service; The Women’s Auxiliary Australian Air Force; (e) a member of a Voluntary Aid Detachment who is or was, during the war, engaged on continuous full-time paid duty with any part of the Defence Force; (f) a member of the Naval, Military or Air Forces of any part of the King’s dominions other than Australia, who is | <p>Definitions.
Sub-section (1)
amended by
No. 216, 1973,
s. 3.</p> |

or was, during the war, engaged on service in a prescribed area and was born in Australia or was, immediately prior to his becoming a member of any of those Forces, domiciled in Australia; and

- (g) a person who is or was, during the war, engaged on continuous full-time service with any Nursing Service or other Women's Service auxiliary to the Naval, Military or Air Forces of any part of the King's dominions other than Australia who was born in Australia or was, immediately prior to her becoming a member of that Service, domiciled in Australia,

but does not include any enemy alien who served during the war as a member of the Army Labour Corps but not otherwise;

"the Minister", in relation to any provision of this Act, means the Minister for the time being administering the Part or Division of this Act in which that provision occurs;

"the war" means the war which commenced on the third day of September, One thousand nine hundred and thirty-nine, and includes any other war in which His Majesty became engaged after that date and before the date of commencement of this Part;

"war service" means—

- (a) service as a member of the Permanent Forces, other than the Australian Imperial Force;
- (b) service in the Australian Imperial Force;
- (c) the service of a member of the Citizen Forces when called out for war service in pursuance of the *Defence Act* 1903-1945, or during continuous training under that Act, the *Naval Defence Act* 1910-1934 or the *Air Force Act* 1923-1941;
- (d) the continuous full-time service in the Defence Force under any Act or under any regulations under an Act, of any person who volunteers and is accepted for that service during war;
- (e) in the case of a person specified in paragraph (d), (e), (f) or (g) of the definition of "member of the Forces", service in any of the bodies specified in those paragraphs; or
- (f) in relation to any of the provisions of this Act, the continuous full-time service of any person as a member of an organization or part thereof which is declared by proclamation to be an organization in relation to which those provisions apply.²

(2) For the purposes of this Act, a member of the Forces who has ceased to be engaged on war service shall be deemed to have been discharged.

(3) Where a person—

- (a) was appointed or enlisted, on or before the thirtieth day of June, One thousand nine hundred and forty-seven, for service in a part of the Defence Force which was raised in time of war for war service, or enlisted, on or before that date, solely for service in time of war or for service during that time and a definite period thereafter; or
- (b) enlisted in the Permanent Forces after the thirtieth day of June, One thousand nine hundred and thirty-seven, and before the first day of October, One thousand nine hundred and forty, for a definite period not exceeding twelve years,

Added by
Statutory Rules
1949, No. 104.

and his service was not terminated before the thirtieth day of June, One thousand nine hundred and forty-nine, he shall, for the purposes of Divisions 1 and 3 of Part II, Part IV and Divisions 2, 3 and 4 of Part VI of this Act, be deemed to have ceased to be engaged on war service on the last-mentioned date.

5. (1) The regulations may provide that persons resident in Australia who were, during the war, engaged on service in a prescribed area with the Naval, Military or Air Forces of a prescribed part of the King's dominions other than Australia, of a prescribed foreign power allied or associated with His Majesty or of any prescribed foreign authority recognized by His Majesty as competent to maintain Naval, Military or Air Forces for service in association with His Majesty's Forces, shall, for the purposes of such of the provisions of this Act (other than Division 2 of Part II and Division I of Part VI) as are specified in the regulations, be deemed to be discharged members of the Forces.

Extension of
certain
provisions of
Act to
members of
Dominion,
&c., Forces.

(2) The regulations may amend, vary, limit or modify the application of any of the provisions of this Act in their application to persons referred to in the last preceding sub-section.

Added by
Statutory Rules
1949, No. 104.

6. This Act shall extend to all the Territories.

Application
to
Territories.
Amended by
No. 216, 1973,
s. 3.

7. (1) A Minister may, by writing under his hand, delegate all or any of his powers and functions under this Act, except this power of delegation, so that the delegate may exercise the powers and functions specified in the instrument of delegation.

Delegation.

(2) Where under this Act the exercise of any power or function by a Minister, or the operation of any provision of this Act, is dependent upon the opinion, belief or state of mind of a Minister in relation to any matter, that power or function may be exercised by the delegate of the Minister, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of the delegate in relation to that matter.

(3) Every delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any power or function by the Minister.

Delegation
by
prescribed
authorities.

Inserted by
Statutory Rules
1945, No. 181.

7A. (1) A prescribed authority may delegate to any person all or any of the powers and functions of the prescribed authority under this Act or under the regulations, except this power of delegation, so that the delegate may exercise the powers and functions specified in the instrument of delegation.

(2) Where the exercise of any power or function by a prescribed authority, or the operation of any provision of this Act or of the regulations, is dependent upon the opinion, belief, or state of mind of the prescribed authority in relation to any matter, that power or function may be exercised by the delegate of the prescribed authority, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of the delegate in relation to that matter.

(3) Every delegation under this section shall be revocable at will and no delegation shall prevent the exercise of any power or function by the prescribed authority.

(4) Any reference in this Act or in the regulations to a prescribed authority shall, in relation to any matter, be deemed to include a reference to a delegate of the prescribed authority exercising any power or function in relation to that matter.

PART II—PROVISIONS RELATING TO EMPLOYMENT

Division 1—Reinstatement in Civil Employment

Modification
of the
Defence Act.

8. Sub-section (3) of section one hundred and eighteen A of the *Defence Act* 1903-1945 shall, in so far as it is inconsistent with this Division, be inoperative.

Saving.

9. (1) Where any person has applied for reinstatement in employment in accordance with the National Security (Reinstatement in Civil Employment) Regulations and has not been reinstated in employment in accordance with those Regulations, the provisions of this Division shall apply in like manner as they would apply in relation to an application made under this Division on the date of commencement of this Division.

(2) Any application to a Reinstatement Committee, and any notice or statement, made or given under the National Security (Reinstatement in Civil Employment) Regulations, shall have the same effect as if it had been made or given under this Division.

(3) The chairmen and other members of the Reinstatement Committees appointed under the National Security (Reinstatement in Civil Employment) Regulations holding office at the date of commencement

of this Division shall be deemed to have been appointed chairmen and members, respectively, of the corresponding Reinstatement Committees under this Division.

(4) Anything done by a Reinstatement Committee under the National Security (Reinstatement in Civil Employment) Regulations shall have the same effect as if it had been done under this Division.

(5) The panels of persons selected under the National Security (Reinstatement in Civil Employment) Regulations to represent persons who have rendered war service and employers respectively shall be deemed to have been selected under this Division.

10. (1) In this Division, unless the contrary intention appears—

“employer” includes the Crown (whether in right of the Commonwealth or of a State) and any authority constituted by or under the law of the Commonwealth or of a State or Territory;

Interpretation.
Sub-section (1) amended by No. 216, 1973, s. 3.

“essential work” means, in relation to any person who has rendered war service, work which is, in the opinion of the Minister, more important, in the national interest, than the work which the person would perform if he were reinstated in employment in accordance with this Division;

“former employer” means, in relation to a person who is rendering or has rendered war service, the employer by whom that person was employed for not less than twenty-eight days out of the fifty-six days immediately preceding the date upon which he volunteered for war service or received a notice requiring him to perform war service, and includes any person for the time being—

(a) carrying on an undertaking or service in which the first-mentioned person was so employed; or

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

“Reinstatement Committee” means a Reinstatement Committee appointed, or deemed to have been appointed, under this Division.

(1A) Except as provided in the next succeeding sub-section, where a person has (whether before or after the commencement of this sub-section) completed more than one period of war service, the first period of war service shall, for the purposes of this Division, be deemed to have continued without interruption until the completion of the last period of war service.

Inserted by Statutory Rules 1947, No. 12.

(1B) The provisions of the last preceding sub-section shall not apply in relation to any two periods of war service completed by a person where—

Inserted by Statutory Rules 1947, No. 12.

- (a) the interval between the two periods of war service exceeds twelve weeks, unless during that interval that person applied to be reinstated in employment in accordance with this Division or in accordance with the National Security (Reinstatement in Civil Employment) Regulations and—
 - (i) he had not been so reinstated and his application had not ceased to have effect at the date on which he commenced the later period of war service; or
 - (ii) he had been so reinstated but had been employed by his former employer for less than twenty-eight days out of the fifty-six days immediately preceding the date upon which he received a notice requiring him to perform a further period of war service; or
 - (b) the earlier of those periods of war service was terminated in the manner and for the purpose specified in paragraph (b) of sub-section (3) of this section and, prior to the date upon which he received a notice requiring him to perform the later period of war service, he had failed or had ceased to engage in essential work, unless a Reinstatement Committee, on application by the person, determines that he had reasonable cause for failing or ceasing to engage in that work.
- (2) Subject to the next succeeding sub-section, a person shall be deemed for the purposes of this Division to have completed a period of war service upon the termination of that service for any cause whatsoever.
- (3) Where—
- (a) any person has completed a period of war service and engages in essential work either—
 - (i) within one month after completing that service;
 - (ii) after having applied to be reinstated in employment in accordance with this Division or in accordance with the National Security (Reinstatement in Civil Employment) Regulations and not having been so reinstated; or
 - (iii) after having been so reinstated in employment and not having left that employment except to engage in essential work,the Minister, in his discretion, may; and
 - (b) the war service of any person has, on the recommendation of the Director-General of Man Power or of a Deputy Director-General of Man Power, or of a person thereto authorized by the Director-General of Man Power or by a Deputy Director-General of Man Power, been terminated after the twentieth day of December, One thousand nine hundred and forty-four, for the purpose of enabling that person to engage in essential work, the Minister shall,

notify the former employer (if any) in writing that the rights of the person to reinstatement in employment are reserved, and thereupon the person shall be deemed not to have completed a period of war service until such time as—

- (c) he receives from the Minister a statement in writing that his services are no longer required for essential work; or
- (d) His Majesty ceases to be engaged in all the wars in which His Majesty was engaged at the date of commencement of this Division,

whichever first happens.

(4) Any notification or statement under the last preceding sub-section may be given to a former employer or a person by serving it upon him personally or by sending it to him by post in a letter addressed to his place of abode or business last known to the Minister, and, if it is sent by post, the former employer or the person shall, unless the contrary is proved, be deemed to have been notified or to have received the statement at the time at which the letter would be delivered in the ordinary course of post.

11. (1) An employer shall not terminate the employment of any person employed by him for the reason that that person is, or may become, liable to perform any war service.

Penalty: Two hundred dollars.

(2) In any proceedings for an offence arising under this section, if all the facts and circumstances constituting the offence, other than the reason for the defendant's action, are proved, it shall lie upon the defendant to prove that he was not actuated by the reason alleged in the charge.

Employers not to terminate employment by reason of liability of employees for war service.
Sub-section (1) amended by No. 93, 1966, s. 3.

12. (1) Any person who has completed a period of war service may apply to his former employer for reinstatement in employment.

(2) An application under the last preceding sub-section shall be made not earlier than fourteen days prior to the completion of the period of war service and not later than one month after the completion of that period, or prior to the date to which the period during which the application may be made has been extended by a Reinstatement Committee in pursuance of section twenty-one of this Act.

Application for reinstatement in employment.

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

(2) Where the applicant does not so specify a date he shall, by notice in writing served personally or by post on the former employer, within the period of two months after the date on which the application was made, or prior to the date to which that period has been extended by a

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

Reinstatement Committee in pursuance of section twenty-one of this Act, specify a date during that period or extended period as the date on which the applicant will be available for employment.

Expiration
and renewal
of
applications.

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

(2) An application shall cease to have effect at the expiration of a period of three months after the date on which it was made or last renewed, as the case may be, or, if that period has been extended by a Reinstatement Committee in pursuance of section twenty-one of this Act, at the expiration of that extended period.

(3) Whenever an application is renewed, the applicant shall specify in the notice a date, not later than two months after the date on which the application is renewed, as the date on which the applicant will be available for employment.

Signature of
notices.

15. A notice under this Division may be signed by the applicant personally or by some person acting with his authority.

Reinstatement
in
employment.
Sub-section (1)
amended by
No. 93, 1966,
s. 3.

16. (1) When an application has been made under this Division and is still in force, the former employer shall make employment available to the applicant in accordance with this section at the date notified to him, or last notified to him, as the date on which the applicant will be available for employment or at the first opportunity (if any) at which it is practicable and reasonable to do so thereafter.

Penalty: Two hundred dollars.

(2) A former employer shall be deemed not to have made employment available to the applicant unless he has given reasonable notice thereof in writing to the applicant.

(3) The employment to be made available under this section shall be employment—

- (a) in the occupation in which the applicant was employed immediately prior to the commencement of his period of war service and under conditions not less favorable to him than those which would have been applicable to him in that occupation if he had remained in the employment of the former employer, including any increase of remuneration to which he would have become entitled if he had remained in that employment; or
- (b) if the applicant and the former employer agree, or, in the event of disagreement, a Reinstatement Committee, upon application by either party, determines, that it is not practicable or is not reasonable for the former employer to employ the applicant in that occupation and on those terms and conditions—in an occupation and upon terms and conditions agreed on between the

applicant and the former employer or, in the event of their disagreement, in an occupation and upon terms and conditions which the Reinstatement Committee determines to be reasonable and practicable.

(4) Where several persons apply to a former employer to be reinstated in employment and it is not reasonably practicable for him to make employment available to each of those persons, the former employer shall make employment available to as many of those persons as is reasonably practicable and in the order which gives preference, as between any two applicants, to the applicant whose length of service with that employer was the greater at the date on which the applicant who first commenced a period of war service commenced that period of war service.

Amended by
No. 93, 1966,
s. 3.

Penalty: Two hundred dollars.

(5) Where—

(a) it is not reasonably practicable for a former employer to make employment available to an applicant without employing in some other occupation or under less favorable conditions some person who has been reinstated in accordance with this Division or in accordance with the National Security (Reinstatement in Civil Employment) Regulations, or without terminating the employment of that person; and

Amended by
No. 93, 1966,
s. 3.

(b) the applicant was, prior to the date on which the applicant, or the date on which that person, first commenced his period of war service, whichever is the earlier, employed by the former employer for a longer period than that person was employed,

the former employer shall, as soon as it is practicable and reasonable for him to do so, employ that person in some other occupation or under less favorable conditions, or, if that is not reasonably practicable, shall terminate the employment of that person.

Penalty: Two hundred dollars.

(6) Where it is not reasonably practicable for a former employer to make employment available to an applicant without terminating the employment of some person who was employed to take the place of the applicant and who has not been reinstated in accordance with this Division or in accordance with the National Security (Reinstatement in Civil Employment) Regulations, the former employer shall terminate the employment of that person.

Amended by
No. 93, 1966,
s. 3.

Penalty: Two hundred dollars.

(7) Where employment has been made available to a person in accordance with this section or in accordance with the National Security (Reinstatement in Civil Employment) Regulations and is not accepted by him at the date at which it is made available, the application shall cease to have effect unless, within fourteen days thereafter, the person

applies to a Reinstatement Committee and that Committee determines that the person has reasonable cause for not so accepting that employment, in which event the application to the former employer shall be renewed forthwith in accordance with section fourteen of this Act.

Rights of
reinstated
employees.

17. Where any person has been reinstated in employment in accordance with this Division or in accordance with the National Security (Reinstatement in Civil Employment) Regulations then, for the purposes of determining the rights of that person, as against the employer in whose employment he has been reinstated, in respect of—

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

the continuity of the employment of that person by the employer shall be deemed not to have been broken by his absence from employment during any period between the date upon which that person left the employment to commence war service and the date upon which he was reinstated in employment, but that period shall not, by reason only of this section, be reckoned as part of the period of employment.

Termination
of
employment
after
reinstatement.

Sub-section (1)
amended by
No. 93, 1966,
s. 3.

18. (1) Where an employer has reinstated a former employee in accordance with this Division, or in accordance with the National Security (Reinstatement in Civil Employment) Regulations, he shall not, except as required by sub-section (5) of section sixteen of this Act or without reasonable cause, terminate the employment of that employee or vary it by employing the employee in an occupation, or under conditions, less favourable to him than the employment in which he was so reinstated.

Penalty: Two hundred dollars.

(2) In any proceedings for a contravention of this section, the onus shall, where the employment was terminated or varied within six months after reinstatement, be on the employer to prove that he terminated or varied the employment as required by sub-section (5) of section sixteen of this Act or that he had reasonable cause for terminating or varying the employment and, in any other case, the onus shall be on the prosecutor.

Payment of
portion of
fine or
compensation to
employee.

19. (1) Where an employer is convicted of an offence under this Division—

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

(2) In determining the amount of any compensation under the last preceding sub-section the court shall, where necessary, have regard to—

- (a) the nature of the employment in respect of which the offence occurred;
- (b) the duration of that employment and whether, but for the offence, it was likely to have been permanent employment for that employee or former employee;
- (c) the prospects of the employee or former employee in respect of that employment; and
- (d) any other factors which the court considers relevant.

(3) The like proceedings may be taken upon an order under paragraph (b) of sub-section (1) of this section as if the order were a judgment or order of the court in favour of the employee or former employee.

20. (1) The Minister may appoint a Reinstatement Committee in each State and Territory.

Appointment
of Reinstatement
Committees.
Sub-section (1)
amended by
No. 216, 1973,
s. 3.

(2) Each Reinstatement Committee shall consist of a chairman, one member to represent persons who have rendered war service, one member to represent employers and one member to represent employees.

(3) In the event of the illness or absence of the chairman of a Reinstatement Committee, any person appointed by the Minister to be a deputy chairman of the Committee shall have, and may exercise, all the powers and functions of the chairman.

(4) Any acts done by a deputy chairman as such shall not, in any proceedings, be questioned on the ground that the occasion for the exercise of his powers had not arisen or had ceased.

(5) All questions before a Reinstatement Committee shall be decided by a majority of votes.

(6) The chairman shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(7) Panels of persons to represent persons who have rendered war service, to represent employers, and to represent employees, respectively, shall be selected in such manner as the Minister determines, and the members of a Reinstatement Committee, other than the chairman, shall be selected from the panels in such manner as the Minister determines.

(8) A person shall not, at any meeting, act as a member of a Reinstatement Committee in relation to any matter in which that person has a direct interest as the applicant for reinstatement in employment or the employee, or as the employer or former employer, or as a member of the firm or company which is the employer or former employer.

(9) The regulations may prescribe the manner in which applications may be made to, or disputes may be referred to, Reinstatement Committees and the procedure in relation to the hearing of such applications or disputes.

(10) The members of Reinstatement Committees shall be paid remuneration and allowances at such rates (if any) as the Minister determines.

Extension of periods within which application, &c., may be made.

21. (1) A Reinstatement Committee may, on application by a person who has completed a period of war service, extend—

- (a) the period specified in sub-section (2) of section twelve of this Act as the period within which that person may apply for reinstatement in employment;
- (b) the period specified in sub-section (2) of section thirteen of this Act as the period within which that person shall specify a date as the date on which he will be available for employment; or
- (c) the period specified in sub-section (2) of section fourteen of this Act as the period at the expiration of which an application shall cease to have effect,

if it is satisfied that the person made the application as early as it was practicable and reasonable for him to do so and that, by reason of illness or other reasonable cause, the application should be granted.

(2) A Reinstatement Committee may extend any period specified in paragraph (a), (b) or (c) of the last preceding sub-section notwithstanding that that period has expired.

(3) Where, after the expiration of the period specified in sub-section (2) of section fourteen of this Act as the period at the expiration of which an application shall cease to have effect, a Reinstatement Committee has extended that period, the application shall thereupon revive and shall continue in force until the expiration of the extended period.

Certain persons excluded from application of this Division.

Inserted by Statutory Rules 1948, No. 9.

21A. The provisions of sections ten to twenty-one of this Act shall not apply to, or in relation to, any person who—

- (a) completes a period of war service after the thirtieth day of June, One thousand nine hundred and forty-nine; and
- (b) has not, on or before that date, made application for reinstatement in employment in accordance with this Division.

Division 2—Preference in Employment

22. (1) Section one hundred and seventeen of the *Australian Soldiers' Repatriation Act* 1920-1943 is repealed.

Repeal of s. 117 of the *Australian Soldiers' Repatriation Act*.

(2) The *Australian Soldiers' Repatriation Act* 1920-1943, as amended by this section, may be cited as the *Australian Soldiers' Repatriation Act* 1920-1945.³

23. (1)-(5)⁴ * * * * *

* * * * *

Sub-section (6) omitted by No. 43, 1945, s. 1.

24. (1) The provisions of this Division shall apply to the exclusion of any provisions, providing for preference in any matter relating to the employment of discharged members of the Forces, of any law of the Commonwealth or of a Territory, or of any industrial award, order, determination or agreement made or filed under or in pursuance of any such law, and whether the law, award, order, determination or agreement was enacted, made or filed before or after the commencement of this section.

Provisions of this Division to be exclusive of other laws, &c.

Sub-section (1) amended by No. 216, 1973, s. 3.

(1A) The reference in the last preceding sub-section to any law of the Commonwealth shall be deemed not to include a reference to the *Tradesmen's Rights Regulation Act* 1946-1952.

Substituted by No. 89, 1952, s. 3.

(2) The provisions of this Division shall apply to the exclusion of any provisions, providing for preference in any matter relating to the employment of discharged members of the Forces, of any law of a State, or of any industrial award, order, determination or agreement made or filed under or in pursuance of any such law, and whether the law, award, order, determination or agreement was enacted, made or filed before or after the commencement of this section.

25. In this Division, unless the contrary intention appears—

“employer” includes an intending employer;

Interpretation.

“employment” means remunerative employment and “employed” has a corresponding meaning;

“member of the Forces” includes a person who was, at any time during the war which commenced on the fourth day of August, One thousand nine hundred and fourteen, engaged on continuous full-time service as a member of—

(a) the Defence Force; or

(b) the Army Medical Corps Nursing Service;

“person entitled to preference” means—

(a) a member of the Forces who has been discharged or is awaiting discharge; and

(b) a person registered under section thirty-two of this Act.

Application.
Amended by
No. 216, 1973,
s. 3.

26. The application of this Division shall extend in relation to employment by the Crown in right of the Commonwealth or a State or by any authority constituted by or under any law of the Commonwealth or of a State or Territory.

Preference in
employment.

27. (1) An employer shall, in the engagement of any person for employment, engage, in preference to any other person, a person entitled to preference, unless he has reasonable and substantial cause for not doing so.

(2) Any person entitled to preference may apply in writing to the employer concerned to be engaged for employment in any position notwithstanding that employment in the position has not been offered to him.

(3) In determining whether reasonable and substantial cause exists for not engaging in employment a person entitled to preference, the employer concerned shall consider—

- (a) the length, locality and nature of the service of that person;
- (b) the comparative qualifications of that person and of other applicants for engagement in employment in the position concerned;
- (c) the qualifications required for the performance of the duties of the position;
- (d) the procedure (if any) provided by law for engaging persons for employment in the position; and
- (e) any other relevant matters.

(4) In determining, as between two or more persons entitled to preference who are applicants for engagement in employment, which of those persons shall be engaged in employment, the employer shall consider—

- (a) the matters referred to in paragraphs (a), (c), (d) and (e) of the last preceding sub-section; and
- (b) the comparative qualifications of those persons.

(5) Nothing in this section shall—

- (a) apply in relation to the engagement for employment by any employer of a person who is already employed by him; or
- (b) require the engagement in employment of a person who has, since the termination of his service, been convicted of an offence of such a nature that he is unsuitable for engagement in that employment.

28. (1) Where a person whom an employer has refused to engage in employment considers that, having regard to the provisions of the last preceding section, the employer should have engaged him in employment, that person may apply to a prescribed authority for an order under this section.

Applications by persons considering themselves entitled to preference in employment.
Substituted by No. 90, 1953, s. 3.

(2) On the hearing of the application, the prescribed authority shall have regard to the matters specified in sub-section (3) or sub-section (4) (whichever is applicable) of the last preceding section and shall make such order as he thinks just and reasonable in the circumstances.

(3) The prescribed authority shall not, on the hearing of the application, make an order directing an employer to engage a person in employment in a position if the authority is satisfied that that person—

- (a) would be unable to perform the duties of the position by reason of lack of skill or a reasonable degree of efficiency;
- (b) is physically or mentally unfit to perform the duties of the position; or
- (c) has, since the termination of his service, been convicted of an offence of such a nature that he is unsuitable for engagement in that employment.

(4) Except as provided by the next succeeding section, the decision of the prescribed authority is final and conclusive.

(5) The Governor-General may arrange with the Governor in Council of a State for the performance or execution by persons who hold office as Police, Stipendiary, Resident or Special Magistrates in that State of the functions of a prescribed authority under this section.

(6) Notice of an arrangement under the last preceding sub-section shall be published in the *Gazette*.

(7) For the purposes of this section, a prescribed authority is—

- (a) a person who holds office as a Stipendiary, Resident or Special Magistrate in a Territory; or
- (b) where the Governor-General has made an arrangement with the Governor in Council of a State under sub-section (5) of this section—a person who holds an office specified in the arrangement.

Amended by No. 216, 1973, s. 3.

(8) The regulations may make provision for regulating the procedure for or in relation to the making, hearing and determination of applications under this section and, in particular, for or in relation to the summoning of witnesses before, and the taking of evidence by, a prescribed authority.

Appeals.

29. (1) The Commonwealth Court of Conciliation and Arbitration may, if it thinks fit, grant special leave to appeal from any order under the last preceding section, and, in any such case, that Court shall have jurisdiction to hear the appeal.

(2) The Commonwealth Court of Conciliation and Arbitration may affirm, reverse or modify the order appealed from, and may make such order as ought to have been made in the first instance.

(3) The decision of the Commonwealth Court of Conciliation and Arbitration shall be final and conclusive.

(4) The jurisdiction of the Commonwealth Court of Conciliation and Arbitration under this section shall be exercised by a single Judge.

Persons not
to be
dismissed
without
reasonable
cause.

30. An employer shall not, without reasonable cause, terminate the employment of any person whom he has engaged in employment in accordance with the provisions of this Division.

Preference
Boards.
Sub-section (1)
amended by
No. 216, 1973,
s. 3.

31. (1) The Minister may appoint a Central Preference Board and, in each State and Territory, one or more Regional Preference Boards.

(2) Each Preference Board shall consist of a chairman, one member to represent persons who have rendered war service, one member to represent employers and one member to represent employees.

(3) In the event of the illness or absence of the chairman of a Preference Board, any person appointed by the Minister to be a deputy chairman of the Board shall have, and may exercise, all the powers and functions of the chairman.

(4) Any act done by a deputy chairman shall not, in any proceedings, be questioned on the ground that the occasion for the exercise of his powers had not arisen or had ceased.

(5) All questions before a Preference Board shall be decided by a majority of votes.

(6) The chairman shall have a deliberative vote and, in the event of an equality of votes, shall also have a casting vote.

(7) Panels of persons to represent persons who have rendered war service, to represent employers, and to represent employees, respectively, shall be selected in such manner as the Minister determines, and the members of a Preference Board, other than the chairman, shall be selected from the panels in such a manner as the Minister determines.

(8) Unless in any particular case the Minister is satisfied that it is not practicable, a majority of the members of a Preference Board selected from the panels shall be persons who have been members of the Forces.

(9) A person shall not, at any meeting, act as a member of a Preference Board in relation to any matter in which that person has an interest, whether personally or as a member of a firm or company.

(10) A Preference Board shall exercise such powers and functions as are prescribed.

(11) The members of Preference Boards shall be paid remuneration and allowances at such rates (if any) as the Minister determines.

32. (1) Where any person not otherwise entitled to the benefits of this Division considers that, having regard to the service performed by him in relation to the war, he is entitled to receive the benefits of this Division, he may apply to the Central Preference Board for registration.

Registration of certain persons entitled to preference.

(2) After the prescribed date, any such application shall be made to a Regional Preference Board.

(3) If the Board to which the application is made considers that that person is so entitled, the Board shall, subject to the next succeeding sub-section, register him accordingly.

(4) There shall be an appeal to the Central Preference Board from any decision of a Regional Preference Board under this section.

(5) An application under this section shall not be made after the second day of September, One thousand nine hundred and fifty-two.

Added by No. 89, 1952, s. 4.

33. (1) A person who contravenes or fails to comply with any provision of this Division, or contravenes or fails to comply with any order made under this Division, shall be guilty of an offence punishable on conviction by a fine not exceeding Two hundred dollars or imprisonment for a period not exceeding six months, or both.

Offences.
Sub-section (1) amended by No. 90, 1953, s. 4; and No. 93, 1966, s. 3.

(2) Where a person is convicted of an offence under this section, the court may order that a portion of the fine imposed shall be paid to such person entitled to preference as the court specifies in the order.

34.⁵ (1) Sections twenty-four to thirty-three (inclusive) of this Act shall cease to be in operation at midnight on the thirtieth day of June, One thousand nine hundred and sixty.

Operation of sections 24 to 33.

Substituted by No. 56, 1955, s. 3.

(2) When the sections of this Act referred to in the last preceding sub-section cease to be in operation, they shall be deemed to have been repealed and the provisions of section eight of the *Acts Interpretation Act* 1901-1950 shall have effect accordingly.

Sub-section (1) substituted by No. 52, 1958, s. 3.

Division 3—Apprenticeship

Amendment
of the
Defence Act.

35. (1) Section forty A of the *Defence Act* 1903-1941 is amended by omitting all the words after the words “Military Forces”.

(2) Section forty B of the *Defence Act* 1903-1941 is repealed.

(3) The *Defence Act* 1903-1941, as amended by this section, may be cited as the *Defence Act* 1903-1945.

Interpret-
ation.

Sub-section (1)
amended by
No. 216, 1973,
s. 3.

36. (1) In this Division—

“Apprenticeship Authority” means any person or body authorized by the Minister, by notice in the *Gazette*, to exercise and perform the powers and functions of an Apprenticeship Authority under this Division;

“employer” includes the Crown (whether in right of the Commonwealth or of a State) and any authority constituted by or under the law of the Commonwealth or of a State or Territory;

“trainee apprentice” means a person who is employed in a trade without indentures or other written contract of apprenticeship for the purpose of learning to be a skilled journeyman.

(2) In this Division, any reference to an employer shall, in relation to a person who is rendering or has rendered war service, include a reference to any person for the time being—

(a) carrying on an undertaking or service in which the first mentioned person was employed immediately prior to the commencement of his war service; or

(b) carrying on an undertaking or service with which that undertaking or service has been amalgamated or in which, immediately prior to the commencement of the employee’s war service, it was comprised.

Employers to
notify
Apprentice-
ship
Authorities
of
apprentices
engaged on
war service.

37. Where an apprentice has become or becomes engaged on war service and an Apprenticeship Authority has not already been notified by the apprentice’s employer, the employer shall forthwith notify an Apprenticeship Authority accordingly.

Penalty: One hundred dollars.

Amended by
No. 93, 1966,
s. 3.

38. Where an apprentice, whether before or after the commencement of this Division, is or has been absent from his usual employment by reason of his being engaged on war service for a period exceeding one week, his contract of apprenticeship shall be deemed to have been suspended during the period of his absence and shall remain suspended until it is revived, transferred or cancelled in accordance with this Division.

Suspension of contracts of apprenticeship.

39. (1) An apprentice who has been absent from his usual employment by reason of his being engaged on war service may, within two months after he ceases to be so engaged, make application to an Apprenticeship Authority for the revival of the contract of apprenticeship.

Revival of contracts of apprenticeship.

(2) Forthwith on receipt of the application, the Apprenticeship Authority shall give notice in writing to the employer of the receipt of the application, and the employer may, within fourteen days after the receipt of the notice, lodge an objection in writing to the revival of the contract of apprenticeship on the ground that he is no longer in a position to undertake the proper training of the apprentice.

(3) Forthwith after the expiration of the time for lodging objection, the Apprenticeship Authority shall consider the application and any objection received from the employer, and shall—

- (a) determine that the contract of apprenticeship shall, as from such date as it specifies, be revived; or
- (b) if the Apprenticeship Authority is satisfied that the employer is no longer in a position to undertake the proper training of the apprentice, authorize the transfer of the contract of apprenticeship to another employer, or, if that is impracticable, cancel the contract of apprenticeship.

(4) Where the Apprenticeship Authority determines that the contract of apprenticeship shall be revived, it shall have effect as from the date specified by the Apprenticeship Authority.

40. If any apprentice fails to make application within the time prescribed by the last preceding section, the Apprenticeship Authority shall, on application by the employer, cancel the contract of apprenticeship unless the Apprenticeship Authority is satisfied that the failure to make the application was occasioned by mistake, absence from the Commonwealth or other reasonable cause.

Failure to make application.

41. (1) Where a contract of apprenticeship is revived, the apprentice shall be entitled to resume his apprenticeship under the contract, and shall have absolute preference in employment over any apprentice engaged during his absence on war service, and the employer shall not refuse to permit the apprentice to resume his employment.

Right to employment
Sub-section (1)
amended by No.
93, 1966, s. 3.

Penalty: Two hundred dollars.

Amended by
No. 216, 1973,
s. 3.

(2) Where a contract of apprenticeship is revived, the Apprenticeship Authority may, if it considers it necessary so to do in order to protect the interests of any apprentice engaged during the period during which the contract was suspended—

- (a) if the number of apprentices who may be employed by the employer is limited by any law of the Commonwealth or of a State or Territory, or by any industrial award, order, determination or agreement—determine the number of apprentices who may be employed by the employer; and
- (b) in any event—authorize the transfer of any contract of apprenticeship to another employer.

(3) Where the Apprenticeship Authority, in pursuance of the last preceding sub-section, determines the number of apprentices who may be employed by an employer, the employer may employ that number of apprentices.

Variation of
contracts of
apprentice-
ship in
certain
circum-
stances.

42. (1) An Apprenticeship Authority may, in exercising its powers under section thirty-nine of this Act, review the contract of apprenticeship, and may vary any of its provisions in such a manner and to such extent as it deems just and equitable, and, if satisfied that the capabilities of the apprentice for the exercise of his trade have increased during the period of suspension of his contract of apprenticeship, may direct that the period or any portion of the period shall be included in the term of apprenticeship.

(2) Where an Apprenticeship Authority, in pursuance of the last preceding sub-section, varies any of the provisions of a contract of apprenticeship, or directs that the period, or any portion of the period during which a contract of apprenticeship was suspended shall be included in the term of apprenticeship, the contract shall be deemed to be so varied, and the apprentice shall, for all purposes be deemed to have served that period, or portion of that period, under and in accordance with the contract of apprenticeship in continuation of the period served by him prior to the suspension of the contract of apprenticeship.

Allowances
to
apprentices
in certain
cases.

Amended by
Statutory Rules
1945, No. 181.

43. Where a contract of apprenticeship in a trade, occupation or calling is revived by an Apprenticeship Authority and that authority does not direct that the whole of the period during which the contract was suspended shall be included in the term of apprenticeship, a prescribed authority may authorize the payment, during the time during which the apprentice is completing his apprenticeship, of an allowance at such a rate as, in the opinion of the prescribed authority, will ensure to the apprentice an income by way of wages and allowance equivalent to the wage he would have been earning in that trade, occupation or calling if his contract of apprenticeship had not been suspended.

44. The provisions of this Division shall apply, *mutatis mutandis*, to and in relation to trainee apprentices and the employers of trainee apprentices in the same manner and to the same extent as those provisions apply to and in relation to apprentices and the employers of apprentices, and any reference in this Division to a contract of apprenticeship shall include a reference to a contract of apprenticeship of a trainee apprentice.

Trainee apprentices.

45. An application to an Apprenticeship Authority under the National Security (Apprenticeship) Regulations shall have effect as if it had been made to the Apprenticeship Authority in pursuance of this Division, and any determination or direction of an Apprenticeship Authority under those regulations shall have effect as if it had been made in pursuance of this Division.

Saving.

45A. The provisions of sections thirty-six to forty-five of this Act shall not apply to, or in relation to, any person who ceases to be engaged on war service after the thirtieth day of June, One thousand nine hundred and forty-nine.

Certain persons excluded from application of this Division.
Inserted by Statutory Rules 1948, No. 9.

Division 4—Modification of Conditions of Entry to Employment

46. (1) The Governor-General may make regulations modifying or suspending, in relation to discharged members of the Forces—

Modification of conditions of entry into employment.

- (a) the requirements by way of training or practical experience, the completion of any course of study, the passing of any examination or the holding of any degree or diploma, to be complied with by persons desiring to engage in any profession, occupation, business, trade or industry; and
- (b) the requirement that a person shall obtain a licence, permit or other authority in relation to any profession, occupation, business, trade or industry.

(2) The Governor-General may make regulations providing that a specified proportion of any licences, permits or other authorities required in relation to any profession, occupation, business, trade or industry shall be granted to discharged members of the Forces.

(3) A regulation under this Division shall have effect according to its tenor notwithstanding anything inconsistent therewith in any other law.

Division 5—The Commonwealth Employment Service

Establishment
of the
Common-
wealth
Employment
Service.

47. (1) There shall be a Commonwealth Employment Service.

(2) The Minister may, for the purposes of the Commonwealth Employment Service, establish and maintain Commonwealth Employment Offices at such places as he thinks fit.

Functions of
Common-
wealth
Employment
Service.

48. The functions of the Commonwealth Employment Service shall be to provide services and facilities in relation to employment for the benefit of persons seeking to become employed, to change employment or to engage labour, to provide facilities to assist in bringing about and maintaining a high and stable level of employment throughout the Commonwealth and, in particular, but without limiting the generality of the foregoing—

- (a) to provide facilities to assist in the re-employment of discharged members of the Forces, including facilities relating to the operation of the preceding Divisions of this Part and to the operation of Part IV of this Act;
- (b) to provide facilities to assist in the re-establishment of civilians who have been engaged in war work;
- (c) to aid any person who has been trained (whether under Part III of this Act or otherwise) to become employed in the manner best suited to his training, experience, abilities and qualifications;
- (d) to provide means whereby any person whose name is entered in the Register of Disabled Persons referred to in Part IV of this Act may obtain employment;
- (e) to afford occupational advice, vocational guidance and other services to facilitate the engagement in employment and continued employment of persons in the manner best suited to their experience, abilities and qualifications;
- (f) to provide means whereby any person in receipt of unemployment benefit under the *Unemployment and Sickness Benefits Act* 1944, or of a re-employment allowance under Division 2 of Part VI of this Act, may obtain employment; and
- (g) to provide such advice and information services, and such other facilities in relation to employment, or to matters connected with employment, as the Minister determines.

Committees
to advise
Minister.

49. (1) The Minister may appoint such committees as he thinks fit to advise him on matters relating to the administration of this Division.

(2) The members of committees so appointed shall be paid such remuneration and allowances (if any) as the Minister determines.

PART III—VOCATIONAL TRAINING

50. (1) The Minister may, on behalf of the Commonwealth, establish a scheme, to be known as the Commonwealth Reconstruction Training Scheme, for the vocational training (including training for a professional occupation or for an agricultural occupation) of such classes of discharged members of the Forces and of other persons as the Minister determines.

Provision of training facilities.

Sub-section (1) amended by No. 48, 1951, s. 5.

(2) The Minister may, on behalf of the Commonwealth, make arrangements with any State for the use, for the purposes of this Part, of any services and facilities of the State in relation to vocational training (including training for a professional occupation or for an agricultural occupation).

(3) Any such arrangement may provide for the extension of any such services and facilities of the State and for the use of those services and facilities as extended in pursuance of the arrangement.

(4) The Minister may, on behalf of the Commonwealth, provide, or arrange for the provision of, facilities in connexion with any such scheme.

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

Substituted by No. 48, 1951, s. 5.

(5A) Subject to such limitations (if any) as the Minister determines, where the prescribed authority is satisfied that a person who has obtained a loan under the last preceding sub-section is unable to repay the amount of the loan or any interest thereon, or that for any other reason the amount of the loan or any part thereof, or any interest thereon, should be written off, the prescribed authority may write off that amount or interest accordingly.

Inserted by Statutory Rules, 1949, No. 104; amended by No. 48, 1951, s. 5.

(6) The Commonwealth may, subject to such conditions as the Minister determines, pay tuition and other like fees on behalf of persons undergoing training under this Part.

Amended by No. 48, 1951, s. 5.

(7) The Commonwealth may, subject to such conditions as the Minister determines, provide or supply to persons undergoing training under this Part, or arrange for the provision or supply to such persons, of such books, equipment, appliances and tools of trade as are necessary in connexion with the training.

Amended by No. 48, 1951, s. 5.

Central
Reconstruc-
tion Training
Committee.

51. (1) For the purposes of this Part there shall be a Central Reconstruction Training Committee.

(2) The Committee shall consist of a chairman and such number of other members as the Minister determines.

(3) The members of the Committee shall be appointed by the Minister and shall hold office on such terms and conditions as he determines.

(4) The functions of the Central Reconstruction Training Committee shall be—

- (a) to advise and assist the Minister with respect to such matters affecting the administration of the Commonwealth Reconstruction Training Scheme as are referred to it by the Minister; and
- (b) to supervise the conduct of the business of the Regional Training Committees,

together with such additional functions as the Minister determines.

Regional
Training
Committees,
Industrial
Committees
and
Professional
Committees.

52. (1) The Minister may, on the recommendation of the Central Reconstruction Training Committee, establish such Regional Training Committees, Industrial Committees and Professional Committees as he thinks fit.

(2) Each such committee shall consist of a chairman and such number of other members as the Minister determines.

(3) The members of each such committee shall be appointed by the Minister and shall hold office on such terms and conditions as the Minister determines.

(4) Each such committee shall assist in the administration of the Commonwealth Reconstruction Training Scheme and shall have such additional functions as the Minister determines.

Saving of
certain
rights.

53. Nothing done under this Part shall deprive any employer or employee of any rights under any industrial award, order, determination or agreement, or in accordance with any custom or usage in any profession, occupation, business, trade or industry.

Regulations.

54. The regulations may prescribe matters providing for or in relation to —

- (a) the selection of persons for training, or for any particular kind of training;
- (b) the method and time of application for training;
- (c) the payment of expenses to members of the Central Reconstruction Training Committee, the Regional Training Committees, the Industrial Committees and the Professional Committees established under this Part;
- (d) the giving effect to any scheme for the training of persons under this Part agreed upon between the Commonwealth and any

organization composed of or representative of employers or employees; and

- (e) such other matters as are necessary or convenient for carrying out or giving effect to this Part.

54A. The provisions of sections fifty to fifty-four of this Act shall not apply to, or in relation to, a person who ceases to be engaged on war service after the thirtieth day of June, One thousand nine hundred and forty-nine.

Certain persons excluded from application of Division.

Inserted by Statutory Rules 1949, No. 104.

PART IV—DISABLED PERSONS

55. In this Part, “disabled person” means a discharged member of the Forces, or a person included in any prescribed class of persons, who, by reason of injury, disease or deformity, is substantially handicapped in obtaining, or maintaining himself in, employment, or in undertaking work on his own account, of a kind which, but for that injury, disease or deformity, would, in the opinion of the Minister, be suitable to his age, experience and qualifications, and “disablement” has a corresponding meaning.

Interpretation.

56. (1) The regulations may provide for the establishment and maintenance of a Register of Disabled Persons (in this Part referred to as “the Register”).

Register of Disabled Persons.

(2) A person who desires his name to be entered in the Register shall make application in the prescribed manner and if the authority maintaining the Register is satisfied—

- (a) that the applicant is a disabled person;
- (b) that such prescribed conditions as to the entry of the name in the Register as are applicable to the applicant are complied with; and
- (c) that the applicant is not subject to any prescribed disqualification,

his name shall be entered in the Register.

57. (1) The Minister may, on behalf of the Commonwealth, provide, or arrange for the provision of, facilities for making persons whose names are entered in the Register, or who are included in prescribed classes of such persons, and who, by reason of their disablement, are in need of special treatment, fit to undertake training, to obtain employment and to maintain themselves in employment or to work on their own account.

Special treatment for disabled persons.

(2) The facilities referred to in the last preceding sub-section may include training, exercise, occupational and other therapy and other

facilities under medical supervision and under circumstances likely to restore the persons concerned to physical and mental fitness.

Allowances
for disabled
persons.

Sub-section (1)
amended by
No. 48, 1951,
s. 6.

58. (1) The Commonwealth shall pay to disabled persons whose names are entered in the Register such allowances and expenses, and at such rates and subject to such conditions, as the Minister determines.

(2) The rate per week of any allowance payable to a disabled person under this section shall not exceed the rate per week of the allowance which would be paid to that person if he were in receipt of a re-employment allowance under Division 2 of Part VI of this Act.

(3) An allowance under this section shall not be payable in respect of any period after the expiration of three months, or, in special circumstances, six months, from the date on which the name of that person was entered in the Register.

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

Amended by
No. 48, 1951,
s. 7.

59. The Minister may, on behalf of the Commonwealth, subject to such conditions as the Minister determines, provide, or arrange for the provision for disabled persons whose names are entered in the Register, of such books, equipment, appliances, tools of trade, artificial replacements, surgical aids and appliances as are necessary, and may also provide for the payment to disabled persons of expenses incidental to the provision of facilities under this Part.

Persons not
entitled to
double
benefits.

60. A person shall not be entitled to receive any assistance or benefit under any of the last three preceding sections if that person is entitled to receive the like assistance or benefit from the Repatriation Commission.

Employment
of disabled
persons.

61. (1) The regulations may provide for the employment by employers of any class specified in the regulations of—

- (a) a specified number of disabled persons whose names are entered in the Register; or
- (b) a specified proportion of disabled persons whose names are entered in the Register to other employees.

(2) In this section, “employers” includes the Crown in right of the Commonwealth or of a State and any authority constituted by or under any law of the Commonwealth or of a State or Territory of the Commonwealth.

Advisory
Committee.

62. (1) The Minister may appoint one or more committees consisting of a chairman and such number of persons (being, in the opinion of the Minister, representative of Commonwealth or State authorities and other bodies concerned with the welfare of disabled persons and of employers and employees) as the Minister determines.

(2) Each such committee shall advise the Minister as to the administration of the provisions of this Act in so far as they relate to disabled persons.

62A. The provisions of sections fifty-five to sixty-two of this Act shall not apply to, or in relation to, a person who ceases to be engaged on war service after the thirtieth day of June, One thousand nine hundred and forty-nine.

Certain persons excluded from application of Division.

Inserted by Statutory Rules 1949, No. 104.

PART V—DEMOBILIZATION

63. (1) The regulations may provide for the preparation and administration of a scheme for the demobilization of members of the Forces (other than members of the Forces specified in paragraph (f) or (g) of the definition of “member of the Forces” in section four of this Act), having regard to their re-establishment in civil life.

Demobilization.

(2) The scheme shall be prepared so as to apply, so far as is practicable, uniformly to members of the Military Forces, the Naval Forces and the Air Force.

(3) The provisions of the scheme so prepared shall have effect notwithstanding anything inconsistent therewith in any Act other than this Act.

PART VI—RE-ESTABLISHMENT ASSISTANCE

Division 1—Re-establishment Leave

64. A member of the Forces (other than a member of the Forces specified in paragraph (e), (f) or (g) of the definition of “member of the Forces” in section four of this Act) shall, immediately prior to his discharge from the Defence Force, unless his discharge is, in the opinion of a prescribed authority, other than an honourable discharge, be entitled to leave of absence (to be known as re-establishment leave)—

Leave on discharge.
Amended by Statutory rules 1945, No. 181.

(a) where the member has been engaged on war service for a period of not less than six months—for a period of thirty days; and

(b) in any other case—for a period of fifteen days.

65. (1) A member of the Forces may be discharged before entering upon re-establishment leave, or before completing his period of re-establishment leave, and in that case he shall, subject to this section, be paid a sum equivalent to his pay for the period of leave, or the uncompleted period of leave, as the case may be.

Payment in lieu of leave.
Sub-section (1) amended by Statutory Rules 1947, No. 52.

(2) For the purpose of the last preceding sub-section, “pay” includes such allowances as are prescribed.

Added by
Statutory Rules
1947, No. 52;
amended by
Statutory Rules
1948, No. 9.

(3) Where during the period of a member's service he made an allotment of his pay or a sum was ordered to be deducted from his pay and paid to or for the benefit of another person under the laws of the Commonwealth by which his rates of remuneration and the conditions thereof are prescribed, a sum equivalent to the amount ascertained in accordance with the next succeeding sub-section shall be deducted from the sum payable to the member under this section and shall be paid to the person to whom the allotment or the sum ordered to be deducted was payable:

Provided that, if, in the opinion of a prescribed authority within the meaning of the laws of the Commonwealth by which his rates of remuneration and the conditions thereof are prescribed, payment cannot be made to the allottee or the person to whom the sum ordered to be deducted was payable or the circumstances do not justify such payment, the prescribed authority shall direct that that sum be paid to the member.

Added by
Statutory Rules
1947, No. 52.

(4) The amount referred to in the last preceding sub-section shall be the amount which would, in accordance with the allotment or order, have been allotted or deducted if the period of the member's service had been extended for the period of leave of absence in lieu of which the member is paid under this section.

Division 2—Re-employment Allowances

Interpretation.

Sub-section (1)
amended by
Statutory Rules
1946, No. 167.

66. (1) In this Division, unless the contrary intention appears—

“adult dependant”, in relation to any person, means a person who is the spouse, widowed mother, divorced mother, deserted mother, mother whose husband is totally incapacitated, or unmarried mother of, and is substantially dependent for his or her support on, the first-mentioned person;

“child”, in relation to any person, means a person under the age of sixteen years who is a child (including a step-child, illegitimate child or adopted child) of, and is substantially dependent for his support on, the first-mentioned person;

“claim” means a claim for a re-employment allowance;

“claimant” means a person claiming a re-employment allowance;

“re-employment allowance” means a re-employment allowance under this Division.

(2) For the purposes of this Division, where a person who, although not legally married to another person, was, immediately prior to that other person's engagement on war service, substantially dependent for his or her support on that other person and was recognized as the wife or husband of that other person, the first-mentioned person shall be

deemed to be the spouse of that other person, but nothing in this sub-section shall be deemed to deprive the wife or husband of that other person of any right to receive a re-employment allowance to which the wife or husband would have been entitled if this sub-section had not been enacted.

67. (1) A prescribed authority may, subject to this Division, determine claims.

Determination of claims.

Sub-section (1) amended by Statutory Rules 1945, No. 181.

(2) Whenever it appears to a prescribed authority that sufficient reason exists for reviewing any determination under this Division, the prescribed authority may review, and may confirm, vary or annul the determination.

Amended by Statutory Rules 1945, No. 181.

68. (1) A prescribed authority may, for the purposes of this Division—

Taking of evidence and production of documents.

Sub-section (1) amended by Statutory Rules 1945, No. 181.

- (a) summon witnesses;
- (b) receive evidence on oath; and
- (c) require the production of documents.

(2) A person who has been summoned to appear before a prescribed authority shall not, without lawful excuse and after tender of reasonable expenses, fail to appear in obedience to the summons.

Amended by Statutory Rules 1945, No. 181.

(3) A person, whether summoned or not, who appears before a prescribed authority shall not—

Amended by Statutory Rules 1945, No. 181; and Act No. 93, 1966, s. 3.

- (a) refuse to be sworn as a witness or to make an affirmation;
 - (b) fail to answer any question which he is lawfully required to answer; or
 - (c) fail to produce any document he is lawfully required to produce.
- Penalty: One hundred dollars.

* * * * *

Section 69 repealed by Statutory Rules 1945, No. 181.

70. A person performing duties, or exercising powers and functions under this Division—

Secrecy.

Amended by Statutory Rules 1945, No. 181; and Act No. 93, 1966, s. 3.

- (a) shall not, directly or indirectly, except in the performance of his duties or in the exercise of his powers or functions under this Division, and while he has, or after he has ceased to have, any such duties, powers or functions, make a record of, or divulge or communicate to any person, any information acquired by him in the performance of those duties, or in the exercise of those powers or functions, with respect to the affairs of any other person;

- (b) shall, if the Minister or prescribed authority so directs, before entering upon his duties, or exercising any powers or functions, under this Division, make before a Justice of the Peace or a Commissioner for Declarations a declaration in accordance with the prescribed form; and
- (c) shall not be required to produce in court any claim or determination of a claim, or to divulge or to communicate to any court any matter or thing coming under his notice in the performance of his duties, or in the exercise of his powers or functions, under this Division, except where it is necessary to do so, for the purpose of carrying into effect the provision of this Division.

Penalty: Five hundred dollars.

Information may be disclosed in certain circumstances.

Sub-section (1) amended by Statutory Rules 1945, No. 181.

71. (1) Notwithstanding anything contained in the last preceding section, a person performing duties, or exercising powers and functions, under this Division, may—

- (a) if the Minister or prescribed authority certifies that it is necessary in the public interest that any information acquired by him in the performance of those duties, or in the exercise of these powers and functions, should be divulged, divulge that information to such person as the Minister or a prescribed authority directs;
- (b) divulge any such information to any prescribed person.

(2) Any person to whom information is divulged under the last preceding sub-section, and any person or employee under the control of that person, shall, in respect of that information, be subject to the same rights, privileges, obligations and liabilities under paragraphs (a) and (c) of the last preceding section as if he were a person performing duties under this Division and had acquired the information in the performance of those duties.

Re-employment allowance for discharged members of the Forces.

Amended by Statutory Rules 1945, No. 181; and 1949, No. 104.

72. Subject to this Division, a discharged member of the Forces—

- (a) who, in the opinion of a prescribed authority—
 - (i) has been honourably discharged not later than the thirtieth day of June, One thousand nine hundred and forty-nine, after not less than six months' war service; or
 - (ii) has been materially prejudiced by reason of his war service and has been honourably discharged not later than the thirtieth day of June, One thousand nine hundred and forty-nine, after less than six months' war service;
- (b) who is not in receipt of any payment under Division 1 of this Part;
- (c) who is residing in Australia; and
- (d) who satisfies the prescribed authority that he—
 - (i) is unemployed and that his unemployment is not due to his being a direct participant in a strike;

(ii) is capable of undertaking, and is willing to undertake work which, in the opinion of the prescribed authority, is suitable to be undertaken by him; and

(iii) has taken reasonable steps to obtain such work,

shall be qualified to receive a re-employment allowance.

73. A discharged member of the Forces shall not be qualified to receive a re-employment allowance if, since his discharge or the cessation of hostilities in all the wars in which His Majesty was engaged at the date of commencement of this Division, whichever is the later, he has been employed for a period or periods exceeding six months in the aggregate.

Disqualifi-
cation in
certain cases.

74. A person shall not be disqualified from receiving a re-employment allowance by reason only of his refusal to undertake work which has become available by reason of a strike or lock-out.

Persons not
to be
disqualified
in certain
cases.

75. A married woman shall not be qualified to receive a re-employment allowance unless a prescribed authority is satisfied that it is not reasonably possible for her husband to maintain her or that her husband is not under any legal obligation to maintain her.

Married
women.
Amended by
Statutory Rules
1945, No. 181.

76. (1) Subject to this Division, the rate of a re-employment allowance shall be—

Rate of re-
employment
allowance.

- (a) in the case of a man—Seven dollars per week;
- (b) in the case of a woman who is, in the opinion of a prescribed authority, capable of wholly or substantially maintaining herself by her own efforts—Seven dollars per week; and
- (c) in the case of a woman who is, in the opinion of a prescribed authority, capable of partially maintaining herself by her own efforts—such proportion of the amount specified in the last preceding paragraph as the prescribed authority determines.

Sub-section (1)
amended by
Statutory Rules
1945, No. 181;
Act No. 48,
1951, s. 8; and
Act No. 93,
1966, s. 3.

(2) The rate of a re-employment allowance payable under the last preceding sub-section shall be increased, or further increased, as the case may be—

Amended by
No. 56, 1955,
s. 4; and No. 93,
1966, s. 3.

- (a) in the case of a person with one or more adult dependants—by Three dollars fifty-five cents per week; and
- (b) in the case of a person with one or more dependent children—by Ninety cents per week in respect of each dependent child, but not exceeding in the aggregate Two dollars seventy cents per week in the case of a person with an adult dependant or Four dollars fifty cents in any other case.

Reduction of re-employment allowance.

Amended by No. 216, 1973, s. 3.

77. The rate per week of the re-employment allowance payable to any person shall be reduced by the amount (if any) of—

- (a) any pension payable to that person or to any dependant of that person;
- (b) any allowance (including sustenance allowance) or workers' compensation payable to that person or to any dependant of that person under any law of the Commonwealth or of a State or Territory; and
- (c) any amount earned or derived by that person from any permanent, temporary, casual or intermittent employment or occupation.

Period for which re-employment allowance payable.

Sub-section (1) amended by Statutory Rules 1945, No. 181.

78. (1) Subject to the next succeeding sub-section, a re-employment allowance shall be payable from such date and shall continue for such period or periods, not exceeding, in the aggregate, three months, or, in special circumstances, six months, as a prescribed authority determines.

(2) A re-employment allowance shall not be payable to any person in respect of any period after the expiration of twelve months from—

- (a) the date of his discharge; or
- (b) in the case of a person discharged while a patient in hospital—the date of his ceasing to be such a patient,

or from the cessation of hostilities in all the wars in which His Majesty was engaged at the date of commencement of this Division, whichever is the later.

Claims for re-employment allowances.

Sub-section (1) amended by Statutory Rules 1945, No. 181.

79. (1) A claim for a re-employment allowance shall be made in accordance with such form and in such manner as a prescribed authority determines.

(2) Every claim shall be investigated in such manner as a prescribed authority determines.

Amended by Statutory Rules 1945, No. 181.

Re-employment allowance to be paid only while recipient qualified.

Amended by Statutory Rules 1945, No. 181.

80. Subject to this Division, a re-employment allowance shall be paid to a person only so long as a prescribed authority is satisfied that that person continues to be qualified to receive it.

81. A prescribed authority may postpone for such period as he thinks fit the date from which a re-employment allowance shall be payable to any person, or may cancel the payment of a re-employment allowance to any person, as the case requires—

- (a) if that person voluntarily became unemployed without good and sufficient reason;
- (b) if that person became unemployed by reason of his misconduct as a worker;
- (c) if that person has refused or failed, without good and sufficient reason, to accept an offer of employment which the prescribed authority considers to be suitable; or
- (d) if that person becomes imprisoned or an inmate of a hospital for the insane.

Postpone-
ment and
cancellation
of re-
employment
allowances
in certain
cases.

Amended by
Statutory Rules
1945, No. 181.

82. A re-employment allowance shall be paid, in such manner as a prescribed authority determines, to the person entitled thereto, but the prescribed authority may determine that the whole or part of the allowance shall be paid to such other person as the prescribed authority approves, in which case payment shall be made accordingly.

Manner of
payment of
re-
employment
allowance.

Amended by
Statutory Rules
1945, No. 181.

83. (1) Whenever so required by a prescribed authority, a person in receipt of a re-employment allowance shall furnish to the prescribed authority a statement, in accordance with a form approved by the prescribed authority, relating to any matter which might affect the payment to him of the re-employment allowance.

Beneficiaries
to furnish
statements as
required.

Sub-section (1)
amended by
Statutory Rules
1945, No. 181;
and Act No. 93,
1966, s. 3.

Penalty: Forty dollars.

(2) If, for any reason, a prescribed authority is satisfied that the payment of a re-employment allowance to any person should be cancelled, or that the rate of a re-employment allowance paid to any person is greater or less than it should be, the prescribed authority may cancel the payment of the allowance, or reduce or increase the rate of the allowance, paid to that person accordingly.

Amended by
Statutory Rules
1945, No. 181.

84. (1) Re-employment allowances shall be payable in weekly instalments on such days as a prescribed authority determines.

Re-
employment
allowances
to be paid
weekly.

(2) Where payment of any instalment of a re-employment allowance has not been made within one month after the date on which the instalment became payable, the instalment shall not (unless the prescribed authority, in special circumstances, otherwise determines) be paid.

Sub-section (1)
amended by
Statutory Rules
1945, No. 181.

85. Subject to this Division, re-employment allowances shall be absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

Re-
employment
allowances
to be
absolutely
inalienable.

Information as to recipients of re-employment allowances.

Amended by Statutory Rules 1945, No. 181; and Act No. 93, 1966, s. 3.

86. A prescribed authority may require any person whom the prescribed authority believes to be in a position to do so to furnish to the prescribed authority a confidential report relating to any matter which might affect the payment of a re-employment allowance to any person and a person so required shall not fail to furnish the report accordingly within a reasonable time and shall not furnish a report which is false or misleading in any particular.

Penalty: One hundred dollars or imprisonment for three months.

Receipt of income by recipient of re-employment allowance to be notified.

Amended by Statutory Rules 1945, No. 181; and Act No. 93, 1966, s. 3.

87. Whenever—

- (a) any person in receipt of a re-employment allowance earns, derives or receives any income or other payment the receipt of which affects the rate of the re-employment allowance payable to him; or
- (b) any person in receipt of a re-employment allowance earns, derives or receives any income or other payment which was not received by him when the re-employment allowance was granted,

he shall, within seven days after the acquisition or receipt thereof, give notice to a prescribed authority accordingly.

Penalty: Forty dollars.

Recovery of over-payments.

88. Where, in consequence of any false statement or representation, or in consequence of any failure to give notice as required by the last preceding section, any amount has been paid by way of re-employment allowance which would not have been paid but for the false statement or representation, or failure to give notice, or where any amount of re-employment allowance which is not payable has been paid, the amount so paid shall be recoverable in any court of competent jurisdiction from the person to whom, or on whose account, the amount was paid, or from the estate of that person, as a debt due to the Commonwealth.

Offences.

Sub-section (1) amended by No. 93, 1966, s. 3.

89. (1) A person shall not—

- (a) make, either orally or in writing, a false or misleading statement in connexion with, or in support of, any claim, either for himself or for any other person;
- (b) obtain payment of a re-employment allowance or any instalment thereof which is not payable;
- (c) obtain payment of a re-employment allowance or any instalment thereof by means of any false or misleading statement; or
- (d) make or present to any officer doing duty in relation to this Division any statement or document which is false in any particular.

Penalty: One hundred dollars or imprisonment for three months.

(2) Any person convicted of an offence against this section may, in addition to the penalty imposed for the offence, be ordered to repay to

the Commonwealth any amount paid by way of re-employment allowance in consequence of the act in respect of which he was convicted.

90. Nothing contained in any law of a State or Territory shall operate so as to prohibit any person from furnishing any information, or making any books, documents or papers available, to a prescribed authority or to any person doing duty in relation to this Division, for the purposes of this Division.

Indemnity to certain persons.
Amended by Statutory Rules 1945, No. 181; and Act No. 216, 1973, s. 3.

Division 3—Re-establishment Loans

91. (1) In this Division—

“agricultural occupation” includes an occupation by way of farming, horticultural, viticultural, apicultural, dairy farming, poultry farming, pastoral or grazing operations or any other prescribed form of primary production;

Interpretation.
Sub-section (1) amended by Statutory Rules 1945, No. 181.

“eligible person” means—

(a) a discharged member of the Forces who—

- (i) in the opinion of a prescribed authority, has been honourably discharged after not less than six months' war service or has been materially prejudiced by reason of his war service and has been honourably discharged after less than six months' war service; and
- (ii) was, immediately prior to his engagement on war service, engaged in an occupation, business or practice on his own account, as an active member of a partnership, as a share-farmer or as a contract worker; or

(b) the widow who has not re-married of a deceased member of the Forces—

- (i) whose death occurred in such circumstances that there is a liability under the *Australian Soldiers' Repatriation Act 1920-1945*³ to pay war pension in respect of his death or that there would be a liability if the widow were not rendered ineligible for war pension by virtue of a provision of that Act having effect irrespective of the circumstances of the death; and
- (ii) who was, immediately prior to his engagement on war service, engaged in an occupation, business or practice on his own account, as an active member of a partnership, as a share-farmer or as a contract worker.

Amended by
Statutory Rules
1945, No. 181.

(2) For the purposes of this Division, a person who, at the time of the occurrence of the event resulting in the death of a member of the Forces, was recognized as the wife of that person although not legally married to him, shall, if a prescribed authority is satisfied that that person was wholly or partly dependent upon the earnings of the member, be deemed to be the widow of that member and that member shall be deemed to have been her husband, but nothing in this sub-section shall prevent the making of a loan under this Division to the lawful widow of the member, or the guaranteeing under this Division of repayment of a loan (including interest thereon) made, or to be made, to her.

Amended by
Statutory Rules
1945, No. 181.

(3) Where a person is not an eligible person by reason only that that person, or the husband of that person, was not, immediately prior to his engagement on war service, engaged in an occupation, business or practice on his own account, as an active member of a partnership, as a share-farmer or as a contract worker, a prescribed authority may, if it considers it desirable in the circumstances of the case, determine that that person shall be an eligible person.

Loans for
establish-
ment in
business or
civil
occupation.
Sub-section (1)
amended by
Statutory Rules
1945, No. 181.

92. (1) Subject to this Division, a prescribed authority may, if, in the opinion of the prescribed authority, an eligible person is in need of financial assistance to enable him to establish or re-establish himself satisfactorily in civil life, make a loan to that person so that that person may—

- (a) purchase or take on lease any land or premises, purchase or take on lease any business, effect improvements on land, or purchase, take on hire or otherwise acquire tools of trade, stock, live-stock, plant or equipment, to enable him—
 - (i) to engage in or resume any occupation, business or practice, whether on his own account, as an active member of a partnership, as a share-farmer or as a contract worker;
 - (ii) to expand or develop his business or practice;
 - (iii) to establish a co-operative business with other persons; or
 - (iv) to carry on an occupation, business or practice more efficiently;
- (b) reduce or discharge any mortgage, charge, bill of sale or other encumbrance on property owned by him and used in his occupation, business or practice;
- (c) fulfil his obligations under a hire purchase agreement in respect of property so used;
- (d) pay any subscription, fee or other sum of money to enable or qualify him to engage in or resume any occupation, business or practice; or
- (e) otherwise establish or re-establish himself in civil life by engaging in or resuming an occupation, business or practice, whether

on his own account, as an active member of a partnership, as a share-farmer or as a contract worker.

(2) Subject to this Division, a prescribed authority may guarantee the repayment of any loan (including interest thereon) made or to be made for any of the purposes specified in paragraphs (a), (b), (c), (d) and (e) of the last preceding sub-section.

Amended by
Statutory Rules
1945, No. 181.

(3) A prescribed authority may, instead of making a loan of money under sub-section (1) of this section, make available property to an eligible person referred to in that sub-section, and the amount of the value of the property so made available shall be deemed to be a loan of that amount made to that person.

Added by
Statutory Rules
1945, No. 181.

93. (1) The amount of any loan made, or in respect of which a guarantee is given, under this Division to any eligible person (or, if there is more than one such loan, the aggregate of those loans) shall not exceed—

Amount of
loans, &c.
Sub-section (1)
amended by
No. 48, 1951,
s. 9; and No. 93,
1966, s. 3.

- (a) Seven hundred and fifty dollars;
- (b) where the loan is for the purpose of enabling the eligible person to engage in or resume an agricultural occupation—Three thousand dollars; or
- (c) where the loan is for the purpose of enabling the eligible person to engage in or resume a prescribed occupation, business or practice—One thousand five hundred dollars.

(2) The aggregate amount of any loans made, or in respect of which guarantees are given, under this Division to more than one eligible person in respect of the same enterprise shall not exceed the amount of the loan which could have been made, or in respect of which a guarantee could have been given, to one eligible person in respect of that enterprise.

(3) Where two or more eligible persons have agreed to carry on an enterprise jointly, the provisions of sub-section (2) of this section shall not apply in relation to any loans made, or in respect of which guarantees are given, under this Division to each of those persons who, in the opinion of a prescribed authority, devotes or intends to devote the whole of his time to active participation in that enterprise.

Added by
Statutory Rules
1946, No. 177.

(4) Where, prior to the commencement of this sub-section, a prescribed authority has purported to make a loan, or to give a guarantee in respect of a loan, in pursuance of this Division, and the loan could have been validly made, or the guarantee validly given, if the last preceding sub-section had been in force when the loan was made or the guarantee given, the provisions of this Division shall apply in relation to that loan or guarantee.

Added by
Statutory Rules
1946, No. 177.

Added by
Statutory Rules
1946, No. 177.

(5) Where, prior to the commencement of this sub-section, the prescribed authority has purported to make a loan, or to give a guarantee in respect of a loan, in pursuance of this Division, for the purpose of enabling an eligible person to engage in or resume an occupation, business or practice which was not, at the time when the loan was made or the guarantee given, a prescribed occupation, business or practice, but is subsequently so prescribed, the provisions of this Division shall apply in relation to that loan or guarantee.

Terms and
conditions of
loans.

Sub-section (1)
amended by
Statutory Rules
1945, No. 181.

94. (1) Subject to this Division, a loan made or guarantee given under this Division by a prescribed authority shall be made or given on such security and on such terms and conditions as the prescribed authority determines.

Added by
Statutory Rules
1945, No. 181.

(2) The regulations may make provision for or in relation to the form, registration and effect of securities (other than securities over land) given in pursuance of the last preceding sub-section.

Added by
Statutory Rules
1946, No. 165.

(3) An infant or minor may give a security, and the security shall have the same effect and may be enforced to the same extent as if he were not an infant or minor.

Interest on
loans.

95. Loans made under this Division shall bear interest at such rate as is prescribed.

Conditions
to be
complied
with by
applicants.

Sub-section (1)
amended by
Statutory Rules
1945, No. 181;
1949, No. 104;
and Act No. 48,
1951, s. 10.

96. (1) Subject to this section, a loan shall not be made or guarantee given under this Division by a prescribed authority unless—

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

- (i) within five years after the cessation of hostilities in all the wars in which His Majesty was engaged at the date of commencement of this Division;
- (ii) within five years after the date, being not later than the thirtieth day of June, One thousand nine hundred and forty-nine, on which the applicant, or, where the applicant is a widow, her late husband, ceased to be engaged on war service;
- (iii) within five years after the date of the termination or completion of any training which the applicant, or, where the applicant is a widow, the applicant or her late husband, received under Part III of this Act;
- (iv) within five years after the date of the termination or completion of a contract of apprenticeship of the applicant, or, where the applicant is a widow, of her late husband, being a contract which was revived under Division 3 of Part II of this Act;
- (v) within five years after the date, being not later than the thirty-first day of December, One thousand nine hundred and fifty-four, of the termination or completion of any

vocational training which the applicant, or, where the applicant is a widow, the applicant or her late husband, has undertaken without expense to the Commonwealth; or

- (vi) where the applicant is a widow whose husband has died without making an application in relation to which any of the last five preceding sub-paragraphs applies before the expiration of the period within which he could have applied if he had lived—before whichever is the later of the date of the expiration of a period of one year after the death of her husband and the date on which the youngest of her children (if any) attains the age of six years,

whichever is the latest;

- (b) the applicant satisfies the prescribed authority that he has the ability and qualifications to engage in, with a reasonable prospect of success, the occupation, business or practice in respect of which the loan or guarantee is sought;
- (c) the applicant satisfies the prescribed authority that the applicant's engaging in the occupation, business or enterprise is a suitable means of establishing or re-establishing himself in civil life; and
- (d) the applicant satisfies the prescribed authority that he is likely to be able to repay the amount of the loan made or guaranteed within a reasonable period.

(2) In determining whether a loan should be made or a guarantee given to an applicant, the prescribed authority shall take into account—

- (a) the effect of the applicant's war service on his capacity and opportunities to establish or re-establish himself in civil life; and
- (b) where there are limited opportunities for the establishment of a business, practice or enterprise of a particular type or in a particular locality—the applications of other eligible persons and the effect of the establishment of the business, practice or enterprise on other persons conducting businesses, practices or enterprises of the same or a similar type, or on persons who have ceased to conduct such businesses, practices or enterprises by reason of circumstances attributable to the war.

96A. Where a loan has been made under this Division to an eligible person (being a discharged member of the Forces) and after the second day of September, One thousand nine hundred and forty-five and before the first day of July, One thousand nine hundred and forty-seven, that person entered upon a further period of war service as a member of the Forces, he may, after completion of that further period of war service, being not later than the thirtieth day of June, One thousand nine hundred and forty-nine, if the obligations under this Division in respect of that loan have been fully discharged, be granted a further loan subject to and in accordance with the provisions of this Division.

Loan in respect of further period of service.

Inserted by Statutory Rules 1948, No. 9; amended by Statutory Rules 1949, No. 104.

Loans to be repayable if improperly expended.

Sub-section (1) amended by Statutory Rules 1945, No. 181.

97. (1) Where a prescribed authority is satisfied—

- (a) that any money lent under this Division by that prescribed authority has not been applied for the purpose for which it was lent or has not been carefully and economically expended; or
- (b) owing to the misconduct, idleness or inefficiency of the person to whom the loan was made, the purpose for which the loan was made is not likely to be achieved,

the balance of the loan then remaining unpaid shall, at the option of the prescribed authority, become due and payable on demand and be recoverable with interest thereon and, after the exercise of the option, interest shall accrue from day to day.

Amended by Statutory Rules 1945, No. 181.

(2) Where the prescribed authority by which a loan has been made under this Division is satisfied as to any of the matters specified in paragraphs (a) and (b) of the last preceding sub-section, the prescribed authority may vary all or any of the terms and conditions on which the loan was made.

Substituted by Statutory Rules 1945, No. 181.

(3) Where the prescribed authority by which a loan has been made under this Division is satisfied that, in view of the efficiency or industry of the person to whom the loan was made, it is desirable to do so, the prescribed authority may vary, in favour of that person, all or any of the terms and conditions on which the loan was made.

Arrangement with Commonwealth Trading Bank, Commonwealth Development Bank, State authorities and Savings Banks.

Sub-section (1) substituted by No. 16, 1959, s. 3.

98. (1) A prescribed authority may, with the consent of the Treasurer, enter into an agreement with the Commonwealth Trading Bank of Australia, with the Commonwealth Development Bank of Australia, with a State, with an authority of a State or with a Savings Bank for the performance by the Commonwealth Trading Bank of Australia, by the Commonwealth Development Bank of Australia, by the State, by the authority or by the Savings Bank of such of the functions of the prescribed authority under this Division as are specified in the agreement.

Inserted by Statutory Rules 1946, No. 14.

(1A) Where any Bank, State or authority which has entered into any agreement under the last preceding sub-section makes any loan to, or gives any guarantee with respect to a loan made to, an eligible person, in accordance with that agreement, the Bank, State or authority, as the case may be, may take any security in respect of the loan or guarantee in its own name.

Amended by Statutory Rules 1945, No. 181.

(2) A prescribed authority may, with the consent of the Treasurer, make loans to, and may, on behalf of the Commonwealth, give financial guarantees to an authority of a State or a Savings Bank making loans to, or giving guarantees with respect to loans made to, eligible persons, in accordance with the agreement.

99. Subject to such limitations (if any) as are prescribed, where a prescribed authority is satisfied that a person who has obtained a loan under this Division from the prescribed authority is unable to repay the amount of the loan or any interest thereon, or that for any other reason the amount of the loan or any part thereof, or any interest thereon, should be written off, the prescribed authority may write off that amount or interest accordingly.

Writing off loans.
Amended by Statutory Rules 1945, No. 181.

Division 4—Business Re-establishment Allowances

100. In this Division, “adult dependant” and “child” have the same respective meanings as in Division 2 of this Part and “agricultural occupation” and “eligible person” have the same respective meanings as in Division 3 of this Part.

Definitions.
Amended by Statutory Rules 1949, No. 104.

101. (1) Where a prescribed authority is satisfied that an eligible person is in need of a financial allowance to enable him to establish or re-establish himself satisfactorily in civil life in an occupation, business or practice on his own account, as an active member of a partnership, as a share-farmer or as a contract worker, the prescribed authority may pay to that person an allowance to be known as a business re-establishment allowance.

Business re-establishment allowance.
Sub-section (1) amended by Statutory Rules 1945, No. 181.

(2) A business re-establishment allowance shall be payable only in respect of the period during which the income derived by the person concerned from the occupation, business or practice is, in the opinion of the prescribed authority, inadequate.

(3) The rate per week of a business re-establishment allowance shall be such as the prescribed authority determines, having regard to all the circumstances of the case, including the income of the person concerned (whether from the occupation, business or practice or from any other source), but shall not exceed the appropriate rate of the allowance specified in the next succeeding section.

Substituted by Statutory Rules 1947, No. 87.

(4) Notwithstanding anything contained in the last preceding sub-section, the amount of any war pension payable to a person or a dependant of that person under the *Repatriation Act 1920-1956* or of a pension payable to a person or a dependant of that person under the *Repatriation (Far East Strategic Reserve) Act 1956-1962* or under the *Repatriation (Special Overseas Service) Act 1962* shall be deemed not to be income for the purposes of that sub-section.

Added by Statutory Rules 1949, No. 104; amended by Act No. 96, 1956, s. 3; and Act No. 92, 1962, s. 3.

Rate of
business
re-establish-
ment
allowances.

Inserted by
Statutory Rules
1947, No. 87.

Sub-section (1)
amended by
Statutory Rules
1949, No. 104;
Act No. 48,
1951, s. 11; Act
No. 89, 1952,
s. 6; and Act
No. 93, 1966,
s. 3.

101A. (1) The rate of a business re-establishment allowance shall, except in the case of a person engaged in an agricultural occupation, not exceed—

- (a) in the case of a man—Ten dollars fifty cents per week;
- (b) in the case of a woman who is, in the opinion of a prescribed authority, capable of wholly or substantially maintaining herself by her own efforts—Ten dollars fifty cents per week; and
- (c) in the case of a woman who is, in the opinion of a prescribed authority, capable of only partially maintaining herself by her own efforts—such proportion of the amount specified in the last preceding paragraph as the prescribed authority determines.

Amended by
Statutory Rules
1949, No. 104;
and Act No. 93,
1966, s. 3.

(2) The rate of a business re-establishment allowance payable under the last preceding sub-section shall be increased, or further increased, as the case may be—

- (a) in the case of a person with one or more adult dependants—by Two dollars twenty cents per week; and
- (b) in the case of a person with one or more dependent children—by Ninety cents per week in respect of each dependent child, but not exceeding in the aggregate in respect of dependent children—Two dollars seventy cents per week in the case of a person with an adult dependant, or Four dollars fifty cents in any other case.

Amended by
Statutory Rules
1949, No. 104.

(3) The rate of a business re-establishment allowance, in the case of a person engaged in an agricultural occupation, shall not exceed the amount which that person would have received if he had been in receipt of an allowance under Part III of this Act.

Period of
payment of
re-establish-
ment
allowance.

102. (1) Subject to this section, a business re-establishment allowance shall not be payable to any person in respect of any period after the expiration of six months (or, if that person is engaged in an agricultural occupation, twelve months) from the date of his engagement in the occupation, business or practice concerned.

Amended by
Statutory Rules
1945, No. 181.

(2) Except in the case of a person engaged in an agricultural occupation, the prescribed authority by which a business re-establishment allowance is paid may, if the prescribed authority considers it necessary in any particular case, extend payment of the allowance for such additional period as it considers reasonable, but the amount paid during the extended period shall be deemed to be a loan made by the prescribed authority under Division 3 of this Part and the provisions of that Division relating to loans shall be applicable thereto.

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

Period within which application is to be made.

Substituted by No. 48, 1951, s. 12.

(a) within five years after—

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

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

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

whichever is the latest.

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

- (a) within whichever of the periods referred to in the last preceding sub-section is the latest; or
- (b) within three years after the date on which the applicant commenced full-time working in that occupation,

whichever is the earlier.

PART VII—SERVICEMEN'S SETTLEMENT

Advances to
States.

103. The Commonwealth may, in accordance with any agreement entered into between the Commonwealth and any State, make advances or payments to a State—

(a) to enable that State to—

- (i) acquire land for the purpose of settlement by discharged members of the Forces;
- (ii) develop or improve land for settlement by discharged members of the Forces; and
- (iii) settle discharged members of the Forces on land so acquired, developed or improved; and

(b) for such other purposes relating to the settlement of discharged members of the Forces on land as are prescribed.

PART VIII—HOUSING

Housing.

104. (1) The Minister may, on behalf of the Commonwealth, enter into an agreement with any State for the allocation of dwelling-houses amongst discharged members of the Forces, or classes of discharged members of the Forces, and other persons or classes of persons.

(2) In this section, "dwelling-house" means any building or part of a building occupied or intended to be occupied as a separate dwelling and constructed or purchased in accordance with any agreement between the Commonwealth and the State relating to housing.

PART IX—LEGAL SERVICE BUREAUX

Heading
amended by
Statutory Rules
1947, No. 100.

Legal service
bureaux.

Sub-section (1)
amended by
Statutory Rules
1947, No. 100.

105. (1) The legal service bureaux established by the Attorney-General for the purpose of furnishing legal advice to members of the Forces, discharged members of the Forces and the dependants of such members and discharged members, which are in existence at the date of commencement of this Part shall continue in existence.

Amended by
Statutory Rules
1947, No. 100.

(2) The Attorney-General may establish additional legal service bureaux at such places as he thinks fit.

Part X (sections
106-135)
repealed by
No. 7, 1958,
s. 4.

* * * * *

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

Part XI (sections 136 and 137) repealed, and Part XI (sections 138-152) inserted by No. 48, 1951, s. 13.

* * * * *

Sections 136 and 137 repealed by No. 48, 1951, s. 13.

Division 1—General

Division 1 added by No. 48, 1951, s. 13.

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

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

Added by No. 48, 1951, s. 13.

Sub-section (1) amended by No. 56, 1955, s. 5; and No. 7, 1958, s. 10.

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

Amended by No. 89, 1952, s. 7; and No. 56, 1955, s. 5.

- (a) a reference in those provisions to a member of the Forces shall be read as a reference to a member of the Forces as defined by the next succeeding section;
- (b) a reference in those provisions to the war or to hostilities in all the wars in which His Majesty was engaged at the date of commencement of a Division of a Part of this Act shall be read as a reference to the war as defined by the next succeeding section;
- (c) a reference in those provisions to Part IV of this Act shall be read as a reference to Division 3 of this Part;
- (d) section seventy-two of this Act shall be read as if the words “not later than the thirtieth day of June, One thousand nine hundred and forty-nine,” were omitted;
- (da) if the obligations under Division 3 of Part VI of this Act in respect of a loan made to an eligible person under section ninety-two of this Act and a further loan (if any) made to the same person under section ninety-six A of this Act have been fully discharged, the amounts of that loan and of that further loan (if any) shall be disregarded in connexion with the making of a loan to that person as an eligible person within the meaning of that Division in its extended operation;
- (e) section ninety-six of this Act shall be read as if paragraph (a) of sub-section (1) of that section were omitted and the following paragraph were inserted in its stead:—

“(a) an application for the loan or guarantee is made within the prescribed period;” and

- (f) the regulations may provide that a business re-establishment allowance is not payable unless an application for the allowance is made within the prescribed period.

Amended by
No. 89, 1952,
s. 7.

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

(4) For the purposes of the last preceding sub-section, a member of the Forces who, on the expiration of his original enlistment or subsequent re-engagement, re-engages to serve for a further period, shall, if the aggregate of the period of original enlistment and the period or periods of re-engagement exceeds three years, be deemed to have enlisted for a period exceeding three years.

Interpretation.

Added by
No. 48, 1951,
s. 13.

Sub-section (1)
amended by
No. 89, 1952,
s. 8; and
No. 216, 1973,
s. 3.

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

“member of the Forces” means—

- (a) a person who served on war service as a member of the Defence Force; and
- (b) a person—
 - (i) who served on war service as a member of the naval, military or air forces of a part of the Queen’s dominions other than the Commonwealth; and
 - (ii) who is resident in Australia or in an external Territory and satisfies a prescribed authority that he was domiciled in Australia or an external Territory immediately before his appointment or enlistment;

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

“port” includes airport;

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

“war service” means, in relation to a member of the Forces, his service while—

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

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

(a) shall be deemed to have commenced—

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

(b) shall be deemed to have ended—

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

Division 2—Reinstatement in Civil Employment

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

Division 2 added by No. 48, 1951, s. 13.

Modification of the Defence Act.

Added by No. 48, 1951, s. 13.

141. (1) In this Division, unless the contrary intention appears—

“employer” includes the Crown (whether in right of the Commonwealth or of a State) and an authority constituted by or under the law of the Commonwealth or of a State or Territory;

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

- (a) carrying on an undertaking or service in which the member of the Forces was so employed; or
- (b) carrying on an undertaking or service with which that undertaking or service has been amalgamated or in which that undertaking or service was comprised during those fifty-six days;

“member of the Forces” means a person who, on or after the twenty-sixth day of June, One thousand nine hundred and fifty, enlisted in the Permanent Military Forces for a period not exceeding

Interpretation.

Added by No. 48, 1951, s. 13.

Sub-section (1) amended by No. 89, 1952, s. 9; and No. 216, 1973, s. 3.

three years and was allotted to that portion of those Forces raised or maintained for service in Korea.

Added by
No. 89, 1952,
s. 9.

(2) A member of the Forces who, on the expiration of his original enlistment or subsequent re-engagement, re-engages to serve for a further period shall, if the aggregate of the period of original enlistment and the period or periods of re-engagement exceeds three years, be deemed to have enlisted for a period exceeding three years.

Application
for reinstatement in
employment.

Added by
No. 48, 1951,
s. 13.

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

Substituted by
No. 89, 1952,
s. 10.

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

(a) earlier than fourteen days before the date of discharge of the member of the Forces; or

(b) later than—

(i) one month after the date of discharge of the member of the Forces; or

(ii) where, at the date on which the *Re-establishment and Employment Act 1952* receives the Royal Assent, the member of the Forces has been discharged—one month after that date.

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

Added by
No. 48, 1951,
s. 13.

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

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

Expiration
and renewal
of
applications.

Added by
No. 48, 1951,
s. 13.

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

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

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

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

Reinstatement in employment.
Added by No. 48, 1951, s. 13.
Sub-section (1) amended by No. 93, 1966, s. 3.

Penalty: Two hundred dollars.

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

Amended by No. 89, 1952, s. 11.

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

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

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

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

Rights of reinstated employees.
Added by No. 48, 1951, s. 13; amended by No. 89, 1952, s. 12.

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

the continuity of the employment of the applicant by the former employer shall be deemed not to have been broken by his absence from employment during a period between the date upon which he left the

employment to become a member of the Forces and the date upon which he was reinstated in employment.

Termination of employment after reinstatement.

Added by No. 48, 1951, s. 13.

Sub-section (1) amended by No. 93, 1966, s. 3.

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

Penalty: Two hundred dollars.

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

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

Penalty may be paid to employee.

Added by No. 48, 1951, s. 13.

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

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

Special civil remedy against the Crown.

Added by No. 48, 1951, s. 13.

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

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

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

Division 3—Rehabilitation of Disabled Persons

Division 3 added by No. 48, 1951, s. 13.

150. (1) Subject to this section, the operation of Part VIII, of the *Social Services Consolidation Act* 1947-1951⁶ extends to, and in relation to, disabled persons as defined by sub-section (3) of this section in the same way as it applies to pensioners, claimants for pensions, beneficiaries and claimants for benefits as defined in that Part.

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

(2) For the purposes of Part VIII of the *Social Services Consolidation Act* 1947-1951,⁶ in its operation as extended by the last preceding sub-section, a reference in that Part to a pensioner, claimant for a pension, beneficiary or claimant for a benefit shall be read as a reference to a disabled person as defined by the next succeeding sub-section.

Added by No. 48, 1951, s. 13.

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

151. While a disabled person is receiving treatment under Part VIII of the *Social Services Consolidation Act* 1947-1951⁶, in its operation as extended by this Division, he shall be paid—

Rehabilitation allowance during treatment.

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

Added by No. 48, 1951, s. 13.

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

Person not entitled to double benefits.

Added by No. 48, 1951, s. 13.

PART XII—MISCELLANEOUS

Part XII added by No. 48, 1951, s. 13.

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

Regulations.

Added by No. 48, 1951, s. 13; amended by No. 93, 1966, s. 3.

- (a) for or in relation to—

- (i) the payment by the Commonwealth of such allowances and expenses as are prescribed, to such classes of persons as are prescribed;
 - (ii) the supply by the Commonwealth of household furniture, not exceeding the prescribed value, to such classes of persons as are prescribed; and
 - (iii) the supply of tools of trade, plant and equipment, professional instruments and other articles of personal equipment (other than clothing), not exceeding the prescribed value, to such classes of persons as are prescribed; and
- (b) for prescribing penalties not exceeding a fine of One hundred dollars for offences against the regulations.

NOTES

1. The *Re-establishment and Employment Act 1945-1973* comprises the *Re-establishment and Employment Act 1945* as amended by the other Acts specified in the following table and by the Regulations listed below:

Act	Number and year	Date of Assent	Date of commencement
<i>Re-establishment and Employment Act 1945</i>	No. 11, 1945	28 June 1945	(a)
<i>Commonwealth Public Service Act 1945</i>	No. 29, 1945	16 Aug 1945	16 Aug 1945
<i>Commonwealth Public Service Act (No. 2) 1945</i>	No. 43, 1945	11 Oct 1945	(b)
<i>Re-establishment and Employment Act 1951</i>	No. 48, 1951	8 Dec 1951	8 Dec 1951 (a)
<i>Re-establishment and Employment Act 1952</i>	No. 89, 1952	18 Nov 1952	3 Sept 1952
<i>Commonwealth Bank Act 1953</i>	No. 12, 1953	1 Apr 1953	29 Apr 1953
<i>Re-establishment and Employment Act 1953</i>	No. 90, 1953	12 Dec 1953	12 Dec 1953
<i>Re-establishment and Employment Act 1955</i>	No. 56, 1955	4 Nov 1955	S. 3 (1): 3 Sept 1955 S. 4: 5 Nov 1953 Remainder: Royal Assent
<i>Re-establishment and Employment Act 1956</i>	No. 96, 1956	15 Nov 1956	1 Sept 1957 (c)
<i>Re-establishment and Employment Act 1958</i>	No. 7, 1958	6 May 1958	1 Sept 1958
<i>Re-establishment and Employment Act (No. 2) 1958</i>	No. 52, 1958	1 Oct 1958	S. 3: 2 Sept 1958 Remainder: Royal Assent
<i>Re-establishment and Employment Act 1959</i>	No. 16, 1959	23 Apr 1959	14 Jan 1960 (d)
<i>Re-establishment and Employment Act 1962</i>	No. 92, 1962	14 Dec 1962	28 May 1963 (e)
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	No. 93, 1966	29 Oct 1966	1 Dec 1966
<i>Statute Law Revision Act 1973</i>	No. 216, 1973	19 Dec 1973	31 Dec 1973

The Re-establishment and Employment Act was also amended by the Re-establishment and Employment Regulations.

Before its repeal by the *Re-establishment and Employment Act* 1951, section 137 of the *Re-establishment and Employment Act* provided as follows:

“137. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are by this Act required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for prescribing penalties not exceeding a fine of Fifty pounds for any offence against the regulations.

“(2) Regulations may be made providing for the repeal or amendment of, or the addition to, any of the provisions of this Act.

“(3) Any regulations made in pursuance of the last preceding sub-section shall, by force of this sub-section, if not sooner repealed, be repealed at the termination of all the wars in which His Majesty was engaged at the date of commencement of this Part.

“(4) Upon the repeal of regulations by virtue of the last preceding sub-section, the provisions of this Act shall have effect as if no regulation had been made in pursuance of sub-section (2) of this section.”

In pursuance of that section, the Re-establishment and Employment Act was amended by the Re-establishment and Employment Regulations, which comprised the following Statutory Rules:

Year and Number	Date of notification in <i>Gazette</i>	Date of commencement
1945, No. 181	23 Nov 1945	23 Nov 1945
1946, No. 14	21 Jan 1946	21 Jan 1946
1946, No. 57	22 Mar 1946	22 Mar 1946
1946, No. 85	10 May 1946	10 May 1946
1946, No. 130	1 Aug 1946	1 Aug 1946
1946, No. 165	15 Nov 1946	15 Nov 1946
1946, No. 167	21 Nov 1946	21 Nov 1946
1946, No. 177	5 Dec 1946	5 Dec 1946
1947, No. 12	24 Jan 1947	24 Jan 1947
1947, No. 52	24 Apr 1947	24 Apr 1947
1947, No. 87	3 July 1947	1 July 1947
1947, No. 100	29 July 1947	29 July 1947
1948, No. 9	15 Jan 1948	15 Jan 1948
1948, No. 57	14 May 1948	14 May 1948
1948, No. 73	25 June 1948	25 June 1948
1949, No. 72	29 Sept 1949	29 Sept 1949
1949, No. 104	1 Dec 1949	1 Dec 1949
1950, No. 68	26 Oct 1950	26 Oct 1950

Section 137 of the Re-establishment and Employment Act and the Regulations made thereunder were repealed by the *Re-establishment and Employment Act* 1951, but the amendments made by the Regulations continue to have effect by virtue of section 3 of the last-mentioned Act, which provides as follows:

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

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

- (a) All the Parts and Divisions of the *Re-establishment and Employment Act* 1945 were proclaimed to commence on 27 August 1945 (*see Gazette* 1945, p. 1859). Parts XI and XII, as inserted by the *Re-establishment and Employment Act* 1951, were proclaimed to commence on 11 January 1952 (*see Gazette* 1952, p. 1319).
- (b) Section 1 of the *Commonwealth Public Service Act* (No. 2) 1945, which included an amendment of the Re-establishment and Employment Act, was proclaimed to commence on 1 May 1946 (*see Gazette* 1946, p. 771).
- (c) By section 2 of the *Re-establishment and Employment Act* 1956, that Act came into operation on the day on which the *Repatriation (Far East Strategic Reserve) Act* 1956 came into operation. The last-mentioned Act came into operation on a date fixed by Proclamation. The date fixed was 1 September 1957 (*see Gazette* 1957, p. 2631).

- (d) By section 2 of the *Re-establishment and Employment Act* 1959, that Act came into operation on the day on which the *Reserve Bank Act* 1959 came into operation. The last-mentioned Act came into operation on a date fixed by Proclamation. The date fixed was 14 January 1960 (*see Gazette* 1960, p. 47).
 - (e) By section 2 of the *Re-establishment and Employment Act* 1962, that Act came into operation on the day on which the *Repatriation (Special Overseas Service) Act* 1962 came into operation. The last-mentioned Act came into operation on a date fixed by Proclamation. The date fixed was 28 May 1963 (*see Gazette* 1963, p. 1869).
- 2.—S. 4—For a Proclamation specifying organizations to which this Act applies, *see Gazette* 1945, p. 1980.
 - 3.—Ss. 22 and 91 (1)—Now cited as the *Repatriation Act* 1920-1973.
 - 4.—Sub-sections 23 (1) to 23 (5) amend the *Public Service Act* and the amendments have been incorporated in the print of the *Public Service Act* 1922-1973.
 - 5.—Section 34 was substituted by sub-section 3 (1) of the *Re-establishment and Employment Act* 1955. Sub-sections 3 (2) to 3 (4) of that Act provide as follows:
 - “(2) A person shall not be convicted of an offence arising under section thirty-three of the Principal Act as amended by this Act which was committed on or after the third day of September, One thousand nine hundred and fifty-five, and before the date on which this Act receives the Royal Assent.
 - “(3) An order purporting to have been made under section twenty-eight or twenty-nine of the Principal Act after the second day of September, One thousand nine hundred and fifty-five, and before the day on which this Act receives the Royal Assent, has, subject to the next succeeding sub-section, the same force and effect as if the Principal Act had been in force on the day on which the order was made.
 - “(4) Where an order made under section twenty-eight or twenty-nine of the Principal Act on or before the second day of September, One thousand nine hundred and fifty-five, or an order referred to in the last preceding sub-section, directed an employer to engage a person in employment on or before a date occurring after the second day of September, One thousand nine hundred and fifty-five, and before the day on which this Act receives the Royal Assent, that order shall, for the purposes of the Principal Act as amended by this Act, be deemed to have directed, and shall have effect as if it had directed, the employer to engage the person in employment on or before the fourteenth day after the day on which this Act receives the Royal Assent.”
 - 6.—Ss. 150 (1), (2) and 151—Now cited as the *Social Services Act* 1947-1973.

REFERENDUM (CONSTITUTION ALTERATION) ACT 1906-1973

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REFERENDUM (CONSTITUTION ALTERATION) ACT 1906-1973

An Act relating to the submission to the Electors of proposed Laws for the alteration of the Constitution.

PART I—PRELIMINARY

1. This Act may be cited as the *Referendum (Constitution Alteration) Act 1906-1973*.¹

* * * * *

3. In this Act, unless the contrary intention appears—

“Referendum” means the submission to the electors of a proposed law for the alteration of the Constitution;

“Absent voter” means an elector voting or desiring to vote in pursuance of the regulations relating to absent voting made in pursuance of section one hundred and thirteen of the *Commonwealth Electoral Act 1918-1934* in connexion with a referendum;

“Absent voting” means voting in pursuance of the regulations relating to absent voting made in pursuance of section one hundred and thirteen of the *Commonwealth Electoral Act 1918-1934* in connexion with a referendum;

“Election” means an election of senators or of members of the House of Representatives.

4. (1) The provisions of section forty-five, sub-section (3) of section forty-seven, and the proviso to sub-section (1) of section fifty-seven of the *Commonwealth Electoral Act 1918-1934*, and the provisions of Parts XII, XIII, and XVII, and sub-section (2) of section one hundred and forty-one and section one hundred and ninety-four A of that Act shall, subject to this Act, and so far as they are applicable, apply to a referendum as if it were an election.

(2) In the application of any provision or part of the said Act to a referendum:—

(a) A reference to a writ shall be read as a reference to a writ for a referendum;

(b) A reference to a polling-day shall be read as a reference to the day fixed by a writ for a referendum for the taking of the votes of the electors;

Short title.
Short title
amended;
No. 32, 1918,
s. 2.

Section 2
repealed by
No. 216, 1973,
s. 3.

Definitions.
Amended by
No. 17, 1912,
s. 3; No. 14,
1919, s. 2; No.
23, 1926, s. 11;
No. 42, 1928,
s. 4; and No. 61,
1936, s. 2.

Application
of Electoral
Act.
Substituted by
No. 17, 1912,
s. 4.
Sub-section (1)
amended by
No. 14, 1919,
s. 3; No. 23,
1926, ss. 2 and
11; No. 42, 1928,
s. 4; and No. 61,
1936, s. 2.

Amended by
No. 23, 1926,
s. 2; and No. 49,
1965, s. 2.

- (c) A reference to a poll shall be read as a reference to the taking of the votes of the electors for the purposes of a referendum;
- (d) A reference to an election shall be read as a reference to a referendum;
- (e) Each Divisional Returning Officer and Assistant Returning Officer shall, in any case, make the necessary arrangements for the taking of the votes of the electors in his Division or portion of a Division, as the case requires;
- (f) Sections one hundred and four, one hundred and five, one hundred and five A, one hundred and five B, one hundred and six, one hundred and eight, one hundred and twelve, one hundred and twenty-three, one hundred and twenty-four, one hundred and fifty-six, one hundred and fifty-seven, one hundred and fifty-eight, one hundred and fifty-nine, one hundred and sixty, one hundred and sixty-one, and one hundred and sixty-two, shall not apply to a referendum;
- (g) The ballot-papers to be used under Part XII and section one hundred and thirteen, section one hundred and twenty-one, and section one hundred and twenty-one A, for the purposes of a referendum, shall be in accordance with the forms prescribed for use in connexion with a referendum;
- (h) A ballot-paper used for the purposes of a referendum shall only be rejected as informal for the reasons specified in this Act or the regulations;
- (i) The vote of an elector shall be marked on his ballot-paper in the manner directed by this Act or the regulations, and the ballot-paper shall be folded so as to conceal the vote marked thereon;
- (j) A reference to scrutineers or to a scrutineer shall be read as a reference to scrutineers or to a scrutineer appointed in pursuance of this Act, as the case requires;
- (k) A reference to electoral matter or to electoral papers shall be read as a reference to corresponding matter or papers in relation to a referendum;
- (l) A reference to a ballot-paper, ballot-box, or other thing shall be read as a reference to a ballot-paper, ballot-box, or corresponding thing in relation to a referendum;
- (m) Any reference to "this Act" shall be read as a reference to the provisions and Parts of the said Act which are applicable to a referendum.

PART II—WRIT FOR THE REFERENDUM

Writ for a referendum.

5. (1) Whenever a proposed law for the alteration of the Constitution is to be submitted to the electors,² the Governor-General may issue a writ for the submission of the proposed law to the electors.

(2) The writ may be in accordance with Form E in the Schedule and shall appoint—

Substituted by
No. 216, 1973,
s. 3.

- (a) a date, being a Saturday, for the taking of the votes of the electors; and
- (b) a date for the return of the writ.

6. The Governor-General may cause to be attached to the writ a copy of the proposed law, or a copy of a statement setting out—

Statement of
proposed
law.

- (a) the text of the proposed law,
- (b) the text of the particular provisions (if any) of the Constitution proposed to be textually altered by the proposed law, and the textual alterations proposed to be made therein.

6A. (1) If within four weeks after the passage of the proposed law through both Houses there is forwarded to the Chief Electoral Officer—

Distribution
to electors of
arguments
for and
against
proposed
law.

- (a) an argument in favour of the proposed law, consisting of not more than two thousand words, and authorized by a majority of those members of both Houses of the Parliament who voted for the proposed law and desire to forward such an argument; or
- (b) an argument against the proposed law, consisting of not more than two thousand words, and authorized by a majority of those members of both Houses of the Parliament who voted against the proposed law and desire to forward such an argument,

Inserted by
No. 35, 1912,
s. 2.

Sub-section (1)
amended by
No. 38, 1915,
s. 2; and No. 61,
1936, s. 3.

the Chief Electoral Officer shall, within two months after the expiry of those four weeks, and not later than two weeks after the issue of the writ, cause to be printed and posted to each elector, as nearly as practicable, a pamphlet containing the arguments together with a statement showing the textual alterations and additions proposed to be made to the Constitution.

(2) When there are to be referendums upon more than one proposed law on the same day—

- (a) the arguments in regard to all the proposed laws shall be printed in one pamphlet,
- (b) the argument in favour of any proposed law may exceed two thousand words if the arguments in favour of all the proposed laws do not average more than two thousand words each; and the argument against any proposed law may exceed two thousand words if the arguments against all the proposed laws do not average more than two thousand words each,
- (c) instead of separate statements in regard to each proposed law, there may be one statement setting out all the alterations and additions to the Constitution to be made by all the proposed laws, with marginal notes identifying the proposed law by which each alteration is proposed to be made.

Copy of writ and proposed law to be sent to Governors of States.

Amended by No. 216, 1973, s. 3.

7. A copy of the writ and a copy of the proposed law or of the statement (if any) attached to the writ shall immediately after the issue of the writ be forwarded to the Governors of the several States.

Action by Chief Electoral Officer on receipt of writ.

8. The original writ shall be forwarded to the Chief Electoral Officer, who shall forthwith after the receipt thereof—

- (a) forward copies of it to the Commonwealth Electoral Officers for the several States; and
- (b) insert in the *Gazette* a notification of the receipt and particulars of the writ, and a copy of the proposed law or of the statement (if any) attached to the writ.

Action by Commonwealth Electoral Officers.

9. The Commonwealth Electoral Officer for each State shall forthwith after the receipt of the copy of the writ—

- (a) give notice of the receipt and particulars of the writ by advertisement in two or more newspapers circulating in the State, which notice shall include a copy of the proposed law or a copy of the statement (if any) attached to the writ; and
- (b) cause copies of the proposed law or of the statement (if any) attached to the writ to be exhibited at Post Offices and Customs Houses in the State, and at such other places in the State as the Chief Electoral Officer directs; and
- (c) forward a copy of the writ and of the proposed law or of the statement (if any) attached to the writ to each Divisional Returning Officer and Assistant Returning Officer.

Action by officers to carry writ into effect.

10. Each Divisional Returning Officer and Assistant Returning Officer shall, subject to this Act, and to the directions of the Commonwealth Electoral Officer for the State, forthwith take all such steps as are necessary to be taken on his part to carry the writ into effect.

Electors who may be admitted to vote at referendum.

Inserted by No. 31, 1910, s. 2.

Sub-section (1) substituted by No. 14, 1919, s. 4.

10A. (1) At a referendum only those electors who would be entitled to vote if the referendum were an election shall be admitted to vote.

Omitted by No. 14, 1919, s. 4; inserted by No. 216, 1973, s. 3.

(2) Nothing in this section entitles a person to vote if he is disqualified from voting.

* * * * *

Sub-section (3)
omitted by
No. 216, 1973,
s. 3.

PART III—VOTING AT THE REFERENDUM

11. The voting at the referendum shall, subject to this Act, be taken throughout Australia on the day appointed by the writ for taking the votes of the electors. Voting on same day throughout Australia.
12. The polling places appointed under the laws of the Commonwealth for the time being in force relating to Parliamentary elections shall be polling places for the purposes of the referendum. Polling places.
Amended by
No. 20, 1909,
s. 4.
13. Each elector shall vote only once at any referendum. One vote only.
14. The voting at a referendum shall be by ballot and each elector shall indicate his vote—
 - (a) if he approves the proposed law— by writing the word “Yes” in the space provided on the ballot-paper; or
 - (b) if he does not approve the proposed law—by writing the word “No” in the space so provided.Manner of voting.
Substituted by
No. 121, 1965,
s. 2.
- 14A. (1) The ballot-papers to be used for the purposes of a referendum may be in accordance with Form C in the Schedule. Forms of ballot-paper.
Inserted by
No. 17, 1912,
s. 6.
- (1A) For the purposes of voting pursuant to section ninety-one A of the *Commonwealth Electoral Act* 1918-1934, the ballot-papers to be used may be in the form prescribed by the regulations in relation thereto. Inserted by
No. 23, 1926,
s. 4; amended by
No. 42, 1928,
s. 4; and No. 61,
1936, s. 2.
- (2) For the purposes of voting under the regulations relating to absent voting made in pursuance of section one hundred and thirteen of the *Commonwealth Electoral Act* 1918-1934 the ballot-papers to be used for the purposes of a referendum may be in accordance with the forms prescribed by the regulations relating to absent voting. Substituted by
No. 14, 1919,
s. 5; amended by
No. 23, 1926,
s. 11; No. 42,
1928, s. 4; and
No. 61, 1936,
s. 2.
- (2A) For the purposes of voting under Part XII of the *Commonwealth Electoral Act* 1918-1934 the ballot-papers and the postal vote certificates to be used for the purposes of a referendum may be in accordance with the forms prescribed by the regulations relating to postal voting. Inserted by
No. 14, 1919,
s. 5; amended by
No. 23, 1926,
s. 11; No. 42,
1928, s. 4; and
No. 61, 1936,
s. 2.
- (2B) For the purposes of voting in pursuance of section one hundred and twenty-one and section one hundred and twenty-one A of the *Commonwealth Electoral Act* 1918-1934 the ballot-papers to be used for the purposes of a referendum may be in accordance with the forms prescribed by the regulations in relation thereto. Inserted by
No. 14, 1919,
s. 5; amended by
No. 23, 1926,
ss. 4 and 11;
No. 42, 1928,
s. 4; and
No. 61, 1936,
s. 2.

Amended by
No. 14, 1919,
s. 5.

(3) Where two or more referendums are held on the same day, it shall not be necessary for the forms of ballot-paper for each referendum to be on separate pieces of paper, but two or more forms of ballot-paper which may be used by any one elector may be on one piece of paper in accordance with Form D in the Schedule, in which case it shall not be necessary for the initials of the Divisional Returning Officer or of the presiding officer, as the case requires, or the official mark, to appear more than once on the piece of paper, and the presence of any mark or writing on the piece of paper by which the voter can be identified shall invalidate all the forms of ballot-paper and votes appearing on the piece of paper, but any other ground of informality shall only apply to the particular ballot-paper and vote to which it relates, and shall not affect the validity of any other ballot-paper or vote.

(4) For the purposes of sub-section (3) the form of ballot-paper may be modified as prescribed, or a special form of ballot-paper may be prescribed, but so that each question shall be capable of being voted on separately, and so that no change be prescribed in the method of marking the votes on the ballot-papers.

Application
of absent
and postal
voters' pro-
visions.

Substituted by
No. 14, 1919,
s. 6; amended by
No. 23, 1926,
ss. 5 and 11;
No. 42, 1928,
s. 4; and
No. 61, 1936,
s. 2.

15. Where the day fixed for the taking of the votes for the purposes of a referendum is the same as that fixed for the polling at an election—

(a) a declaration which suffices to enable an elector to vote—

(i) under the provisions of section ninety-one A, section one hundred and twenty-one or section one hundred and twenty-one A of the *Commonwealth Electoral Act* 1918-1934, or

(ii) as an absent voter for the purposes of the election

shall suffice to enable him to vote under the provisions of section ninety-one A, section one hundred and twenty-one or section one hundred and twenty-one A of the *Commonwealth Electoral Act* 1918-1934, or as an absent voter, as the case requires, for the purposes of the referendum;

- (b) any reference in the declaration to the election shall be deemed to include a reference to the referendum;
- (c) an application for a postal vote certificate and postal ballot-paper for the purposes of the election shall be deemed to include an application for a postal vote certificate and postal ballot-paper for the purposes of the referendum;
- (d) a postal vote certificate for the purposes of the election shall be deemed to have effect as a postal vote certificate for the purposes of the referendum;
- (e) any reference in the application or the certificate to the election shall be deemed to include a reference to the referendum; and
- (f) a postal ballot-paper containing the vote of an elector at the referendum may be enclosed in the same envelope as that in

which the postal ballot-paper containing the vote of the elector at the election is enclosed.

15A. Where the day fixed for the taking of the votes of the electors for the purposes of a referendum is the same as that fixed for the polling at an election, the answers by a person claiming to vote to the questions put to him in pursuance of section one hundred and fifteen of the *Commonwealth Electoral Act* 1918-1934 may be accepted as sufficient to enable him to vote for the purposes of the referendum, if they are satisfactory as regards the election, but the presiding officer may if he thinks fit, in addition to the questions prescribed by that section, put to the person claiming to vote the following question:—

Answers to questions.
Substituted by No. 17, 1912, s. 8; amended by No. 14, 1919, s. 7; No. 23, 1926, s. 11; No. 42, 1928, s. 4; and No. 61, 1936, s. 2.

Have you already voted, either here or elsewhere, at this referendum? (or these referendums?—as the case may be),

and, if the person claiming to vote does not answer the question or admits that he has already voted at the referendum or referendums, shall refuse to allow him to vote.

16. Where a referendum is held on the same day as an election the same ballot-boxes and polling booths may be used for the purposes of the referendum and the election but in that case the ballot-papers for the referendum shall be of a different colour to the ballot-papers for the election.

Use of ballot-boxes and polling booths.

17. The Governor-General, or any person authorized by him, may appoint one scrutineer at each polling place in each State and the Governor of a State or any person thereto authorized by him may appoint one scrutineer at each polling place in the State.

Appointment of scrutineers.
Amended by No. 31, 1910, s. 2.

PART IV—SCRUTINY OF THE REFERENDUM

18. (1) The result of the referendum shall be ascertained by scrutiny.

Ascertainment of result of submission.

(2) The Governor-General or any person authorized by him, may appoint one scrutineer at each place where the scrutiny is conducted in each Electoral Division and the Governor of a State or any person thereto authorized by him may appoint one scrutineer to be present at each place where the scrutiny is conducted in each Electoral Division for the State.

Amended by No. 17, 1912, s. 9.

19. The scrutiny shall be conducted in accordance with the following provisions:—

Conduct of scrutiny.

(a) It shall commence as soon as practicable after the closing of the poll;

Substituted by No. 14, 1919, s. 8; amended by No. 23, 1926, s. 6.

- (b) such scrutineers as have been duly appointed pursuant to the preceding section, and any persons approved by the officer conducting the scrutiny may be present;
- (c) all the proceedings at the scrutiny shall be open to the inspection of the scrutineers;
- (d) the scrutiny may be adjourned from time to time as may be necessary until the counting of the votes is complete;
- (e) each Assistant Returning Officer shall, in the presence of an Assistant Presiding Officer or a Poll Clerk, and of such authorized scrutineers as may attend, open all ballot-boxes received from polling places within or for that portion of the Division in which he exercises his powers; and
- (f) the Divisional Returning Officer shall open all ballot-boxes not opened by an Assistant Returning Officer.

Action at
scrutiny.

Sub-section (1)
amended by
No. 17, 1912,
s. 11.

20. (1) At the scrutiny the following things shall be done:—

- (a) The ballot-papers in the ballot-boxes shall be taken out of the ballot-boxes and examined and shall either be allowed or rejected;
- (b) all informal ballot-papers shall be rejected and their number recorded;

* * * * *

- (d) the votes on the allowed ballot-papers shall be counted and a record of them taken;
- (e) when the counting is complete all the ballot-papers shall be made up into sealed parcels;
- (f) each Assisting Returning Officer shall forthwith after completing the scrutiny of the ballot-papers in the ballot-boxes opened by him transmit to the Divisional Returning Officer the sealed parcels of ballot-papers together with a statement showing—
 - (i) the number of votes given in favour of the proposed law;
 - (ii) the number of votes given not in favour of the proposed law;
 - (iii) the number of ballot-papers rejected as informal.

Added by
No. 17, 1912,
s. 11.

(2) All ballot-papers used for voting in pursuance of the regulations relating to absent voting shall be dealt with as prescribed by the regulations.

Added by
No. 14, 1919,
s. 9; amended by
No. 23, 1926,
ss. 7 and 11;
No. 42, 1928,
s. 4; and No. 61,
1936 c. 7

(3) All ballot-papers used for voting in pursuance of Part XII of the *Commonwealth Electoral Act* 1918-1934 shall be dealt with as prescribed by that Part and the regulations relating to voting by post:

Provided that the ballot-papers used for voting in pursuance of section ninety-one A of the *Commonwealth Electoral Act* 1918-1934 shall be dealt with as prescribed by the regulations relating thereto.

(4) All ballot-papers used for voting in pursuance of section one hundred and twenty-one and section one hundred and twenty-one A of the *Commonwealth Electoral Act* 1918-1934 shall be dealt with as prescribed by the regulations.

Added by No. 14, 1919, s. 9; amended by No. 23, 1926, ss. 7 and 11; No. 42, 1928, s. 4; and No. 61, 1936, s. 2.

20A. (1) If a scrutineer objects to a ballot-paper as being informal, the officer conducting the scrutiny shall mark the ballot-paper “admitted” or “rejected” according to his decision to admit or reject the ballot-paper.

Action on objection to ballot-papers. Inserted by No. 23, 1926, s. 8.

(2) Nothing in this section shall prevent the officer conducting the scrutiny from rejecting any ballot-paper as being informal although it is not objected to.

21. (1) A ballot-paper, other than an absent voter’s ballot-paper or a postal ballot-paper or a ballot-paper used for voting in pursuance of section ninety-one A, section one hundred and twenty-one or section one hundred and twenty-one A of the *Commonwealth Electoral Act* 1918-1934 shall be informal if—

Informal ballot-papers.

Substituted by No. 17, 1912, s. 12.

Sub-section (1) amended by No. 14, 1919, s. 10; No. 23, 1926, ss. 9 and 11; No. 42, 1928, ss. 3 and 4; No. 61, 1936, s. 2; and No. 121, 1965, s. 3.

- (a) it is not authenticated by the initials of the presiding officer or by an official mark as prescribed; or
- (b) it has no vote marked on it; or
- (c) it has more than one vote marked on it; or
- (d) it has upon it any mark or writing (not authorized by this Act or the regulations to be put upon it) by which, in the opinion of the Divisional Returning Officer or Assistant Returning Officer, the voter can be identified:

Provided that paragraph (d) shall not apply to any mark or writing placed upon the ballot-paper by an officer, notwithstanding that the placing of the mark or writing upon the ballot-paper is a contravention of this Act.

(2) An absent voter’s ballot-paper shall be informal only on the grounds prescribed by the regulations relating to absent voting.

(2A) A postal ballot-paper shall be informal only on the grounds prescribed by Part XII of the *Commonwealth Electoral Act* 1918-1934, and the regulations relating to postal voting.

Inserted by No. 14, 1919, s. 10; amended by No. 23, 1926, s. 11; No. 42, 1928, s. 4; and No. 61, 1936, s. 2.

Inserted by
No. 14, 1919,
s. 10; amended
by No. 23, 1926,
ss. 9 and 11;
No. 42, 1928,
s. 4; and No. 61,
1936, s. 2.

(2B) A ballot-paper used for voting in pursuance of section ninety-one A, section one hundred and twenty-one or section one hundred and twenty-one A of the *Commonwealth Electoral Act* 1918-1934 shall be informal only on the grounds prescribed by the regulations in relation thereto.

Inserted by
No. 14, 1919,
s. 10; amended
by No. 23, 1926,
ss. 9 and 11;
No. 42, 1928,
s. 4; and No. 61,
1936, s. 2.

(2C) A ballot-paper shall not be informal for any reason other than the reasons specified in this section, or, in the case of an absent voter's ballot-paper or a postal ballot-paper, or a ballot-paper used for voting in pursuance of section ninety-one A, section one hundred and twenty-one or section one hundred and twenty-one A of the *Commonwealth Electoral Act* 1918-1934, the grounds prescribed by the regulations, but shall be given effect to according to the voter's intention, so far as his intention is clear.

Amended by
No. 93, 1966,
s. 3.

(3) Except as authorized by this Act or the regulations, an officer shall not place upon any ballot-paper any mark or writing which would enable any person to identify the voter by whom it is used.

Penalty: Twenty dollars.

Return of
result of
submission
by Returning
Officers.

Amended by
No. 17, 1912,
s. 13.

22. Each Divisional Returning Officer shall forthwith after he has counted the votes on the ballot-papers taken from the ballot-boxes opened by him and has received from each Assistant Returning Officer a statement showing the voting on the ballot-papers taken from the ballot-boxes opened by him, indorse on the copy of the writ a statement certifying in relation to the votes given at the polling-places in or for his Division—

- (a) the number of votes given in favour of the proposed law;
- (b) the number of votes given not in favour of the proposed law;
and
- (c) the number of ballot-papers rejected as informal;

and shall transmit the copy of the writ so indorsed to the Commonwealth Electoral Officer for the State.

Recount.
Substituted by
No. 17, 1912,
s. 14.

23. (1) At any time before indorsing his copy of the writ as provided for in section twenty-four, the Commonwealth Electoral Officer for the State may, if he thinks fit (and shall if so directed by the Chief Electoral Officer), direct any Divisional Returning Officer to make a recount of the ballot-papers contained in any parcel relating to his Division.

(2) The Chief Electoral Officer may, at the instance of the Governor-General or the Governor of a State, or of his own motion, direct a recount of any ballot-papers.

(3) The officer conducting a recount shall have the same powers as if the recount were the scrutiny, and may reverse any decision in relation to the scrutiny as to the allowance or admission or disallowance or rejection of any ballot-paper.

23A. (1) At any recount the officer conducting the recount may, and at the request of any scrutineer shall, reserve any ballot-paper for the decision of the Commonwealth Electoral Officer for the State.

Reservation
of disputed
ballot-papers.
Inserted by
No. 17, 1912,
s. 15.

(2) The Commonwealth Electoral Officer for the State shall decide whether any ballot-paper reserved for his decision in pursuance of this section is to be allowed and admitted or disallowed and rejected.

(3) In the event of the validity of the referendum being disputed, the Court of Disputed Returns may consider any ballot-papers which were reserved for the decision of the Commonwealth Electoral Officer for the State, but shall not order any recount of the whole or any part of the ballot-papers in connexion with the referendum unless it is satisfied that such recount is justified.

PART V—RETURN OF THE WRIT

24. Each Commonwealth Electoral Officer shall indorse on his copy of the writ a statement showing as regards his State—

Indorsement
on writ by
Common-
wealth
Electoral
Officer.

- (a) The number of votes given in favour of the proposed law;
- (b) The number of votes given not in favour of the proposed law;
and
- (c) the number of ballot-papers rejected as informal;

and shall sign the statement, and shall transmit the copy of the writ so indorsed to the Chief Electoral Officer.

25. (1) The Chief Electoral Officer shall, forthwith after the indorsed copies of the writ have been transmitted to him by the Commonwealth Electoral Officers for the several States, indorse on the original writ a statement showing as regards each State and as regards the whole Commonwealth—

Return of
writ.

- (a) the number of votes given in favour of the proposed law;
- (b) the number of votes given not in favour of the proposed law;
and
- (c) the number of ballot-papers rejected as informal;

and shall sign the statement and shall return the writ with the statement indorsed thereon to the Governor-General.

(2) The Chief Electoral Officer shall publish a copy of the statement in the *Gazette*, and the statement so published shall, subject to this Act, be conclusive evidence of the result of the referendum.

26. Copies of the statement indorsed on the writ shall be forwarded to the Governors of the several States.

Copies of
return to
Governors of
the States.

PART VI—DISPUTED RETURNS

- Disputing validity of submission or return.** **27.** The validity of any referendum or of any return or statement showing the voting on any referendum may be disputed by the Commonwealth or by any State by petition addressed to the High Court.
- Requisites of petition.** **28.** The petition disputing a referendum, return, or statement must—
- (a) set out the facts relied on to invalidate the referendum, return, or statement;
 - (b) contain a prayer asking for the relief to which the petitioner claims to be entitled;
 - (c) be signed by the Attorney-General of the Commonwealth for and on behalf of the Commonwealth or the Attorney-General of a State for and on behalf of the State; and
 - (d) be filed in the Principal Registry of the High Court or in the District Registry of that Court in the capital city of the State by which the referendum statement or return is disputed within forty days after the publication in the *Gazette* of the statement by the Chief Electoral Officer of the result of the voting.
- Jurisdiction of High Court.** **29.** The High Court shall have jurisdiction to entertain and to hear and determine the petition.
- Notice of petition.** **30.** Where the petition is filed by the Commonwealth the Attorney-General shall notify the Attorneys-General of the several States of the filing of the petition, and where the petition is filed by a State the Attorney-General of that State shall notify the Attorney-General of the Commonwealth and the Attorneys-General of the other States of the filing of the petition.
- Joinder of parties.** **31.** The High Court may on the application of the Commonwealth or of any State, order it to be joined as a party petitioning or responding as the case may be.
- Procedure on petition.**
Amended by No. 216, 1973, s. 3. **32.** The procedure in relation to a petition disputing a referendum return or statement shall, subject to this Act, be as prescribed by Rules of Court or, in default of Rules of Court, as directed by the High Court.
- Immaterial errors not to vitiate referendum.**
Amended by No. 23, 1926, s. 10. **33.** No referendum and no return or statement showing the voting on any referendum shall be avoided on account of any delay in relation to the taking of the votes of the electors or in relation to the making of any statement or return or on account of the absence or error of or omission by any officer which did not affect the result of the referendum:
- Provided that where any elector was, on account of the absence or error of or omission by any officer, prevented from voting on a referendum, the Court shall not, for the purpose of determining whether the absence or error of or omission by the officer did or did not affect the result

of the referendum, admit any evidence of the way in which the elector intended to vote.

PART VII—MISCELLANEOUS

Heading substituted by No. 216, 1973, s. 3.

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

Regulations.

* * * * *

Heading omitted by No. 216, 1973, s. 3.

35. (1) Every trades union, registered or unregistered, organization, association, league, or body of persons, which has, or person who has, within three months before the date of taking the vote at any referendum, in connexion with any referendum, expended any money or incurred any expense—

Return of expenses in connexion with the referendum. Substituted by No. 17, 1912, s. 16.

- (a) in support of the proposed law submitted to the electors at the referendum; or
- (b) in opposition to the proposed law submitted to the electors at the referendum,

shall in accordance with this section make a return of the money so expended or expense so incurred.

(2) Every trades union, registered or unregistered, organization, association, league, or body of persons, which has, and every person who has, within three months before the date of taking the vote at any referendum, in connexion with any referendum expended any money or incurred any expense in printing publishing or issuing advertisements or notices, or procuring the insertion in any newspaper of any advertisement article or report or matter, intended or calculated to affect the result of the referendum shall, in accordance with this section, make a return of the money so expended or expense so incurred.

(3) Where two or more referendums are being held on the same day the particulars as regards all the referendums may be included in one return.

(4) The return shall be in accordance with the prescribed form, and shall be signed and declared to before a justice of the peace by the president or chairman and the secretary or other officer of the trades union, registered or unregistered, organization, association, league, or body of persons or by the person concerned, and shall contain particulars of the money expended or expense incurred, and shall state whether such money was expended or expense incurred in support of or in opposition to the proposed law, and shall be filed with the Commonwealth Electoral Officer for the State in which the money was expended or expense

incurred within twelve weeks after the result of the referendum has been declared.

(5) If any trades union, registered or unregistered, organization, association, league, or body of persons, satisfies the Chief Electoral Officer that it has in connexion with any referendum expended money or incurred expense in support of or opposition to the proposed law in all the States or in more than one State he may permit it to file with him, in lieu of any other return under this section, a return of the whole of the money expended or expense incurred by it in connexion with the referendum.

Amended by
No. 93, 1966,
s. 3.

(6) If any trades union, registered or unregistered, organization, association, league, or body of persons, fails to comply with this section, every person who was an officer thereof at the time the money was expended or expense incurred shall be liable to a penalty of One hundred dollars.

Amended by
No. 93, 1966,
s. 3.

(7) If any person fails to comply with this section he shall be liable to a penalty of One hundred dollars.

Amended by
No. 14, 1919,
s. 11; and No.
93, 1966, s. 3.

(8) Any person who wilfully makes an untrue statement in any return under this section shall be liable to a penalty of Two hundred dollars or to imprisonment for six months.

Amended by
No. 14, 1919,
s. 11; and
No. 93, 1966,
s. 3.

(9) The Chief Electoral Officer may, by notice in writing in the prescribed form, require the president or chairman and the secretary or other officer of any trades union, registered or unregistered, organization, association, league, body of persons, or any person, within such time, not being less than one month, as is specified in the notice, to make a return in accordance with this section of any money expended or expense incurred in respect of which a return is required to be made under sub-section (1) or sub-section (2) of this section and the president or chairman and secretary or other officer or person who neglects or refuses to comply with the notice shall be guilty of an offence and liable to a penalty not exceeding Two hundred dollars or to imprisonment for any period not exceeding six months.

(10) Every return filed in pursuance of this section shall, subject to the regulations, be open to public inspection.

Return by
newspaper
proprietors.
Substituted by
No. 17, 1912,
s. 16.
Sub-section (1)
amended by
No. 14, 1919,
s. 12; and
No. 93, 1966,
s. 3.

36. (1) The proprietor or publisher of a newspaper published in the Commonwealth shall, in accordance with this section, make or cause to be made a return setting out the amount of matter in connexion with any referendum inserted in his newspaper within three months before the date of taking the vote at the referendum in respect of which payment was or is to be made, the space occupied by such matter, the amount of money paid or owing to him in respect of such matter, and the names and addresses of the trades unions, registered or unregistered, organizations, associations, leagues, bodies of persons, or persons authorizing the insertion thereof.

Penalty (on proprietor): Two hundred dollars.

(2) In this section “matter” means advertisements, articles, and other matter intended or calculated to affect the result of the referendum.

(3) Where two or more referendums are being held on the same day the particulars as regards all the referendums may be included in one return.

(4) The return shall be in accordance with the prescribed form, and shall be signed by the person making it and shall be declared to before a justice of the peace and shall be filed with the Commonwealth Electoral Officer for the State in which the newspaper is published within twelve weeks after the result of the referendum has been declared.

(5) Every return made in pursuance of this section shall, subject to the regulations, be open to public inspection.

* * * * *

Section 37
repealed by
No. 216, 1973,
s. 3.

38. (1) Referendum papers provided for by this Act or the regulations may, subject to the postal regulations, be transmitted through the post free of charge.

Referendum
papers to be
post free.
Inserted by
No. 17, 1912,
s. 16.

(2) Referendum papers posted for transmission by post and properly addressed shall, in the absence of proof to the contrary, be deemed to have been duly received by the addressees thereof at the times when, in the ordinary course of post, they should have been so received.

39. In all cases where it is impracticable to communicate any referendum matter by post without occasioning undue delay, it may be communicated by telegraphic advice, and that advice communicated in the ordinary course shall suffice to the same extent as if the matter telegraphed had been communicated by serving or forwarding the actual matter.

Telegraphing
matter.
Inserted by
No. 17, 1912,
s. 16.

40. All ballot-papers, certified lists of voters, and declarations used at or in connexion with a referendum shall be preserved as prescribed, until the referendum can be no longer questioned, when they shall be destroyed:

Preservation
of
ballot-papers,
&c.
Inserted by
No. 17, 1912,
s. 16; amended
by No. 14, 1919,
s. 14.

Provided that such ballot-papers, certified lists of voters and declarations shall be preserved for a period of at least six months from the date of the publication in the *Gazette* of a copy of the statement referred to in section twenty-five of this Act.

Alteration of
Form C and
Form D.

Inserted by
No. 17, 1912,
s. 16.

Sub-section (1)
amended by
No. 14, 1919,
s. 15.

41. (1) Form C and Form D in the Schedule may from time to time be altered by the regulations.

Amended by
No. 14, 1919,
s. 15.

(2) If Form C or Form D is altered by the regulations any reference in this Act to that form shall be deemed to be a reference to that form as so altered.

Heading
substituted by
No. 216, 1973,
s. 3.

PART VIII—REFERENDUM OFFENCES

Construction
of Part.

Inserted by
No. 17, 1912,
s. 17; amended
by No. 14, 1919,
s. 16; No. 23,
1926, s. 11;
No. 42, 1928,
s. 4; and No. 61,
1936, s. 2.

42. The provisions of this Part of this Act shall be construed as being in addition to such of the provisions in Part XVII of the *Commonwealth Electoral Act* 1918-1934 as are applicable to a referendum.

Supply of
meat, drink,
or entertain-
ment, &c.

Inserted by
No. 17, 1912,
s. 17; amended
by No. 14, 1919,
s. 17; and
No. 93, 1966,
s. 3.

43. Any person who, after the issue of a writ for a referendum and before the votes have been taken in pursuance thereof, supplies to an elector any meat, drink, or entertainment, or horse or carriage hire with a view to influence his vote in connexion with the referendum shall be guilty of an offence.

Penalty: Four hundred dollars or imprisonment for one year.

Bribery.

Inserted by
No. 17, 1912,
s. 17; amended
by No. 14, 1919,
s. 18; and
No. 93, 1966,
s. 3.

44. Any person who gives, confers, or procures, or promises, or offers to give or confer, or to procure or attempt to procure, any money, property, or benefit or any kind, to upon or for any elector or any other person—

- (a) in order to influence the elector in his vote in connexion with a referendum, or
- (b) in order to induce the elector to refrain from voting at a referendum; or
- (c) in order to induce the elector to support or oppose any proposed law for the alteration of the Constitution,

shall be guilty of an offence.

Penalty: Four hundred dollars or imprisonment for one year.

45. Any elector who asks for, receives or obtains, or agrees or attempts to receive or obtain any money, property, or benefit of any kind, for himself or any other person upon the understanding that his vote in connexion with any referendum shall be influenced thereby, or shall be given in any particular manner, or that he will refrain from voting at any referendum, or that he will support or oppose any proposed law for the alteration of the Constitution, shall be guilty of an offence.

Receipt of
bribe by
elector.

Inserted by
No. 17, 1912,
s. 17; amended
by No. 14, 1919,
s. 19; and
No. 93, 1966,
s. 3.

Penalty: Four hundred dollars or imprisonment for one year.

46. Any person who—

Undue
influence.

(a) threatens, offers or suggests any violence, injury, punishment, damage, loss or disadvantage to an elector or any other person—

Substituted by
No. 14, 1919,
s. 20; amended
by No. 93, 1966,
s. 3.

(i) in order to influence the elector in his vote in connexion with a referendum;

(ii) in order to induce the elector to refrain from voting at a referendum; or

(iii) in order to induce the elector to support or oppose any proposed law for the alteration of the Constitution; or

(b) uses, causes, inflicts or procures any violence, injury, punishment, damage, loss or disadvantage towards, to or upon, any elector or any other person, for or on account of any such vote, refraining from voting, support or opposition,

shall be guilty of an offence.

Penalty: Four hundred dollars or imprisonment for one year.

47. (1) Every advertisement, and every handbill or pamphlet, relating to a referendum and intended or calculated to affect the result thereof shall have the name and address of the person authorizing it at the end thereof, and every such advertisement (other than an advertisement in a newspaper), handbill, or pamphlet, if printed, shall in addition have printed thereon the name and place of business of the printer who printed it.

Advertisements
relating to
referendum.

Inserted by
No. 17, 1912,
s. 17.

(2) Every person who prints or publishes or authorizes the printing or publication of any such advertisement, handbill, or pamphlet which does not comply with this section shall be guilty of an offence.

Amended by No.
93, 1966, s. 3.

Penalty: Two hundred dollars.

48. (1) Every person who—

Misleading
advertisements,
&c.

(a) prints, publishes, or distributes any advertisement or document containing a representation of a ballot-paper, or any representation apparently intended to represent a ballot-paper, and having thereon any directions intended or likely to mislead or improperly interfere with an elector in or in relation to the casting of his vote at a referendum, or

Inserted by
No. 17, 1912,
s. 17.
Sub-section (1)
amended by
No. 93, 1966,
s. 3.

- (b) prints, publishes, or distributes any advertisement or document containing any untrue or incorrect statement intended or likely to mislead or improperly interfere with any elector in or in relation to the casting of his vote at a referendum,

shall be guilty of an offence.

Penalty: Two hundred dollars.

(2) This section shall not prevent the printing, publishing, or distributing of any advertisement or document (not otherwise illegal) which contains instructions how to vote in favour of or against any proposed law submitted to the electors by a referendum, if those instructions are not intended or likely to mislead any elector in or in relation to the casting of his vote.

Misconduct
at public
meeting.

Inserted by
No. 17, 1912,
s. 17.

Sub-section (1)
amended by
No. 93, 1966,
s. 3.

49. (1) Any person who, at any public meeting to which this section applies, acts in a disorderly manner for the purpose of preventing the transaction of the business for which the meeting is held shall be guilty of an offence.

Penalty: Ten dollars.

(2) This section applies to any lawful public meeting held in relation to a referendum between the date of the issue of the writ for the referendum and the date of the return of the writ.

THE SCHEDULE

Forms A and B
omitted by No.
20, 1909, s. 8.

Substituted by
No. 121, 1965,
s. 4.

* * * * *

Form C

BALLOT-PAPER

Commonwealth of Australia

Referendum (Constitution Alteration) Act

State of (*here insert name of State*)

Submission to the Electors of a proposed Law for the alteration of the Constitution.

DIRECTIONS:—Mark your vote on this ballot-paper as follows:—

If you APPROVE the proposed law, write the word Yes in the space provided opposite the question.

If you DO NOT APPROVE the proposed law, write the word No in the space provided opposite the question.

Do you approve the proposed law for the alteration of the Constitution entitled (*here set out the title of the proposed law*)?

Substituted by
No. 121, 1965,
s. 4.

**Commonwealth of Australia
Referendum (Constitution Alteration) Act**

Submission to the Electors of Proposed Laws for the alteration of the Constitution.

- DIRECTIONS:—**Mark your vote on this ballot-paper as follows:—

If you **DO NOT APPROVE** the proposed law, write the word **No** in the space provided opposite the question.

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- DIRECTIONS:—Mark your vote on this ballot-paper as follows:—**

If you **DO NOT APPROVE** the proposed law, write the word **No** in the space provided opposite the question.

11/11/2011

Commonwealth of Australia

His Majesty the King

Greeting:

2. For the return of the writ on or before _____ the _____ day of _____ 19____.

Governor-General.

By His Excellency's Command,

NOTES

1. The *Referendum (Constitution Alteration) Act 1906-1973* comprises the *Referendum (Constitution Alteration) Act 1906* as amended by the other Acts specified in the following table:

Act	Number and year	Date of Assent	Date of commencement
<i>Referendum (Constitution Alteration) Act 1906</i>	No. 11, 1906	8 Oct 1906	8 Oct 1906
<i>Referendum (Constitution Alteration) Act 1909</i>	No. 20, 1909	13 Dec 1909	13 Dec 1909
<i>Referendum (Constitution Alteration) Act 1910</i>	No. 31, 1910	1 Dec 1910	1 Dec 1910
<i>Referendum (Constitution Alteration) Act 1912</i>	No. 17, 1912	6 Nov 1912	6 Nov 1912
<i>Referendum (Constitution Alteration) Act 1912 No. 2</i>	No. 35, 1912	24 Dec 1912	24 Dec 1912
<i>Referendum (Constitution Alteration) Act 1915</i>	No. 38, 1915	13 Sept 1915	13 Sept 1915
<i>Referendum (Constitution Alteration) Act 1919</i>	No. 14, 1919	28 Oct 1919	28 Oct 1919
<i>Referendum (Constitution Alteration) Act 1926</i>	No. 23, 1926	28 June 1926	28 June 1926
<i>Referendum (Constitution Alteration) Act 1928</i>	No. 42, 1928	28 Sept 1928	28 Sept 1928
<i>Referendum (Constitution Alteration) Act 1936</i>	No. 61, 1936	28 Nov 1936	28 Nov 1936
<i>Statute Law Revision Act 1950</i>	No. 80, 1950	16 Dec 1950	31 Dec 1950
<i>Referendum (Constitution Alteration) Act 1965</i>	No. 49, 1965	3 June 1965	1 July 1965
<i>Referendum (Constitution Alteration) Act (No. 2) 1965</i>	No. 121, 1965	18 Dec 1965	15 Jan 1966
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	No. 93, 1966	29 Oct 1966	1 Dec 1966
<i>Statute Law Revision Act 1973</i>	No. 216, 1973	19 Dec 1973	31 Dec 1973

- 2.—S. 5—The following proposed laws for the alteration of the Constitution have been submitted to the electors under the provisions of this Act up to 31 December 1973:

Short title	Date of Submission	Result of Submission	Gazette containing Chief Electoral Officer's Statement of Result	Parliamentary Papers containing Detailed Voting
<i>Constitution Alteration (Senate Elections) 1906</i>	12 Dec 1906	Approved	1907, p. 502	1907, No. 7
<i>Constitution Alteration (Finance) 1909</i>	13 Apr 1910	Not approved	1910, p. 1157	1910, No. 1
<i>Constitution Alteration (State Debts) 1909</i>	13 Apr 1910	Approved	1910, p. 1158	1910, No. 1

Short title	Date of Submission	Result of Submission	Gazette containing Chief Electoral Officer's Statement of Result	Parliamentary Papers containing Detailed Voting
<i>Constitution Alteration (Legislative Powers) 1910</i>	26 Apr 1911	Not approved	1911, p. 1579	1911, No. 2
<i>Constitution Alteration (Monopolies) 1910</i>	26 Apr 1911	Not approved	1911, p. 1580	1911, No. 2
<i>Constitution Alteration (Corporations) 1912</i>	31 May 1913	Not approved	1913, p. 1792	1913, No. 22
<i>Constitution Alteration (Industrial Matters) 1912</i>	31 May 1913	Not approved	1913, p. 1793	1913, No. 22
<i>Constitution Alteration (Nationalization of Monopolies) 1912</i>	31 May 1913	Not approved	1913, p. 1794	1913, No. 22
<i>Constitution Alteration (Trade and Commerce) 1912</i>	31 May 1913	Not approved	1913, p. 1792	1913, No. 22
<i>Constitution Alteration (Railway Disputes) 1912</i>	31 May 1913	Not approved	1913, p. 1793	1913, No. 22
<i>Constitution Alteration (Trusts) 1912</i>	31 May 1913	Not approved	1913, p. 1794	1913, No. 22
<i>Constitution Alteration (Legislative Powers) 1919</i>	13 Dec 1919	Not approved	1920, p. 113	1920, No. 18
<i>Constitution Alteration (Nationalization of Monopolies) 1919</i>	13 Dec 1919	Not approved	1920, p. 113	1920, No. 18
<i>Constitution Alteration (Industry and Commerce) 1926</i>	4 Sept 1926	Not approved	1926, p. 1640	1926-1928, No. 74
<i>Constitution Alteration (Essential Services) 1926</i>	4 Sept 1926	Not approved	1926, p. 1640	1926-1928, No. 74
<i>Constitution Alteration (State Debts) 1928</i>	17 Nov 1928	Approved	1929, p. 50	1929, No. 50
<i>Constitution Alteration (Aviation) 1936</i>	6 March 1937	Not approved	1937, p. 662	1937, No. 67
<i>Constitution Alteration (Marketing) 1936</i>	6 March 1937	Not approved	1937, p. 662	1937, No. 67
<i>Constitution Alteration (Post-war Reconstruction and Democratic Rights) 1944</i>	19 Aug 1944	Not approved	1944, p. 2213	1945-1946, No. 15
<i>Constitution Alteration (Social Services) 1946</i>	28 Sept 1946	Approved	1946, p. 3169	1948, No. 12
<i>Constitution Alteration (Organized Marketing of Primary Products) 1946</i>	28 Sept 1946	Not approved	1946, p. 3169	1948, No. 12
<i>Constitution Alteration (Industrial Employment) 1946</i>	28 Sept 1946	Not approved	1946, p. 3170	1948, No. 12
<i>Constitution Alteration (Rents and Prices) 1947</i>	29 May 1948	Not approved	1948, p. 2590	1950-1951, No. 16
<i>Constitution Alteration (Powers to deal with Communists and Communism) 1951</i>	22 Sept 1951	Not approved	1951, p. 2782	1951-1953, No. 107
<i>Constitution Alteration (Parliament) 1967</i>	27 May 1967	Not approved	1967, p. 3403	1968, No. 125
<i>Constitution Alteration (Aboriginals) 1967</i>	27 May 1967	Approved	1967, p. 3403	1968, No. 125
<i>Constitution Alteration (Prices) 1973</i>	8 Dec 1973	Not approved	1973, No. 195B, p. 1	—
<i>Constitution Alteration (Incomes) 1973</i>	8 Dec 1973	Not approved	1973, No. 195B, p. 1	—

REMOVAL OF PRISONERS (AUSTRALIAN CAPITAL TERRITORY) ACT 1968-1973

TABLE OF PROVISIONS

Section

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9. Validation
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12. Regulations

An Act relating to the Removal from the Australian Capital Territory to Prisons in the State of New South Wales of Prisoners and certain other Persons, and for other purposes.

- | | |
|---|---|
| <p>1. This Act may be cited as the <i>Removal of Prisoners (Australian Capital Territory) Act</i> 1968-1973.¹</p> | <p>Short title.
Short title amended;
No. 32, 1918,
s. 2.</p> |
| <p>2. This Act shall come into operation on the day on which it receives the Royal Assent.¹</p> | <p>Commence-
ment.</p> |
| <p>3. (1) In this Act, unless the contrary intention appears—
“authorized person” means the Sheriff, or a Deputy Sheriff, of the Territory, a magistrate, the Clerk or a Deputy Clerk of the Court of Petty Sessions established under the law of the Territory or the Sheriff or like officer of a Federal Court;
“constable” means a member of the Police Force of the Territory or a Commonwealth Police Officer;
“court” means—
 (a) a Federal Court;
 (b) the Supreme Court of the Australian Capital Territory;
 (c) the Court of Petty Sessions established under the law of the Territory; or
 (d) any other court that has, or has had, jurisdiction in respect of the Territory or a part of the Territory;</p> | <p>Definitions.
Sub-section (1) amended by
No. 216, 1973,
s. 3.</p> |

“magistrate” means a Stipendiary Magistrate or Special Magistrate appointed under the law of the Territory, and includes a magistrate of a State who is performing the duties of a magistrate in the Territory in pursuance of an arrangement in force under section 78 of the *Public Service Act 1922-1968*;

“order” includes direction;

“prison” includes any place that is, or was at the relevant time, a prison for the purposes of the law of the State;

“the State” means the State of New South Wales;

“the Territory” means the Australian Capital Territory, and includes the Jervis Bay Territory.

(2) Where the Governor-General has commuted a sentence of death pronounced on a person to a term of imprisonment, this Act applies to and in relation to the person as if the sentence of death had been a sentence of imprisonment for that term.

(3) For the purposes of this Act, a reference to the making of an order by a court includes a reference to the issue by a court or a magistrate of a warrant remanding or committing a person to prison or to some gaol, lock-up or other place of security, and a reference in this Act to an order shall be construed accordingly.

Imprisonment may be served in the State.

4. (1) Where, under a law as in force in the Territory, a person is to undergo imprisonment or other detention in custody, he is liable to undergo that imprisonment or other detention in the Territory, or, in accordance with this Act, in the State.

(2) Where a person has, in accordance with a warrant issued under this Act by reason of an order or sentence by virtue of which he is to undergo imprisonment, been placed in custody in a prison in the State, he shall be deemed, so long as he is in custody in the State under this Act in consequence of that warrant, to be undergoing that imprisonment.

Removal to, or detention in, the State.

5. (1) Where a magistrate or a court has, whether before or after the commencement of this Act, made an order or pronounced a sentence by virtue of which a person is to be, or may be, imprisoned or otherwise held in custody, an authorized person may, by warrant directed to all constables, require them to convey that person in custody from the Territory to such prison in the State as is specified in the warrant and there to deliver him into the custody of the officer in charge of the prison or some other officer doing duty at the prison, and the warrant may be executed by any constable.

(2) Where a person is delivered into custody at a prison in the State in pursuance of a warrant under the last preceding sub-section, the person may, subject to this Act, be detained in that prison or any other prison in the State for so long as his detention or custody is necessary for the execution of the order or sentence by reason of which the warrant was issued.

(3) Subject to the succeeding provisions of this Act, the person may, while so in custody, be dealt with in the like manner, and is subject to the like laws, including laws relating to the reduction or remission of sentences, as if the order or sentence of the magistrate or court by reason of which the warrant was issued had been a like order or sentence made or pronounced under a law in force in the State.

6. (1) Where a person is being detained in a prison in the State under this Act, an authorized person may issue a warrant requiring the person in charge of the prison to deliver the first-mentioned person into the custody of a constable, and requiring the constable into whose custody the person is so delivered to convey him in custody to the Territory, and a person returned to the Territory in pursuance of such a warrant shall be held in custody in the Territory by that constable or some other constable until released, or returned to the State, in accordance with law.

Return of
persons to
the Territory.

(2) So long as a person returned to the Territory in pursuance of a warrant under the last preceding sub-section continues to be liable to be kept in custody by virtue of the order or sentence by reason of which he was conveyed to the State, the constable executing the warrant or any other constable may keep the person in custody in the Territory and may return him in custody to the prison in the State, where he shall again be received into custody and dealt with as if he had not been returned to the Territory.

7. (1) Upon the commencement of this Act, the *Removal of Prisoners (Territories) Act 1923-1968* ceases to authorize the removal of prisoners or criminal lunatics from the Territory.

Application
of Removal
of Prisoners
(Territories)
Act.

(2) Subject to this Act, section 7, sub-section (3) of section 8, and sections 8A and 10A of the *Removal of Prisoners (Territories) Act 1923-1968* apply, so far as they are capable of so applying, to and in relation to a person who is being detained in a prison in the State under this Act as if his removal from the Territory to the State had been effected in pursuance of that Act and, in the case of a person who is not a prisoner or criminal lunatic within the meaning of that Act, as if he were a prisoner within the meaning of that Act.

8. This Act applies to and in relation to a person who was, before the commencement of this Act, placed in custody in a prison in the State for the purpose of giving effect to an order or sentence of a magistrate or court and has not been unconditionally released before the commencement of this Act, as if—

Application
of Act to
persons in
custody, &c.,
at
commence-
ment of Act.

- (a) this Act had been in force at the time he was so placed in custody;
- (b) he had been delivered into the custody of the officer in charge of that prison in pursuance of a warrant issued under this Act in relation to that order or sentence; and
- (c) his detention in the State before the commencement of this Act had been detention in pursuance of this Act.

Validation.

9. (1) Where, before the commencement of this Act, a person has undergone a period of imprisonment in a prison in the State by way of execution, or purported execution, of a sentence of imprisonment imposed under a law as in force in the Territory, whether or not the person is in such a prison at the commencement of this Act, he shall be deemed to have duly served that period of imprisonment in accordance with that sentence or law.

(2) Where, before the commencement of this Act, a person has been removed in custody from the Territory to the State, and detained in custody in the State, for the purpose of giving effect to an order or sentence of a magistrate or court, that removal and detention, and any act or thing done in relation to that removal or detention, shall be deemed, for all purposes (including the purposes of any action or proceeding, whether instituted before or after the commencement of this Act), to have been as lawful as they would have been if this Act had been in force at the time of the removal and detention and the removal and detention had been in accordance with this Act.

Evidence.

10. A warrant purporting to be a warrant under this Act and to be under the hand of an authorized person shall be received in evidence in any Federal or State court or court of a Territory without further proof, and is evidence of the facts stated in the warrant.

Saving of certain laws.

11. This Act does not affect—

- (a) the exercise of the Royal prerogative of mercy;
- (b) the operation of sections 17, 19A and 20 of the *Crimes Act* 1914-1966, including those sections as affected by section 7 of the *Interpretation Ordinance* 1937-1967 of the Territory;
- (c) the operation of any other law of the Commonwealth, or of any law in force in the Territory, relating to the release of offenders; or
- (d) the operation of any of the following ordinances of the Territory, namely, the *Child Welfare Agreement Ordinance* 1941-1962, the *Mental Health Ordinance* 1962-1966 and the *Insane Persons and Inebriates (Committal and Detention) Ordinance* 1936-1937.

12. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act and, in particular, prescribing forms for the purposes of this Act. Regulations.

NOTE

1. The *Removal of Prisoners (Australian Capital Territory) Act 1968-1973* comprises the *Removal of Prisoners (Australian Capital Territory) Act 1968* as amended by the other Act specified in the following table:

Act	Number and year	Date of Assent	Date of commencement
<i>Removal of Prisoners (Australian Capital Territory) Act 1968</i>	No. 82, 1968	12 Nov 1968	12 Nov 1968
<i>Statute Law Revision Act 1973</i>	No. 216, 1973	19 Dec 1973	31 Dec 1973

REMOVAL OF PRISONERS (TERRITORIES) ACT 1923-1973

TABLE OF PROVISIONS

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5.	Dealing with removed prisoner
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7.	Escape of prisoner from custody
8.	Return of removed prisoner
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10A.	Release of criminal lunatics
11.	Evidence of act of Government of State or Territory or of Governor-General
12.	Cost of removal
13.	State or Territory laws for carrying Act into effect
14.	Regulations

An Act relating to the Removal of Prisoners from Territories under the Authority of the Commonwealth.

- | | |
|--|--|
| <p>1. This Act may be cited as the <i>Removal of Prisoners (Territories) Act 1923-1973</i>.¹</p> | <p>Short title.
Short title amended;
No. 32, 1918, s. 2.</p> |
| <p>2. (1) In this Act, unless the contrary intention appears—</p> <p>“Constable” means a Commonwealth Police Officer or a member of the police force of a State or Territory;</p> <p>“Criminal lunatic” means a person detained in custody by reason of his having been charged with an offence, and either found to have been insane at the time of the commission of the offence, or found or certified or otherwise lawfully proved to be unfit, on the ground of his insanity, to be tried for the offence, and includes a person convicted of an offence and afterwards certified or otherwise lawfully proved to be insane, but does not include an aboriginal native of a Territory;</p> <p>“Prisoner” means any person sentenced to imprisonment in a Territory, but does not include an aboriginal native of a Territory;</p> <p>“This Act” includes the regulations made thereunder.</p> | <p>Interpretation.
Sub-section (1) amended by No. 80, 1950, s. 3; No. 69, 1962, s. 2; and No. 216, 1973, s. 3.</p> |

Added by
No. 69, 1962,
s. 2.

(2) For the purposes of this Act, where the sentence of a person who has been sentenced to death in a Territory has been commuted to a term of imprisonment, that person shall be deemed to have been sentenced to imprisonment in the Territory for that term.

Added by
No. 69, 1962,
s. 2.

(3) In this Act, unless the contrary intention appears, a reference to the sentence of a prisoner shall, in relation to a prisoner who, by reason of his having been declared to be a habitual criminal, may be or is being detained in prison after the expiration of the term of imprisonment imposed upon him, be read as including a reference to any detention that he is liable to undergo by reason of his having been so declared.

Exercise of
powers of
Adminis-
trator where
no office of
Adminis-
trator.

Inserted by
No. 2, 1957, s. 3.

2A. (1) Where there is no office of Administrator in respect of a Territory, the Governor-General may, by order published in the *Gazette*²—

- (a) declare that an office specified in the order shall, for the purposes of the application of this Act in relation to that Territory, be substituted for the office of Administrator; or
- (b) authorize a person named in the order to exercise and perform, in relation to that Territory, the powers and functions of an Administrator under this Act.

(2) A reference in this Act to the Administrator of a Territory shall, in relation to a Territory in respect of which an order is in force under the last preceding sub-section, be read as a reference to—

- (a) the person occupying, or acting in, the office specified in the order; or
 - (b) the person named in the order,
- as the case may be.

Removal of
prisoners
from
Territories in
certain cases.
47 & 48 Vict.,
c. 31, s. 2.
Sub-section (1)
amended by
No. 69, 1962,
s. 3.

3. (1) Where it appears to the Administrator of a Territory—

- (a) that, by reason of there being no prison in the Territory in which the prisoner can properly undergo his sentence, the removal of the prisoner is expedient for his safer custody or for the more efficient carriage of his sentence into effect; or
- (b) that it is likely that the life of a prisoner undergoing his sentence in the Territory will be endangered or his health permanently impaired by further imprisonment in the Territory; or
- (c) that the offence was committed wholly or partly beyond the limits of the Territory; or
- (d) that the prisoner belongs to a class of persons who under the law of the Territory are subject to removal under this Act,

he may recommend to the Governor-General that the prisoner be removed to a State or another Territory, there to undergo his sentence or the residue thereof.

(2) Upon the receipt of a recommendation in pursuance of the last preceding sub-section the Governor-General may, with the concurrence of the Government of the State or Territory to which it is proposed to

remove the prisoner, order the prisoner to be removed to that State or Territory, there to undergo his sentence or the residue thereof.

4. (1) Where the removal of a prisoner from a Territory is ordered in pursuance of this Act, the Governor-General, or the Administrator of the Territory may, by warrant under his hand, direct the prisoner to be removed to the State or Territory mentioned in the order, and for that purpose to be delivered into the custody of the person named or described in the warrant, and to be held in custody and conveyed to that State or Territory, there to undergo his sentence or the residue thereof, until returned in pursuance of this Act or discharged.

Warrant for
removal of
prisoner.
47 & 48 Vict.,
c. 31, s. 7.

(2) Where a prisoner is ordered or required to be returned to the Territory from which he was removed, the Governor-General or the Governor of the State or the Administrator of the Territory in which he is undergoing his sentence may, by warrant under his hand, direct the prisoner to be returned to the Territory from which he was removed, and for that purpose to be delivered into the custody of the person named or described in the warrant, and to be held in custody and conveyed to the Territory from which he was removed, there to undergo the residue of his sentence, or to be discharged or to be tried for an offence, as the case requires.

(3) Every warrant issued in pursuance of this section shall be forthwith executed according to the tenor thereof.

(4) Every warrant purporting to be issued in pursuance of this section, and to be under the hand of the Governor-General or the Governor of a State or the Administrator of a Territory, shall be received in evidence in any Court of a State or Territory without further proof, and shall be evidence of the facts therein stated, and all acts done in pursuance of any such warrant shall be deemed to have been authorized by law.

5. (1) Every prisoner removed in pursuance of this Act shall, until he is returned in pursuance of this Act, be dealt with in the State or Territory to which he is removed, in like manner as if his sentence (with such variation of the conditions thereof as is prescribed by regulations made under paragraph (b) of section fourteen of this Act) had been duly awarded in that State or Territory, and shall be subject accordingly to all laws in force in that State or Territory.

Dealing with
removed
prisoner.
47 & 48 Vict.,
c. 31, s. 8.

(2) Notwithstanding anything contained in the last preceding subsection, the conviction, judgment, and sentence of a prisoner may be questioned in the Territory from which he has been removed in the same manner as if he had not been removed, and his sentence may be remitted, and his discharge ordered, in the same manner and by the same authority as if he had not been removed.

(3) The officer in charge of any prison, on request by any person having the custody of a prisoner under a warrant issued in pursuance of

this Act, and on payment or tender of such amount for expenses as the Government of the State or Territory in which the prison is situated determines, shall receive the prisoner and detain him for such time as is requested by the person for the purpose of the proper execution of the warrant.

Remission of
portion of
imprison-
ment.

47 & 48 Vict.,
c. 31, s. 4(2).

6. Where, in pursuance of this Act, the conditions of a sentence of imprisonment appear to the Governor-General to be more severe in the State or Territory to which a prisoner is removed than in the Territory from which he was removed, the Governor-General may remit a portion of the sentence so that the punishment undergone by the prisoner may not, in the opinion of the Governor-General, be more severe than the punishment to which the prisoner was originally sentenced, and the sentence of imprisonment shall, so long as the prisoner remains in the State or Territory to which he is removed, be carried into effect as if the conditions thereof, as so varied, were the conditions of the original sentence.

Escape of
prisoner
from
custody.

47 & 48 Vict.,
c. 31, s. 9.

7. (1) If a prisoner, while in custody in pursuance of this Act or of a warrant issued in pursuance of this Act, escapes from custody, he may be retaken in the same manner as a person convicted of an offence against the laws of the State or Territory in or to which he escapes may be retaken upon an escape.

(2) A person who so escapes or aids, abets, counsels, or procures, any such escape shall be guilty of an offence.

Penalty: Imprisonment for two years.

Return of
removed
prisoner.

47 & 48 Vict.,
c. 31, s. 3.

8. (1) Where a prisoner has been removed in pursuance of this Act, the Governor-General, or the Government of the State or Territory to which the prisoner has been so removed, may order the prisoner, for the purpose of undergoing the residue of his sentence, to be returned to the Territory from which he was removed.

Amended by
No. 11, 1936,
s. 2; and No. 69,
1962, s. 4.

(2) If the Governor-General, or the Government of the State or Territory to which a prisoner is removed under this Act, requires the prisoner to be returned for discharge to the Territory from which he was removed, the prisoner shall, as prescribed, be returned to that Territory for the purpose of being there discharged at the expiration of his sentence.

Added by
No. 69, 1962,
s. 4.

(3) Where—

- (a) a person has been removed to a State or Territory in pursuance of this Act;
- (b) he is discharged in that State or Territory at the expiration of his sentence or he is released from custody in that State or Territory in pursuance of a licence granted under section eight A of this Act or an order made under section ten A of this Act;
- (c) his return to the Territory from which he was removed would not result, or be likely to result, in a failure by him to comply

with a condition applicable to such a licence or to such an order;
and

- (d) his return to the Territory from which he was removed would not be unlawful,

he is entitled, on making application in such manner and within such time as is prescribed, to be sent free of cost from the place at which he was discharged or released from custody to the Territory from which he was removed.

8A. (1) In this section—

“licence” means a licence to be at large granted under the next succeeding sub-section;

“prescribed authority” means—

- (a) a person who holds office as a Chief, Police, Stipendiary, Resident or Special Magistrate of a State and in respect of whom an arrangement in force under sub-section (15) of this section is applicable; or
- (b) a person who holds office as a Chief, Police, Stipendiary, Resident or Special Magistrate, or a District Officer or Assistant District Officer, of a Territory;

“the prescribed period”, in relation to a licence, means—

- (a) if the prisoner to whom the licence was granted was, at the time when the licence was granted, serving a term of imprisonment—the period commencing on the day on which the licence was granted and ending on the day which, if no remissions of his sentence were granted, would be the last day of that term; or
- (b) if the prisoner to whom the licence was granted was, at the time when the licence was granted, being detained in prison by reason of his having been declared to be a habitual criminal—the period of three years commencing on the day on which the licence was granted.

(2) Where a prisoner has been removed to a State or Territory in pursuance of this Act (not being a person referred to in paragraph (a) or (b) of sub-section (2) of section nineteen A of the *Crimes Act* 1914-1960), the Governor-General may, if he thinks it proper so to do in the circumstances, grant to the prisoner by writing under his hand, a licence to be at large.

(3) A licence is sufficient authority for the release from prison of the person to whom it is granted.

(4) A licence is subject to such conditions, if any, as are specified in the licence.

(5) The Governor-General may, at any time before the expiration of the prescribed period, by writing under his hand—

Licences for
prisoners to
be at large.
Inserted by
No. 69, 1962,
s. 5.

- (a) vary or revoke a condition of a licence or impose additional conditions; or
- (b) revoke a licence.

(6) The varying of a condition, or the imposing of an additional condition, under the last preceding sub-section does not have effect until notice thereof has been given to the person to whom the licence was granted, being notice given before the expiration of the prescribed period.

(7) Where—

- (a) a licence granted to a person is revoked; or
- (b) the person to whom a licence has been granted has, during the prescribed period, failed to comply with a condition of the licence or there are reasonable grounds for suspecting that he has, during that period, failed to comply with a condition of the licence,

a constable may, without warrant, arrest the person.

(8) Where a constable arrests a person in pursuance of the last preceding sub-section on a ground specified in paragraph (b) of that sub-section, the constable shall, as soon as practicable, take that person before a prescribed authority and, if the prescribed authority is satisfied that that person without lawful excuse failed to comply with a condition of the licence granted to him, the prescribed authority shall cancel the licence.

(9) A person brought before a prescribed authority under the last preceding sub-section shall, unless the prescribed authority otherwise directs, be kept in custody until the prescribed authority has determined the matter.

(10) Subject to sub-section (12) of this section, where a licence granted to a person who, at the time of the grant, was serving a term of imprisonment is revoked or cancelled, the person may be detained in prison, as if the licence had not been granted, to undergo imprisonment for a period equal to the part of the term that he had not served at the time when he was released from prison in pursuance of the licence and, in the case of a person who has been declared to be a habitual criminal, he may, on the expiration of that term, be further detained in prison as if the licence had not been granted.

(11) Subject to the next succeeding sub-section, where a licence granted to a person who, at the time of the grant, was being detained in prison by reason of his having been declared to be a habitual criminal is revoked or cancelled, the person may be detained in prison as if the licence had not been granted.

(12) Where a prescribed authority cancels a licence under sub-section (8) of this section, the person to whom the licence was granted

may appeal to the Supreme Court of a Territory or to a prescribed Federal Court against the cancellation and the Court shall—

- (a) if it is satisfied that the ground on which the licence was cancelled has been established—confirm the cancellation; or
- (b) if it is not so satisfied—order that the cancellation cease to have effect.

(13) An appeal under the last preceding sub-section shall be by way of re-hearing, but the Court may have regard to any evidence given before the prescribed authority.

(14) For the purposes of the preceding provisions of this section, “the Governor-General” means the Governor-General of the Commonwealth, or the person for the time being administering the government of the Commonwealth, acting—

Amended by
No. 9, 1968, s. 3.

- (a) in the case of a prisoner sentenced in the Australian Capital Territory or in the Northern Territory of Australia—with the advice of the Attorney-General; or
- (b) in any other case—with the advice of the Minister of State for External Territories.

(15) The Governor-General may arrange with the Governor of a State for the performance by persons who hold office as Chief, Police, Stipendiary, Resident or Special Magistrates in that State of the functions of a prescribed authority under this section.

(16) Notice of an arrangement under the last preceding sub-section shall be published in the *Gazette*.

9. (1) The preceding provisions of this Act, other than the last preceding section, shall, so far as applicable, apply to a person in custody as a criminal lunatic in like manner as they apply to a prisoner undergoing sentence of imprisonment, and, subject to this Act, all laws in force in the State or Territory in which a criminal lunatic, who is removed or returned, is for the time being in custody under a warrant issued in pursuance of this Act, shall apply to the criminal lunatic as if he had become a criminal lunatic in that State or Territory.

Application
of Act to
criminal
lunatics.
47 & 48 Vict.,
c. 31, s. 10.
Sub-section (1)
amended by
No. 69, 1962,
s. 6.

(2) Where a person, who is a criminal lunatic and is unfit to be tried for an offence, is removed in pursuance of this Act, and the Governor-General or the Government of the State or Territory to which the person was removed, or the Government of the Territory from which he was removed, considers that the person has become sufficiently sane to be tried for the offence, and requires him to be returned for trial to the Territory from which he was removed, he shall in accordance with this Act be returned as a prisoner to that Territory for the purpose of being there tried for that offence.

Application
of Act to
existing
prisoners
and criminal
lunatics.

47 & 48 Vict.,
c. 31, s. 17.

Release of
criminal
lunatics.

Inserted by
No. 69, 1962,
s. 7.

10. This Act shall apply to a prisoner who has been convicted, and to a criminal lunatic who has become a criminal lunatic before the commencement of this Act, as if he had been convicted or become a criminal lunatic after the commencement of this Act.

10A. (1) Where a criminal lunatic (being a person who was found to be insane at the time of the commission of the offence with which he was charged but not being a person to whom sub-section (1) of section twenty B of the *Crimes Act* 1914-1960 applies) has been removed to a State or Territory in pursuance of this Act, the Governor-General may, by writing under his hand, order that he be released from custody either unconditionally or subject to such conditions as are specified in the order.

(2) Where, under the last preceding sub-section, the Governor-General orders that a person be released from custody subject to conditions, the Governor-General may, at any time, by writing under his hand—

- (a) vary or revoke all or any of the conditions or impose additional conditions; or
- (b) except where the Governor-General has revoked all the conditions—revoke the order.

(3) Where an order made in respect of a person under sub-section (1) of this section is revoked or the person fails to comply with a condition of such an order, the person may, without warrant, be arrested by any constable and may be detained in custody as if the order under sub-section (1) of this section had not been made.

(4) Upon the Governor-General making an order under sub-section (1) of this section that a person be released from custody unconditionally or upon the Governor-General revoking all the conditions applicable to an order under which a person has been released from custody, this Act, and any law of the Territory from which he was removed that authorizes his detention in custody by reason of his having been found to be insane at the time of the commission of the offence with which he was charged, ceases to apply to him in relation to that offence.

Amended by
No. 9, 1968, s. 4.

(5) For the purposes of this section, “the Governor-General” means the Governor-General of the Commonwealth, or the person for the time being administering the government of the Commonwealth, acting—

- (a) in the case of a criminal lunatic removed from the Australian Capital Territory or from the Northern Territory of Australia—with the advice of the Attorney-General; or
- (b) in any other case—with the advice of the Minister of State for External Territories.

11. (1) The concurrence of and any requirement by the Government of a State or Territory may be given or made—

- (a) in the case of a State, by the Governor in Council;
- (b) in the case of a Territory, by the Administrator; or
- (c) in either case, by such other authority as is from time to time provided by the law of the State or Territory.

Evidence of act of Government of State or Territory or of Governor-General.

(2) The concurrence or requirement shall be signified by writing under the hand of the Governor of a State or the Administrator of a Territory, as the case may be, or any other officer appointed in that behalf by the law of the State or Territory.

(3) Any writing purporting to signify the concurrence or requirement and to be signed by the Governor or Administrator or other officer for the time being, shall be conclusive evidence that the concurrence or requirement has been duly given or made.

(4) Any writing purporting to be under the hand of the Governor-General and to order the removal of a prisoner or criminal lunatic from a Territory shall be conclusive evidence that the order has been duly given by the Governor-General.

Amended by No. 69, 1962, s. 8.

(5) Every writing mentioned in this section shall be admissible in evidence in any Court of a State or Territory.

12. (1) The cost of the removal of any prisoner or criminal lunatic under this Act and of his maintenance while in confinement and of his return and of his being sent, after discharge or release from custody, to any place, shall be borne by the Commonwealth or, where the expenditure of the Territory from which the prisoner or criminal lunatic is removed is defrayed from the revenues of that Territory, by the Territory from which he is removed, and shall be paid in such manner as is arranged between the Governor-General and the Governments of the States and Territories concerned.

Cost of removal.
47 & 48 Vict., c. 31, s. 11.
Sub-section (1) amended by No. 69, 1962, s. 9.

(2) Nothing in this Act shall affect any power to recover the whole or any part of the cost from the property of the prisoner or criminal lunatic.

13. If any law is made in any State or Territory—

- (a) for determining the authority by whom and the manner in which any power or concurrence under this Act is to be exercised or given;
- (b) for the payment of the costs incurred in the removal, maintenance, return, or sending back, after discharge, of a prisoner or criminal lunatic;
- (c) for dealing in the State or Territory with prisoners or criminal lunatics removed thereto in pursuance of this Act;
- (d) for making any class of prisoners or criminal lunatics subject to removal under this Act; or

State or Territory laws for carrying Act into effect.
47 & 48 Vict., c. 31, s. 12.
Amended by No. 69, 1962, s. 10.

(e) otherwise in any manner for the carrying of this Act or any part thereof into effect as regards the State or Territory,
the Governor-General may, for the purposes of this Act, direct that the law shall with or without modification or alteration be recognized and given effect to throughout the Commonwealth and the Territories as if it were part of this Act.

Regulations.
47 & 48 Vict.,
c. 31, s. 4.

14. 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 giving effect to this Act, and in particular for providing for—

- (a) the removal, return and discharge of prisoners and criminal lunatics under this Act; and
- (b) varying the conditions of a sentence of imprisonment passed in a Territory, where those conditions differ from the conditions of a sentence of imprisonment in the State or Territory to which the prisoner is removed, with a view to bringing them into conformity with the latter conditions:

Provided that no such variation shall increase the term of the sentence of imprisonment.

NOTES

1. The *Removal of Prisoners (Territories) Act 1923-1973* comprises the *Removal of Prisoners (Territories) Act 1923* as amended by the other Acts specified in the following table:

Act	Number and year	Date of Assent	Date of commencement
<i>Removal of Prisoners (Territories) Act 1923</i>	No. 14, 1923	1 Sept 1923	1 Sept 1923
<i>Removal of Prisoners (Territories) Act 1935</i>	No. 11, 1936	27 May 1936	27 May 1936
<i>Statute Law Revision Act 1950</i>	No. 80, 1950	16 Dec 1950	31 Dec 1950
<i>Removal of Prisoners (Territories) Act 1957</i>	No. 2, 1957	15 April 1957	15 April 1957
<i>Removal of Prisoners (Territories) Act 1962</i>	No. 69, 1962	24 Nov 1962	22 Dec 1962
<i>Removal of Prisoners (Territories) Act 1968</i>	No. 9, 1968	8 May 1968	8 May 1968
<i>Statute Law Revision Act 1973</i>	No. 216, 1973	19 Dec 1973	31 Dec 1973

See, in connexion with the removal of prisoners from Christmas Island and the application of this Act to Christmas Island, section 18 of the Christmas Island Act 1958-1973.

- 2.—S.2A—By order published in the *Gazette* on 25 July 1957 it was declared that, for the purposes of the application of this Act in relation to the Territory of Cocos

(Keeling) Islands, the office of Official Representative in that Territory be substituted for the office of Administrator.

By order published in the *Gazette* on 23 October 1958 it was declared that, for the purposes of the application of this Act in relation to the Territory of Christmas Island, the office of Official Representative in that Territory be substituted for the office of Administrator.

REMUNERATION AND ALLOWANCES ACTS 1973

TABLE OF PROVISIONS

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PART III—MINISTERS OF STATE

8.	Citation
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PART IV—HOLDERS OF CERTAIN JUDICIAL AND OTHER OFFICES

13.	Remuneration and allowances of holders of certain judicial and other offices
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PART V—PERMANENT HEADS OF DEPARTMENTS OF THE PUBLIC SERVICE

14.	Salaries and allowances of Permanent Heads of Departments
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PART VI—HOLDERS OF CERTAIN OFFICES OR APPOINTMENTS

15.	Salaries and allowances of holders of certain offices or appointments
16.	Remuneration payable to holders of certain statutory offices
17.	Remuneration of office-holder who is appointed to another office

SCHEDULE 1

Amendments of the *Parliamentary Allowances Act* 1952-1973

SCHEDULE 2

Amendments of the *Ministers of State Act* 1952-1973

SCHEDULE 3

Remuneration and allowances of holders of certain judicial and other offices

SCHEDULE 4

Salaries and allowances of holders of certain offices or appointments

REMUNERATION AND ALLOWANCES ACTS 1973

An Act relating to the Remuneration and Allowances payable to Members of the Parliament, Ministers of State, Justices of the High Court, Judges of Courts created by the Parliament, Permanent Heads of Departments of the Public Service and the Holders of certain Offices or Appointments.

PART I—PRELIMINARY

1. This Act may be cited as the *Remuneration and Allowances Acts* 1973.¹ Short title.
Short title
amended;
No. 32, 1918,
s. 2.
2. This Act shall come into operation on the day on which it receives the Royal Assent.¹ Commence-
ment.

PART II—MEMBERS OF THE PARLIAMENT

3. (1) In this Part, the *Parliamentary Allowances Act* 1952-1970 is referred to as the Principal Act. Citation.

* * * * *

Sub-section (2)
omitted by
No. 216, 1973,
s. 3.

4-7.² * * * * *

PART III—MINISTERS OF STATE

8. (1) In this Part, the *Ministers of State Act* 1952-1971 is referred to as the Principal Act. Citation.

* * * * *

Sub-section (2)
omitted by
No. 216, 1973,
s. 3.

9-12.³ * * * * *

PART IV—HOLDERS OF CERTAIN JUDICIAL AND OTHER OFFICES

Remuneration and allowances of holders of certain judicial and other offices.

13. (1) Notwithstanding anything in any other Act in force at the commencement of this Act—

- (a) the rate per annum of the salary applicable to an office specified in the first column of Schedule 3 is the rate per annum specified in the second column of that Schedule in relation to that office; and
- (b) the rate per annum of the annual allowance applicable to an office specified in the first column of Schedule 3 is the rate per annum specified in the third column of that Schedule in relation to that office.

(2) Notwithstanding sub-section 10 (1) of the *Restrictive Trade Practices Act* 1971-1972, the rate per annum of the additional remuneration payable to the person for the time being holding, or acting in, the office of President of the Trade Practices Tribunal if he is not the Chief Judge of the Commonwealth Industrial Court or the President of the Commonwealth Conciliation and Arbitration Commission is Two thousand two hundred dollars per annum.

PART V—PERMANENT HEADS OF DEPARTMENTS OF THE PUBLIC SERVICE

Salaries and allowances of Permanent Heads of Departments.

14. (1) Notwithstanding anything in any other Act in force at the commencement of this Act—

- (a) the rate per annum of the salary applicable to the office of Permanent Head of a Department of the Public Service is Twenty-nine thousand two hundred and fifty dollars a year; and
- (b) the rate per annum of the annual allowance applicable to the office of Permanent Head of a Department of the Public Service is One thousand seven hundred and fifty dollars a year.

(2) A reference in this section to a Department of the Public Service does not include a reference to a Department of the Parliament.

PART VI—HOLDERS OF CERTAIN OFFICES OR APPOINTMENTS

Salaries and allowances of holders of certain offices or appointments.

15. (1) Notwithstanding anything in any other Act in force at the commencement of this Act but subject to this section—

- (a) the rate per annum of the remuneration or salary applicable to an office or appointment specified in the first column of Part I or Part II of Schedule 4 is the rate per annum specified in the second column of that Part of that Schedule in relation to that office or appointment;

- (b) the rate per annum of the salary applicable to an office specified in the first column of Part III of Schedule 4 is the rate per annum specified in the second column of that Part of that Schedule in relation to that office; and
- (c) the rate per annum of the annual allowance (if any) applicable to an office or appointment specified in the first column of Part I or Part II of Schedule 4 is the rate per annum specified in the third column of that Part of that Schedule in relation to that office or appointment.

(2) Sub-section (1) does not apply in relation to a person who is appointed to hold, or perform the duties of, an office or appointment in a part-time capacity.

16. (1) The rate per annum of the remuneration or salary applicable to an office specified in the first column of Part IV of Schedule 4 is the rate per annum specified in the second column of that Part of that Schedule in relation to that office.

Remuneration payable to holders of certain statutory offices.

Added by No. 203, 1973, s. 3.

(2) The rate per annum of the annual allowance (if any) applicable to an office specified in the first column of Part IV of Schedule 4 is the rate per annum specified in the third column of that Part of that Schedule in relation to that office.

(3) Notwithstanding sub-section 9 (2) of the *Grants Commission Act* 1973, the rate of the remuneration payable to a part-time member of the Commission shall be as prescribed by regulations made under that Act but, until regulations are so made, the rate shall be the same as the rate at which that remuneration was paid immediately before the commencement of this section.

(4) Notwithstanding sub-section 8 (1) of the *Prices Justification Act* 1973, the rate of the remuneration payable to a member of the Prices Justification Tribunal (other than the Chairman, the Deputy Chairman or a full-time member) shall be as prescribed by regulations made under that Act but, until regulations are so made, the rate shall be the same as the rate at which that remuneration was paid immediately before the commencement of this section.

(5) Notwithstanding sub-section 14 (2) of the *Wool Industry Act* 1972-1973, the rate of the remuneration payable to a deputy of a member of the Australian Wool Corporation, other than the deputy of the member representing Australia, shall be as prescribed by regulations made under that Act but, until regulations are so made, the rate shall be the same as the rate at which that remuneration was paid immediately before the commencement of this section.

(6) If the Chairman of the Prices Justification Tribunal is a Judge, other than the Chief Judge, of the Australian Industrial Court or is a Deputy President of the Australian Conciliation and Arbitration Commission, additional remuneration at the rate of \$2,200 per annum and an

additional annual allowance at the rate of \$500 per annum are payable in relation to his holding of the office of Chairman of that Tribunal.

Remuner-
ation of
office-holder
who is
appointed to
another
office.

Added by
No. 203, 1973,
s. 3.

17. (1) Where a person appointed to hold a statutory office in a full-time capacity was, immediately before his appointment, the holder in a full-time capacity of another statutory office or an officer (including an unattached officer) of the Public Service or an officer in the service of a body corporate established for a public purpose by or under an Act, he shall, if the regulations so provide, be paid, during the period of his appointment (including any period of re-appointment) to the first-mentioned statutory office, in lieu of the remuneration and annual allowance (if any) payable in respect of that office, remuneration at such rate and an annual allowance at such rate (if any) as are specified in, or ascertained in accordance with, the regulations.

(2) The Governor-General may make regulations prescribing all matters permitted to be prescribed by this section.

SCHEDULE 1²

* * * * *

SCHEDULE 2³

* * * * *

SCHEDULE 3

Section 13

Office	Rate per annum of Salary	Rate per annum of Annual Allowance
	\$	\$
Chief Justice of the High Court	39,000	2,250
Justice (other than the Chief Justice) of the High Court	35,300	1,750
Chief Judge of the Commonwealth Court of Conciliation and Arbitration	31,450	1,750
Chief Judge of the Commonwealth Industrial Court	31,450	1,750
Judge (other than the Chief Judge) of the Commonwealth Industrial Court	29,250	1,250
Judge of the Federal Court of Bankruptcy	29,250	1,250
Judge of the Supreme Court of the Australian Capital Territory	29,250	1,250
Judge of the Supreme Court of the Northern Territory	29,250	1,250
President of the Commonwealth Conciliation and Arbitration Commission	31,450	1,750
Deputy President of the Commonwealth Conciliation and Arbitration Commission	29,250	1,250

SCHEDULE 4

Section 15

PART I

Office or Appointment	Rate per annum of Remuneration or Salary	Rate per annum of Annual Allowance
	\$	\$
Governor of the Reserve Bank of Australia	32,650	1,750
Managing Director of the Commonwealth Banking Corporation	30,950	1,750
High Commissioner of the Commonwealth in the United Kingdom	29,250	
General Manager of the Australian National Airlines Commission	29,250	2,000
Chairman of the Public Service Board	29,250	1,750
Commissioner of Taxation		
Chairman of the Tariff Board		
Solicitor-General		
First Parliamentary Counsel		
Executive Chairman of the Australian Industry Development Corporation	26,700	1,200
Chairman of the Australian Wool Corporation		
Commissioner of the National Urban and Regional Development Authority		
Chairman of the Australian Universities Commission		
Chairman of the Australian Commission on Advanced Education		
Chairman of the Executive of the Commonwealth Scientific and Industrial Research Organization	25,850	1,200
Commissioner of the Snowy Mountains Hydro-electric Authority		
Chairman, Chiefs of Staff Committee		
Deputy Governor of the Reserve Bank of Australia		
Deputy Managing Director of the Commonwealth Banking Corporation		
Chief of Naval Staff in the Naval Forces of the Commonwealth	25,000	1,200
Chief of the General Staff in the Military Forces of the Commonwealth		
Chief of the Air Staff in the Air Force of the Commonwealth		
Auditor-General for the Commonwealth		
Director-General of Security		
General Manager of the Australian Broadcasting Commission	25,000	1,200
General Manager of the Overseas Telecommunications Commission (Australia)		
Commonwealth Railways Commissioner		
Member (other than the Chairman) of the Public Service Board		
Public Service Arbitrator		
Commissioner of Trade Practices		
Second Commissioner of Taxation		
Commissioner of the National Capital Development Commission		
General Manager of the Commonwealth Trading Bank of Australia		
General Manager of the Commonwealth Savings Bank of Australia		
General Manager of the Commonwealth Development Bank of Australia		
General Manager of the Australian Coastal Shipping Commission		
Chairman of the Australian Atomic Energy Commission		

PART II

Office	Rate per annum of Remuneration or Salary	Rate per annum of Annual Allowance
	\$	\$
Member (other than the Chairman) of the Executive of the Commonwealth Scientific and Industrial Research Organization	23,750	..
Administrator of Papua New Guinea	23,207	3,000
Second Parliamentary Counsel	22,758	..
Clerk of the Senate	22,012	..
Clerk of the House of Representatives		
Chairman of the Commonwealth Bureau of Roads		
Chairman of the Australian Wheat Board		
Executive Member of the Australian Atomic Energy Commission		
Director of the Commonwealth Serum Laboratories Commission	20,810	2,500
Chairman of the Australian Broadcasting Control Board		
Administrator of the Northern Territory		
Chairman of the Housing Loans Insurance Corporation	20,810	1,000
Commissioner of the Export Payments Insurance Corporation		
Chairman of a Taxation Board of Review	20,810	..
Associate Commissioner of the Snowy Mountains Hydro-electric Authority	20,502	..
Deputy Commissioner of the National Urban and Regional Development Authority		
National Librarian	19,902	..
Commonwealth Employees' Compensation Tribunal		
Assistant Director of the Snowy Mountains Engineering Corporation	19,148	..
Member (other than the Chairman) of a Taxation Board of Review		
Associate Commissioner of the National Capital Development Commission	18,995	..
Deputy Chairman of the Australian Universities Commission		
Director of the Australian Institute of Marine Science		
Member (other than the Chairman) of the Australian Broadcasting Control Board	18,086	..
Deputy Chairman of the Tariff Board		
Parliamentary Librarian	17,792	..
Chairman of the Australian Capital Territory Electricity Authority		
Member (other than the Chairman or a Deputy Chairman) of the Tariff Board	17,043	700
Director of the Australian Institute of Criminology		
Chairman of the Australian Dairy Produce Board		
Chairman of the Australian Meat Board	17,043	..
Chairman of a Valuation Board		
President of the Superannuation Board	17,043	..
Commissioner of Employees' Compensation		
Commonwealth Teaching Service Commissioner	15,983	900
Member (other than the Chairman) of the Repatriation Commission		
Chairman of a War Pensions Entitlement Appeal Tribunal	15,983	..
General Manager of the Australian Tourist Commission		
Executive Member of the Metric Conversion Board	15,385	..
Principal Parliamentary Reporter		
Secretary to the Joint House Department	14,633	..
Deputy Chairman of the Housing Loans Insurance Corporation		
Chairman of a War Pensions Assessment Appeal Tribunal		

Office	Rate per annum of Remuneration or Salary	Rate per annum of Annual Allowance
Chairman of the Industrial Research and Development Grants Board	\$ 14,479	\$..
Director of the Australian Stevedoring Industry Authority	12,974	1,000
Administrator of Norfolk Island	12,974	..
Member (other than the Chairman) of a War Pensions Entitlement Appeal Tribunal	11,055	500
Chairman of the Australian Canned Fruits Board	10,824	..
Chairman of a Repatriation Board	9,961	..
Member (other than the Chair man) of a Repatriation Board		

PART III

Office	Rate per annum of Salary
Commissioner of the Commonwealth Conciliation and Arbitration Commission	\$ 16,250
Deputy Public Service Arbitrator	

PART IV

Part IV added by
No. 203, 1973,
s. 4.

Office	Rate per annum of Remuneration or Salary	Rate per annum of Annual Allowance
Chairman of the Cities Commission	\$ 29,250	\$ 1,750
Chairman of the Grants Commission	26,700	1,200
Executive Member of the Pipeline Authority	22,012	..
Chief Australian Electoral Officer	21,200	750
Director of the Film and Television School	20,502	..
Deputy Chairman of the Prices Justification Tribunal		
Member (other than the Chairman or a part-time Member) of the Grants Commission	19,148	..
Member (other than the Chairman, the Deputy Chairman or a part-time Member) of the Prices Justification Tribunal	18,995	..
Insurance Commissioner	17,043	..
Deputy Chief Australian Electoral Officer	14,479	..
Australian Electoral Officer for New South Wales	13,500	..
Australian Electoral Officer for Victoria	11,500	..
Australian Electoral Officer for Queensland	6,450	..
Australian Electoral Officer for South Australia	5,150	..
Australian Electoral Officer for Western Australia	3,850	..
Australian Electoral Officer for Tasmania		
Chairman of the Pipeline Authority		
Chairman of the Child Care Standards Committee		
Deputy Chairman of the Australian Wool Corporation		

Office	Rate per annum of Remuneration or Salary	Rate per annum of Annual Allowance
Member (other than the Chairman, the Deputy Chairman or the Member representing Australia) of the Australian Wool Corporation	\$ 3,200	\$..
Commissioner (being a part-time Commissioner) of the Cities Commission	} 2,600	..
Part-time Member (other than the Chairman) of the Pipeline Authority		

NOTES

1. The *Remuneration and Allowances Acts 1973* comprises the *Remuneration and Allowances Act 1973* as amended by the other Acts specified in the following table:

Act	Number and year	Date of Assent	Date of commencement
<i>Remuneration and Allowances Act 1973</i>	No. 14, 1973	1 Apr 1973	1 Apr 1973
<i>Remuneration and Allowances Act (No. 2) 1973</i>	No. 203, 1973	18 Dec 1973	1 Jan 1974
<i>Statute Law Revision Act 1973</i>	No. 216, 1973	19 Dec 1973	31 Dec 1973

2. The amendments made by sections 4 to 7 and Schedule 1 have been incorporated in the print of the *Parliamentary Allowances Act 1952-1973*.
3. The amendments made by sections 9 to 12 and Schedule 2 have been incorporated in the print of the *Ministers of State Act 1952-1973*.

REMUNERATION TRIBUNAL ACT 1973

TABLE OF PROVISIONS

Section

1. Short title
2. Commencement
3. Interpretation
4. Establishment of Tribunal
5. Functions of the Tribunal
6. Inquiries and reports by Tribunal
7. Inquiries and determinations by Tribunal
8. Tribunal to make reports and determinations annually
9. Resignation and removal from office
10. Meetings of the Tribunal
11. Method of inquiry by Tribunal
12. Fees and allowances
13. Regulations

An Act to establish a Tribunal in relation to the Remuneration of certain public and other Offices.

1. This Act may be cited as the *Remuneration Tribunal Act 1973*.¹ Short title.
2. This Act shall come into operation on the day on which it receives the Royal Assent.¹ Commencement.
3. (1) In this Act, unless the contrary intention appears— Interpretation.
 “Chairman” means Chairman of the Tribunal and includes a member appointed temporarily in the place of the Chairman under sub-section 33 (4) of the *Acts Interpretation Act 1901-1973*;
 “holder of a statutory office” means the holder of an office or appointment (other than a judicial office or appointment or an office or appointment in the Public Service or the service or employment of a body corporate) established by or made under a law of Australia, and includes a person who constitutes, or is a member of, an authority or body (other than a court) established for a public purpose by such a law;
 “member” means a member of the Tribunal and includes a person appointed temporarily in the place of a member under sub-section 33 (4) of the *Acts Interpretation Act 1901-1973*;
 “Tribunal” means the Tribunal established by sub-section 4 (1).
 (2) A reference in this Act to remuneration shall be read as including a reference to annual allowances.
4. (1) For the purposes of this Act, there is hereby established a Tribunal to be known as the Remuneration Tribunal. Establishment of Tribunal.

(2) The Tribunal shall consist of three members appointed by the Governor-General on a part-time basis.

(3) Subject to this Act, a member holds office for a period of 5 years but is eligible for re-appointment.

(4) A person shall not be appointed as a member if he is or has been—

- (a) a member of the Parliament;
- (b) an officer of, or person temporarily employed in, the Public Service;
- (c) the holder of a statutory office;
- (d) a Justice or Judge of a federal court or of the Supreme Court of an internal Territory; or
- (e) a person who, by virtue of an Act, has the same status as a Justice or Judge of a court referred to in paragraph (d).

(5) The Governor-General shall appoint one of the members to be the Chairman of the Tribunal.

(6) A member is not eligible to be appointed as Chairman unless—

- (a) he is a Judge or a retired Judge of a court of a State; or
- (b) he is qualified for appointment as a Judge of a court of a State.

**Functions of
the Tribunal.**

5. The functions of the Tribunal are to inquire into, and report to the Minister on, matters referred to in section 6 and to inquire into, and determine, matters referred to in section 7.

**Inquiries and
reports by
Tribunal.**

6. (1) The Tribunal shall, from time to time as provided by this Act, inquire into, and report to the Minister on, the question whether any alterations are desirable in the salaries payable to Ministers of State out of public moneys of Australia.

(2) The Tribunal shall, from time to time as provided by this Act, inquire into, and report to the Minister on, the question whether any alterations are desirable in the remuneration payable to Judges out of public moneys of Australia.

(3) Where the Tribunal inquires into, and reports on, a matter referred to in sub-section (1) or (2), the Tribunal may also inquire into, and report on, any matter that is significantly related to the first-mentioned matter.

(4) If the Tribunal reports that alterations are desirable in respect of a matter, it shall, in its report, recommend the nature and extent of the alterations that should be made.

(5) The Minister shall cause a copy of a report to be laid before each House of Parliament within 15 sitting days of that House after the report is received by him.

Inquiries and determinations by Tribunal.

7. (1) The Tribunal shall, from time to time as provided by this Act, inquire into, and determine, the allowances (including allowances in accordance with section 48 of the Constitution) to be paid out of the public moneys of Australia to members of the Parliament by reason of their membership of the Parliament or by reason of their holding particular offices, or performing particular functions in, or in relation to, the Parliament or either House of the Parliament.

(2) The Tribunal shall, from time to time as provided by this Act, inquire into, and determine, the allowances to be paid to Ministers of State out of the public moneys of Australia.

(3) The Tribunal shall, from time to time as provided by this Act, inquire into, and determine, the remuneration to be paid to officers of the First Division of the Public Service and to the holders of statutory offices.

(4) Where the Tribunal inquires into, and determines, a matter referred to in sub-section (1), (2) or (3), the Tribunal may also inquire into, and determine, any matter that is significantly related to the first-mentioned matter.

(5) A determination of the Tribunal shall be in writing and shall come into operation, or shall be deemed to have come into operation, on such date as the Tribunal specifies in the determination.

(6) The Tribunal shall furnish to the Minister a copy of every determination made by the Tribunal.

(7) The Minister shall cause a copy of a determination to be laid before each House of the Parliament within 15 sitting days of that House after the determination is received by him.

(8) If either House of the Parliament, within 15 sitting days of that House after a copy of a determination has been laid before that House, passes a resolution disapproving of the determination, then—

- (a) if the determination has not come into operation—the determination shall not come into operation; or
- (b) if the determination has come into operation—the determination shall not have any force or effect in respect of a period on or after the day on which the resolution was passed.

(9) Subject to sub-section (8), remuneration to which a determination applies shall, notwithstanding the provisions of any law of Australia, be paid in accordance with the determination out of the Consolidated Revenue Fund, which is appropriated accordingly.

Tribunal to
make reports
and
determin-
ations
annually.

8. The Tribunal shall, as soon as practicable after the commencement of this Act, and at subsequent intervals of not more than 1 year, make at the one time—

- (a) reports on the matters referred to in sub-sections 6 (1) and (2); and
- (b) determinations in respect of the matters referred to in sub-sections 7 (1), (2) and (3).

Resignation
and removal
from office.

9. (1) A member may resign his office by writing signed by him and delivered to the Governor-General.

(2) The Governor-General may remove a member from office for misbehaviour or physical or mental incapacity.

(3) A member ceases to hold office if he becomes a person mentioned in sub-section 4 (4).

Meetings of
the Tribunal.

10. (1) The Chairman may convene meetings of the Tribunal.

(2) The Chairman shall preside at all meetings of the Tribunal at which he is present.

(3) In the event of the absence of the Chairman from a meeting, another member nominated by the Chairman shall preside.

(4) At a meeting of the Tribunal—

- (a) the procedure shall be as determined by the Tribunal;
- (b) two members constitute a quorum;
- (c) all questions shall be decided by a majority of votes of the members present and voting; and
- (d) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

Method of
inquiry by
Tribunal.

11. (1) In the performance of the functions of the Tribunal—

- (a) the Tribunal may inform itself in such a manner as it thinks fit;
- (b) the Tribunal may receive written or oral statements;
- (c) the Tribunal is not required to conduct any proceedings in a formal manner; and
- (d) the Tribunal is not bound by the rules of evidence.

(2) The Minister may, if he thinks fit, appoint a person or persons to assist the Tribunal in an inquiry.

Fees and
allowances.

12. A member and any person appointed under sub-section 11 (2) to assist the Tribunal shall be paid such fees and allowances as are prescribed.

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

NOTE

1. Act No. 215, 1973; assented to 19 December 1973.

REPATRIATION ACT 1920-1973

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REPATRIATION ACT 1920-1973

An Act to make provision for the Repatriation of Australian Soldiers and for other purposes.

PART I—PRELIMINARY

1. This Act may be cited as the *Repatriation Act* 1920-1973.¹

Short title.
Short title
amended;
No. 32, 1918,
s. 2.

2. This Act shall commence on a day to be fixed by Proclamation.¹

Commence-
ment.

* * * * *

Section 3
repealed by
No. 216, 1973,
s. 3; section 4
repealed by
No. 104, 1973,
s. 3.

5. This Act extends to the Territories.

Extension of
Act to
Territories.

Substituted by
No. 34, 1950,
s. 4; amended by
No. 216, 1973,
s. 3.

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

“adopted” means, in relation to a child of a member of the Forces, adopted in accordance with the law of a State or Territory or of another country;

“Board” means a Repatriation Board appointed under this Act;

“Commission” means the Repatriation Commission appointed under this Act;

“Commissioner” means a member of the Commission and includes an acting member of the Commission;

“Member of a Board” includes an acting member of a Board;

“organization representing returned soldiers” means an organization representing persons who are members of the forces as defined by section 23, 100 or 107B.

Interpre-
tation.

Sub-section (1)
amended by
No. 22, 1943,
s. 5; No. 29,
1947, s. 3;
No. 58, 1952,
s. 3; No. 69,
1953, s. 3;
No. 27, 1973,
s. 9; and
No. 216, 1973,
s. 3.

* * * * *

Sub-section (2)
omitted by
No. 2, 1973, s. 3.

PART II—ADMINISTRATION

7. (1) For the purposes of this Act there shall be a Repatriation Commission which shall, subject to the control of the Minister, be charged with the general administration of this Act.

Amended by
No. 23, 1922,
s. 2.

(2) The Commission shall be a body corporate with perpetual succession and a common seal and may acquire hold and dispose of real and personal property and shall be capable of suing and being sued.

(3) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Commission affixed to any document or notice and shall deem that it was duly affixed.

Members of
Commission.
Sub-section (1)
amended by
No. 22, 1943,
s. 6.

8. (1) The Commission shall consist of not less than three and not more than five members who shall be appointed by the Governor-General.

(2) Any organization representing returned soldiers throughout the Commonwealth may submit to the Minister a list containing the names of not less than three persons from which the organization recommends that a selection be made of a person to be appointed as one of the Commissioners, and the Governor-General may appoint a person selected from any list so submitted to be one of the Commissioners.

(3) The Governor-General shall appoint one of the Commissioners to be Chairman of the Commission.

Amended by
No. 22, 1943,
s. 6.

(4) In the case of the illness, or absence from Australia or absence for the purpose of performing the duties of another office, or suspension of any Commissioner, or in the event of the office of a Commissioner becoming vacant, the Governor-General may appoint a person to act during the illness, absence or suspension, or until the appointment of a Commissioner, as the case may be, and the person so acting shall have all the powers and perform all the duties of a Commissioner.

(5) At their first meeting in each calendar year the members of the Commission may elect one of their number to be deputy chairman until the first meeting of the Commission in the next calendar year.

Substituted by
No. 31, 1954,
s. 3.

(6) Where there is a vacancy in the office of deputy chairman of the Commission, the Commissioners present at a meeting of the Commission may elect one of their number to be deputy chairman until the next meeting of the Commission on or after the first day of January next following the date of the election.

Inserted by
No. 31, 1954,
s. 3.

(6A) The chairman shall preside at all meetings of the Commission at which he is present and, in the absence of the chairman, the deputy chairman shall preside.

Inserted by
No. 31, 1954,
s. 3.

(6B) If neither the chairman nor the deputy chairman is present at a meeting of the Commission, the Commissioners present at the meeting may elect one of their number to preside at that meeting.

Amended by
No. 22, 1943,
s. 6.

(7) At any meeting of the Commission two Commissioners shall form a quorum unless there are more than three Commissioners, when three Commissioners shall form a quorum.

9. The members of the Commission shall receive such remuneration and allowances as the Governor-General determines.²

Remuneration of Commissioners.

Amended by No. 120, 1968, s. 3.

10. (1) Subject to this Act, the members of the Commission appointed under this Act shall hold office for the term of three years, and shall be eligible for re-appointment.

Term of office of Commissioners.

Sub-section (1) amended by No. 216, 1973, s. 3.

(2) Upon the happening of a vacancy in the office of Commissioner, the Governor-General may appoint a person to the vacant office and such person shall, subject to this Act, hold office until the expiration of the term for which his predecessor was appointed:

Amended by No. 27, 1973, s. 9.

Provided that any appointment to fill a vacancy in the office of the Commissioner appointed in pursuance of sub-section (2) of section 8, shall be made upon a recommendation in accordance with that sub-section.

11. (1) The Commission may exercise such powers, and shall perform such duties, as are conferred upon it by or under this Act or any other Act.

Powers and duties of Commission.

Sub-section (1) amended by No. 68, 1956, s. 3.

(2) Before exercising any power under this Act or any other Act which involves the expenditure of more than Twenty thousand dollars, the Commission shall submit its proposal for, and obtain, the approval of the Minister.

Amended by No. 34, 1950, s. 5; No. 68, 1956, s. 3; and No. 42, 1966, s. 12.

* * * * *

Sub-sections (3) and (4) omitted by No. 216, 1973, s. 3.

12. (1) The Commission may, by writing under its seal with the approval of the Minister, delegate any of its powers and functions under this Act in relation to any matters or class of matters, or to any particular State or Territory, so that the delegated powers and functions may be exercised by the delegate with respect to the matters or class of matters specified, or the State or Territory defined, in the instrument of delegation.

Delegation by Commission.

(2) Every delegation by the Commission shall be revocable in writing at will, and no delegation shall prevent the exercise of any power by the Commission.

* * * * *

Sub-section (3) omitted by No. 80, 1950, s. 12.

Section 13
repealed by
No. 34, 1950,
s. 6.

* * * * *

Repatriation
Boards.

14. (1) There shall be a Repatriation Board for each State to consist of three members.

Inserted by
No. 60, 1970,
s. 3.

(1A) Where it appears to the Governor-General that an additional Repatriation Board is required for a particular State, the Governor-General may establish an additional Repatriation Board for that State.

Amended by
No. 60, 1970,
s. 3.

(2) Where the Governor-General notifies by Proclamation that for the purposes of the administration of this Act any portion of a State or Territory is attached to any adjoining State the Board or Boards of that adjoining State shall be the Board or Boards of the portion so attached.³

Members of
Repatriation
Boards.

15. (1) The Governor-General shall, upon the recommendation of the Commission, as soon as conveniently practicable, appoint in each State three persons to be the members of the Board for that State.

Inserted by
No. 60, 1970,
s. 4.

(1A) Where a Repatriation Board is established under sub-section (1A) of the last preceding section, the Governor-General shall, upon the recommendation of the Commission, appoint three persons to be the members of that Board.

Amended by
No. 34, 1950,
s. 7; and
No. 60, 1970,
s. 4.

(2) Any organization representing returned soldiers throughout the Commonwealth, may, in respect of a Board, submit to the Commission a list, containing the names of not less than three persons, from which the organization recommends that a selection be made of a person to be appointed as one of the members of that Board, and the Governor-General may appoint a person selected from any list so submitted, recommended by the Commission, to be a member of that Board.

(3) On the happening of any vacancy in the office of a member of a Board the Governor-General shall upon the recommendation of the Commission appoint a person to the vacant office and such person shall hold office until the expiration of the term for which his predecessor was appointed:

Provided that any appointment to fill a vacancy in the office of a member appointed on the recommendation specified in the last preceding sub-section, shall be made upon a similar recommendation.

(4) The Governor-General shall appoint one of the members of a Board to be chairman of the Board.

(5) In the event of a vacancy occurring in the office of chairman of a Board the Governor-General may appoint a member of the Board to the vacant office.

(6) A member of a Board shall, subject to this Act, hold office for a term of two years and shall be eligible for re-appointment.

(7) In the case of the illness, absence from the State for which he is appointed, or suspension of a member of a Board, or in the event of the

office of a member of a Board becoming vacant, the Governor-General may appoint a person to act during the illness, absence or suspension, or until the appointment of a member, as the case may be, and the person so acting shall have all the powers and perform all the duties of a member of a Board.

(8) At their first meeting in each calendar year the members of a Board may elect one of their number to be Deputy Chairman until the first meeting of the Board in the next calendar year.

(9) Where there is a vacancy in the office of Deputy Chairman of a Board, the members of the Board present at a meeting of the Board may elect one of their number to be Deputy Chairman until the first meeting of the Board on or after the first day of January next following the date of the election.

Substituted by
No. 31, 1954,
s. 4.

(9A) The Chairman shall preside at all meetings of a Board at which he is present and, in the absence of the Chairman, the Deputy Chairman shall preside.

Inserted by
No. 31, 1954,
s. 4.

(9B) If neither the Chairman nor the Deputy Chairman is present at a meeting of a Board, the members present at the meeting may elect one of their number to preside at that meeting.

Inserted by
No. 31, 1954,
s. 4.

(10) At any meeting of a Board two members shall form a quorum.

(11) The members of a Board shall receive such remuneration or fees as the Governor-General determines.²

16. (1) The Minister may suspend a Commissioner or an Acting Commissioner from office for inability, inefficiency or misbehaviour or neglect or failure to carry out any of the provisions of this Act or the regulations.

Suspension
and removal
of Com-
missioner or
Acting Com-
missioner.

Sub-section (1)
amended by
No. 22, 1943,
s. 9; and
No. 34, 1950,
s. 8.

(2) The Minister shall cause to be laid before each House of the Parliament a full statement of the grounds of suspension within seven sitting days of that House after the suspension.

Substituted by
No. 69, 1953,
s. 4.

(3) If each House of the Parliament, within fifteen sitting days of that House after the statement has been laid before it, declares by resolution that the Commissioner or Acting Commissioner, as the case may be, ought to be restored to office, he shall forthwith be restored to office by the Minister, and shall be entitled to receive the remuneration of his office for the period of his suspension.

Added by
No. 69, 1953,
s. 4.

(4) If resolutions of both Houses of the Parliament are not passed in accordance with the last preceding sub-section, the Governor-General shall—

Added by
No. 69, 1953,
s. 4.

- (a) terminate the appointment of the Commissioner or Acting Commissioner;
- (b) direct that the suspension of the Commissioner or Acting Commissioner continue for such further period as the Governor-General specifies; or
- (c) direct that the suspension of the Commissioner or Acting Commissioner cease.

Added by
No. 69, 1953,
s. 4.

(5) Where a Commissioner or Acting Commissioner has been suspended from office by the Minister, he is not, unless he is restored to office in pursuance of the provisions of sub-section (3) of this section or the Governor-General otherwise directs, entitled to receive any remuneration in respect of the period for which he has been so suspended or any further period of suspension directed by the Governor-General.

Suspension
and removal
of member
or acting
member of
Board.

17. (1) The Commission may suspend a member or acting member of a Board from office for inability, inefficiency or misbehaviour or neglect or failure to carry out any of the provisions of this Act or the regulations.

Substituted by
No. 69, 1953,
s. 5.

(2) The Commission shall, within seven days after the suspension, forward to the Minister a full statement of the grounds of suspension.

Added by
No. 69, 1953,
s. 5.

(3) The Governor-General may, on the recommendation of the Minister—

- (a) terminate the appointment of the member or acting member;
- (b) direct that the suspension of the member or acting member continue for such further period as the Governor-General specifies; or
- (c) direct that the suspension of the member or acting member cease.

Added by
No. 69, 1953,
s. 5.

(4) Where a member or acting member has been suspended from office by the Commission, he is not, unless the Governor-General otherwise directs, entitled to receive any remuneration in respect of the period for which he has been so suspended or any further period of suspension directed by the Governor-General.

Offices—
how vacated.
Sub-section (1)
substituted by
No. 22, 1943,
s. 10; amended
by No. 34, 1950,
s. 9.

18. (1) A Commissioner or an Acting Commissioner shall be deemed to have vacated his office if, without the approval of the Governor-General, he engages, during his term of office, in any paid employment outside the duties of his office.

Inserted by
No. 22, 1943,
s. 10; amended
by No. 34, 1950,
s. 9.

(1A) Where a Commissioner or an Acting Commissioner is, with the approval of the Governor-General, appointed to any other office under the Commonwealth or an authority of the Commonwealth, he shall

retain all his existing and accruing rights and shall be eligible for any additional rights conferred on Commissioners or Acting Commissioners as if his service in such office were a continuation of his term of office.

(2) A Commissioner, an Acting Commissioner or a member of a Board shall be deemed to have vacated his office if—

Amended by
No. 22, 1943,
s. 10; No. 34,
1950, s. 9;
No. 46, 1961,
s. 3; and
No. 216, 1973,
s. 3.

- (a) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (b) he is wilfully absent from duty, except on leave granted—
 - (i) in the case of a Commissioner or Acting Commissioner—by the Governor-General; or
 - (ii) in the case of a member of a Board—by the Minister, for twenty-one consecutive days or he becomes incapable of performing his duties; or
- (c) he, in any way, otherwise than as a member, and in common with the other members, of an incorporated company consisting of more than twenty-five persons—
 - (i) becomes concerned or interested in any contract or agreement made by or on behalf of the Commission; or
 - (ii) participates, or claims to be entitled to participate, in the profit of any such contract or agreement or in any benefit or emolument arising therefrom.

(3) If a Commissioner, an Acting Commissioner or a member of a Board becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Commission, or in any way participates or claims to be entitled to participate in the profit thereof, or in any benefit or emolument arising therefrom, otherwise than as a member and in common with the other members of an incorporated company consisting of more than twenty-five persons, he shall be guilty of an indictable offence.

Amended by
No. 22, 1943,
s. 10; No. 34,
1950, s. 9; and
No. 42, 1966,
s. 12.

Penalty: One thousand dollars, or imprisonment for three years, or both.

19. A person who is an uncertificated bankrupt shall be incapable of being appointed Commissioner, Acting Commissioner or member of a Board.

Uncertifi-
cated
insolvent not
to be Com-
missioner,
Acting Com-
missioner or
member of
Board.

Amended by
No. 22, 1943,
s. 11; No. 34,
1950, s. 10; and
No. 216, 1973,
s. 3.

Powers and duties of Boards.

20. A Board may exercise such powers and shall perform such duties as are conferred on it by this Act or as are prescribed.

Commissioners and members of Boards not subject to Public Service Act.
Sub-section (1) amended by No. 22, 1943, s. 12; No. 34, 1950, s. 11; and No. 216, 1973, s. 3.

21. (1) The Commissioners and the members of the Boards shall not be subject to the *Public Service Act* 1922-1973, but if an officer of the Public Service of the Commonwealth is appointed Commissioner or member of a Board his service as Commissioner or member of a Board shall, for the purpose of determining his existing or accruing rights, be taken into account as if it were service in the Public Service of the Commonwealth, and if an officer of the Public Service of a State is appointed Commissioner or member of a Board, his service as Commissioner or member of a Board shall, for the purpose of determining his existing and accruing rights, be taken into account as if it were service in the Public Service of the Commonwealth and as if he had been an officer of a department transferred to the Commonwealth and were retained in the service of the Commonwealth.

Sub-section (2) omitted by No. 1, 1947, s. 4.

* * * * *

Section 22^a repealed by No. 1, 1947, s. 4.

* * * * *

PART III—PENSIONS

Sub-heading inserted by No. 14, 1929, s. 4.

Division 1—Grant of Pensions

Interpretation.

Amended by No. 23, 1922, s. 3; No. 14, 1929, s. 5; No. 10, 1931, s. 44; No. 32, 1934, s. 2; No. 58, 1935, s. 4; No. 42, 1937, s. 3; No. 22, 1943, s. 14; No. 34, 1950, s. 12; No. 69, 1953, s. 6; No. 39, 1955, s. 3; No. 105, 1964, s. 3; No. 66, 1968, s. 4; No. 82, 1972, s. 3; No. 2, 1973, s. 4; and No. 27, 1973, s. 9.

23. In this Part, unless the contrary intention appears—

“Appeal Tribunal” means a War Pensions Entitlement Appeal Tribunal established under this Part;

“Child”, in relation to a member of the Forces, means a son, step-son or adopted son, or a daughter, step-daughter or adopted daughter, of the member—

(a) who is under the age of sixteen years; or

(b) who—

(i) has attained the age of sixteen years;

(ii) is receiving full-time education at a school, college or university; and

(iii) is not in receipt of an invalid pension under Part III of the *Social Services Act* 1947-1972,

and includes such a child who is an ex-nuptial child of the member;

“Dependant” means, in relation to a member of the Forces whose death or incapacity has resulted from any occurrence that happened during his war service—

(a) the wife or widow of the member;

- (b) his widowed mother, if he is her unmarried son;
- (c) a child of the member;

* * * * *

- (e) any other member of his family who was wholly or partly dependent upon his earnings at any time within the period of twelve months immediately preceding his enlistment or appointment;
- (f) any parent of the member who is, at any time after such an occurrence that resulted in the member's death, without adequate means of support;
- (g) any ex-nuptial child (wholly or partly dependent upon the earnings of the member at any time within the period of twelve months immediately preceding his enlistment or appointment) of a son or daughter of the member; and
- (h) the parent or grandparent of the member (wholly or partly dependent upon the earnings of the member at any time within the period of twelve months immediately preceding his enlistment or appointment) if the member is an ex-nuptial child;

“Dependent female”, in relation to a member of the Forces, means a woman who—

- (a) is, or was at the time of the member's death, living with the member as his wife on a permanent and *bona fide* domestic basis, although not legally married to him;
- (b) has, at any time, so lived with him for a continuous period of not less than three years; and
- (c) is, or was at the time of the death of the member, wholly or partly dependent on him;

“Discharge” includes termination of appointment;

“Incapacity” includes incapacity of a member of the Forces that arose from disease, not due to the serious default of the member, contracted by him while employed on war service;

“Instalment” means an instalment of a pension;

“Member of the Forces” or “Returned Soldier” means a person who, during the present war, was—

- (a) a member of the Commonwealth Naval or Military Forces enlisted or appointed for or employed on active service outside Australia or employed on a ship of war;
- (b) a member of the Army Medical Corps Nursing Service who was accepted or appointed by the Director-General of Medical Services for service outside Australia; or

(c) enlisted or appointed for service in connexion with naval or military preparations or operations;

“Member of a family” means wife, father, mother, adoptive father, adoptive mother, grandfather, grandmother, step-father, step-mother, foster-mother, son (including an adopted son and an ex-nuptial son), daughter (including an adopted daughter and an ex-nuptial daughter), grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister, step-brother, step-sister, adoptive brother, adoptive sister or mother-in-law;

“Other dependants” means dependants of a member of the Forces other than his wife (or widow) and children;

“Parents” includes—

- (a) the mother of a member of the Forces who was born out of wedlock and brought up by her,
- (b) the stepmother or adoptive mother of a member of the Forces who was brought up by her, and
- (c) the foster mother of a member of the Forces;

“Pension” means a pension under this Act, and includes a service pension, and the amounts and allowances specified in the Schedules;

“Permanently unemployable” means permanently incapable, by reason of physical or mental disablement, of being employed in a remunerative occupation in which, in the opinion of the Commission, he can reasonably be expected to obtain regular employment;

“Served in a theatre of war” means served at sea, in the field or in the air, in naval, military or aerial operations against the enemy in an area, or on an aircraft or ship of war, at a time when danger from hostile forces of the enemy was incurred in that area or on that aircraft or ship of war by the person so serving;

“Service pension” means a pension granted under Division 5 of Part III;

“Step-son” or “Step-daughter”, in relation to a member of the Forces, means a step-son or step-daughter of a member, being—

- (a) where the member is or was a male person—a child whose father is dead;
- (b) where the member is or was a female person—a child whose mother is dead; or
- (c) a child the marriage of whose parents has been dissolved and in respect of whom the Commission is satisfied that he or she—
 - (i) is in the custody, care and control of, or is being maintained by, the member;

- (ii) if the member is dead, was in the custody, care and control of, or was being maintained by, the member at the time of the member's death; or
- (iii) if the member, being a male person, is dead, is in the custody, care and control of, or is being maintained by, the member's widow;

"The present war" means the war which commenced on 4th August, 1914;

"Unmarried member of the Forces"⁵ does not include a member with respect to whom a dependent female is receiving a pension;

"War service"⁶ means the service, during the present war, of a member of the Forces;

"Widow" includes a dependent female of a deceased member;

"Wife" includes a dependent female of a living member.

24. (1) Upon the death or incapacity—

- (a) of any person, to whom paragraph (a) or (b) of the definition of "Member of the Forces" applies, whose death or incapacity—

- (i) results or has resulted from any occurrence that happened during his war service;
- (ii) does not arise from intentionally self-inflicted injuries; and
- (iii) does not arise from, or from any occurrence that happened during the commission of, any serious breach of discipline by that person, and

- (b) of any person to whom paragraph (c) of the definition of "Member of the Forces" applies, whose death or incapacity results or has resulted from his employment in connexion with naval or military preparations or operations,

the Commonwealth shall, subject to this Act, be liable to pay to the member or his dependants, or both, as the case may be, pensions in accordance with this Division:

Provided that—

- (a) a claim for payment of a pension in accordance with this Division is made—

- (i) in case of the death of a member of the Forces—by a dependant not more than six months after the date of the death of the member, except in the case of parents who though not dependent upon the earnings of the member at the time of his death are at any time without adequate means of support; and
- (ii) in case of the incapacity of a member of the Forces—by the member or a dependant not more than six months after the discharge of the member,

Pensions upon death or incapacity.
Sub-section (1) amended by No. 10, 1931, s. 45; No. 58, 1935, s. 5; No. 34, 1950, s. 13; No. 69, 1953, s. 7; No. 58, 1959, s. 3; and No. 105, 1964, s. 4.

except where the Commission is satisfied that failure to make the claim within the prescribed period was owing to some reason which in the opinion of the Commission is adequate;

- (b) the right of any person to payment by way of pension in accordance with this Division shall be substituted for his right to any payment in respect of incapacity or death, which, but for this Act, would have been due under the *Defence Act* 1903-1918 or the *Naval Defence Act* 1910-1918, and any right of that person under either of those Acts shall be by force of this Act determined; and
- (c) if the member or any of his dependants is entitled to receive, or receives, under—
 - (i) the law of a country other than the Commonwealth that is or has been a part of the dominions of the Crown; or
 - (ii) the law of a State,

any payment in respect of incapacity or death resulting from employment in connexion with warlike operations in which the armed forces of the Sovereign have been engaged since the commencement of the present war, the rate or the amount of that payment shall be taken into account in assessing the rate of pension payable under this Act.

Added by
No. 34, 1921,
s. 2; amended by
No. 58, 1935,
s. 5; No. 22,
1943, s. 15; and
No. 34, 1950,
s. 13.

(2) Notwithstanding that the origin of the cause of the death or incapacity of a member of the Forces, who, after enlistment with those Forces, served in camp in Australia for at least six months or embarked for active service with those Forces overseas, existed prior to his enlistment, where, in the opinion of a Board—

- (a) the incapacity from which the member is suffering or from which he has died has been contributed to in any material degree, or has been aggravated, by the conditions of his war service; and
- (b) neither the death or incapacity, nor the origin of the cause of the death or incapacity, was due to the serious default or wilful act of the member,

the Commonwealth shall, subject to this Act, be liable to pay to the member or his dependants, or both, as the case may be, pensions in accordance with this Division.

Substituted by
No. 69, 1953,
s. 7.

(3) Where a pension is granted under this Division, the Commission or a Board may, subject to this Act, approve of the payment of the pension from and including a date not earlier than three months before the date of lodgment of the claim for pension.

24A. On the death of a claimant for payment of a pension in accordance with this Division or, if the death occurred before the commencement of this section, on the commencement of this section, the legal personal representative of the claimant or, if there is no legal personal representative of the claimant, a person approved by the Commission as the representative of the claimant may, for the purpose of procuring payment of pension, or payment of pension at a higher rate, in respect of a period before the death of the claimant, take such action as the claimant could have taken after the commencement of this section if he had not died and, for that purpose, shall be treated as if he were the claimant.⁷

Prosecution of claim of a deceased claimant.

Substituted by No. 2, 1973, s. 5.

25. (1) The Governor-General may appoint such Special Magistrates of the Commonwealth as he thinks necessary for the purposes of this Act.

Special Magistrates.

(2) The person for the time being holding office as Special Magistrates under the *Social Services Consolidation Act* 1947-1950 shall be deemed to have been appointed to the offices under this Act corresponding respectively to the offices held by them under that Act.

Amended by No. 34, 1950, s. 14.

(3) A Special Magistrate appointed or deemed to have been appointed under this section shall have such powers, duties and functions as are conferred or imposed upon him by the regulations.

Added by No. 34, 1950, s. 14.

26. (1) The Chairman of the Commission or of a Board may—

Powers of Commission and Boards.

- (a) summon witnesses;
- (b) take evidence on oath; and
- (c) require the production of documents.

(2) A person who has been summoned to appear as a witness before the Commission or a Board shall not, without reasonable excuse, and after tender of reasonable expenses, fail to appear in answer to the summons.

Substituted by No. 34, 1950, s. 15; amended by No. 42, 1966, s. 12.

Penalty: Forty dollars.

(3) A person who appears before the Commission or a Board as a witness in answer to a summons shall not, without reasonable excuse, refuse to be sworn.

Substituted by No. 34, 1950, s. 15; amended by No. 42, 1966, s. 12.

Penalty: One hundred dollars.

(4) A person who appears before the Commission or a Board as a witness otherwise than in answer to a summons may be requested by the Commission or the Board to give evidence on oath, and, if he declines to be sworn, his evidence shall not be received.

Added by No. 34, 1950, s. 15.

Added by
No. 34, 1950,
s. 15; amended
by No. 42, 1966,
s. 12.

(5) A person who has been sworn as a witness before the Commission or a Board shall not, without reasonable excuse, refuse to produce documents or to answer truthfully questions which he is required to answer.

Penalty: One hundred dollars.

Added by
No. 34, 1950,
s. 15.

(6) Whenever a witness to be examined before the Commission or a Board conscientiously objects to take an oath, he may, instead of taking the oath, make an affirmation that he conscientiously objects to take an oath and that he will state the truth, the whole truth and nothing but the truth, to all questions asked him, and an affirmation so made shall be of the same force and effect, and shall entail the same liabilities, as an oath.

Added by
No. 34, 1950,
s. 15.

(7) In this section, "reasonable excuse" means, in relation to an act or omission, an excuse that would excuse an act or omission of a similar nature by a witness or a person summoned as a witness before a court of law.

Duties of Boards.

Sub-section (1)
amended by
No. 32, 1934,
s. 3; No. 58,
1935, s. 6;
No. 37, 1940,
s. 4; No. 22,
1943, ss. 16 and
52; No. 34, 1950,
s. 16; and
No. 27, 1973,
s. 9.

27. (1) Each Board shall be charged with the duties of—

(a) determining whether the incapacity from which a member of the Forces is suffering or from which he has died—

- (i) in fact resulted from an occurrence that happened during his war service;
 - (ii) in fact resulted from his employment in connexion with naval or military preparations or operations;
 - (iii) arose out of or is attributable to his war service; or
 - (iv) has been contributed to in any material degree, or has been aggravated, by the conditions of his war service,
- and in the case of incapacity the nature and extent thereof;

* * * * *

- (c) determining the extent to which persons alleged to be dependent upon a member of the Forces were in fact so dependent;
- (d) assessing, from time to time, the rates of pensions of members of the Forces and their dependants, and determining the dates of the commencement and cessation of such pensions;
- (e) determining, in such cases as the Board thinks proper, that payment of pension shall be suspended and fixing the date of any such suspension;
- (f) determining the date of re-commencement of payment of a pension which has been suspended;
- (g) determining whether a member of the Forces served in a theatre of war;
- (h) determining whether a member of the Forces has reached an age specified in section 84 in relation to such a member;

- (i) determining whether a member of the Forces is permanently unemployable; and
- (j) determining whether a member of the Forces is suffering from pulmonary tuberculosis.

(2) The Commission may, in such cases as it thinks fit, make any determination or assessment specified in paragraphs (a) to (j) (inclusive) of the last preceding sub-section, and may, at any time, direct that any particular case or cases of a particular class be referred to it for assessment or determination.

Substituted by
No. 58, 1935,
s. 6.

28. An appeal shall lie to the Commission from any assessment or determination of a Board under this Part.

Appeal to
Commission.

29. (1) Where a claim for pension has been rejected and upon subsequent application or appeal to the Commission, being an appeal from a determination of a Board lodged later than three months after the making of the determination, a pension is granted to the claimant, the pension shall not be payable in respect of any period prior to the period of six months immediately preceding the date of lodgment of the application or appeal upon which the pension was granted.

Date of
operation of
determination
of
Commission
on appeal.

Inserted by
No. 10, 1931,
s. 46.

Sub-section (1)
amended by
No. 22, 1943,
s. 17; No. 75,
1962, s. 3; and
No. 47, 1963,
s. 3.

(2) The last preceding sub-section does not apply in relation to a person whose claim for pension was rejected by a Board but subsequently granted on appeal to the Commission if—

Added by
No. 139, 1972,
s. 9.

- (a) the person was, at any time during the period of three months after the determination of the Board, a resident of the Torres Strait Islands; and
- (b) the appeal to the Commission was lodged within a further three months after the expiration of the period referred to in the last preceding paragraph.

30. (1) Where a pension has been cancelled and the pensioner, upon an application for re-instatement of his pension, is again granted a pension, payment of the pension so granted shall not be made in respect of any period prior to the date of the commencement of the period of six months immediately preceding the date of the latest application for re-instatement.

Re-grant of
cancelled
pension.

Inserted by
No. 10, 1931,
s. 46.

Sub-section (1)
amended by
No. 32, 1934,
s. 4; and
No. 22, 1943,
s. 18.

Amended by
No. 32, 1934,
s. 4; and
No. 22, 1943,
s. 18.

(2) Where a pension has been voluntarily relinquished either wholly or in part and the pensioner applies for the restoration of the pension or part thereof so relinquished, the pension or part thereof shall, subject to this Act, be restored, but the restoration shall not operate in respect of any period prior to the date of the commencement of the period of six months immediately preceding the date of the latest application.

Review by
Commission.
Sub-section (1)
amended by
No. 58, 1935,
s. 7; and
No. 34, 1950,
s. 17.

31. (1) Whenever it appears to the Commission that, under this Act, sufficient reason exists for reviewing any assessment, decision or determination in relation to pension under this Division the Commission may review the assessment, decision or determination.

Added by
No. 34, 1950,
s. 17.

(2) Whenever, in pursuance of the last preceding sub-section, the Commission reviews an assessment, decision or determination, and varies or revokes the assessment, decision or determination, as the case may be, the Commission shall specify the date from which the variation or revocation shall operate and it shall operate accordingly.

Failure of
pensioner to
attend at
review.

Amended by
No. 32, 1934,
s. 5; No. 58,
1935, s. 8; and
No. 34, 1950,
s. 10.

32. Where any assessment, decision or determination in relation to the pension payable to a member of the Forces under this Division is to be reviewed, and the member refuses or fails to attend at the time and place fixed by the Commission or a Board for the review, or by his default renders it impossible to review the assessment, decision or determination, the Commission may cancel the pension, and any pensions payable under this Division to the dependants of the member shall not be continued for more than twelve months from the date fixed for the review:

Provided that, where, in the opinion of the Commission, the incapacity of the member is of a permanent nature, the Commission may continue the pension to any dependant for such period as it thinks proper.

Section 33
repealed by
No. 34, 1950,
s. 19.

* * * * *

Suspension
and
forfeiture of
pension
where
pensioner
imprisoned.

Substituted by
No. 69, 1953,
s. 8.

34. (1) If a pensioner is convicted of an offence and sentenced to a period of imprisonment, the Commission may order the suspension or forfeiture of all instalments of the pension accruing due during the period for which he is imprisoned or a part of that period.

(2) Where suspension or forfeiture of an instalment of a pension is ordered in pursuance of the last preceding sub-section, the Commission may, if it thinks fit, pay the whole or a part of the instalment to—

- (a) a dependant of the pensioner; or
- (b) a person, not being a dependant of the pensioner, who, in the opinion of the Commission, is or has been dependent upon the pensioner for support.

35. (1) Subject to the next succeeding section, the rates of pension payable under this Division and Divisions 6 to 10 (inclusive) are those specified in the Schedules.

Rates of pension.
Sub-section (1) substituted by No. 58, 1952, s. 5; amended by No. 82, 1972, s. 4; No. 27, 1973, s. 9; and No. 104, 1973, s. 4.

* * * * *

Sub-sections (1A), (1B), (1C), (1D) and (1E) omitted by No. 58, 1952, s. 5.

(2) The amount of any such pension granted and payable to a member of the Forces shall not be reduced within the period of six months from the date of the commencement of the pension.

Substituted by No. 58, 1952, s. 11.

35AA. (1) This section applies to a dependant of a member of the Forces—

- (a) who is a child of the member;
- (b) who has attained the age of sixteen years; and
- (c) to or in respect of whom a maintenance or living allowance or a salary is payable by the Commonwealth under the Soldiers' Children Education Scheme or under any other scheme for assistance by the Commonwealth in the education or training of children.

Rate of pension to certain dependants who are children.
Inserted by No. 82, 1972, s. 5.

(2) Where the maintenance or living allowance or the salary payable by the Commonwealth to or in respect of a dependant to whom this section applies—

Amended by No. 27, 1973, s. 9; and No. 104, 1973, s. 5.

- (a) is payable under the Soldiers' Children Education Scheme; or
- (b) is payable under a scheme other than the Soldiers' Children Education Scheme at a fortnightly rate that equals or exceeds the fortnightly rate of the corresponding Soldiers' Children Education Scheme allowance in relation to that dependant,

no pension is payable to or in respect of that dependant under this Division or Division 6, 7, 8, 9 or 10.

(3) Where—

- (a) the maintenance or living allowance or the salary payable by the Commonwealth to or in respect of a dependant to whom this section applies is payable under a scheme other than the Soldiers' Children Education Scheme; and
- (b) the amount of the fortnightly rate of that maintenance or living allowance or that salary is less than the amount of the fortnightly rate of the corresponding Soldiers' Children Education Scheme allowance in relation to that dependant,

Amended by No. 27, 1973, s. 9; and No. 104, 1973, s. 5.

the fortnightly instalment of the pension payable to that dependant under this Division or Division 6, 7, 8, 9 or 10 shall not exceed the

amount by which the first-mentioned amount referred to in paragraph (b) is less than the other amount referred to in that paragraph.

(4) In this section—

“the corresponding Soldiers’ Children Education Scheme allowance”, in relation to a dependant who is not an eligible child for the purposes of the Soldiers’ Children Education Scheme, means the maintenance or living allowance that would be payable to or in respect of the dependant under the Soldiers’ Children Education Scheme if the dependant were an eligible child for the purposes of that Scheme;

“the Soldiers’ Children Education Scheme” means the Soldiers’ Children Education Scheme prepared by the Commission in accordance with the regulations.

Pensions to dependants.
Inserted by
No. 80, 1950,
s. 12.

35A. (1) A pension shall not be granted or continued under this Act to a person who is a dependant, within the meaning of this Part, of a member of the Forces, unless the dependant is, in the opinion of the Commission, without adequate means of support.

Amended by
No. 2, 1973, s. 6.

(2) The last preceding sub-section shall not apply—

- (a) to the widow or wife or a child of a member of the Forces;
- (b) to the unmarried mother of a deceased unmarried member of the Forces who was brought up by her;
- (c) to the widowed mother of a deceased unmarried member of the Forces if she became a widow either prior to, or within three years after, the death of the member; or
- (d) to the widowed mother of a deceased unmarried member of the Forces who was born out of wedlock and brought up by her if she became a widow either prior to, or within three years after, the death of the member.

Continuation of payment of certain war pensions after pensioner leaves Australia.

Inserted by
No. 27, 1973,
s. 3.

35B. Sections 85A and 92 apply in relation to—

- (a) a pension to which section 35A applies; and
- (b) a pension payable in accordance with Table A in the Third Schedule the rate of which is required to be assessed having regard to the maximum rate of age pension under sub-section (1A) of section 28 of the *Social Services Act* 1947-1973,

as if those pensions were service pensions.

Payment of pensions.

Inserted by
No. 58, 1935,
s. 11.

36. (1) Pensions payable under this Act shall be payable in fortnightly instalments which may be paid in advance.

(2) The instalment of a pension covering a period of less than a fortnight shall be in proportion to the number of days in a fortnight.

(3) In this section, "pension" includes an allowance under section 98A.

Added by No. 47, 1958, s. 4; amended by No. 27, 1973, s. 9.

37. (1) The rate of pension payable under this Division to a member of the Forces in respect of incapacity caused by pulmonary tuberculosis shall be not less than the rate specified in Column 3 of the table in Schedule 1.

Pension for pulmonary tuberculosis. Sub-section (1) inserted by No. 32, 1934, s. 6; amended by No. 58, 1935, s. 12; No. 34, 1950, s. 21; No. 58, 1952, s. 6; No. 27, 1973, s. 9; and No. 104, 1973, s. 6.

(2) Any such pension shall not be terminated or reduced below the rate so specified unless it is shown that the pension was obtained by fraud or impersonation.

Inserted by No. 32, 1934, s. 6.

(3) Where a member of the Forces—

(a) served in a theatre of war; and

(b) at any time after his discharge from the Forces, became or becomes incapacitated, or died or dies, from pulmonary tuberculosis,

Added by No. 22, 1943, s. 19; amended by No. 34, 1950, s. 21; and No. 27, 1973, s. 9.

and pension in respect of the incapacity or death would not, but for this sub-section, be payable, the Commonwealth shall, subject to this Act and upon receipt of an application in writing, be liable to pay to the member or his dependants, or both, as the case may be, from the date of the application, pension in accordance with Division 1 as if the incapacity or death resulted from an occurrence that happened during his war service.

(4) Where, after an application for a pension under the last preceding sub-section has been made by a member, an application for such a pension is made by or on behalf of a dependant of the member, the Commission or a Board may approve of the payment of such a pension to that dependant from and including a date not earlier than three months before the date of the application for the pension to that dependant, and not earlier than the date of the application by the member for his pension.

Added by No. 31, 1954, s. 6.

38. Where a member of the Forces—

(a) has, in pursuance of section 32 of the *Australian Soldiers' Repatriation Act* 1920, or of that Act as subsequently amended, or in pursuance of section 9 of the *War Pensions Act* 1914, or of that Act as subsequently amended, received payment of a lump sum in substitution for pension payable to him under either of those Acts, or under either of those Acts as subsequently amended; and

Reinstatement of commuted pension.

Inserted by No. 58, 1935, s. 13; amended by No. 27, 1973, s. 9.

- (b) is suffering from any incapacity in respect of which, but for the payment of that lump sum, he would be entitled to a pension in accordance with this Division,

the Commission may, upon receipt of an application in writing by that member (whether received before or after the commencement of this section) grant a pension, in accordance with this Division, to that member:

Provided that any pension so granted shall not be payable in respect of any period prior to the date of the commencement of this section or the date of the receipt by the Commission of the application for the pension, whichever last happens.

Pension payable for limited period in certain cases.

Sub-section (1) amended by No. 10, 1931, s. 47; No. 34, 1950, s. 22; and No. 82, 1972, s. 6.

Inserted by No. 82, 1972, s. 6.

39. (1) A pension payable to any dependant (other than the wife or widow, or a child, of a member of the Forces) who at the date of the granting of the pension is under sixteen years of age shall cease upon the pensioner attaining that age.

(1A) A pension payable to a dependant of a member of the Forces by reason of his being a child of the member ceases to be payable when the dependant ceases to be such a child.

(2) Except in the case of a child, or of the wife, widow, father, mother, step-mother, foster-mother, grandfather, or grandmother of a member of the Forces, or of the mother of a member of the Forces who was born out of wedlock, no pension shall be payable for a period exceeding two years to any dependant who, in the opinion of the Commission or a Board, as the case may be, is able to earn a livelihood.

(3) A pension which has been discontinued in pursuance of the last preceding sub-section shall not, after such discontinuance, be renewed.

(4) Where—

- (a) a pension granted under this Division to a person, being a child, terminates;
- (b) the person makes application for a further pension; and
- (c) the Commission is satisfied that the person was, at the time at which the pension terminated, unable to earn a livelihood and has continued from that time to be unable to earn a livelihood,

the person shall be granted a pension at such rate as is assessed by the Commission, but not exceeding the rate specified in Column 1 of the table in Schedule 1.

Substituted by No. 39, 1955, s. 4; amended by No. 27, 1973, s. 9; and No. 104, 1973, s. 7.

Sub-section (5) omitted by No. 39, 1955, s. 4.

* * * * *

39A. If the marriage of a member of the Forces is dissolved, otherwise than by death, a pension to which the former spouse of the member was entitled as the spouse of the member shall thereupon cease.

Pensions to spouses to cease upon dissolution of marriage.

Inserted by No. 68, 1956, s. 4.

40. A pension payable under this Act to any female dependant of a member of the Forces shall not be continued after her marriage or re-marriage.

Pensions to female dependants to cease upon marriage or re-marriage.

Amended by No. 10, 1931, s. 48.

40AA. (1) This section applies to a dependant of a member of the Forces who—

Change of status of child to be notified.

Inserted by No. 82, 1972, s. 7.

- (a) is a child of the member;
- (b) has attained the age of sixteen years; and
- (c) is in receipt of a pension, other than a service pension.

(2) Where a dependant to whom this section applies—

- (a) ceases to receive full-time education at a school, college or university;
- (b) commences to receive an invalid pension under Part III of the *Social Services Act 1947-1972*; or
- (c) commences to receive a maintenance or living allowance or a salary payable by the Commonwealth under any scheme for assistance by the Commonwealth in the education or training of children, or to receive that allowance or salary at a higher rate than before,

the person who has the custody, care and control of that dependant shall, within fourteen days after that dependant so ceases or so commences, notify the Commission or a Board accordingly.

(3) Where a dependant to whom this section applies ceases to be in the custody, care and control of a person, that person shall, within fourteen days after that dependant so ceases, notify the Commission or a Board accordingly.

Penalty: Forty dollars.

Gratuity to certain persons on re-marriage or marriage.

Inserted by No. 34, 1950, s. 23.
Sub-section (1) amended by No. 31, 1951, s. 3; and No. 27, 1973, s. 9.

40A. (1) Where a person who—

- (a) is in receipt of a pension under this Division as the widow of a member of the Forces;
- (b) being the widow of a member of the Forces, is in receipt of a pension under section 45; or
- (c) is in receipt of a pension under section 42 in respect of a member of the Forces who has died or dies,

re-marries or marries, that person may be paid a gratuity equal to twenty-six instalments of pension at the rate payable to her in respect of that member immediately prior to her re-marriage or marriage, as the case may be.

Added by No. 31, 1951, s. 3.

(2) For the purposes of the last preceding sub-section, a person shall be deemed to be in receipt of a pension if she lodged a claim for payment of a pension, or makes application for the gratuity, within twelve months after, her re-marriage or marriage, as the case may be, and a pension would have been payable to her if her entitlement had been determined before that re-marriage or marriage.

Maximum pension payable to widowed mother.

Substituted by No. 34, 1950, s. 24.
Sub-section (1) amended by No. 104, 1973, s. 8.

41. (1) In the case of a widowed mother of two or more members of the Forces whose deaths result or have resulted from occurrences that happened during their respective periods of war service, the rate of pension payable to the widowed mother in respect of their deaths shall, except as provided in the next succeeding sub-section, be the rate of pension payable under this Division in respect of the death of any one of those members.

(2) If the widowed mother was dependent upon one or more of the members, she may be granted further pension, but the maximum rate of pension payable to her shall not exceed the total rate of the pensions payable under this Division in respect of the deaths of one member and the other members upon whom she was dependent.

Pensions to certain dependent females.

Substituted by No. 34, 1950, s. 24.
Sub-section (1) amended by No. 27, 1973, s. 9.

42. (1) Where, at the time of the occurrence during his war service of an event that resulted in the incapacity or death of a member of the Forces (including a member of the Forces within the meaning of section 100 or section 107B), a person was recognized as the wife of the member though not legally married to him, and the Commission is satisfied that that person was wholly or partly dependent upon the earnings of the member, a pension under this Division may be paid to that person at a rate not exceeding the rate of pension which would have been payable to her under this Division if she had been legally married to the member.

(2) A pension may be paid under this section in addition to any pension payable to the wife or the widow, as the case may be, of the member of the Forces.

43. (1) Where a member of the Forces or a dependant of a member of the Forces has, in writing, requested the Commission or a Board to cancel a pension granted to that member or dependant, as the case may be, the Commission or Board may cancel the pension.

Termination of pension upon request or failure to draw pension.

(2) Where a dependant of a member of the Forces has, for a continuous period of not less than six months, failed to draw a pension granted to him, the Commission or a Board may cancel the pension.

Substituted by No. 69, 1953, s. 9.

44. Where a person was the wife of a member of the Forces (including a member of the Forces within the meaning of section 100 or section 107B), has been divorced and, at the time of the occurrence during the member's war service of an event that resulted in his incapacity or death, was dependent upon alimony payable by the member, a pension may, on discontinuance of the payment of the alimony, be paid to that person at a rate equal to—

Pension to divorcee of member.

Substituted by No. 34, 1950, s. 25; amended by No. 27, 1973, s. 9.

(a) the amount of the alimony; or

(b) the rate of pension which would have been payable to her if she had not been divorced,

whichever is the less.

45. (1) Where a member of the Forces has died or dies, after the termination of his war service, from causes other than the result of an occurrence that happened during his war service and a pension—

Pension payable to dependants on death of a member after termination of war service.

Substituted by No. 34, 1950, s. 25.

(a) was being paid, or was payable, to a dependant of the member under this Division immediately before the death of the member; or

(b) would have been payable to a dependant of the member under this Division immediately before the death of the member if—

Sub-section (1) substituted by No. 64, 1965, s. 3.

(i) in a case where a claim for pension had been lodged by the dependant, but had not been determined, before the death of the member—it had been so determined;

(ii) in a case where a claim for pension had not been lodged by the dependant before the death of the member—a claim for pension had been lodged by the dependant, and had been determined, before the death of the member; or

(iii) in a case where the dependant is a posthumous child of the member—the dependant had been born, and a claim for pension had been lodged by him, and had been determined, before the death of the member,

the dependant is entitled to receive that pension.

Amended by
No. 27, 1973,
s. 9.

(2) Where a member of the Forces has died or dies from causes other than the result of an occurrence that happened during his war service and has left or leaves a widow who married him at any time on or after 2nd October, 1931, and before the date of the commencement of this sub-section or a child born to him during that period, the widow and any such child shall, subject to this Act, be entitled to receive such pension (if any) as could have been granted to them under this Division if, prior to the death of the member, they had been dependants and had applied for the pension.

Added by
No. 46, 1961,
s. 5.

(3) The rate of a pension which a person is entitled to receive under this section by virtue of the death of a member of the Forces is the rate at which pension would have been paid or payable to that person if the member of the Forces had not died and the nature and extent of his incapacity had remained as they were immediately prior to his death.

Pensions to
dependants
of certain
deceased
members.

Substituted by
No. 34, 1950,
s. 25.

Sub-section (1)
amended by
No. 68, 1956,
s. 6; No. 27,
1973, s. 9; and
No. 104, 1973,
s. 28.

46. (1) Where a member of the Forces has died or dies, after the termination of his war service, from causes other than the result of an occurrence that happened during his war service and the member, immediately prior to his death, was in receipt of—

- (a) a pension under Schedule 2; or
- (b) an amount in respect of a disability described in any of the first eight items in Column 1 of the table in paragraph one of Schedule 5,

the dependants of that member shall, subject to this Act, be entitled to receive, as from the death of the member, such pensions as would have been payable to them if the member's death had resulted from an occurrence that happened during his war service.

Added by
No. 47, 1958,
s. 5.

(2) Where—

- (a) a member of the Forces was not, immediately prior to his death, in receipt of a pension or an amount referred to in paragraph (a) or (b) of the last preceding sub-section; and
- (b) by virtue of a determination, decision or assessment made under this Act after his death such a pension or amount becomes payable in respect of the member for a period terminating immediately prior to his death,

the member shall, for the purposes of the last preceding sub-section, be deemed to have been in receipt of such a pension or amount immediately prior to his death.

47. (1) The Commission, a Board, an Appeal Tribunal and an Assessment Appeal Tribunal, in hearing, determining or deciding a claim, application or appeal, shall act according to substantial justice and the merits of the case, shall not be bound by technicalities or legal forms or rules of evidence and shall give to the claimant, applicant or appellant the benefit of any doubt—

Determination, &c., of claims and appeals.

Substituted by No. 22, 1943, s. 21.

- (a) as to the existence of any fact, matter, cause or circumstance which would be favourable to the claimant, applicant or appellant; or
- (b) as to any question whatsoever (including the question whether the incapacity from which the member of the Forces is suffering or from which he has died was contributed to in any material degree, or was aggravated, by the conditions of his war service) which arises for decision under his claim, application or appeal.

(2) It shall not be necessary for the claimant, applicant or appellant to furnish proof to support his claim, application or appeal but the Commission, Board, Appeal Tribunal or Assessment Appeal Tribunal determining or deciding the claim, application or appeal shall be entitled to draw, and shall draw, from all the circumstances of the case, from the evidence furnished and from medical opinions, all reasonable inferences in favour of the claimant, applicant or appellant, and in all cases whatsoever the onus of proof shall lie on the person or authority who contends that the claim, application or appeal should not be granted or allowed to the full extent claimed.

47A. (1) The regulations may provide that this section is to apply in relation to the authority or authorities specified in any of the following paragraphs:—

Form of determination.

Inserted by No. 104, 1973, s. 9.

- (a) the Repatriation Boards;
- (b) the Repatriation Commission;
- (c) the War Pensions Entitlement Appeal Tribunals;
- (d) the Assessment Appeal Tribunals.

(2) Where an authority in relation to which this section applies makes in proceedings before it a determination that relates, in whole or in part, to a prescribed matter, the authority shall cause to be prepared a written record of the determination, containing a statement of the reasons for the determination, so far as it relates to the prescribed matter, including any findings of fact in relation to the prescribed matter.

(3) An authority that makes a determination referred to in subsection (2)—

- (a) shall file the determination with the records of the case; and
- (b) shall furnish a copy of the determination to the claimant or to a person authorized by the claimant.

(4) In this section—

“claimant” includes an applicant and an appellant (including a person who is to be treated as an appellant by virtue of sub-section (4B) of section 72) and a person affected by an assessment, decision or determination under review by the Commission under section 31;

“determination” includes a decision and an assessment;

“prescribed matter” means a matter referred to in sub-section (1) of section 27 that is declared by the regulations to be a prescribed matter for the purposes of this section;

“proceedings” means proceedings in relation to a claim, application or appeal referred to in section 47 or in relation to a review under section 31.

No action for making statements in proceedings, &c.

Inserted by
No. 104, 1973,
s. 9.

47B. No action or proceeding, civil or criminal (other than proceedings for perjury) lies against any person in respect of—

- (a) the making of any statement, the expressing of any opinion or the making of any determination, decision or assessment in proceedings in relation to a claim, application or appeal referred to in section 47 or in relation to a review under section 31; or
- (b) the furnishing under sub-section (3) of section 47A of a document.

Medical reports.

Inserted by
No. 22, 1943,
s. 21.

Sub-section (1)
amended by
No. 34, 1950,
s. 26.

48. (1) A medical practitioner shall, in reporting on any claim in relation to a member of the Forces, set out in his report his opinion—

- (a) in the case of a claim in respect of the death of the member—as to the cause of the death; and
- (b) in the case of a claim in respect of the incapacity of the member—as to the nature, cause and extent of the incapacity,

and shall also set out whether, in his opinion, the incapacity from which the member is suffering or from which he has died—

- (i) resulted from an occurrence that happened during his war service;
- (ii) resulted from his employment in connexion with naval or military preparations or operations;

* * * * *

- (iv) arose out of or is attributable to his war service; or
- (v) has been contributed to in any material degree, or has been aggravated, by the conditions of his war service.

(2) Where a medical practitioner entertains any doubt concerning any of the matters which by the last preceding sub-section he is required to report upon, he shall state in his report that he entertains such a doubt and shall indicate, as far as is practicable, the nature and extent of his doubt.

(3) The provisions of this section shall extend to every medical practitioner, whether an officer of the Department of Repatriation or not, who is required by the Commission, a Board, an Appeal Tribunal or an Assessment Appeal Tribunal to report on a claim, and to the members of any medical board who examine a person on war service immediately prior to his discharge from the Forces.

Amended by
No. 34, 1950,
s. 26.

49. (1) The war pension payable to an unmarried member of the Forces who is afflicted with lunacy, or to a married member so afflicted the pension of whose wife has been terminated in pursuance of section 43, may be retained by the Commission and expended or invested in accordance with this section.

Pension of
member
afflicted with
lunacy.

Repealed by
No. 32, 1934,
s. 8; inserted by
No. 55, 1938,
s. 2.

Sub-section (1)
amended by
No. 22, 1943,
s. 52; and
No. 27, 1973,
s. 9.

(2) The moneys retained by the Commission in accordance with this section, and the interest on any moneys invested by the Commission, may be applied towards—

Amended by
No. 34, 1950,
s. 27; and
No. 31, 1951,
s. 4.

- (a) the provision of clothing or comforts for the member, or such other form of assistance to him as the Commission determines;
- (b) the payment of such allowances (if any) as the Commission thinks fit to any person, being a member of the family of the member or being or having been, in the opinion of the Commission, dependent on the member, who is in necessitous circumstances;
- (c) the cost of maintenance of the member while he is an inmate of an institution; and
- (d) the education, maintenance or advancement of a son, daughter, step-son, step-daughter, adopted son, adopted daughter, ex-nuptial son or ex-nuptial daughter of the member:

Provided that the amount applied for the purpose specified in paragraph (c) of this sub-section shall not exceed one-half of the amount of the pension retained.

(3) Any amounts not expended by the Commission for the purposes specified in the last preceding sub-section may be invested on behalf of the member in any of the investments authorized by the law of the Commonwealth or a State for the investment of trust funds.

(4) The Commission may from time to time vary or realize any investment made in pursuance of sub-section (3).

Amended by
No. 27, 1973,
s. 9.

Amended by
No. 34, 1950,
s. 27; and
No. 27, 1973,
s. 9.

(5) On proof to the Commission of the recovery of the member from his affliction, the Commission shall render to him an account relating to the moneys retained, invested and expended in pursuance of this section, and shall pay to him any balance held by the Commission on his behalf and an amount equal to that applied for the purpose specified in paragraph (c) of sub-section (2), and shall transfer to him any investments held on his behalf or realize those investments and pay him the proceeds thereof.

Amended by
No. 34, 1950,
s. 27; No. 69,
1953, s. 10;
No. 31, 1954,
s. 7; No. 68,
1956, s. 7; and
No. 27, 1973,
s. 9.

(6) Where—

- (a) a member whose pension is being retained by the Commission in pursuance of this section dies; and
- (b) proof has not been furnished to the Commission, within six months after the death of the member, that the member was not afflicted with lunacy at the time of his death,

the moneys held and investments made on his behalf by the Commission shall be deemed not to form, or to have formed, part of his estate for any purpose, but the whole or part of such moneys and investments or the proceeds thereof, and the whole or part of an amount equal to that applied for the purpose specified in paragraph (c) of sub-section (2), may be applied by the Commission towards the payment of the funeral expenses of the member or towards the payments of allowances of the kind specified in paragraph (b) of sub-section (2), whether granted by the Commission before or after his death, or may be distributed among such persons, being members of his family or persons who, in the opinion of the Commission, have been dependent on him, and in such proportions, as the Commission determines.

Added by
No. 34, 1950,
s. 27.

(7) For the purposes of this section, “unmarried member of the Forces” means a member of the Forces who has never been married and includes a member who has been married but no longer has a spouse.

Added by
No. 68, 1956,
s. 7.

(8) For the purposes of this section, an ex-nuptial child of a member of the Forces shall be deemed to be a member of his family.

Double
pension.
Substituted by
No. 39, 1955,
s. 5.

50. (1) Where a person is in receipt of, or is eligible for, pension by virtue of being a child of a member of the Forces and that person also is, or becomes, eligible for pension by virtue of being a child of another member of the Forces, that person shall not be paid pension in respect of both of those members but, if the rate of pension in respect of one of those members is higher than the rate of pension in respect of the other member, that person shall be paid pension at the higher rate.

Substituted by
No. 97, 1956,
s. 3; amended by
No. 91, 1962,
s. 3; No. 27,
1973, s. 9; and
No. 104, 1973,
s. 10.

(2) In this section—

“member of the Forces” includes—

- (a) a person who is a member of the Forces for the purposes of Division 6, 7, 8, 9 or 10;
- (b) a person who is a member of the Forces for the purposes of the *Repatriation (Far East Strategic Reserve) Act*

1956-1962 or of the *Repatriation (Special Overseas Service) Act* 1962; and

“pension” includes—

- (a) a pension under the *Repatriation (Far East Strategic Reserve) Act* 1956-1962; and
- (b) a pension under the *Repatriation (Special Overseas Service) Act* 1962.

51. Pensions granted pursuant to this Act, and allowances granted under section 98A, shall be payable out of moneys from time to time appropriated by Parliament for the purpose.

Pensions payable from moneys appropriated.
Amended by No. 47, 1958, s. 6; and No. 27, 1973, s. 9.

52. (1) Subject to this Act, a pension and an allowance under section 98A shall be absolutely inalienable whether by way or in consequence of sale, assignment, charge, execution, bankruptcy, or otherwise howsoever.

Pension absolutely inalienable.
Sub-section (1) amended by No. 47, 1958, s. 7; No. 27, 1973, s. 9; and No. 216, 1973, s. 3.

(2) Notwithstanding sub-section (1), the Commission may, at the request of a service pensioner or in accordance with the *Income Tax Assessment Act* 1936-1973, make deductions from the instalments of service pension payable to the pensioner, and pay the amounts so deducted to the Commissioner of Taxation, for the purpose of enabling the collection of tax that is, or may become, payable by the pensioner.

Added by No. 104, 1973, s. 11.

(3) In sub-section (2), “service pension” includes a pension payable in prescribed cases in accordance with Table A in Schedule 3 to the extent that that pension exceeds the amount that would be assessed if the requirement in that Table to have regard to the maximum rate of age pension under sub-section (1A) of section 28 of the *Social Services Act* 1947-1973 were disregarded, and “service pensioner” has a corresponding meaning.

Added by No. 104, 1973, s. 11.

53. (1) Any person who—

- (a) makes, either orally or in writing, a false or misleading statement in, or in connexion with, or in support of, any application for pension;
- (b) obtains any pension or instalment of pension which is not payable;
- (c) obtains payment of any pension or instalment of pension by means of any false or misleading statement; or
- (d) makes or presents to the Minister or the Commission or an Assistant Commissioner or a Board or to any officer doing duty in relation to this Act or the regulations, any statement or document which is false in any particular,

Offences.
Substituted by No. 23, 1922, s. 4.
Sub-section (1) amended by No. 22, 1943, s. 23; and No. 42, 1966, s. 12.

shall be guilty of an offence.

Penalty: One hundred dollars or imprisonment for six months.

Amended by
No. 47, 1963,
s. 4.

(2) Any person convicted of an offence against this section may, in addition to the penalty imposed for the offence, be ordered to repay to the Commission any amount received by him, or by any other person, by way of pension in consequence of the act in respect of which he was convicted.

Sub-section (3)
omitted by
No. 22, 1943,
s. 23.

* * * * *

(4) Proceedings under this section may be taken before a Court of summary jurisdiction, and may be commenced at any time within three years after the commission of the offence.

Added by
No. 47, 1958,
s. 8; and No. 27,
1973, s. 9.

(5) In this section, "pension" includes an allowance under section 98A.

Extension of
Act to British
reservists,
&c.

Sub-section (1)
amended by
No. 58, 1959,
s. 4.

54. (1) The provisions of this Part shall extend to—

- (a) any soldier of the Imperial Reserve Forces called up for active service during the present war; and
- (b) any person who is serving or has served during the present war in the Naval or Military Forces of any part of the King's Dominions, other than the Commonwealth, on active service outside that Dominion,

on proof to the satisfaction of the Commission that he was, immediately before being called up or before his enlistment, as the case may be, domiciled in the Commonwealth.

Added by
No. 58, 1959,
s. 4; amended by
No. 216, 1973,
s. 3.

(2) A pension shall not be granted under this section to a person who is not resident in Australia or a Territory not forming part of Australia.

Division 2
inserted by
No. 14, 1929,
s. 6.

Division 2—War Pensions Entitlement Appeals

War
Pensions
Entitlement
Appeal
Tribunals.

Inserted by
No. 14, 1929,
s. 6.

55. (1) There shall be such War Pensions Entitlement Appeal Tribunals as are established by the Governor-General.

(2) An Appeal Tribunal shall consist of a Chairman and two other members all of whom shall be appointed by the Governor-General.

(3) The Chairman of an Appeal Tribunal shall be a person who has been admitted to practise as a barrister or solicitor of the High Court or of the Supreme Court of a State.

(4) The members other than the Chairman shall be returned soldiers, and one shall be selected for appointment from a list, containing the names of not less than three returned soldiers, submitted to the

Minister by any organization representing returned soldiers throughout the Commonwealth.

56. In the case of the illness, or absence from Australia, or suspension, of any member of an Appeal Tribunal, or in the event of the office of a member of an Appeal Tribunal becoming vacant, the Governor-General may appoint a person to act temporarily during the illness, absence or suspension, or until the appointment of a member of the Appeal Tribunal, as the case may be, and the person so acting shall have all the powers and functions and perform all the duties of a member of the Appeal Tribunal.

Acting members.
Inserted by
No. 14, 1929,
s. 6.

57. (1) The Governor-General may appoint one of the members of an Appeal Tribunal to be Deputy Chairman.

Deputy Chairman.
Inserted by
No. 14, 1929,
s. 6.

(2) In the absence of the Chairman from any meeting the Deputy Chairman shall preside.

58. At any meeting of an Appeal Tribunal two members shall form a quorum.

Quorum.
Inserted by
No. 14, 1929,
s. 6.

59. The members of an Appeal Tribunal shall receive such remuneration as the Governor-General determines.²

Remuneration of members.
Inserted by
No. 14, 1929,
s. 6.

60. (1) Subject to this Act, the members of an Appeal Tribunal shall be appointed for a term not exceeding five years and shall be eligible for re-appointment.

Tenure.
Inserted by
No. 14, 1929,
s. 6.
Sub-section (1)
amended by
No. 67, 1936,
s. 2.

(2) Upon the happening of a vacancy in the office of a member of an Appeal Tribunal, the Governor-General may appoint a person to the vacant office and such person shall, subject to this Act, hold office until the expiration of the term for which his predecessor was appointed:

Amended by
No. 22, 1943,
s. 52; and
No. 27, 1973,
s. 9.

Provided that any person appointed to fill a vacancy in the office of the member selected from a list submitted in pursuance of sub-section (4) of section 55 shall be selected from a list submitted in accordance with that sub-section.

61. (1) The Minister may suspend a member of an Appeal Tribunal, or an acting member, from office for inability, inefficiency or misbehaviour or neglect or failure to carry out any of the provisions of this Act or the regulations.

Suspension of member.
Inserted by
No. 14, 1929,
s. 6.

Amended by
No. 216, 1973,
s. 3.

(2) The Minister shall cause to be laid before each House of the Parliament, within 7 sitting days of that House after the suspension, a full statement of the grounds of suspension, and if within sixty days thereafter an address is presented to the Governor-General by the Senate and the House of Representatives praying for the restoration of the member or acting member, as the case may be, to office he shall be restored accordingly; but if no such address is so presented the Governor-General may confirm the suspension and declare the office of the member or acting member, as the case may be, to be vacant and the office shall thereupon be and become vacant.

Vacation of
office—
disqualifica-
tion.

Inserted by
No. 14, 1929,
s. 6.

Sub-section (1)
amended by
No. 46, 1961,
s. 6; and
No. 216, 1973,
s. 3.

62. (1) A member of an Appeal Tribunal or an acting member shall be deemed to have vacated his office if—

- (a) he engages during the term of office in any paid employment outside the duties of his office;
- (b) he becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (c) he is wilfully absent from duty, except on leave granted by the Minister, for twenty-one consecutive days.

Amended by
No. 216, 1973,
s. 3.

(2) A person who is an uncertificated bankrupt shall be incapable of being appointed a member of an Appeal Tribunal.

Members of
Appeal
Tribunal not
subject to the
Common-
wealth
Public
Service Act.

Inserted by
No. 14, 1929,
s. 6.

63. (1) The members of an Appeal Tribunal shall not be subject to the *Commonwealth Public Service Act* 1922-1928,⁸ but if an officer of the Public Service of the Commonwealth is appointed a member of an Appeal Tribunal his service as a member of the Tribunal shall, for the purpose of determining his existing and accruing rights, be taken into account as if it were service in the Public Service of the Commonwealth, and if an officer of the Public Service of a State is appointed a member of an Appeal Tribunal his service as a member of the Tribunal shall, for the purpose of determining his existing and accruing rights, be taken into account as if it were service in the Public Service of the Commonwealth and as if he had been an officer of a Department transferred to the Commonwealth and were retained in the service of the Commonwealth.

Sub-section (2)
omitted by
No. 216, 1973,
s. 3.

* * * * *

64. (1) A person who has claimed a pension (other than a service pension or a pension payable by virtue of sub-section (3) of section 37) or other benefit under this Act arising out of the incapacity or death of a member of the Forces and whose claim has been refused by the Commission on the ground that the member is not suffering from any incapacity or on the ground—

- (a) that the incapacity or death of the member has not resulted from any occurrence that happened during the period of his war service, or from his employment in connexion with naval or military preparations or operations, or did not arise out of or is not attributable to his war service, as the case may be; or
- (b) that the incapacity from which the member is suffering or from which he has died has not been contributed to in any material degree, or has not been aggravated, by the conditions of his war service,

may lodge with the prescribed person, in the prescribed form, an appeal to an Appeal Tribunal against the determination of the Commission.

(1A) A person who has claimed a pension under this Act arising out of the incapacity or death of a member of the Forces, being a pension payable by virtue of sub-section (3) of section 37, and whose claim has been refused by the Commission on any ground relating to the medical condition of the member or to the cause of his death, may lodge with the prescribed person, in the prescribed form, an appeal to an Appeal Tribunal against the determination of the Commission.

(2) The person with whom an appeal is lodged under either of the last two preceding sub-sections shall forward the appeal to the Commission which shall transmit it to the Appeal Tribunal with the records in the possession of the Commission relating to the appellant.

(3) If, upon the hearing of an appeal by an Appeal Tribunal, no further evidence is tendered which, in the opinion of the Tribunal has a substantial bearing upon the appellant's claim, the Tribunal shall decide the appeal.

(4) If, upon the hearing of an appeal before an Appeal Tribunal, further evidence is tendered which, in the opinion of the Tribunal, has a substantial bearing upon the appellant's claim, the Tribunal shall again refer the claim to the Commission for reconsideration.

(5) The Commission shall thereupon reconsider the case and notify the Appeal Tribunal of its determination.

(6) If the determination of the Commission in pursuance of the last preceding sub-section is adverse to the appellant, the Appeal Tribunal shall hear and decide the appeal upon the records and evidence upon which the determination appealed against and the determination upon the reconsideration were made by the Commission.

Appeals.

Inserted by
No. 14, 1929,
s. 6.

Sub-section (1)
substituted by
No. 58, 1935,
s. 19; amended
by No. 37, 1940,
s. 9; No. 22,
1943, s. 24;
No. 34, 1950,
s. 29; No. 69,
1953, s. 11;
No. 31, 1954,
s. 8; No. 68,
1956, s. 8;
No. 47, 1963,
s. 5; and
No. 27, 1973,
s. 9.

Inserted by
No. 47, 1963,
s. 5; amended by
No. 27, 1973,
s. 9.

Amended by
No. 47, 1963,
s. 5.

Amended by
No. 39, 1955,
s. 6.

Amended by
No. 34, 1950,
s. 29; and
No. 39, 1955,
s. 6.

Substituted by
No. 34, 1950,
s. 29.

Substituted by
No. 34, 1950,
s. 29; amended
by No. 39, 1955,
s. 6.

Inserted by
No. 39, 1955,
s. 6; amended by
No. 27, 1973,
s. 9.

(6A) A decision by an Appeal Tribunal under sub-section (3), or under the last preceding sub-section, which is adverse to the appellant does not prevent the Commission reconsidering the claim of the appellant at any time when it appears to the Commission that there are sufficient grounds for so doing.

Amended by
No. 58, 1935,
s. 19; No. 58,
1952, s. 8;
No. 69, 1953,
s. 11; No. 39,
1955, s. 6; and
No. 27, 1973,
s. 9.

(7) If, at any time after a decision of an Appeal Tribunal made under sub-section (3) or sub-section (6), the appellant submits to the Commission in writing any further evidence which, in the opinion of the Commission, is material to, and has a substantial bearing upon, the appellant's claim, the Commission shall reconsider the claim and, if the claim is refused by the Commission, the appellant may appeal in writing to an Appeal Tribunal which shall consider the further evidence and hear and decide the appeal.

Substituted by
No. 69, 1953,
s. 11.

(7AA) Where, in the opinion of the Commission, further evidence submitted by an appellant is not material to, or has not a substantial bearing upon, the appellant's claim, the Commission shall notify the appellant accordingly and the appellant may—

- (a) submit that evidence in writing to an Appeal Tribunal; and
- (b) if the Appeal Tribunal decides that the evidence is material to, and has a substantial bearing upon, his claim, appeal to an Appeal Tribunal.

Inserted by
No. 58, 1952,
s. 8;
amended by
No. 39, 1955,
s. 6.

(7AB) The Appeal Tribunal to which an appeal is made in pursuance of paragraph (b) of the last preceding sub-section shall consider the further evidence and hear and decide the appeal.

Sub-section (7A)
omitted by
No. 39, 1955,
s. 6.

* * * * *

(8) Upon any decision being made under this section by an Appeal Tribunal, it shall forthwith give notice, in the prescribed form, to the Commission and to the appellant, of the decision.

Substituted by
No. 58, 1935,
s. 19; amended
by No. 58, 1952,
s. 8; and No. 27,
1973, s. 9.

(9) The Commission may, within six months after a decision by an Appeal Tribunal under sub-section (3), sub-section (6), sub-section (7) or sub-section (7AB), appeal in writing to the Tribunal upon any further evidence relating to the appeal which, in the opinion of the Commission, is material thereto and has a substantial bearing thereon:

Provided that the Commission may appeal in writing to the Tribunal at any time in any case where it is satisfied that the pension has been obtained by fraud or impersonation.

Added by
No. 22, 1943,
s. 24.

(10) Where in connexion with any hearing of an appeal the Appeal Tribunal refers the case for further medical opinion, the appellant or a representative of the appellant or both may attend at any sittings at which the further medical opinion is considered by the Appeal Tribunal.

Division 3—War Pension Assessment Appeals

Division 3
inserted by
No. 14, 1929,
s. 6.

65. (1) There shall be such Assessment Appeal Tribunals as the Minister, from time to time, determines for the purpose of deciding appeals by members of the Forces against—

Assessment
Appeal
Tribunals.

Inserted by
No. 14, 1929,
s. 6.

Sub-section (1)
amended by
No. 58, 1935,
s. 20; No. 22,
1943, s. 25;
No. 68, 1956,
s. 9; and No. 27,
1973, s. 9.

- (a) assessments by the Commission or a Board of the rates of pension payable to members of the Forces under any Division other than Division 5; and
- (b) determinations by the Commission under Division 5 in cases where the Commission has refused to grant a pension solely on the ground that the member of the Forces was not—
 - (i) permanently unemployable; or
 - (ii) suffering from pulmonary tuberculosis.

(2) Each Assessment Appeal Tribunal shall consist of a Chairman appointed by the Minister and of two other members who shall be medical practitioners who have the necessary knowledge of the nature of disability from which the appellant or appellants is or are suffering.

(3) The Chairman of an Assessment Appeal Tribunal shall be selected for appointment from a list of returned soldiers who have been admitted to practise as Barristers or Solicitors of the High Court or of the Supreme Court of a State, submitted in the manner provided by subsection (4) of section 55.

Amended by
No. 22, 1943,
s. 52; and
No. 27, 1973,
s. 9.

(4) The two members of an Assessment Appeal Tribunal, other than the Chairman, shall be selected in the prescribed manner from lists of medical practitioners approved by the Minister.

(5) Subject to this Act, the Chairman of an Assessment Appeal Tribunal shall be appointed for a term not exceeding five years, and shall be eligible for re-appointment.

Amended by
No. 67, 1936,
s. 3.

(6) The provisions of sections 61, 62 and 63 shall apply to the Chairman of an Assessment Appeal Tribunal as if he were a member of an Appeal Tribunal.

Amended by
No. 22, 1943,
s. 52; and
No. 27, 1973,
s. 9.

66. The members of an Assessment Appeal Tribunal shall receive such remuneration as the Minister determines.²

Remuner-
ation of
members of
Assessment
Appeal
Tribunal.

Inserted by
No. 14, 1929,
s. 6.

Appeals to
Assessment
Appeal
Tribunals.

Substituted by
No. 74, 1930,
s. 3.

Sub-section (1)
amended by No.
58, 1935, s. 21;
No. 37, 1940,
s. 10; No. 22,
1943, s. 26;
No. 34, 1950,
s. 30; No. 31,
1954, s. 9;
No. 139, 1972,
s. 10; and
No. 216, 1973,
s. 3.

67. (1) Any member of the Forces—

- (a) who is in receipt of a pension under this Act (other than a service pension); or
- (b) who is not in receipt of such a pension but as to whom the Commission, a Board or an Appeal Tribunal has determined that he has an incapacity that—
 - (i) is the result of any occurrence that happened during his war service;
 - (ii) is the result of his employment in connexion with naval or military preparations or operations;
 - (iii) is directly attributable to his war service;
 - (iv) arose out of or is attributable to his war service; or
 - (v) has been contributed to in any material degree, or has been aggravated, by the conditions of his war service,

and the Commission or a Board has decided that the incapacity is so slight that it does not warrant a pension assessment,

may, within three months after—

* * * * *

- (d) the date of the notification of the assessment by the Commission or a Board of his pension, or the date of the notification of the refusal by the Commission or a Board to alter the existing assessment; or
- (e) the date of the notification by the Commission or a Board that the incapacity of the member of the Forces did not warrant a pension assessment,

whichever is the later, or, if the appellant was at any time during that period a resident of the Torres Strait Islands, within a further three months after the expiration of that period, lodge with the prescribed person an appeal in the prescribed form against the current assessment of the rate of his pension, or against the decision that a pension assessment is not warranted, as the case may be.

Amended by
No. 58, 1935,
s. 21.

(2) The person with whom an appeal is lodged under the last preceding sub-section shall forward it to an Assessment Appeal Tribunal with all the records relative to the assessment appealed against, or to the decision that a pension assessment was not warranted, as the case may be.

68. An Assessment Appeal Tribunal shall, after hearing an appeal lodged by a member of the Forces in pursuance of the last preceding section, decide the appeal and may increase, reduce or continue any such pension or make an assessment, and the Tribunal shall forthwith give notice in the prescribed form to the Commission and to the appellant of the decision.

Decision of appeals.

Substituted by No. 74, 1930, s. 3; amended by No. 10, 1931, s. 49; No. 47, 1931, s. 5; and No. 39, 1955, s. 7.

69. (1) The decision of an Assessment Appeal Tribunal upon an appeal lodged under section 67 shall, subject to this section, be binding upon the appellant, the Commission and a Board for such period as is specified by the Tribunal being not more than three years from the date of the decision, and if no time is so specified, for six months from that date.

Effect of decision of Assessment Appeal Tribunals.

Substituted by No. 58, 1935, s. 22.

Sub-section (1) amended by No. 22, 1943, s. 52; No. 34, 1950, s. 31; and No. 27, 1973, s. 9.

(2) If, at any time after the hearing by the Assessment Appeal Tribunal of an appeal lodged under section 67 and during the period during which a decision of the Tribunal is binding, the appellant to whom the decision applies is of opinion that his incapacity has increased, he may apply to the Commission or a Board for an increase in his pension and, within three months of the date of the notification by the Commission or a Board of its decision on that application or, if the appellant was at any time during that period a resident of the Torres Strait Islands, within a further three months after the expiration of that period, he may lodge, in the manner provided in this Division, a further appeal to the Assessment Appeal Tribunal, and that Tribunal shall hear and decide the appeal in accordance with the provisions of this Act.

Amended by No. 22, 1943, s. 52; No. 39, 1955, s. 8; No. 139, 1972, s. 11; and No. 27, 1973, s. 9.

70. (1) Any person who has applied, as a member of the Forces, for a pension under section 85, and whose application has been refused by the Commission solely on the ground that the member was not—

Appeals by applicants under s. 85.

Inserted by No. 58, 1935, s. 22.

(a) permanently unemployable; or

(b) suffering from pulmonary tuberculosis,

Sub-section (1) amended by No. 22, 1943, s. 52; No. 139, 1972, s. 12; and No. 27, 1973, s. 9.

may, within three months after the date of the notification by the Commission of its determination or, if the appellant was at any time during that period a resident of the Torres Strait Islands, within a further three months after the expiration of that period, lodge with the prescribed person an appeal in the prescribed form against that determination.

(2) The person with whom an appeal is lodged under the last preceding sub-section shall forward it to an Assessment Appeal Tribunal with all the records relative to the determination appealed against.

Where decision given on false evidence.
 Inserted by No. 58, 1935, s. 22.

71. (1) Where, in the opinion of the Commission, a decision of an Assessment Appeal Tribunal has been affected by evidence which is false in a material particular, the Commission may refer the case to the Assessment Appeal Tribunal with a statement of the ground of its opinion.

(2) An Assessment Appeal Tribunal may, if it thinks fit, upon receipt of a statement referred to in the last preceding sub-section, re-hear the appeal and make such decision as it thinks just.

Division 4
 inserted by No. 14, 1929, s. 6.

Heading amended by No. 58, 1935, s. 23.

Division 4—General Provisions relating to Appeals

Right of appellant to appear.
 Inserted by No. 14, 1929, s. 6.

72. (1) An appellant to an Appeal Tribunal or to an Assessment Appeal Tribunal may attend in person at any sittings at which his appeal is being heard.

(2) The Commission may be represented by any person other than a legal practitioner at the hearing of any appeal by an Appeal Tribunal or by an Assessment Appeal Tribunal.

Amended by No. 39, 1955, s. 9; and No. 62, 1964, s. 3.

(3) Any appellant shall be entitled—

(a) if he attends a sitting of a Tribunal at which his appeal is being heard, to receive—

(i) such expenses in connexion with his attendance; and

(ii) such allowances in respect of any loss of salary or wages, or of earnings from work on his own account, suffered by him by reason of his attendance,

as are prescribed; and

(b) to be represented, at his own expense, at the hearing of his appeal, by a person other than a legal practitioner.

Substituted by No. 62, 1964, s. 3.

(4) The regulations may provide for the payment, subject to such conditions as the Commission determines, to an attendant who accompanies an appellant who is attending a sitting of a Tribunal—

(a) of such expenses in connexion with his accompanying the appellant; and

(b) of such allowances in respect of any loss of salary or wages, or of earnings from work on his own account, suffered by him by reason of his accompanying the appellant,

as the Commission considers reasonable.

(4A) Where the Tribunal is of opinion that an appeal is frivolous, it may declare that neither the appellant nor any attendant accompanying him is entitled to receive any payment under this section in connexion with the appeal.

Inserted by
No. 62, 1964,
s. 3.

(4B) Where the Commission appeals to an Appeal Tribunal under sub-section (9) of section 64 of this Act, sub-sections (1) and (3) of this section, and the regulations made by virtue of sub-section (4) of this section, apply in respect of the appeal as if the person who made the claim to which the appeal relates were the appellant in relation to the appeal.

Inserted by
No. 64, 1965,
s. 4; amended by
No. 27, 1973,
s. 9.

(5) In this section, "appeal" includes a submission under paragraph (a) of sub-section (7AA) of section 64.

Added by
No. 39, 1955,
s. 9; amended by
No. 27, 1973,
s. 9.

73. An Appeal Tribunal and an Assessment Appeal Tribunal may—

- (a) summon witnesses;
- (b) take evidence on oath; and
- (c) require the production of documents.

Summoning
of witnesses,
&c.

Inserted by
No. 14, 1929,
s. 6.

74. Any person who has been summoned to appear as a witness before an Appeal Tribunal or an Assessment Appeal Tribunal and who, without lawful excuse, and after tender of reasonable expenses, fails to appear in answer to the summons, shall be guilty of an offence.

Witness
failing to
appear.

Inserted by
No. 14, 1929,
s. 6; amended by
No. 42, 1966,
s. 12.

Penalty: Forty dollars.

75. Any person who appears before an Appeal Tribunal or an Assessment Appeal Tribunal as a witness and who, without lawful excuse, refuses to be sworn, or to make an affirmation, or to produce documents, or to answer questions he is lawfully required to answer, shall be guilty of an offence.

Witness
refusing to
be sworn.

Inserted by
No. 14, 1929,
s. 6; amended by
No. 42, 1966,
s. 12.

Penalty: One hundred dollars.

76. An Appeal Tribunal and an Assessment Appeal Tribunal may appoint any person to hear and receive evidence with respect to any matter pertaining to an appeal under this Part, and such person shall have authority to administer oaths and to hear and receive evidence upon oath and to take affidavits in any part of the Commonwealth.

Appointments
of persons to
take
evidence.

Inserted by
No. 14, 1929,
s. 6.

77. (1) As soon as conveniently practicable after the receipt by an Appeal Tribunal or by an Assessment Appeal Tribunal of an appeal and the records relating to the appellant, the Chairman of the Tribunal shall fix a time and place for the hearing of the appeal and shall notify the appellant and the Commission thereof.

Hearing of
appeals.

Inserted by
No. 14, 1929,
s. 6.

Sub-section (1)
amended by
No. 39, 1955,
s. 10.

(2) Subject to this Act, the hearing of any appeal under this Part shall be conducted in such a manner as is prescribed.

Substituted by
No. 22, 1943,
s. 27.

* * * * *

Sub-sections (3)
and (4) omitted
by No. 22, 1943,
s. 27.

Date of operation of decisions and determinations on appeal.

Sub-section (1) substituted by No. 44, 1957, s. 3; amended by No. 27, 1973, s. 9.

Substituted by No. 44, 1957, s. 3; amended by No. 75, 1962, s. 4; No. 42, 1966, s. 3; and No. 27, 1973, s. 9.

Inserted by No. 75, 1962, s. 4; amended by No. 42, 1966, s. 3; No. 139, 1972, s. 13; and No. 27, 1973, s. 9.

Substituted by No. 31, 1954, s. 10; amended by No. 47, 1958, s. 9; No. 75, 1962, s. 4; No. 105, 1964, s. 5; and No. 27, 1973, s. 9.

78. (1) An Appeal Tribunal or an Assessment Appeal Tribunal may specify in a decision made by it under this Part, and the Commission may specify in a determination made by it by virtue of section 64, the date from which the decision or determination, as the case may be, operates.

(2) Subject to the next succeeding sub-section, a decision of an Appeal Tribunal, or a determination of the Commission referred to in the last preceding sub-section, shall not be expressed to operate—

(a) in any case—

(i) from a date earlier than three months before the date on which the claim for pension was lodged; or

(ii) from a date earlier than six months before the date on which the appeal under sub-section (1) or sub-section (1A) of section 64 was lodged; or

(b) in the case of a decision made by virtue of sub-section (7) or (7AB) of that section, or a determination made by virtue of sub-section (6A) or (7) of that section—from a date earlier than four years before the date of the decision or determination, as the case may be.

(2A) Where an appeal to an Appeal Tribunal against a determination of the Commission is lodged in accordance with sub-section (1) or sub-section (1A) of section 64 and—

(a) the appeal is so lodged within three months after the making of the determination or, if the appellant was at any time during that period a resident of the Torres Strait Islands, within a further three months after the expiration of that period; and

(b) in a case where the determination of the Commission was made on an appeal to the Commission from a determination of a Board—the appeal to the Commission was lodged within three months after the making of the determination of the Board or, if the appellant was at any time during that period a resident of the Torres Strait Islands, within a further three months after the expiration of that period,

sub-paragraph (ii) of paragraph (a) of the last preceding sub-section does not apply to a decision of the Appeal Tribunal made by virtue of sub-section (3) or (6) of section 64 or to a determination of the Commission made by virtue of sub-section (5) of that section.

(3) A decision of an Assessment Appeal Tribunal shall not be expressed to operate—

(a) where the appeal follows upon an appeal to an Appeal Tribunal or to the Commission that has been upheld or upon a determination of the Commission made by virtue of section 64—from a date earlier than the date from which the decision or determina-

tion of the Appeal Tribunal or of the Commission, as the case may be, operates;

- (b) where the appeal is from a decision of the Commission or a Board whereby a claim for a pension has been rejected—from a date earlier than the earliest date from which the Commission or the Board, as the case may be, if it had not rejected the claim, could have approved of the payment of a pension in respect of the claim; or
- (c) where the appeal is from a decision of the Commission or a Board whereby a pension has been cancelled or reduced—from a date earlier than six months before the date on which the appeal to the Assessment Appeal Tribunal was lodged.

79. (1) If an appellant dies or becomes mentally afflicted after lodging an appeal to an Appeal Tribunal or an Assessment Appeal Tribunal, or after submitting further evidence to the Commission under subsection (7) of section 64 in relation to a claim for pension, the appeal may be continued, or the claim may be pursued and any subsequent appeal may be made, as the case may be, by a person approved by the Appeal Tribunal, the Assessment Appeal Tribunal or the Commission, as the case may be, as a proper representative of the appellant, and the approved person has, for the purposes of the appeal or of the claim and any subsequent appeal, all the rights of the appellant.

Deceased or mentally afflicted person.

Substituted by No. 34, 1950, s. 32.

Sub-section (1) substituted by No. 64, 1965, s. 5; amended by No. 27, 1973, s. 9.

(2) In the case of a mentally afflicted member of the Forces, a person approved by an Appeal Tribunal or an Assessment Appeal Tribunal as a proper representative of the member may lodge an appeal on his behalf, and shall, for the purpose of the conduct of the appeal, have all the rights of the member.

80. An Appeal Tribunal and an Assessment Appeal Tribunal shall, so far as is consistent with the interests of the appellant, and with any obligation to respect information given to the Commission upon a confidential basis, make available to the appellant or his representative information contained in the records relating to the case:

Information in records may be made available to appellant.

Inserted by No. 14, 1929, s. 6.

Provided that information given to the Commission on a confidential basis may be disclosed to the appellant or his representative in any case if the person who has provided the information consents in writing.

80A. Where—

- (a) an Appeal Tribunal or an Assessment Appeal Tribunal decides an appeal adversely to the appellant;
- (b) the appellant makes application to the Tribunal, within three months after the decision or, if the appellant was at any time during that period a resident of the Torres Strait Islands, within a further three months after the expiration of that period, for the Tribunal to set aside the decision under this section; and
- (c) the Tribunal is satisfied that the appellant, or a person representing the appellant, was unable to make any submission,

Tribunal may set aside decisions in certain circumstances.

Inserted by No. 47, 1963, s. 6; amended by No. 139, 1972, s. 14.

or present any evidence, to the Tribunal by reason that the appellant or that person was, due to circumstances outside his control, prevented from attending the sittings, or a part of the sittings, at which the appeal was heard,
the Tribunal shall set aside its decision, and shall fix a time and place for the further hearing of the appeal and notify the appellant and the Commission of the time and place so fixed.

Salaries and
expenses of
Tribunals.

Inserted by
No. 14, 1929,
s. 6.

81. The salaries and expenses of members of Appeal Tribunals and of Assessment Appeal Tribunals shall be paid out of moneys provided by the Parliament for the purpose.

Reports.

Inserted by
No. 14, 1929,
s. 6.

82. (1) Appeal Tribunals shall furnish to the Minister an annual report, which the Minister shall present to the Parliament.

Amended by
No. 22, 1943,
s. 52; and
No. 27, 1973,
s. 9.

(2) The Commission shall include in its report under section 122, statistics of cases dealt with by Assessment Appeal Tribunals.

Division 5
inserted by
No. 58, 1935,
s. 24.

Division 5—Service Pensions

Interpre-
tation.

Inserted by
No. 58, 1935,
s. 24.

Sub-section (1)
amended by
No. 67, 1936,
s. 4; No. 29,
1947, s. 4;
No. 34, 1950,
s. 33; No. 69,
1953, s. 12;
No. 31, 1954,
s. 11; No. 39,
1955, s. 12;
No. 68, 1956,
s. 10; No. 97,
1956, s. 4;
No. 47, 1958,
s. 10; No. 58,
1959, s. 5;
No. 44, 1960,
ss. 3 and 4;
No. 91, 1962,
s. 4; No. 47,
1963, s. 7;
No. 105, 1964,
s. 6; No. 64,
1965, s. 6;
No. 42, 1966,
ss. 4 and 12;
No. 82, 1972,
s. 8; No. 2, 1973,
s. 7; No. 27,
1973, s. 4;
No. 104, 1973,
ss. 12 and 28;
and No. 216,
1973, s. 3.

- 83.** (1) In this Division, unless the contrary intention appears—
“Benevolent home” has the same meaning as in Part III of the *Social Services Act 1947-1963*;
“Australia” includes the Territories;
“Child”, in relation to a member of the Forces, means a son (including an ex-nuptial son), step-son, adopted son or foster-son, or a daughter (including an ex-nuptial daughter), step-daughter, adopted daughter or foster-daughter, or a ward, of the member—
(a) who is under the age of sixteen years and of whom the member has the custody, care and control; or
(b) who—
(i) has attained the age of sixteen years;
(ii) is receiving full-time education at a school, college or university;
(iii) is wholly or substantially dependent on the member; and
(iv) is not in receipt of an invalid pension under Part III of the *Social Services Act 1947-1973*;

“Dependent female”, in relation to a member of the Forces, means a woman who has lived with the member as his wife on a permanent and *bona fide* domestic basis, although not legally married to him, for not less than three years immediately preceding the operation of any provision of this Division in relation to that woman or that member;

“Income”, in relation to any person, means any personal earnings, moneys, valuable consideration or profits earned, derived or received by that person for his own use or benefit by any means from any source whatsoever, within or outside Australia, and includes any periodical payment or benefit by way of gift or allowance from any person other than the father, mother, son, daughter, brother or sister of the first-mentioned person, but does not include—

- (a) a payment (not being a payment of an annuity) by way of benefit from any friendly society;
- (b) a payment (not being a payment of an annuity) in respect of illness, infirmity or old-age from any trade union;
- (ba) an instalment of a superannuation pension;
- (c) the value of food relief or like assistance granted under any law of a State or Territory;
- (d) a payment under Division 4B of Part III, or under Part V, VI, VIA, VII, VIIA or VIII, of the *Social Services Act* 1947-1973;
- (e) a benefit under a law of the Commonwealth (other than the *Social Services Act* 1947-1960) relating to the provision of pharmaceutical, sickness or hospital benefits, or of medical or dental services;
- (f) a payment made by an organization registered under a law referred to in the last preceding paragraph for or in respect of expenses incurred by a person for hospital, medical or dental treatment;
- (g) a payment under section 9 of the *Tuberculosis Act* 1948;
- (h) the value of board and lodging received by a member of the Forces who is suffering from pulmonary tuberculosis and who receives that board and lodging while undergoing treatment for that disease as an inmate of a hospital, sanatorium or similar institution;
- (i) an amount of interest credited or paid in pursuance of the *War Gratuity Acts* 1920 or the *War Gratuity Act* 1945;⁹
- (j) income derived from property;
- (k) an attendant’s allowance payable under Schedule 2 or 5 or under either of those Schedules as applied by section 7

of the *Repatriation (Far East Strategic Reserve) Act 1956-1962* or by section 7 of the *Repatriation (Special Overseas Service) Act 1962*;

- (ka) a benefit under section 98AAA;
- (l) an amount payable to a member of the Forces by the Commission as an allowance for expenditure incurred or to be incurred by the member for his transport for the purposes of recreation or as an allowance towards the cost of maintenance and running expenses of a motor vehicle provided by the Commission for the member because of his serious incapacity;
- (la) an amount payable by the Commission by way of sustenance allowance;
- (m) an amount payable to a member of the Forces as an allowance by reason of the fact that he has been awarded a decoration; or
- (n) an amount payable by the Commission as a clothing allowance to a member of the Forces whose clothing, because of a disability from which he suffers, is subject to exceptional wear and tear or damage;

“Income derived from property”, in relation to a person, means income derived from property owned, whether alone or jointly or in common with another person, by that person, other than income which—

- (a) consists of an annuity; or
- (b) is derived from a life interest in property, not being, where that person is a pensioner or applicant, property which is the permanent home of the pensioner or applicant;

“Means as assessed” in relation to a person, means an amount equal to the sum of the annual rate of the income of that person, apart from service pension, and the property component calculated in relation to that person;

“Mental hospital” means premises declared by the Commission under section 94A to be a mental hospital for the purposes of this Division;

“Mental hospital patient” means a person who—

- (a) has been admitted to a mental hospital as a patient of the hospital;
- (b) is shown on the records of the hospital as a patient, other than an out-patient, of the hospital; and
- (c) is maintained in the hospital at the public expense;

“Property component”, in relation to a person, means an amount calculated at the rate of One dollar ninety-five cents for every complete Twenty dollars included in so much of the net capital

value of the accumulated property of that person as exceeds Four hundred dollars;

“Service pensioner” means a person in receipt of a service pension;

“Superannuation pension” means payments made periodically (including payments under a law of the Commonwealth, a State, a Territory or a country other than Australia) to a person, or to the former spouse of a deceased person, in consequence of—

- (a) the past employment or past services of that first-mentioned person or that deceased person as an employee or in any other capacity;
- (b) contributions made by that first-mentioned person or that deceased person under a law providing for benefits for contributors; or
- (c) an investment of moneys made by that first-mentioned person or that deceased person by way of an annuity, being a transaction entered into in the ordinary course of business of the other party to it,

but does not include payments by way of, or in the nature of, compensation for injury, disability or death;

“Wife” includes a dependent female.

(2) Where a mental hospital patient is transferred from one mental hospital to another mental hospital, he shall, for the purposes of this Division, be deemed to be a mental hospital patient during the period of the transfer notwithstanding that, during that period, he is not shown on the records of a mental hospital as a patient of a mental hospital.

Added by
No. 47, 1963,
s. 7; omitted by
No. 64, 1965,
s. 6; added by
No. 42, 1966,
s. 4.

(3) In the application of section 28 of the *Social Services Act* 1947-1966 for the purposes of this Division—

Added by
No. 42, 1966,
s. 4; amended by
No. 66, 1968,
s. 5; No. 95,
1969, s. 3;
No. 82, 1972,
s. 8; No. 2, 1973,
s. 7; and No. 27,
1973, ss. 4 and 9.

* * * * *

- (aa) the reference in sub-paragraph (ii) of paragraph (b) of sub-section (1AA) of that section to the Director-General shall be read as a reference to a Board;
- (b) a reference in that section to the means as assessed or the property component of a person shall be read as a reference to the means as assessed or the property component, as the case may be, of the person for the purposes of this Division;
- (c) a reference in that section to a child under the age of sixteen years of whom a person has the custody, care and control shall, in relation to a member of the Forces, be read as a reference to a child of that member; and
- (d) sub-section (1C) of section 28 of that Act shall be deemed not to have any operation.

Sub-section (3A)
omitted by No.
15, 1972, s. 3.

* * * * *

Added by
No. 42, 1966,
s. 4; amended by
No. 27, 1973,
s. 9.

(4) In the application of section 50 of the *Social Services Act* 1947-1966 for the purposes of this Division, the reference in subparagraph (i) of paragraph (a) of sub-section (1) of that section to an allowance under Division 4A of Part III of the *Social Services Act* 1947-1966 shall be read as a reference to an allowance under section 98A of this Act.

Superannuation
pension may
be included
in "income".

Inserted by
No. 82, 1972,
s. 9.

83A. Where—

- (a) a superannuation pension is payable to a person; and
- (b) the rate of service pension payable to the person would be greater if that superannuation pension were not included in the accumulated property of the person for the purposes of this Division but each instalment of that superannuation pension were treated as income of the person for the purposes of this Division,

the superannuation pension shall be treated accordingly.

Grant of
service
pensions.

Inserted by
No. 58, 1935,
s. 24.

Sub-section (1)
amended by
No. 29, 1936,
s. 20; No. 67,
1936, s. 5;
No. 12, 1937,
s. 3; No. 96,
1940, s. 3;
No. 49, 1941,
s. 3; No. 22,
1943, s. 29;
No. 29, 1947,
s. 5; No. 68,
1956, s. 11;
No. 44, 1960,
s. 3; No. 17,
1971, s. 4;
No. 15, 1972,
s. 4; and No. 27,
1973, s. 9.

84. (1) Subject to this Act, the Commission or a Board may grant a service pension to a member of the Forces who—

- (a) in the case of a man—has served in a theatre of war and has reached the age of sixty years;
- (b) in the case of a woman—has served in a theatre of war or served abroad or embarked for service abroad and has reached the age of fifty-five years,

at a rate per annum not exceeding the maximum rate of pension per annum that would be applicable to him under section 28 of the *Social Services Act* 1947-1971 if he were qualified to receive an age pension under that Act.

Omitted by
No. 42, 1966,
s. 5; added by
No. 4, 1970, s. 3;
amended by
No. 27, 1973,
s. 9.

(2) Sub-section (1AAA) of section 28 of the *Social Services Act* 1947-1970 does not apply for the purposes of the last preceding sub-section but, if a Board is satisfied that—

- (a) the living expenses of a married person and the husband or wife of that person are, or are likely to be, greater than they would otherwise be by reason that those persons are unable, as a result of the illness or infirmity of either or both of them, to live together in a matrimonial home; and
- (b) the inability is likely to continue indefinitely,

the Board may determine that the maximum rate per annum of the service pension that may be granted to the first-mentioned person is to be the maximum rate of pension per annum that would be applicable to the person under that section if the person were qualified to receive an age

pension under that Act and a direction were in force in relation to the person under sub-section (1AAA) of that section.

(3) Where it appears to a Board that sufficient reason exists for reviewing a determination given under the last preceding sub-section, the Board may review the determination and may affirm it or make a determination annulling it.

Added by No. 4, 1970, s. 3.

85. (1) Subject to this Act, the Commission or a Board may grant a service pension to a person included in a class of persons specified in the first column of the following table at a rate not exceeding the rate, or the appropriate rate, specified in the second column of that table in respect of that class:—

Pension in respect of a member permanently unemployable, &c.

Inserted by No. 58, 1935, s. 24.

Sub-section (1) substituted by No. 105, 1964, s. 7; amended by No. 42, 1966, s. 12; No. 66, 1968, s. 6; No. 68, 1971, s. 3; No. 82, 1972, s. 10; No. 27, 1973, s. 9; and No. 104, 1973, s. 13.

Members of the Forces irrespective of their age	The maximum rate that would be applicable to the member if he were qualified to receive a pension under the last preceding section.
Wives of members of the Forces	The maximum rate of pension per annum that would be applicable to the wife if she were qualified to receive a wife's pension under Part III of the <i>Social Services Act</i> 1947-1972.
Children of members of the Forces	(a) If no older child of the member is, or would but for sub-section (5) be, in receipt of service pension—Two hundred and sixty dollars per annum.

* * * * *

(1A) After the commencement of this sub-section, a service pension shall not be granted under sub-section (1) to a child of a member of the Forces.

Inserted by No. 104, 1973, s. 13.

(2) A pension under this section shall not be granted to a member of the Forces unless the member, in the opinion of the Commission or a Board—

Substituted by No. 67, 1936, s. 6; amended by No. 22, 1943, s. 30.

(a) is permanently unemployable and—

- (i) in the case of a man—has served in a theatre of war; or
- (ii) in the case of a woman—has served in a theatre of war or served abroad or embarked for service abroad; or

(b) is suffering from pulmonary tuberculosis.

(2A) A woman is not entitled to receive at the same time a service pension under this section by reason that she is a member of the Forces and a service pension under this section by reason that she is the wife of a member of the Forces.

Inserted by No. 2, 1973, s. 8.

Substituted by
No. 82, 1972,
s. 10; amended
by No. 104,
1973, s. 13.

(3) A pension under this section shall not be granted to the wife of a member of the Forces unless a pension under this Division is payable to or in respect of the member or the member would, in the opinion of the Commission or a Board, have been granted a pension under this Division but for his death before the determination of an application made by him before his death.

Substituted by
No. 64, 1965,
s. 8; amended by
No. 82, 1972,
s. 10.

(3A) In deciding, for the purposes of the last preceding sub-section, whether a member would have been granted a pension but for his death, the question whether or not the member was, at the time of his application, in receipt of an age or invalid pension under the *Social Services Act* 1947-1960 shall not be taken into account.

Inserted by
No. 67, 1936,
s. 6; amended by
No. 22, 1943,
ss. 30 and 52;
No. 47, 1963,
s. 8; and
No. 27, 1973,
s. 9.

(3B) For the purposes of sub-section (3), a pension shall be deemed to be payable to a member during any period during which the member is, by reason only of the operation of section 92, ineligible to receive a pension.

Sub-section (4)
omitted by
No. 104, 1973,
s. 13.

* * * * *

Omitted by
No. 22, 1943,
s. 30; added by
No. 66, 1968,
s. 6; amended by
No. 27, 1973,
s. 9.

(5) Where—

- (a) the maximum rate at which a service pension is payable to a member of the Forces by virtue of sub-section (1A) of section 28 of the *Social Services Act* 1947-1968 in its application for the purposes of this Division is increased in respect of a child by virtue of sub-section (1B) of that section; and
- (b) a service pension would, but for this sub-section, be payable to the child in accordance with paragraph (a) in the second column of the table in sub-section (1) of this section,

the service pension is not payable to the child.

Claimant to
be resident
in Australia.

85A. (1) A person is not eligible to lodge a claim for a service pension unless he is residing in Australia.

Inserted by
No. 27, 1973,
s. 5.

(2) A service pension shall not be granted to a claimant who has ceased to reside in Australia after he has lodged his claim unless the circumstances are such that the date of commencement of the period in respect of which the service pension, if granted, would be paid is a date not later than the date on which the claimant ceased to reside in Australia.

Restrictions
as to dual
pensions.

86. (1) Notwithstanding anything contained in this Division—

(a) a person is not entitled to receive at the same time—

- (i) a service pension under one section of this Division and a service pension under another section of this Division; or
- (ii) a service pension and a pension under Part III or Part IV of the *Social Services Act* 1947-1973; and

Substituted by
No. 39, 1948,
s. 4.

Sub-section (1)
substituted by
No. 2, 1973, s. 9.

- (b) a widow who is in receipt of a war pension in respect of her husband's death or a child who is in receipt of a war pension in respect of his father's death is not entitled to receive a service pension under section 94 at the same time.¹⁰

(2) A member of the Forces who is permanently unemployable and who would, but for the fact that he is receiving an age or invalid pension under the *Social Services Act* 1947-1960, be eligible for a service pension may surrender the age or invalid pension, and, thereupon, a service pension may be granted to him as from the date of the surrender, and service pensions may be granted to the wife and children of that member as from the date of his application for a service pension in any case where the wife of the member is not in receipt of a pension under Part III of the *Social Services Act* 1947-1960.

Amended by
No. 44, 1960,
s. 3.

(3) In this section, "war pension" means—

- (a) a pension payable under this Act (but not including a service pension or an attendant's allowance payable under Schedule 2 or 5 to this Act);
- (aa) a pension payable under the *Repatriation (Far East Strategic Reserve) Act* 1956-1962 or under the *Repatriation (Special Overseas Service) Act* 1962 (but not including an attendant's allowance payable under Schedule 2 or 5 to this Act as applied by section 7 of either of those Acts);
- (b) a pension payable under the *Seamen's War Pensions and Allowances Act* 1940-1955 (but not including an attendant's allowance payable under section 21 of that Act); or
- (c) pension, or compensation of a periodical nature, payable under section 13 of the *Defence (Transitional Provisions) Act* 1946-1951 (but not including an attendant's allowance payable under that section),

Added by
No. 39, 1955,
s. 13; amended
by No. 97, 1956,
s. 5; No. 91,
1962, s. 5;
No. 27, 1973,
s. 9; and
No. 104, 1973,
s. 28.

and includes a pension which is payable under the law of a country other than Australia and, in the opinion of the Commission, is similar in character to a war pension.

87. (1) A service pension shall not be granted at a rate that exceeds the highest rate at which an age pension or, if the grant is to be made to a woman by reason that she is the wife of a member, a wife's pension could be payable to the service pensioner under Part III of the *Social Services Act* 1947-1972 if the service pensioner were qualified to receive an age pension or a wife's pension, as the case may be, under that Part.

Variation of
rate of
service
pension
according to
means.
Inserted by
No. 58, 1935,
s. 24.
Sub-section (1)
substituted by
No. 82, 1972,
s. 11.

(1A) Sub-section (1) does not apply in relation to a claimant or pensioner—

Inserted by
No. 104, 1973,
s. 14.

- (a) who is permanently blind; or

(b) who has attained the age of seventy-five years.

Substituted by
No. 69, 1953,
s. 13.

(2) In the case of a husband and wife, the income of each shall, unless—

(a) they are living apart in pursuance of a separation agreement in writing or of a decree, judgment or order of a court; or

(b) for any special reason, in a particular case, the Commission otherwise determines,

be deemed to be half the total income of both.

Substituted by
No. 42, 1966,
s. 6; amended by
No. 95, 1969,
s. 4.

(3) In the computation, for the purposes of this Division, of the income of a member of the Forces—

(a) where the member is not in receipt of an age pension or an invalid pension under the *Social Services Act* 1947-1966 but the wife or husband of the member is in receipt of a pension under that Act, that pension shall not be treated as income of the wife or husband, as the case may be; and

(b) where a child of the member is dependent on the member, the income of the member shall be reduced by the amount of Two hundred and eight dollars per annum, less the annual amount of any payment, not being a payment under this Part or under Part III or Part VI of the *Social Services Act* 1947-1966, received by the member for or in respect of the child.

Inserted by
No. 104, 1973,
s. 14.

(3A) Subject to sub-section (3B), in the computation of the income of a person for the purpose of ascertaining his means as assessed for the purpose of the application to him of sub-section (2) of section 28 of the *Social Services Act* 1947-1973, the amount of any of the following payments shall be reduced by one-quarter:—

(a) a payment of an instalment of a pension (other than a service pension within the meaning of sub-section (2) of section 52 of this Act);

(b) a payment of an instalment of a pension under—

(i) the *Repatriation (Far East Strategic Reserve) Act* 1956-1973;

(ii) the *Repatriation (Special Overseas Service) Act* 1962-1973; or

(iii) the *Seamen's War Pensions and Allowances Act* 1940-1973;

(c) a payment referred to in—

(i) paragraph (c) of the proviso to sub-section (1) of section 24 or of section 101, sub-section (6) of section 107C or sub-section (3) of section 107Q of this Act;

(ii) sub-section (8) of section 6 of the *Repatriation (Far East Strategic Reserve) Act* 1956-1973;

(iii) sub-section (9) of section 6 of the *Repatriation (Special Overseas Service) Act* 1962-1973; or

- (iv) section 53A of the *Seamen's War Pensions and Allowances Act* 1940-1973;
- (d) a payment under—
 - (i) regulation 176D of the Repatriation Regulations as amended and in force for the time being;
 - (ii) regulation 54 of the Repatriation (Far East Strategic Reserve) Regulations or of the Repatriation (Special Overseas Service) Regulations as amended and in force for the time being;
 - (iii) regulation 37 of the Seamen's War Pensions and Allowances Regulations as amended and in force for the time being.

(3B) Where the amount of a payment referred to in paragraph (c) of sub-section (3A) exceeds the amount to which the person to whom it is paid would be entitled under Division 1 if eligible solely under that Division, the amount by which the first-mentioned amount is to be reduced under sub-section (3A) shall be one-quarter of the second-mentioned amount.

Inserted by
No. 104, 1973,
s. 14.

(4) This section does not apply in relation to the grant of service pension to a child of a member of the Forces who is in the custody, care and control of the member or, if the member is dead, of the member's widow.

Added by
No. 105, 1964,
s. 8.

* * * * *

Section 88
repealed by
No. 29, 1947,
s. 9;
section 89
repealed by
No. 44, 1960,
s. 6.

90. (1) In the computation of the net capital value of accumulated property for the purposes of this Division—

- (a) all real and personal property and any superannuation pension shall, subject to this section, be deemed to be accumulated property;
- (b) there shall be disregarded—
 - (i) the value of any property which is owned by the pensioner or applicant or by his spouse and is the permanent home of the pensioner or applicant;
 - (ii) the value of any furniture and personal effects;
 - (iii) the surrender value (not exceeding Fifteen hundred dollars in the aggregate) of any life insurance policy or policies;
 - (iv) the capital value of any life interest or annuity, other than a superannuation pension;
 - (v) the value of any contingent interest;

Net capital
value of
accumulated
property.

Substituted by
No. 29, 1947,
s. 10.

Sub-section (1)
amended by
No. 34, 1950,
s. 36; No. 31,
1951, s. 8;
No. 69, 1953,
s. 15; No. 68,
1956, s. 13;
No. 47, 1963,
s. 9; No. 42,
1966, s. 12; and
No. 82, 1972,
s. 12.

- (vi) the present value of any reversionary interest or interests;
 - (vii) the value of any property (not being a contingent or reversionary interest) to which a person is entitled from the estate of a deceased person, but which has not been received by that person; and
 - (viii) the amount of any war gratuity under the *War Gratuity Acts* 1920 or the *War Gratuity Act* 1945;
- (c) there shall be deducted the amount of any charge or encumbrance lawfully existing on the property, other than property the value of which is disregarded under the last preceding paragraph;
 - (d) if, for any special reason, in any particular case, the Commission so directs, the value of the whole or any part of the property of the applicant or pensioner or of his spouse shall be disregarded; and
 - (e) where a person has sold his home on terms and purchased another home, also on terms, there shall be set off against the amount of the balance due to him from time to time in respect of the sale of the former home the amount of the balance due by him from time to time in respect of the purchase of the latter home.

Inserted by
No. 39, 1948,
s. 6; amended by
No. 34, 1950,
s. 36; and
No. 47, 1963,
s. 9.

(1A) Where a charge or encumbrance lawfully exists on property the value of which is disregarded under paragraph (b) of the last preceding sub-section and the same charge or encumbrance lawfully exists on other property of the pensioner or applicant or of his spouse, the amount to be deducted under paragraph (c) of that sub-section shall be the amount which bears to the amount of the charge or encumbrance the same proportion as the value (as determined by the Commission) of that other property bears to the value (as determined by the Commission) of all the property of the pensioner, applicant or spouse on which the charge or encumbrance exists.

Inserted by
No. 39, 1948,
s. 6.

(1B) Where, in the opinion of the Commission, a charge or encumbrance is a collateral security, that charge or encumbrance, and the charge or encumbrance to which it is collateral (in this sub-section referred to as "the principal security"), shall, for the purposes of this section, be deemed to be one charge or encumbrance lawfully existing on any property on which either the collateral security or the principal security lawfully exists.

Inserted by
No. 82, 1972,
s. 12; amended
by No. 27, 1973,
s. 9; and
No. 104, 1973,
s. 28.

(1C) The value of a superannuation pension payable to a person who has not attained the age of ninety-nine years is an amount equal to the product of the amount of the annual rate of the superannuation pension and the conversion factor set out in column 2 of Schedule 7 opposite to the age next birthday of the person in column 1 of that Schedule.

(1D) Where a person in receipt of a superannuation pension has attained the age of ninety-nine years, the value of that superannuation pension shall be disregarded.

Inserted by
No. 82, 1972,
s. 12.

(2) For the purposes of this Division, the value of the property of a husband and or wife shall—

Amended by
No. 39, 1948,
s. 6; and No. 27,
1973, s. 9.

(a) except where they are living apart in pursuance of a separation agreement in writing or of a decree, judgment or order of a court; or

(b) unless, for any special reason, in any particular case, the Commission otherwise determines,

be deemed to be half the sum of the value of the property of the husband and the value of the property of the wife, as computed, in any case in which sub-section (1) is applicable, in accordance with that sub-section.

91. If, in the opinion of the Commission, a service pensioner or an applicant for a service pension has directly or indirectly deprived himself of property or income in order to qualify for or obtain a pension or in order to obtain a pension at a higher rate than that for which he would have been otherwise eligible, the value of the property or the amount of the income of which the applicant has deprived himself shall be deemed to be the property or the income of the applicant.

Disposal of
property.
Inserted by
No. 58, 1935,
s. 24.

* * * * *

Section 91A
repealed by
No. 39, 1955,
s. 14.

92.¹¹ (1) Except as provided by this section, the right of a person to commence, or to continue, to be paid a service pension granted to him is not affected by the fact that he leaves Australia after the commencement of this section.

Right to be
paid service
pension
outside
Australia.

(2) An allowance by way of supplementary assistance is not payable in respect of any period during which the service pensioner is outside Australia.

Substituted by
No. 27, 1973,
s. 6.

(3) Subject to sub-section (4), where—

(a) a person who formerly resided in Australia has returned to Australia and, before the expiration of the period of twelve months that commenced on the date of his return, has lodged a claim for a service pension; and

(b) that person leaves Australia (whether before or after his claim is determined) before the expiration of that period,

any service pension granted as a result of that claim is not payable in respect of any period during which the service pensioner is outside Australia.

(4) Where the Commission considers, in relation to a person referred to in paragraph (a) of sub-section (3) who has been granted a service pension as a result of the claim referred to in that paragraph, that

the person's reasons for leaving, or wishing to leave, Australia before the expiration of the period referred to in that paragraph arose from circumstances that could not reasonably have been foreseen at the time of his return to Australia, the Commission may, by instrument in writing, determine that that sub-section does not apply in relation to that service pension.

(5) Where a person who is in receipt of a pension by virtue of this section or of Part IVAA of the *Social Services Act* 1947-1973 would, if that pension were cancelled, be eligible, if he were residing in Australia, for the grant of another pension, being a service pension, that other pension (excluding any allowance by way of supplementary assistance) may, on the cancellation of the pension that he is in receipt of, be granted and paid as if he were residing in Australia.

(6) A service pension payable by virtue of this section may be paid in such manner, at such places and in such instalments as the Commission determines.

Payment of service pensions.

Inserted by No. 58, 1935, s. 24; amended by No. 47, 1958, s. 12; and No. 27, 1973, s. 9.

93. In such cases as the Commission thinks proper, the total service pensions and any allowance under section 98A payable per fortnight to—

- (a) a member of the Forces and to any dependant being the wife or child of the member; or
- (b) the widow and any child of a member of the Forces,

may be paid for the benefit of the service pensioners to such person and for such period as the Commission, from time to time, determines.

Pension to widow and children of service pensioner.

Substituted by No. 67, 1936, s. 10.

Sub-section (1) amended by No. 12, 1937, s. 6.

94. (1) Upon the death of a member of the Forces the service pension previously payable, or granted subsequent to his death, to the wife and children of the member may, subject to this Act, be continued at such rates, not exceeding the maximum rate payable under this Act to the wife or children as the case may be, as the Commission or a Board determines, but, if the wife re-marries, her pension shall be cancelled as from the date of the re-marriage.

Added by No. 66, 1968, s. 8; amended by No. 27, 1973, s. 9.

(2) Where—

- (a) a service pension would, but for sub-section (5) of section 85, be payable to a child of a member of the Forces in accordance with paragraph (a) in the second column of the table in sub-section (1) of that section; and

- (b) the member dies,

the Commission or a Board may grant to the child a service pension at such rate, not exceeding the rate specified in paragraph (a) in the second column of the table in sub-section (1) of that section, as the Commission or the Board determines.

(3) A person who is in receipt of a double orphan's pension under Part VIA of the *Social Services Act* 1947-1973 is not entitled to a pension under this section.

Added by
No. 104, 1973,
s. 15.

94A. Where the Commission is satisfied that accommodation for mentally ill or mentally defective persons is provided in any premises, the Commission may, by instrument in writing, declare the premises to be a mental hospital for the purposes of this Division.

Declaration
of mental
hospitals.

Inserted by
No. 42, 1966,
s. 7.

94B. (1) Subject to this section, where—

- (a) a service pensioner is a mental hospital patient; and
- (b) the rate of his service pension exceeds the rate of age pension specified in paragraph (a) of sub-section (1) of section 50 of the *Social Services Act* 1947-1966 that would be applicable to him if he were an age pensioner who was an inmate of a benevolent home,

Service
pensioner in
mental
hospital.

Inserted by
No. 42, 1966,
s. 7.

Sub-section (1)
amended by
No. 27, 1973,
s. 9.

that part of his service pension that exceeds pension at that last-mentioned rate is, by force of this section, suspended in respect of the period during which he is a mental hospital patient.

(2) Where a service pensioner who is a mental hospital patient is, for a continuous period of more than six days, absent from a mental hospital, the last preceding sub-section does not apply to him in respect of any whole day included in the period during which he is so absent.

(3) Where—

- (a) a part of the service pension of a mental hospital patient has been suspended by force of sub-section (1); and
- (b) he ceases to be a mental hospital patient otherwise than by reason of death,

Amended by
No. 27, 1973,
s. 9.

he is, subject to this Division, entitled to payment of the part of his pension that was suspended—

- (c) in respect of each day in respect of which a part of his pension was suspended; or
- (d) if the number of days in respect of which a part of his pension was suspended exceeds eighty-four days—in respect of each of the last eighty-four of those days.

(4) Where a mental hospital patient is absent from a mental hospital for a continuous period of four weeks or more, he shall, for the purposes of the last preceding sub-section, be deemed to have ceased to be a mental hospital patient at the commencement of the absence, and, if he ceases to be so absent by reason of again becoming an inmate of a mental hospital, he shall, for the purposes of sub-section (1), be deemed to have again become a mental hospital patient.

Amended by
No. 27, 1973,
s. 9.

(5) This section does not apply in relation to a service pensioner in respect of any period during which he is in receipt of an allowance under

the *Tuberculosis Act* 1948 by reason that he is suffering from pulmonary tuberculosis.

Added by
No. 66, 1968,
s. 9; amended by
No. 27, 1973,
s. 9.

(6) In this section, "service pension" includes an allowance under section 98A.

Service pensioner in a public institution.

95. (1) * * * * *

Substituted by
No. 67, 1936,
s. 11.

Sub-section (1) omitted by
No. 42, 1966,
s. 8.

Substituted by
No. 69, 1953,
s. 17; amended
by No. 44, 1960,
s. 3; No. 47,
1963, s. 10;
No. 66, 1968,
s. 10; and
No. 27, 1973,
s. 9.

(1A) If an applicant for service pension is, or a service pensioner becomes, an inmate of an institution that is a benevolent home, and is maintained in that institution at the public expense—

- (a) he shall, subject to this section, for so long as he remains an inmate of the institution, be paid so much of his pension as does not exceed the rate of age pension specified in paragraph (a) of sub-section (1) of section 50 of the *Social Services Act* 1947-1963 that would be applicable to him if he were an age pensioner who had become an inmate of a benevolent home;
- (aa) in the case of a male service pensioner in relation to whose income sub-section (2) of section 87 of this Act applies and the maximum rate of whose pension is increased by reason of the operation of sub-section (1B) or sub-section (1F) of section 28 of the *Social Services Act* 1947-1968 in its application for the purposes of this Division—there shall, so long as he remains an inmate of the institution, be paid to his wife so much of his service pension as does not exceed the amount per annum by which the amount per annum of his service pension is greater than the amount that, but for the operation of those sub-sections, would be the amount per annum of his service pension; and
- (b) the balance (if any) of his pension shall be paid to the person controlling the institution for the maintenance of the pensioner in the institution.

Sub-sections (1B)
and (1C) omitted
by No. 15, 1972,
s. 5.

* * * * *

Inserted by
No. 17, 1971,
s. 5; amended by
No. 15, 1972,
s. 5; and No. 27,
1973, s. 9.

(1D) An amount of a service pension that would, but for this sub-section, be payable to a person controlling an institution by virtue of sub-section (1A) is not so payable in respect of a period during which a Commonwealth benefit is payable under Part V of the *National Health Act* 1953-1970 in respect of hospital treatment received by the service pensioner concerned.

(2) A payment under sub-section (1A) shall commence—

(a) where it is granted in pursuance of an application made by a person who is an inmate as specified in this section—as from the date of the application; and

(b) where a service pensioner becomes such an inmate—on the first pension pay day after he becomes such an inmate.

Substituted by No. 42, 1966, s. 8; amended by No. 17, 1971, s. 5; No. 15, 1972, s. 5; and No. 27, 1973, s. 9.

(3) This section shall not apply to a member of the Forces who is suffering from pulmonary tuberculosis and is undergoing treatment for that disease in any institution specified in sub-section (1A).

Amended by No. 34, 1950, s. 38; and No. 27, 1973, s. 9.

(4) In this section, “pension” includes an allowance under section 98A.

Added by No. 66, 1968, s. 10; amended by No. 27, 1973, s. 9.

96. (1) Except as prescribed, whenever a service pensioner becomes the owner of property he shall, within twenty-eight days after becoming the owner of that property, notify the Commission, or the Board for the State or Territory in which he resides, accordingly.

Acquisition of property, &c., to be notified.

Substituted by No. 47, 1963, s. 11.

(2) Where the average weekly rate of any income, other than service pension, received in any prescribed period by a service pensioner who—

Amended by No. 27, 1973, s. 9.

(a) is not married, or is married but is living apart from his spouse; and

(b) is not a person in receipt of an allowance under section 98A, is higher than the prescribed rate and is higher than the average weekly rate of the income last specified by him in an application, statement or notification under this Division, the pensioner shall, within fourteen days after the expiration of that period, notify the Commission, or the Board for the State or Territory in which he resides, of the amount of the income received by him in that period.

(3) Where the average weekly rate of the sum of—

Amended by No. 27, 1973, s. 9.

(a) any income, other than service pension, received in any prescribed period by a service pensioner who—

(i) is married and is not living apart from his spouse; and

(ii) is not a person in receipt of an allowance under section 98A; and

(b) any income, other than service pension, received by his spouse, is higher than the prescribed rate and is higher than the average weekly rate of the sum of the income of the pensioner and the income of his spouse last specified by him in an application, statement or notification under this Division, the pensioner shall, within fourteen days after the expiration of that period, notify the Commission, or the Board for the State or Territory in which he resides, of the amount of the income received by him, and the amount of the income received by his spouse, in that period.

Amended by
No. 27, 1973,
s. 9.

(4) For the purposes of the last two preceding sub-sections—

“prescribed period”, in relation to a service pensioner, means—

- (a) any period of such number of consecutive weeks as the Commission from time to time determines and causes to be notified, in writing, to the pensioner; or
- (b) in the absence of such determination and notification—any period of eight consecutive weeks;

“prescribed rate”, in relation to a service pensioner, means—

- (a) such rate as the Commission from time to time determines and causes to be notified, in writing, to the pensioner; or
- (b) in the absence of such determination and notification—
 - (i) if the pensioner is married and is not living apart from his spouse—the rate specified in subparagraph (i) of paragraph (b) of the definition of “prescribed rate” in sub-section (4) of section 45 of the *Social Services Act 1947-1963*; or
 - (ii) in any other case—the rate specified in subparagraph (ii) of paragraph (b) of that definition.

(5) A notification for the purposes of the last preceding sub-section may be given by sending it by post to the address of the pensioner last known to the Commission.

Amended by
No. 42, 1966,
s. 12; and
No. 27, 1973,
s. 9.

(6) In the event of—

- (a) the marriage or remarriage of a service pensioner;
- (b) the dissolution of the marriage of a service pensioner;
- (c) a married service pensioner ceasing to live with his spouse or ceasing to live apart from his spouse;
- (d) the death of the spouse of a service pensioner;
- (e) a service pensioner ceasing to reside in a home owned by him or his spouse;
- (f) a service pensioner becoming an inmate of a benevolent home; or
- (g) a service pensioner disposing of any property the value of which—
 - (i) is, by virtue of paragraph (b) of sub-section (1) of section 90, disregarded in the computation of the net capital value of accumulated property for the purposes of this Division; and
 - (ii) exceeds Two hundred dollars,

the pensioner shall notify the Commission, or the Board for the State or Territory in which he resides, accordingly within fourteen days after the occurrence of the event.

(7) A service pensioner—

Amended by
No. 216, 1973,
s. 3.(a) shall not leave Australia, except to go to an external Territory;
or(b) shall not leave an external Territory, except to go to Australia or
to another external Territory,

without first giving notice to the Commission, or the Board for the State or Territory in which he resides, of his intention so to leave Australia or the Territory.

(8) Where a member of the Forces is in receipt of a service pension and a child of the member who is in the custody, care and control of the member—

Amended by
No. 27, 1973,
s. 9.

(a) ceases to be in the custody, care or control of the member; or

(b) being a child referred to in paragraph (b) of the definition of
“Child” in sub-section (1) of section 83—(i) ceases to be wholly or substantially dependent on the
member; or(ii) ceases to receive full-time education at a school, college
or university,

the member shall, within fourteen days after the child so ceases, notify the Commission, or the Board for the State or Territory in which the child resides, accordingly.

(9) Where a child of a member of the Forces who—

Amended by
No. 42, 1966,
s. 12; and
No. 27, 1973,
s. 9.

(a) is not in the custody, care and control of the member;

(b) is a child referred to in paragraph (b) of the definition of
“Child” in sub-section (1) of section 83; and

(c) is in receipt of a service pension,

ceases to receive full-time education at a school, college or university, the person to whom the service pension is paid on behalf of, or as trustee of, the child shall, within fourteen days after the child so ceases, notify the Commission, or the Board for the State or Territory in which the child resides, accordingly.

Penalty: Forty dollars.

97. (1) Whenever required by the Commission or a Board each service pensioner shall forward to the Commission or Board, as the case may be, a statement in the prescribed form relating to his income and accumulated property.

Service
pensioner to
furnish
information
when
required.

(2) Where a service pensioner fails to comply with any requirement made by the Commission or a Board under the last preceding sub-section the Commission or Board may cancel the pension.

Inserted by
No. 58, 1935,
s. 24.

Cancellation
or variation
of pension.
Inserted by
No. 58, 1935,
s. 24.

98. If upon investigation the Commission or a Board is satisfied that a service pension should be cancelled or that the rate of pension is greater or less than it should be, the Commission or Board may cancel the pension or reduce or increase the rate of pension accordingly.

Rate of
supplemen-
tary
allowance
during
period when
spouse
overseas.
Inserted by
No. 27, 1973,
s. 7.

98AA. Where—

- (a) a person and the husband or wife of the person are each receiving an allowance by way of supplementary assistance at a rate ascertained in accordance with sub-section (3A) of section 98A; and
- (b) the wife or husband of the person ceases, by virtue of section 92, to receive the allowance during a period during which he or she is outside Australia,

the rate of the allowance of the first-mentioned person during the period referred to in paragraph (b) is the rate that would be applicable if the person were a person to whom sub-section (3) of section 98A applies.

Supplemen-
tary
assistance.
Substituted by
No. 64, 1965,
s. 10.
Sub-section (1)
substituted by
No. 82, 1972,
s. 13.

98A.¹² (1) This section applies to a person if—

- (a) the person is a service pensioner;
- (b) the amount of that person's means as assessed is less than Two hundred and sixty dollars; and
- (c) the Commission is satisfied that that person—
 - (i) requires supplementary assistance by reason that that person or that person's husband or wife pays rent; and
 - (ii) is entirely or substantially dependent upon that person's pension.

Inserted by
No. 82, 1972,
s. 13.

(1A) A person does not comply with sub-paragraph (i) of paragraph (c) of the last preceding sub-section by reason only that the wife or husband of the person pays for lodging, or for board and lodging, in premises outside the matrimonial home.

Inserted by
No. 82, 1972,
s. 13; amended
by No. 27, 1973,
s. 9.

(1B) Where a husband and wife are living apart, neither spouse complies with sub-paragraph (i) of paragraph (c) of sub-section (1) by reason only that the other spouse pays rent.

(2) Subject to this section, there is payable to a person to whom this section applies, in addition to his service pension, an allowance by way of supplementary assistance.

Substituted by
No. 82, 1972,
s. 13; amended
by No. 27, 1973,
s. 9.

(3) Where a person is a person—

- (a) the rate of whose service pension is calculated having regard to paragraph (a) of sub-section (1A) of section 28 of the *Social Services Act* 1947-1972;
- (b) in respect of whom a determination is in force under sub-section (2) of section 84 of this Act; or
- (c) in respect of whose wife or husband a determination is in force under sub-section (2) of section 84 of this Act,

the rate at which an allowance under this section is payable to that first-mentioned person is—

- (d) where the amount of his means as assessed is Fifty-two dollars or less—Two hundred and eight dollars per annum; or
- (e) in any other case—an amount per annum equal to the amount by which Two hundred and sixty dollars exceeds the amount of his means as assessed.

(3A) The rate at which an allowance under this section is payable to a person, other than a person to whom the last preceding sub-section applies, is one-half of the rate at which the allowance would be payable if the person were a person to whom the last preceding sub-section applies.

Inserted by
No. 82, 1972,
s. 13.

(4) An allowance under this section is payable from a date determined by the Commission, which may be a date before the date of the determination.

(4A) An allowance under this section is not payable to a child of a member of the Forces.

Substituted by
No. 82, 1972,
s. 13.

* * * * *

Sub-section (4B)
omitted by
No. 82, 1972,
s. 13.

(5) Where a person in receipt of an allowance under this section ceases to be a person to whom this section applies, the Commission may cancel the allowance as on and from such date as the Commission determines.

(6) The date determined by the Commission under the last preceding sub-section may, in the case of a person who has failed to comply with a requirement of section 96 or of sub-section (8) or (9) of this section, be a date earlier than the date of the determination but not earlier than the first day after the expiration of the time within which the requirement could have been complied with, and, if any amount of the allowance is received by the person in respect of a period after the date so determined—

Amended by
No. 27, 1973,
s. 9.

- (a) the person is liable to refund that amount; and
- (b) the Commission may sue for and recover that amount in any court of competent jurisdiction as a debt due to the Commonwealth.

* * * * *

Sub-section (7)
omitted by
No. 64, 1965,
s. 10.

- (8) Where a person in receipt of an allowance under this section—
 - (a) ceases to pay rent; or

Amended by
No. 42, 1965,
s. 12.

- (b) in any period of two consecutive weeks, receives income the average weekly rate of which is higher than the weekly rate of income last specified by him in an application, claim, statement or notification under this Part,

the person shall, within fourteen days after the date on which the last payment of rent was due, or after the expiration of that period, as the case may be, notify the Commission in writing accordingly.

Penalty: Forty dollars.

Amended by
No. 44, 1960,
s. 3; No. 64,
1965, s. 10;
No. 42, 1966,
s. 12; and
No. 27, 1973,
s. 9.

(9) Where the husband or wife of a person in receipt of an allowance under this section is granted an age pension or invalid pension under Part III of the *Social Services Act* 1947-1960 or an allowance under section 9 of the *Tuberculosis Act* 1948, that last-mentioned person shall, within fourteen days after becoming aware of the grant of the pension or allowance, notify the Commission in writing of the grant.

Penalty: Forty dollars.

(10) In this section, "rent", in relation to a service pensioner, means rent in respect of premises, or a part of premises, occupied by him as his home, and includes amounts payable by him for lodging, or for board and lodging.

Transitional
benefit for
the aged
blind.

Inserted by
No. 104, 1973,
s. 16.

98AAA. (1) This section applies to a person if—

- (a) the person is in receipt of a service pension;
- (b) the person is permanently blind;
- (c) the person, being a woman, has attained the age of sixty years or, being a man, has attained the age of sixty-five years; and
- (d) the person is not in receipt of a transitional benefit for the aged blind under section 30D of the *Social Services Act* 1947-1973.

(2) There is payable to a person to whom this section applies, in addition to his service pension, a transitional benefit that, until the Parliament otherwise provides, shall be payable at the rate of One hundred and fifty-six dollars per annum.

(3) A benefit under this section is payable from a date determined by the Commission, which may be a date before the date of the determination.

(4) Where a person in receipt of a benefit under this section ceases to be a person to whom this section applies, the Commission may cancel the benefit as on and from such date as the Commission determines.

98B. (1) For the purposes of this section, unless the contrary intention appears—

- (a) a woman shall be deemed to be the widow of a deceased man where, immediately before his death, she was a dependent female in respect of him for the purposes of the operation of a provision of Part III of the *Social Services Act* 1947-1968; and
- (b) a man shall be deemed to be the widower of a deceased woman where, immediately before her death, she was a dependent female in respect of him for the purposes of the operation of a provision of Part III of the *Social Services Act* 1947-1968.

On death of married person, widow, widower or child to receive certain benefits for three months.
Inserted by No. 66, 1968, s. 11.

(2) Subject to this Division, where—

- (a) a person in receipt of a service pension, being a person in relation to whose income sub-section (2) of section 87 applies; or
- (b) a person in receipt of a pension under Part III of the *Social Services Act* 1947-1968, being a person who is a married person for the purposes of that Part,

Amended by No. 27, 1973, s. 9.

dies and the widow or widower, or a child, of the deceased person was, at the time of the death of that person, in receipt of a service pension—

- (c) that service pension is, notwithstanding section 94 of this Act, payable at the rate at which it would have been payable if the deceased person had not died; and
- (d) in addition, there is payable to the widow or widower a service pension at a rate equal to the rate at which the pension referred to in paragraph (a) or paragraph (b), as the case may be, of this sub-section would have been payable to the deceased person if—
 - (i) the deceased person had not died;
 - (ii) where the next succeeding sub-section applies in relation to the deceased person—the provisions referred to in that sub-section did not operate in relation to that person; and
 - (iii) where section 95 of this Act or section 50 of the *Social Services Act* 1947-1968 operated in relation to the deceased person at the time of his death—that section did not operate in relation to that person.

(3) For the purposes of the last preceding sub-section, a deceased person who, but for the operation of the provisions of section 133N, or sub-section (1) of section 135D, of the *Social Services Act* 1947-1968, would have been in receipt of a pension under Part III of the *Social Services Act* 1947-1968 at the time of his or her death shall be deemed to have been in receipt of that pension at that time.

Amended by No. 27, 1973, s. 9.

(4) Section 95 does not apply in relation to a pension payable by virtue of paragraph (d) of sub-section (2) of this section.

Amended by No. 27, 1973, s. 9.

(5) Where the amount of a fortnightly payment that, but for this sub-section, would be made to the widow or widower of a deceased person under the preceding provisions of this section would be less than the

amount of the corresponding fortnightly payment that, but for this section, would be made to that widow or widower under this Division and under the *Social Services Act* 1947-1968, the amount of the fortnightly payment to be made to that widow or widower under this section is that second-mentioned amount.

(6) A reference in the last preceding sub-section to a fortnightly payment that, but for this section, would be made to a widow or widower under the *Social Services Act* 1947-1968 shall be read as a reference to the payment that would be so made if fortnightly instalments of pensions and allowances under that Act were paid at fortnightly intervals corresponding to the fortnightly intervals at which service pensions are paid.

(7) This section applies in relation to the widow, widower or child of a deceased person only in respect of instalments of service pension falling due during the period of twelve weeks after the date of the death of the deceased person.

Inserted by
No. 4, 1970,
s. 5; amended by
No. 27, 1973,
s. 9.

(7A) Where, immediately before the death of a person referred to in paragraph (a) or paragraph (b) of sub-section (2), a determination made under sub-section (2) of section 84 was in force in relation to the husband or wife of the person, then, for the purposes of this section—

- (a) that determination shall be deemed not to have been made; and
- (b) if a determination made under sub-section (2) of section 84 of this Act or a direction given under sub-section (1AAA) of section 28 of the *Social Services Act* 1947-1970 was in force in relation to the deceased person immediately before the death of the person—that determination or direction shall be deemed not to have been made or given.

(8) In this section, “service pension” includes an allowance under the last preceding section.

Division 6
inserted by
No. 37, 1940,
s. 12.
Heading
substituted by
No. 22, 1943,
s. 34; amended
by No. 34, 1950,
s. 39.

Division 6—Extension of Application of Provisions of Divisions 1 to 5 to certain Male Members of the Forces (1939-1945 War)

Extension of
application
of Act to
certain male
members of
the Forces.

Inserted by
No. 37, 1940,
s. 12.

Sub-section (1)
amended by
No. 22, 1943,
ss. 35 and 52;
No. 47, 1963,
s. 12; and
No. 27, 1973,
s. 9.

99. (1) Subject to the provisions of this Division, the provisions of Divisions 1 to 4 (inclusive), other than section 24, and of the Schedules, shall extend to and in relation to—

- (a) members of the Forces within the meaning of section 100; and
- (b) the dependants of such members.

(1A) Subject to the provisions of this Division, the provisions of Division 5 shall extend to and in relation to—

Inserted by
No. 47, 1963,
s. 12;
amended by
No. 2, 1973,
s. 10; and
No. 27, 1973,
s. 9.

- (a) a member of the Forces within the meaning of section 100;
- (b) the wife, as defined in sub-section (1) of section 83, of such a member; and
- (c) a child, as defined in sub-section (1) of section 83, of such a member.

(2) For the purposes of the extension of the provisions of Divisions 1 to 5 (inclusive) and of the Schedules as provided in the last two preceding sub-sections—

Amended by
No. 22, 1943,
ss. 35 and 52;
No. 39, 1948,
s. 8; No. 34,
1950, s. 40;
No. 80, 1950,
s. 12; No. 69,
1953, s. 18;
No. 47, 1963,
s. 12; No. 82,
1972, s. 14;
No. 139, 1972,
s. 15; No. 2,
1973, s. 10; and
No. 27, 1973,
s. 9.

- (a) any reference in those Divisions or Schedules to a member of the Forces or to a member or to a returned soldier shall, except where otherwise expressly provided, be read as a reference to a member of the Forces within the meaning of section 100; and
- (b) any reference in those Divisions or Schedules to dependants shall, except where otherwise expressly provided, be read as a reference to—

- (i) the wife or widow of a member of the Forces;
- (ii) the widowed mother of an unmarried member;
- (iii) a child of a member of the Forces;
- (iv) the parent of a deceased member who is at any time without adequate means of support;
- (v) any other members of the family of a member who were wholly or partly dependent upon his earnings at the time of his enlistment or at any time during his war service;
- (vi) any ex-nuptial child (wholly or partly dependent upon the earnings of a member at the time of his enlistment or at any time during his war service) of a son or daughter of the member;
- (vii) the parents or grand-parents of a member, who is an ex-nuptial child, who were so dependent; and
- (viii) in the case of a member of the forces who is a Torres Strait Islands member for the purposes of Part II of the *Repatriation (Torres Strait Islanders) Act 1972*—a person whom the Commission, by instrument in writing, determines, for the purposes of this sub-paragraph, to be a person who is dependent on the member.¹³

* * * * *

Sub-section (3)
omitted by
No. 2, 1973,
s. 10.

**Interpre-
tation.**

Substituted by
No. 22, 1943,
s. 36; amended
by No. 22, 1943,
s. 52; No. 34,
1950, s. 41;
No. 105, 1964,
s. 10; No. 2,
1973, s. 11;
No. 27, 1973,
s. 9; and
No. 216, 1973,
s. 3.

100. For the purposes of this Division—

“Active Service” means any active service by a member of the Forces—

- (a) on a ship of war engaged in seagoing operations beyond the territorial waters of Australia;
- (b) outside Australia;
- (c) in the case of a member who embarked for service abroad or in the external Territories, after the vessel or aircraft on which the member proceeded outside Australia had departed from the port or aerodrome at which the member embarked; or
- (d) within Australia—
 - (i) in such areas as are prescribed as combat areas for the purposes of this Act, during such periods as are prescribed, and under such conditions as are prescribed;
 - (ii) at any place at which the member has been injured or has contracted disease as a result of enemy action;
 - (iii) in actual combat against the enemy; or
 - (iv) in such circumstances as, in the opinion of the Commission, should be deemed to be actual combat against the enemy;

“dependant” means a dependant specified in paragraph (b) of subsection (2) of section 99;

“enlisted” includes appointed to, or called up for continuous service with, the Naval, Military or Air Forces of the Commonwealth;

“enlistment” includes appointment to, or call up for continuous service with, the Naval, Military or Air Forces of the Commonwealth;

“member of the Forces” means a male person who, during the war, was—

- (a) a member of the Permanent Naval Forces, the Permanent Military Forces or the Permanent Air Force of the Commonwealth; or
- (b) a member of the Citizen Forces enlisted for the duration of, and directly in connexion with, the war,

and whose war service commenced prior to 1st July, 1947;

“the war” means the war which commenced on 3rd September, 1939, and includes any other war in which His Majesty became engaged after that date and before 3rd September, 1945;

“war service” means the service, during the war, of a member of the Forces.

101. (1) Upon the incapacity or death—

- (a) of any member of the Forces who was employed on active service, whose incapacity or death has resulted from any occurrence that happened during the period from the date of his enlistment to the date of the termination of his service in respect of that enlistment; or
- (b) of any member of the Forces whose incapacity or death has arisen out of or is attributable to his war service,

the Commonwealth shall, subject to this Act, be liable to pay to the member, or his dependants, or both, as the case may be, pensions in accordance with Division 1:

Provided that—

- (a) the incapacity or death of the member—
 - (i) is not due to the serious default or wilful act of the member;
 - (ii) does not arise from intentionally self-inflicted injuries; and
 - (iii) does not arise from, or from any occurrence that happened during the commission of, any serious breach of discipline by the member,

but, if the death of the member is, in the opinion of the Commission, due to venereal disease contracted during his period of service, the Commonwealth shall, subject to this Act, be liable to pay pensions to his widow and to his children, being persons specified in sub-paragraph (iii) of paragraph (b) of sub-section (2) of section 99;

- (b) the right of any person to payment by way of pension under this Act shall be substituted for his right to any payment in respect of incapacity or death, which, but for this Act, would have been due under the *Naval Defence Act* 1910-1934, or the *Defence Act* 1903-1939, or the *Air Force Act* 1923-1939, and any right of that person under any of those Acts shall be by force of this Act determined;
- (c) If the member or any of his dependants is entitled to receive, or receives, under—
 - (i) the law of a country other than the Commonwealth that is or has been a part of the dominions of the Crown; or
 - (ii) the law of any State,

Liability of Commonwealth to pay pensions to certain male members of the Forces.

Inserted by No. 37, 1940, s. 12.

Sub-section (1) amended by No. 22, 1943, s. 37; No. 39, 1948, s. 9; No. 34, 1950, s. 42; No. 58, 1959, s. 6; No. 105, 1964, s. 11; and No. 27, 1973, s. 9.

any payment in respect of incapacity or death resulting from employment in connexion with warlike operations in which His Majesty is or has been engaged, the rate or the amount of that payment shall be taken into account in assessing the rate of pension payable under this Act, so that the total payments to the member, or his dependants, or both, as the case may be, shall not exceed the total payments to which they respectively or collectively would be entitled if eligible solely under this Act;

- (d) in the case of a member who was appointed or enlisted—
 - (i) for service in any part of the Forces which was raised in time of war for war service, or solely for service in time of war or during that time and a definite time thereafter; or
 - (ii) in the Citizen Forces and called up for continuous service for the duration of, and directly in connexion with, the war,

the liability of the Commonwealth to pay pension to or in relation to the member shall not arise until the termination of his war service or 1st July, 1951, whichever first happens; and

- (e) in the case of any other member who was serving on 3rd January, 1949, the liability of the Commonwealth to pay pension to or in relation to the member shall be deemed to have arisen on that date.

Inserted by
No. 34, 1950,
s. 42; amended
by No. 27, 1973,
s. 9.

(1AA) For the purposes of this section—

- (a) where any member to whom paragraph (d) of the proviso to the last preceding sub-section applies is still serving on 1st July, 1951, the day immediately preceding that date shall be deemed to be the date of the termination of his war service; and
- (b) the day immediately preceding the date specified in paragraph (e) of that proviso shall be deemed to be the date of the termination of the war service of a member to whom that paragraph applies.

Substituted by
No. 34, 1950,
s. 42; amended
by No. 27, 1973,
s. 9.

(1A) For the purposes of paragraph (b) of sub-section (1) but without affecting the generality thereof, the incapacity or death of a member shall be deemed to have arisen out of his war service if it was the result of an accident that happened to him while travelling directly to or from his place of employment on war service or was, in the opinion of the Commission, due to an accident that occurred or to a disease or an infection that was contracted, and that would not have occurred or been contracted but for his being on war service or but for changes in his environment consequent upon his being on war service.

Amended by
No. 22, 1943,
s. 37;
No. 34, 1950,
s. 42; and
No. 27, 1973,
s. 9.

(2) Notwithstanding that, in the case of a member of the Forces, who, after his enlistment, served in camp in Australia for at least six months or was employed on active service, the origin or cause of his incapacity or death existed prior to his enlistment, then, if in the opinion of the Commission or a Board—

- (a) the incapacity from which the member is suffering or from which he has died has been contributed to in any material degree, or has been aggravated, by the conditions of his war service; and
- (b) neither the incapacity or death, nor the origin of the cause of the incapacity or death, was due to the serious default or wilful act of the member,

the Commonwealth shall, subject to this Act, be liable to pay to the member or his dependants, or both, as the case may be, pensions in accordance with Division 1.

(3) Where a pension is granted, the Commission or a Board may, subject to this Act, approve of the payment of the pension on and from a date not prior to three months before the date of lodgment of the claim for pension.

Added by
No. 22, 1943,
s. 37.

(4) Where a claim for pension was, prior to the commencement of this sub-section, rejected on the ground that the incapacity or death of the member of the Forces was not directly attributable to his employment as a member, the Commission shall, without further application, consider the claim as if it were a claim under this section and, if a pension is granted, the Commission may, subject to this Act, approve of the payment of the pension on and from a date not earlier than six months prior to the commencement of this sub-section.

Added by
No. 22, 1943,
s. 37.

102. The provisions specified in sub-sections (1) and (1A) of section 99 and the provisions of sections 101 and 103 extend, in like manner as they extend to a member of the Forces, to, and in relation to, a person who—

Extension of
Division in
respect of
other parts of
the Queen's
dominions.

- (a) having been appointed or enlisted before 1st July, 1947, served before 1st July, 1951, in the naval, military or air forces of a part of the Queen's dominions, other than the Commonwealth, on active service outside that part of the Queen's dominions or in a theatre of war;
- (b) satisfies the Commission that he was, immediately before his appointment or enlistment, domiciled in Australia or an external Territory;¹⁴ and
- (c) is resident in Australia or an external Territory,

Substituted by
No. 58, 1952,
s. 11; amended
by No. 69, 1953,
s. 19; No. 47,
1963, s. 13;
No. 27, 1973,
s. 9; and
No. 216, 1973,
s. 3.

of which the pensions are payable were attributable to service in one war only.

103. Notwithstanding anything contained in this Act, the Commonwealth shall not be liable to pay to any person pensions at rates which in the aggregate exceed the rate at which pension would have been payable to that person if the incapacity or death or both in respect of which the pensions are payable were attributable to service in one war only.

Maximum
rates of
pensions.
Inserted by
No. 37, 1940,
s. 12.

Division 7
inserted by
No. 22, 1943,
s. 39.

Heading
amended by
No. 34, 1950,
s. 44.

Division 7—Extension of Application of Provisions of Divisions 1 to 5 to Members of the Women's Services (1939-1945 War)

Extension of
application
of Act to
members of
Women's
Services.

Inserted by
No. 22, 1943,
s. 39.

Sub-section (1)
amended by
No. 22, 1943,
s. 52; No. 47,
1963, s. 14;
No. 105, 1964,
s. 12; No. 2,
1973, s. 12; and
No. 27, 1973,
s. 9.

104. (1) Subject to the provisions of this Division, the provisions of Divisions 1 to 4 (inclusive) (other than section 24), sections 100 (other than the definitions of "dependant" and "member of the Forces"), 101 and 103 and of the Schedules shall extend to, and in relation to—

- (a) members of the Forces within the meaning of section 105; and
- (b) the dependants of such members.

Inserted by
No. 47, 1963,
s. 14; amended
by No. 27, 1973,
s. 9.

(1A) Subject to the provisions of this Division, the provisions of Division 5 shall extend to and in relation to—

- (a) a member of the Forces within the meaning of section 105; and—
- (b) a child, as defined in sub-section (1) of section 83, of such a member.

Amended by
No. 22, 1943,
s. 52; No. 34,
1950, s. 45;
No. 80, 1950,
s. 12; No. 39,
1955, s. 15;
No. 47, 1963,
s. 14; No. 82,
1972, s. 15;
No. 2, 1973,
s. 12; and
No. 27, 1973,
s. 9.

(2) For the purposes of the extension of the provisions of Divisions 1 to 5 (inclusive), of sections 100, 101 and 103 and of the Schedules as provided in the last two preceding sub-sections—

- (a) any reference in those Divisions, sections or Schedules to a member of the Forces or to a member shall, except where otherwise expressly provided, be read as a reference to a member of the Forces within the meaning of section 105; and
- (b) any reference in those Divisions, sections or Schedules to dependants shall, except where otherwise expressly provided, be read as a reference to—
 - (i) the husband or widower of a member of the Forces who was married to the member before or during her war service;
 - (ii) a child of a member of the Forces;
 - (iii) such other members of the family of a member, or, in the case of a member who is an ex-nuptial child, such of the parents or grandparents of the member, as were wholly or partly dependent upon her earnings at the time of her enlistment, or at any time during her war service.

105. For the purposes of this Division, unless the contrary intention appears—

“dependant” means a dependant specified in paragraph (b) of subsection (2) of section 104;

“member of the Forces” means a person who, on or after 3rd September, 1939, and before 1st July, 1947, was a member of the Royal Australian Naval Nursing Service, the Australian Army Nursing Service, the Royal Australian Air Force Nursing Service, the Women’s Royal Australian Naval Service, the Australian Women’s Army Service, the Australian Army Medical Women’s Service or the Women’s Auxiliary Australian Air Force or any woman who, during the war, was an officer of the Australian Army Medical Corps or was employed on full-time paid duty as a member of the Voluntary Aid Detachment.

Interpretation.

Inserted by No. 22, 1943, s. 39; amended by No. 22, 1943, s. 52; No. 29, 1947, s. 12; No. 34, 1950, s. 46; No. 39, 1955, s. 16; No. 47, 1963, s. 15; No. 105, 1964, s. 13; No. 82, 1972, s. 16; No. 2, 1973, s. 13; and No. 27, 1973, s. 9.

106. (1) A pension shall not be granted or continued to a dependant of a member of the Forces, being a dependant who is not a child of the member, unless—

Pensions to dependants of members of Women’s Services.

Substituted by No. 39, 1955, s. 17.

- (a) where dependant pension is in respect of the incapacity of the member—the member is being paid, or, in the case of a deceased member, was, immediately before her death, being paid, a pension at a rate not less than fifty per centum of the rate for total incapacity and the dependant is wholly or substantially dependent upon the member or would, but for the death or incapacity of the member, be so dependent; or
- (b) where the pension is in respect of the death of the member—the dependant would, but for the death of the member, be so dependent,

and, where the dependant is the husband of the member, unless the husband is, by reason of physical or mental incapacity, unable to earn a livelihood, is without adequate means of support and is not separated from the member.

(2) A pension shall not be granted or continued to a dependant of a member of the Forces, being a dependant who is a child of the member, unless the member is dead and the child is without adequate means of support or, if the member is not dead, unless—

- (a) the father or step-father of the child—
 - (i) is, by reason of physical or mental incapacity, unable to earn a livelihood and is without adequate means of support; or
 - (ii) is dead or is separated or divorced from, or has deserted, the member; and
- (b) the child is wholly or substantially dependent upon the member and is without adequate means of support.

Extension of Division in respect of other parts of the Queen's dominions.

Substituted by No. 58, 1952, s. 12; amended by No. 47, 1963, s. 16; No. 27, 1973, s. 9; and No. 216, 1973, s. 3.

107. The provisions specified in sub-sections (1) and (1A) of section 104 extend, in like manner as they extend to a member of the Forces, to, and in relation to, a person who—

- (a) having been appointed, enlisted or enrolled before 1st July, 1947, served before 1st July, 1951, in a nursing service of, or other women's service auxiliary to, the naval, military or air forces of a part of the Queen's dominions, other than the Commonwealth, on active service outside that part of the Queen's dominions or in a theatre of war;
- (b) satisfies the Commission that she was, immediately before her appointment, enlistment or enrolment, domiciled in Australia or an external Territory;¹⁴ and
- (c) is resident in Australia or an external Territory.

Division 8 inserted by No. 34, 1950, s. 48.

*Division 8—Extension of Application of Provisions of Divisions 1 to 5 to certain Male Members of the Forces (Korea and Malaya Operations)*¹⁵

Extension of application of Act to certain male members of the Forces.

Inserted by No. 34, 1950, s. 48.

Sub-section (1) amended by No. 39, 1955, s. 18; No. 47, 1963, s. 17; and No. 27, 1973, s. 9.

107A. (1) Subject to the provisions of this Division, the provisions of Divisions 1 to 4 (inclusive) (other than section 24), of section 103 and of the Schedules extend to, and in relation to—

- (a) members of the Forces within the meaning of this Division; and
- (b) the dependants of such members.

Inserted by No. 47, 1963, s. 17; amended by No. 2, 1973, s. 14; and No. 27, 1973, s. 9.

(1A) Subject to the provisions of this Division, the provisions of Division 5 shall extend to and in relation to—

- (a) a member of the Forces within the meaning of this Division;
- (b) the wife, as defined by sub-section (1) of section 83, of such a member; and
- (c) a child, as defined in sub-section (1) of section 83, of such a member.

Amended by No. 69, 1953, s. 20; No. 39, 1955, s. 18; No. 47, 1963, s. 17; No. 82, 1972, s. 17; No. 2, 1973, s. 14; and No. 27, 1973, s. 9.

(2) For the purposes of the provisions of Divisions 1 to 5 (inclusive) and of the Schedules as extended by the last two preceding sub-sections—

- (a) any reference in those Divisions or Schedules to a member of the Forces or to a member or to a returned soldier shall, except where otherwise expressly provided, be read as a reference to a member of the Forces within the meaning of section 107B;
- (b) any reference in those Divisions or Schedules to dependants shall, except where otherwise expressly provided, be read as a reference to—

- (i) the wife or widow of a member of the Forces;
 - (ii) the widowed mother of an unmarried member;
 - (iii) a child of a member of the Forces;
 - (iv) the parent of a deceased member who is at any time without adequate means of support;
 - (v) any other member of the family of a member who was wholly or partly dependent upon his earnings at the time of his enlistment or at any time during his war service;
 - (vi) any ex-nuptial child (wholly or partly dependent upon the earnings of a member at the time of his enlistment or at any time during his war service) of a son or daughter of the member; and
 - (vii) a parent or grandparent who was so dependent on a member who is an ex-nuptial child; and
- (c) any reference in those Divisions to service in a theatre of war shall be read as a reference to service in an operational area.

* * * * *

Sub-section (3)
omitted by
No. 2, 1973,
s. 14.

107B. (1) For the purposes of this Division—

“commencement” means, in relation to the war service of a member of the Forces—

Interpre-
tation.

Inserted by
No. 34, 1950,
s. 48.

- (a) where he was in Australia at the time at which he was allotted for war service—the time of his departure from the last port of call in Australia for that service; or
- (b) where he was outside Australia at the time at which he was allotted for war service—the time at which he was so allotted;

Sub-section (1)
amended by
No. 39, 1955,
s. 19; No. 105,
1964, s. 14;
No. 2, 1973,
s. 15; and
No. 27, 1973,
s. 9.

“conclusion” means, in relation to the war service of a member of the Forces, the time at which he—

- (a) on returning from war service—arrived at the first port of call in Australia; or
- (b) having been allotted from war service to an area outside Australia other than an operational area—
 - (i) arrived in that area; or
 - (ii) was allotted to that area at a time when he was in that area;

“dependant” means a dependant specified in paragraph (b) of sub-section (2) of section 107A;

“enemy” means forces against which the forces of the Commonwealth are engaged in an operational area;

“member of the Forces” means a male member of the Naval, Military or Air Forces of the Commonwealth who served on war service;

“operational area” means an area outside Australia that is prescribed to be an operational area for the purposes of warlike operations in Korea after 26th June, 1950, or in Malaya after 28th June, 1950;

“port” includes airport;

“war service” means, in relation to a member of the Forces, his service while—

- (a) a member of, or attached to, a body, contingent or detachment of the Naval, Military or Air Forces of the Commonwealth that was allotted for duty in an operational area; or
- (b) allotted for duty in an operational area, from the time of its commencement to the time of its conclusion.

Amended by
No. 27, 1973,
s. 9.

(2) For the purposes of this Division, a person specified in paragraph (b) of sub-section (1) of section 107C shall be deemed to be a member of the Forces who was incapacitated or killed on war service.

Liability of
Common-
wealth to
pay pensions
to certain
male
members of
the Forces.

Inserted by
No. 34, 1950,
s. 48.

Sub-section (1)
amended by
No. 27, 1973,
s. 9.

107C. (1) Upon the incapacity or death—

- (a) of a member of the Forces whose incapacity or death has resulted from any occurrence that happened during his war service; or
- (b) of a member of the Naval, Military or Air Forces of the Commonwealth who is incapacitated or killed in any area outside Australia as the result of action by an enemy or in combating an enemy,

the Commonwealth is, subject to this Act, liable to pay to the member or his dependants, or both, as the case may be, pensions in accordance with Division 1.

Amended by
No. 105, 1964,
s. 15; and
No. 27, 1973,
s. 9.

(2) The Commonwealth is not liable under the last preceding sub-section if the incapacity or death of a member—

- (a) was due to his serious default or wilful act;
- (b) arose from intentional self-inflicted injuries; or
- (c) arose from, or from an occurrence that happened during the commission of, a serious breach of discipline by the member,

but, if the death of a member is, in the opinion of the Commission, due to venereal disease contracted during his war service, the Commonwealth shall, subject to this Act, be liable to pay pensions to his widow and to his children, being persons specified in sub-paragraph (iii) of paragraph (b) of sub-section (2) of section 107A.

(3) Notwithstanding that the origin or cause of the incapacity or death of a member of the Forces existed prior to his enlistment, if, in the opinion of the Commission or a Board—

Amended by
No. 27, 1973,
s. 9.

- (a) that incapacity was contributed to in any material degree, or has been aggravated, by the conditions of his war service; and
- (b) neither the incapacity or death, nor the origin of the cause of the incapacity or death, was due to the serious default or wilful act of the member,

the Commonwealth is, subject to this Act, liable to pay to the member or his dependants, or both, as the case may be, pensions in accordance with Division 1.

(4) A pension is not payable to or in relation to a member for any period prior to the termination of the service in respect of which the liability of the Commonwealth to pay pension arises.

(5) Where a pension is granted, the Commission or a Board may, subject to this Act, approve of the payment of the pension as from a date not more than three months before the date of lodgment of the claim for pension.

(6) If the member or any of his dependants is entitled to receive, or receives, under—

Amended by
No. 58, 1959,
s. 7; and
No. 105, 1964,
s. 15.

- (a) the law of a country other than the Commonwealth that is or has been a part of the dominions of the Crown; or
- (b) the law of a State,

any payment in respect of incapacity or death resulting from employment in connexion with warlike operations in which His Majesty is or has been engaged, the rate or the amount of that payment shall be taken into account in assessing the rate of pension payable under this Act, so that the total payments to the member, or his dependants, or both, as the case may be, shall not exceed the total payments to which they respectively or collectively would be entitled if eligible solely under this Act.

107D. The provisions specified in sub-sections (1) and (1A) of section 107A and the provisions of the last preceding section extend, in like manner as they extend to a member of the Forces, to, and in relation to, a male member of the naval, military or air forces of a part of the King's dominions other than the Commonwealth who—

Extension of
Division in
respect of
other parts of
the Queen's
dominions.

- (a) served in an operational area;
- (b) satisfies the Commission that he was, immediately before his appointment or enlistment, domiciled in Australia or an external Territory;¹⁴ and
- (c) is resident in Australia or an external Territory.

Inserted by
No. 34, 1950,
s. 48; amended
by No. 58, 1952,
s. 13; No. 69,
1953, s. 21;
No. 39, 1955,
s. 20; No. 47,
1963, s. 18;
No. 27, 1973,
s. 9; and
No. 216, 1973,
s. 3.

Division 9
inserted by
No. 34, 1950,
s. 48.

*Division 9—Extension of Application of Provisions of Divisions 1 to 5 to certain Female Members of the Forces (Korea and Malaya Operations)*¹⁵

Extension of
application
of Act to
members of
Women's
Services.

Inserted by
No. 34, 1950,
s. 48.

Sub-section (1)
amended by
No. 39, 1955,
s. 21; No. 47,
1963, s. 19;
No. 105, 1964,
s. 16; No. 2,
1973, s. 16; and
No. 27, 1973,
s. 9.

107E. (1) Subject to the provisions of this Division, the provisions of Divisions 1 to 4 (inclusive) (other than section 24), of sections 103, 106, 107B (other than the definitions of “dependant”, “member of the Forces”) and 107C and of the Schedules extend to, and in relation to—

- (a) members of the Forces within the meaning of section 107F; and
- (b) the dependants of such members.

Inserted by
No. 47, 1963,
s. 19; amended
by No. 27, 1973,
s. 9.

(1A) Subject to the provisions of this Division, the provisions of Division 5 shall extend to and in relation to—

- (a) a member of the Forces within the meaning of section 107F; and
- (b) a child, as defined in sub-section (1) of section 83, of such a member.

Amended by
No. 39, 1955,
s. 21; No. 47,
1963, s. 19;
No. 82, 1972,
s. 18;
No. 2, 1973,
s. 16; and
No. 27, 1973,
s. 9.

(2) For the purposes of the provisions of Divisions 1 to 5 (inclusive), of sections 106, 107B and 107C and of the Schedules as extended by the last two preceding sub-sections—

- (a) any reference in those Divisions, sections or Schedules, to a member of the Forces or to a member shall, except where otherwise expressly provided, be read as a reference to a member of the Forces within the meaning of section 107F;
- (b) any reference in those Divisions, sections or Schedules, to dependants shall, except where otherwise expressly provided, be read as a reference to—
 - (i) the husband or widower of a member of the Forces who was married to the member before or during her war service;
 - (ii) a child of a member of the Forces;
 - (iii) such other members of the family of a member or, in the case of a member who is an ex-nuptial child, such of the parents or grandparents of the member, as were wholly or partly dependent upon her earnings at the time of the commencement of, or at any time during, her war service; and
- (c) any reference in those Divisions to service in a theatre of war shall be read as a reference to service in an operational area.

* * * * *

Sub-section (3)
omitted by
No. 2, 1973,
s. 16.

107F. For the purposes of this Division—

“dependant” means a dependant specified in paragraph (b) of sub-section (2) of section 107E;

“member of the Forces” means a female member of the Naval, Military or Air Forces of the Commonwealth who served on war service.

Interpre-
tation.

Substituted by
No. 39, 1955,
s. 22; amended
by No. 105,
1964, s. 17;
No. 2, 1973,
s. 17; and
No. 27, 1973,
s. 9.

107G. The provisions specified in sub-sections (1) and (1A) of section 107E extend, in like manner as they extend to a member of the Forces, to, and in relation to, any member of a nursing service of, or other women’s service auxiliary to, the naval, military or air forces of a part of the King’s dominions other than the Commonwealth who—

Extension of
Division in
respect of
other parts of
the Queen’s
dominions.

- (a) served in an operational area;
- (b) satisfies the Commission that she was, immediately before her appointment or enlistment, domiciled in Australia or an external Territory;¹⁴ and
- (c) is resident in Australia or an external Territory.

Inserted by
No. 34, 1950,
s. 48; amended
by No. 58, 1952,
s. 14; No. 47,
1963, s. 20;
No. 27, 1973,
s. 9; and
No. 216, 1973,
s. 3.

Division 10—Extension of Application of Provisions of Divisions 1 to 4 to certain Members of the Forces who are serving or have served in the Defence Force

Division 10
inserted by
No. 104, 1973,
s. 17.

107H. (1) Subject to this Division, the provisions of Divisions 1 to 4 (inclusive) of this Part (other than sections 24, 37, 41, 42 and 44) and of the Schedules extend to and in relation to—

Extension of
application
of Act to
certain
members of
the Forces.

- (a) members of the Forces within the meaning of this Division; and
- (b) the dependants of those members.

Inserted by
No. 104, 1973,
s. 17.

(2) In the application, by virtue of sub-section (1), of the provisions specified in that sub-section to, or in relation to, a member—

- (a) a reference to a member of the Forces or to a member or to a returned soldier shall be read as a reference to a member of the Forces within the meaning of this Division;
- (b) a reference to dependants shall be read as a reference to—
 - (i) the wife or widow of a member of the Forces;
 - (ii) the husband or widower of a member of the Forces who was married to the member before or during her defence service; and
 - (iii) a child of a member of the Forces; and
- (c) a reference to war service shall be read as a reference to defence service;

Definitions.

Inserted by
No. 104, 1973,
s. 17.

107J. In this Division—

- “Compensation Act” means the *Compensation (Australian Government Employees) Act 1971-1973*;
- “defence service” means continuous full-time service as a member of the Defence Force on or after 7 December 1972;
- “dependant” means a dependant specified in paragraph (b) of subsection (2) of section 107H;
- “effective full-time service”, in relation to a member of the Defence Force, means any period of continuous full-time service of the member other than—
- (a) a period exceeding twenty-one consecutive days during which the member was—
 - (i) on leave of absence without pay;
 - (ii) absent without leave;
 - (iii) awaiting or undergoing trial on a charge in respect of an offence of which he was later convicted; or
 - (iv) undergoing detention or imprisonment; or
 - (b) in the case of an officer of the Defence Force who, on his appointment, was a student enrolled in a degree or diploma course at a university or other tertiary educational institution and was required by the appropriate authority of the Defence Force to continue his studies after his appointment—the period of his service during which, by reason of the requirement to engage in his studies or in activities connected with his studies, he was not regarded by the appropriate authority of the Defence Force as rendering effective full-time service;
- “member of the Forces” means a person who is a regular serviceman in accordance with section 107K or a national serviceman in accordance with section 107L.

Regular
serviceman.
Inserted by
No. 104, 1973,
s. 17.

107K. (1) Subject to this section, a person is a regular serviceman for the purposes of this Division if—

- (a) he has served on continuous full-time service as a member of the Defence Force, not being service that ended before 7 December 1972 and, during that service, has, whether before or after that date, completed three years’ effective full-time service as such a member;
- (b) he was engaged to serve as a member of the Defence Force for a period on continuous full-time service of not less than three years but that service ended, on or after 7 December 1972 by reason of his death or his discharge on the ground of invalidity or physical or mental incapacity to perform duties; or
- (c) he was an officer appointed for continuous full-time service in the Defence Force (other than an officer whose appointment

was for a period of continuous full-time service of less than three years), but that service ended, on or after 7 December 1972 by reason of his death or the termination of his appointment on the ground of invalidity or physical or mental incapacity to perform duties.

(2) For the purposes of paragraph (a) of sub-section (1)—

- (a) the service of a person as an officer of the Naval Forces undergoing the course of training at the Royal Australian Naval College, and his service after completion of that course, shall be disregarded unless the officer is subsequently promoted to the rank of sub-lieutenant or a higher rank;
- (b) the service of a person as a member of the Corps of Staff Cadets of the Military Forces shall be disregarded unless the person is subsequently appointed as an officer of those Forces; and
- (c) the service of a person as an Air Cadet of the Air Force shall be disregarded unless the person is subsequently appointed as an officer of that Force.

(3) Paragraphs (b) and (c) of sub-section (1) do not apply in relation to a discharge or termination of appointment—

- (a) that occurred before the person concerned had completed twelve months' effective full-time service; and
- (b) the ground for which was invalidity, or physical or mental incapacity to perform duties, caused, or substantially contributed to, by a physical or mental condition that—
 - (i) existed at the time the person concerned commenced full-time continuous service as a member of the Defence Force; and
 - (ii) was not aggravated, or was not materially aggravated, by that service.

(4) Paragraph (c) of sub-section (1) does not apply in relation to a period of service referred to in paragraph (b) of the definition of "effective full-time service" in section 107J that was brought to an end by the death, or the termination of the appointment, of the officer concerned.

(5) A member of the Defence Force not on continuous full-time service who has, whether before or after the commencement of this section, commenced continuous full-time service in pursuance of a voluntary undertaking given by him and accepted by the appropriate authority of the Defence Force shall—

- (a) if he was an officer on the day on which he so commenced—be deemed, for the purposes of paragraph (c) of sub-section (1), to have been appointed as an officer of the Defence Force on that day for service for the period for which he was bound to serve on continuous full-time service; or

- (b) if he was a member other than an officer on the day on which he so commenced—be deemed, for the purposes of paragraph (b) of sub-section (1), to have been engaged to serve as a member of the Defence Force on that day for service for the period for which he was bound to serve on continuous full-time service.

National
serviceman.
Inserted by
No. 104, 1973,
s. 17.

107L. Subject to this section, a person is a national serviceman for the purposes of this Division if—

- (a) he was, immediately before 7 December 1972, a national serviceman, or a national service officer, for the purposes of the *National Service Act* 1951-1971 serving in the Regular Army Supplement; and
- (b) on or after that date—
 - (i) he completed the period of service in that Force for which he was to be deemed to have been engaged to serve or for which he was appointed, as the case may be; or
 - (ii) that service ended by reason of his death or his discharge, or the termination of his appointment, on the ground of invalidity or physical or mental incapacity to perform duties.

Liability of
Australia to
pay pensions
to certain
members of
the Forces,
&c.

Inserted by
No. 104, 1973,
s. 17.

107M. (1) Upon the incapacity or death of a member of the Forces whose incapacity or death has arisen out of, or is attributable to, his defence service, Australia is, subject to this Act, liable to pay to the member, to the dependants of the member or to both, as the case may be, pensions in accordance with Division 1, as applied by section 107H.

(2) For the purposes of sub-section (1) but without affecting the generality of that sub-section, the incapacity or death of a member shall be deemed to have arisen out of his defence service if the incapacity or death was the result of—

- (a) an accident that happened to the member while he was travelling to or from his place of employment on defence service; or
- (b) an accident, a disease or an infection that would not have occurred or been contracted, as the case may be, but for—
 - (i) the member being on defence service; or
 - (ii) changes in the environment of the member consequent upon the member being on defence service.
- (3) Where—
 - (a) the origin or cause of the incapacity or death of a member who has served at least six months effective full-time service as a member of the Defence Force existed before he commenced his defence service; and
 - (b) the Commission or a Board is of the opinion that the incapacity from which the member is suffering or from which he died has,

or had, been contributed to in a material degree, or has, or had, been aggravated, by the conditions of his defence service, Australia is, subject to this Act, liable to pay to the member, to his dependants or to both, as the case may be, pensions in accordance with Division 1, as applied by section 107H.

(4) Australia is not liable under this section if the incapacity or death of the member—

- (a) was due to the serious default or wilful act of the member;
- (b) arose from intentionally self-inflicted injuries; or
- (c) arose from, or from an occurrence that happened during the commission of, a serious breach of discipline by the member.

(5) Where a pension is granted, the Commission or a Board may, subject to this Act, approve of the payment of the pension—

- (a) on and from a date not more than three months before the date of lodgement of the claim for pension; or
- (b) where the claim for pension is lodged within three months after the commencement of this section and the origin or cause of the death or incapacity of the member existed before the commencement of this section—on and from a date—
 - (i) not earlier than 7 December 1972; and
 - (ii) not earlier than the earliest date at which the origin or cause of the death or incapacity of the member existed.

107N. (1) A pension shall not be granted or continued to the husband of a member of the Forces unless—

- (a) the member is being paid a pension at a rate not less than fifty per centum of the rate for total incapacity; and
- (b) the husband—
 - (i) is wholly or substantially dependent upon the member or would, but for the incapacity of the member, be so dependent;
 - (ii) is, by reason of physical or mental incapacity, unable to earn a livelihood;
 - (iii) is without adequate means of support; and
 - (iv) is not separated from the member.

(2) A pension shall not be granted or continued to the widower of a member of the Forces unless—

- (a) the member was, immediately before her death, being paid a pension at a rate not less than fifty per centum of the rate for total incapacity; and
- (b) the widower—
 - (i) would, but for the death of the member, be wholly or substantially dependent on the member;

Conditions of payment of pension to certain dependants of members of the Forces.

Inserted by No. 104, 1973, s. 17.

- (ii) is, by reason of physical or mental incapacity, unable to earn a livelihood; and
- (iii) is without adequate means of support.

(3) A pension shall not be granted or continued to a child of a female member of the Forces unless the member is dead and the child is without adequate means of support or, if the member is not dead, unless—

- (a) the father or step-father of the child—
 - (i) is, by reason of physical or mental incapacity, unable to earn a livelihood and is without adequate means of support; or
 - (ii) is dead or is separated or divorced from, or has deserted, the member; and
- (b) the child is wholly or substantially dependent upon the member and is without adequate means of support.

Pensions payable to certain dependent females.

Inserted by No. 104, 1973, s. 17.

107P. (1) Where—

- (a) Australia is liable to pay pension in respect of the incapacity of a member or the death during defence service of a member;
- (b) a person was, at the time of the death, or the discharge from the Defence Force on medical grounds, of the member, recognized as the wife of the member although not legally married to him; and
- (c) the Commission is satisfied that that person was wholly or partly dependent upon the member at that time,

a pension under this Division in respect of that incapacity or death may be paid to that person at a rate not exceeding the rate of pension that would be payable to her under this Division if she were, or had been at the time of his death, legally married to the member.

(2) A pension may be paid under this section in addition to any pension payable to the wife or widow, as the case may be, of the member.

Dual entitlement.
Inserted by No. 104, 1973, s. 17.

107Q. (1) A person is not entitled to receive at the same time and in respect of the same death or incapacity—

- (a) a pension under this Division; and
- (b) a pension under Division 1, 6, 7, 8 or 9 of this Act or under the *Repatriation (Far East Strategic Reserve) Act 1956-1973*, the *Repatriation (Special Overseas Service) Act 1962-1973* or the *Seamen's War Pensions and Allowances Act 1940-1973*.

(2) The right conferred by this Division on a member of the Forces to payment by way of pension in respect of an incapacity, or on a person other than a member to payment by way of pension in respect of an incapacity or the death of a member, is in substitution for the right (if any) of

that member or of that other person to a payment in respect of the incapacity, or of the incapacity or death of the member, as the case may be, to which, but for this sub-section, he would have been entitled under the *Naval Defence Act* 1910-1971, the *Defence Act* 1903-1970 or the *Air Force Act* 1923-1965, and any such right of the member or other person under any of those Acts is, by force of this sub-section, determined.

(3) If a person or persons who is or are entitled under this Division to pension in respect of the incapacity or death of a member is or are also entitled under—

- (a) the law of a country, other than Australia, that is or has been a part of the dominions of the Crown; or
- (b) the law of a State,

to receive any payment or payments in respect of the incapacity or death of the member resulting from service in the naval, military or air forces of Australia or a country referred to in paragraph (a), the rate or amount of every such payment shall be taken into account in assessing the rate or rates of pension payable under this Division so that the total payments to that person or those persons, as the case may be, shall not exceed the total payments to which that person, or those persons respectively or collectively, would be entitled if eligible solely under this Division.

107R. (1) In this section—

“compensation” means—

- (a) compensation under the Compensation Act (other than section 37 or 44); or
- (b) damages recoverable at law (including any amount paid under a compromise or settlement of a claim for damages at law), whether from Australia or another person, in respect of the injury or death of a person, other than—
 - (i) an amount that represents expenses incurred in medical or hospital treatment; or
 - (ii) an amount recovered by Australia under section 99 or 100 of the Compensation Act;

“dependant” includes a woman referred to in section 107P.

(2) For the purposes of this section—

- (a) where a lump sum payment by way of compensation is made to a person who is in receipt of, or is subsequently granted, a pension under this Division, that person shall, by reason of that payment by way of compensation, be deemed, on and after—
 - (i) the date of commencement of the period in respect of which his pension is, or becomes, payable; or
 - (ii) the date on which the lump sum payment is made,
 whichever was the earlier date, to have been, or to be in receipt of payment by way of compensation of such amount per fortnight for his life as is determined by, or in accordance with the

Persons in receipt of payments by way of compensation or damages.

Inserted by
No. 104, 1973,
s. 17.

instructions of, the Commonwealth Actuary, to be the equivalent of a lump sum equal to that lump sum and paid to him on that earlier date; and

- (b) an amount of compensation that has been paid on behalf of, or for the benefit of, a person shall be deemed to have been paid to that person.

- (3) Where—

- (a) an amount of damages payable to a member or a dependant of a member is paid to Australia in pursuance of a notice under section 107T; or
- (b) the liability of Australia to pay damages to a member or a dependant of a member is, by virtue of section 107V, to be deemed to have been discharged by a particular amount,

the date referred to in sub-paragraph (i) of paragraph (a) of sub-section (2) shall be calculated as if such of the instalments of pension paid to the member or dependant, commencing with the first such instalment, as are equal, in the aggregate, to the amount referred to in paragraph (a) or (b), as the case may be, were not payable and had not been paid.

(4) Where, in respect of a period, the amount, or the aggregate of the amounts, per fortnight paid by way of compensation in respect of an injury or the death of a member of the Forces equals or exceeds the amount, or the aggregate of the amounts, per fortnight of pension under this Division that would, but for this section, be payable in respect of an incapacity of the member resulting from that injury or in respect of the death of the member, no pension under this Division is payable in respect of that period in respect of that incapacity or death.

(5) Where, in respect of a period, the amount, or the aggregate of the amounts, per fortnight paid by way of compensation in respect of an injury or the death of a member of the Forces (in this sub-section referred to as “the compensation amount”) is less than the amount, or the aggregate of the amounts, per fortnight of pension under this Division that would, but for this section, be payable in respect of an incapacity of the member resulting from that injury or in respect of the death of the member (in this sub-section referred to as “the pension amount”), the amount, or the aggregate of the amounts, per fortnight of pension under this Division payable in respect of that period in respect of that incapacity or death is, by force of this sub-section, an amount equal to the pension amount reduced by the compensation amount.

(6) In giving effect to a reduction required by sub-section (5) as between two pensions one of which is a preferred pension with respect to the other, the amount per fortnight of the pension that is not the preferred pension shall be reduced to nil before the rate of the preferred pension is affected.

- (7) For the purposes of sub-section (6)—

- (a) a pension payable to a member or, in respect of a deceased member, to the widow or widower or a woman referred to in section 107P is a preferred pension with respect to any other pension;
- (b) a pension payable to the wife or husband of a member or, in respect of a living member, to a woman referred to in section 107P is a preferred pension with respect to any pension payable to a child of the member; and
- (c) a pension payable to a child of a member is a preferred pension with respect to a pension payable to a younger child of the member.

(8) In giving effect to a reduction required by sub-section (5) as between or among two or more pensions neither or none of which is a preferred pension, within the meaning of sub-section (6), with respect to the other or others, the amount of the reduction shall be allocated between or among those pensions in the same proportion as the amounts per fortnight at which those pensions would, but for this section, be payable bear to one another.

107S. (1) Where—

- (a) pension is, or has been, payable in respect of the incapacity or death of a member;
- (b) the incapacity arose, or the death occurred, in circumstances that appear to create a legal liability in a person other than Australia to pay damages in respect of an injury from which the incapacity of the member resulted or in respect of the death of the member; and
- (c) proceedings against that person for the purpose of recovering such damages have not been instituted by the member or by or for the benefit of a dependant of the member, or have been so instituted but have been discontinued or have not been properly prosecuted,

Power to request proceedings to be taken against third party or to take such proceedings itself.

Inserted by No. 104, 1973, s. 17.

a person authorized by the Commission may request the member or dependant to institute proceedings or fresh proceedings against that person for that purpose or properly to prosecute the proceedings, as the case may be.

(2) Where a member or dependant is requested in accordance with sub-section (1) to institute proceedings against a person, then—

- (a) if the member or dependant refuses, or fails within a reasonable time after the making of the request, to institute the proceedings or, having instituted the proceedings, discontinues the proceedings—Australia may institute proceedings or fresh proceedings, as the case may be, against the person in the name of the member or dependant for the recovery of damages in respect of the incapacity or death; or

- (b) if the member or dependant, having instituted the proceedings, fails properly to prosecute the proceedings—Australia may take over the conduct of the proceedings.

(3) Where a member or dependant who is requested in accordance with sub-section (1) properly to prosecute proceedings instituted against a person refuses, or fails within a reasonable time after the making of the request, to do so, Australia may take over the conduct of the proceedings.

(4) Australia is liable to pay all costs of or incidental to proceedings referred to in sub-section (1), (2) or (3), being costs payable by the plaintiff in those proceedings, but not including costs unreasonably incurred by the plaintiff.

(5) Where, in accordance with this section, Australia institutes proceedings in the name of a member or dependant or takes over the conduct of proceedings that have been instituted in the name of a member or dependant—

(a) Australia may—

- (i) settle the proceedings either with or without obtaining judgment in the proceedings; and
- (ii) if a judgment is obtained in the proceedings in favour of the plaintiff—take such steps as are necessary to enforce that judgment; and

(b) the member or dependant shall sign any document relevant to the proceedings, including the settlement of the proceedings, that a person acting on behalf of Australia requires him to sign and, if he fails to sign any such document, the court or tribunal in which the proceedings are being taken may direct that that document be signed on his behalf by a person acting on behalf of Australia.

(6) In this section, “dependant” includes a woman referred to in section 107P.

Payment of
damages by
persons to
Australia.

Inserted by
No. 104, 1973,
s. 17.

107T. (1) Where a person other than Australia appears to be liable to pay damages to a member or a dependant of a member in respect of an injury that has resulted in the incapacity of the member or in respect of the death of the member, being an incapacity or death in respect of which pension is or has been payable under this Division to the member or dependant, a person authorized by the Commission may, by notice in writing to the person, require the person, in the event of the person agreeing to pay damages to the member or dependant in respect of that injury or death or in the event of damages against the person being awarded to the member or dependant in proceedings instituted in respect of that injury or death, to pay to Australia so much of the amount of the damages as does not exceed an amount specified in the notice, being the amount of pension that has been paid under this Division in

respect of that incapacity or death to the member or dependant, as the case may be, and the person shall comply with the notice.

(2) Subject to sub-section (3), where—

- (a) a person other than Australia has agreed to pay damages to a member or a dependant of a member in respect of an injury that has resulted in the incapacity of the member or in respect of the death of the member, being an incapacity or death in respect of which pension is or has been payable under this Division to the member or dependant; or
- (b) damages against a person other than Australia have been awarded to a member or a dependant of a member in proceedings instituted in respect of an injury that has resulted in the incapacity of the member or in respect of the death of the member, being an incapacity or death in respect of which pension is or has been payable under this Division to the member or dependant,

a person authorized by the Commission may, by notice in writing, require the person to pay to Australia so much of the amount of the damages as does not exceed an amount specified in the notice, being the amount of pension that has been paid under this Division in respect of that incapacity or death to the member or dependant, as the case may be, and the person shall comply with the notice.

(3) Where, before a notice under sub-section (2) was received, by a person, a person had paid to or in respect of the member or dependant, the whole or any part of the damages to which the notice related—

- (a) if the whole of the damages had been paid—the notice has no force or effect; or
- (b) if a part only of the damages had been paid—the reference in that sub-section to the amount of the damages shall be read as a reference to so much of that amount as had not been paid.

(4) If a person fails to pay an amount to Australia in pursuance of a notice under this section, Australia may recover that amount from the person as a debt due to Australia by action in a court of competent jurisdiction.

(5) The payment of an amount to Australia by a person in pursuance of a notice under this section or the recovery of an amount from a person under sub-section (4) is, to the extent of the amount paid or recovered, a discharge of the liability of that person to the member or dependant.

(6) In this section—

“damages” does not include any amount that has been paid in pursuance of a notice under section 102 of the Compensation Act;

“dependant” includes a woman referred to in section 107P.

Deduction of over-payments of pension.

Inserted by No. 104, 1973, s. 17.

107U. (1) Where—

- (a) an amount of pension under this Division in respect of the incapacity or death of a member has been paid to a person; and
- (b) that amount is not payable to that person by virtue of section 107R,

that amount is recoverable from that person by deduction from any amount of pension payable to that person under this Division in respect of that incapacity or death.

(2) Nothing in this section prevents the recovery of an amount referred to in sub-section (1) otherwise than in accordance with that sub-section, but an amount shall not be recovered twice.

Liability to pay damages to be discharged by payments of pension.

Inserted by No. 104, 1973, s. 17.

107V. (1) Where—

- (a) damages against Australia have been awarded to a member or a dependant of a member in proceedings instituted in respect of an injury that resulted in the incapacity of the member or in respect of the death of the member; and
- (b) pension under this Division is or has been payable to the member or dependant, as the case may be, in respect of that incapacity or death,

the liability of Australia to pay those damages or such part of them as does not represent expenses incurred in medical or hospital treatment shall be deemed to have been discharged to the extent of the amount of that pension that has been paid to the member or the dependant, as the case may be.

(2) In this section, “dependant” includes a woman referred to in section 107P.

PART IV—ASSISTANCE AND BENEFITS

Interpretation.

Sub-section (1) amended by No. 34, 1950, s. 49; No. 105, 1964, s. 18; No. 2, 1973, s. 18; and No. 27, 1973, s. 9.

108. (1) In Parts IV and V, unless the contrary intention appears—

“child”, in relation to a member of the Forces, means a son, daughter, step-son, step-daughter, adopted son or adopted daughter of the member, and includes an ex-nuptial child of the member;

“medical treatment” means any treatment with a view to restoring a person to, or maintaining a person in, physical or mental health or alleviating suffering, and includes—

- (a) any accommodation, nursing care or transport in relation to such treatment; and
- (b) the supply, renewal and repair of artificial replacements and surgical and other aids and appliances;

“spouse” includes—

- (a) in relation to a deceased member of the Forces—a person who is a dependent female, as defined in section 23, of that member; or
- (b) in relation to a living member of the Forces—a person who is a dependent female, as defined in section 23 or 83, of that member;

“step-son” or “step-daughter”, in relation to a member of the Forces, means a step-son or step-daughter of a member, being—

- (a) where the member is or was a male person—a child whose father is dead;
- (b) where the member is or was a female person—a child whose mother is dead; or
- (c) a child the marriage of whose parents has been dissolved and in respect of whom the Commission is satisfied that he or she—
 - (i) is in the custody, care and control of, or is being maintained by, the member;
 - (ii) if the member is dead, was in the custody, care and control of, or was being maintained by, the member at the time of the member’s death; or
 - (iii) if the member, being a male person, is dead, is in the custody, care and control of, or is being maintained by, the member’s widow;

“the present war” has the same meaning as in Division 1 of Part III;

“the war” has the same meaning as in Division 6 of Part III;

“widow”, in relation to a deceased member of the Forces, includes a person who is a dependent female, as defined in section 23, of that member;

“wife”, in relation to a living member of the Forces, includes a person who is a dependent female, as defined in section 23 or 83, of that member.

(2) For the purposes of Parts IV and V, any person who—

(a) was, during the present war, a member of the Naval or Military Forces—

- (i) enlisted or appointed for or employed on active service outside Australia or employed on a ship of war; or
- (ii) enlisted or appointed for service in connexion with naval or military preparations or operations; or

(b) was, during the present war, a member of the Army Medical Corps Nursing Service accepted or appointed by the Director-General of Medical Services for service outside Australia; or

(c) served during the present war in the naval or military forces of a part of the Queen’s dominions, other than the Commonwealth, on active service outside that part of the Queen’s dominions,

Amended by
No. 22, 1943,
s. 40; No. 34,
1950, s. 49;
No. 58, 1952,
s. 15; No. 27,
1973, s. 9; and
No. 216, 1973,
s. 3.

and satisfies the Commission that he was, immediately before his enlistment or appointment, domiciled in Australia or an external Territory;¹⁴ or

- (d) was, during the present war, a member of the Army Medical Corps Nursing Service of a part of the Queen's dominions, other than the Commonwealth, and satisfies the Commission that she was, immediately before her acceptance by or appointment to that service, domiciled in Australia or an external Territory,¹⁴

shall be deemed to be a member of the Forces within the meaning of those Parts.

Substituted by
No. 34, 1950,
s. 49; amended
by No. 58, 1952,
s. 15; No. 27,
1973, s. 9; and
No. 216, 1973,
s. 3.

- (3) For the purposes of Parts IV and V, a person who—
 - (a) was, during the war, a member of the Forces within the meaning of section 100;
 - (b) was, during the war, a member of the Forces within the meaning of section 105;
 - (c) was, during the war, a person to whom section 102 applies; or
 - (d) was, during the war, a member of a nursing service of, or other women's service auxiliary to, the naval, military or air forces of a part of the Queen's dominions, other than the Commonwealth, who was appointed, enlisted or enrolled before 1st July, 1947, and served before 30th June, 1951, and satisfies the Commission that she was, immediately before her appointment, enlistment or enrolment, domiciled in Australia or an external Territory,¹⁴

shall be deemed to be a member of the Forces.

Inserted by
No. 34, 1950,
s. 49; amended
by No. 27, 1973,
s. 9.

- (3A) For the purposes of Parts IV and V, any person who was—
 - (a) a member of the Forces within the meaning of Division 8 of Part III;
 - (b) a member of the Forces within the meaning of Division 9 of that Part;
 - (c) a person to whom section 107D applies; or
 - (d) a person to whom section 107G applies,

shall be deemed to be a member of the Forces.

Substituted by
No. 22, 1943,
s. 40; amended
by No. 22, 1943,
s. 52; and
No. 27, 1973,
s. 9.

- (4) For the purposes of the last preceding sub-section, the terms "enlisted" and "enlistment" have the same meaning as in section 100, and the expression "served in a theatre of war" has the same meaning as in section 23.

Added by
No. 34, 1950,
s. 49; amended
by No. 27, 1973,
s. 9.

- (5) Where, by force of sub-section (1AA) of section 101, the war service of a member of the Forces is deemed, for the purposes of that section, to have terminated on a date specified in that sub-section, his war service shall be deemed to have terminated on the same date for the purposes of Parts IV and V.

(6) In sections 114 and 114A any reference to a member of the Forces includes a reference to a deceased member of the Forces and any reference to persons who are dependent on a member of the Forces includes a reference to a person who, but for the death of a member, would have been dependent on the member.

Added by
No. 34, 1950,
s. 49; amended
by No. 27, 1973,
s. 9.

* * * * *

Section 109
repealed by
No. 80, 1950,
s. 12.

110. (1) The Commission may appoint Local Committees within a State or Territory.

Local
Committees.

(2) The persons to be appointed as members of a Local Committee shall be selected in the prescribed manner.

(2A) Any person appointed or purporting to have been appointed as a member of a Local Committee prior to 8th February, 1934, shall be deemed to be and at all times to have been validly appointed.

Inserted by
No. 58, 1935,
s. 25; amended
by No. 27, 1973,
s. 9.

(3) Subject to the regulations, a Local Committee shall have power to raise and control funds for the district for which they are appointed and to disburse those funds within that district for the granting of assistance and benefits to any of the classes of persons specified in paragraphs (a), (b), (c), (d) and (e) of sub-section (1) of section 124 or to any relative or person not specified in paragraphs (b), (c), (d) or (e) of that sub-section who was dependent upon any deceased or discharged member of the Forces prior to his enlistment or for any other purpose prescribed by the regulations.

Amended by
No. 22, 1943,
ss. 42 and 52;
No. 47, 1958,
s. 16; and
No. 27, 1973,
s. 9.

(3A) Where a Local Committee fails or refuses to furnish, as prescribed, information to the Commission relating to the funds of the Committee or where, after investigation in the prescribed manner, the Commission is satisfied that the funds of a Local Committee are not being disbursed in accordance with this Act, the Commission may, by notification in the *Gazette*, declare that the funds of the Local Committee to which the notice refers, are vested in the Commission and thereupon such funds shall be vested in the Commission.

Inserted by
No. 58, 1935,
s. 25.

(3B) Upon notification by the Commission that the funds of a Local Committee have been vested in the Commission, any person or body of persons having control of those funds shall transfer the funds to the Commission, or otherwise deal with them as directed by the Commission.

Inserted by
No. 58, 1935,
s. 25.

(3C) Upon receipt of any funds vested in the Commission under this section the Commission may disburse them in the manner provided by or under this Act in relation to the disbursement of the funds of the Local Committee by which the funds so vested in the Commission were raised.

Inserted by
No. 58, 1935,
s. 25.

Inserted by
No. 58, 1935,
s. 25; amended
by No. 27, 1973,
s. 9.

(3D) Where the Minister is satisfied that—

(a) funds held by a Local Committee; or

(b) funds of a Local Committee which, in pursuance of this section are vested in the Commission,

cannot be suitably disbursed in the district for which the Committee is appointed, he may, in writing, authorize the Committee or the Commission, as the case may be, to disburse the funds in some other district for the granting of assistance and benefits to any of the persons or classes of persons referred to in sub-section (3), and thereupon the Committee or the Commission, as the case may be, shall have power so to disburse those funds.

(4) A Local Committee shall have such other powers as are prescribed.

(5) The Commission shall appoint, for each Local Committee, an executive consisting of seven members of the Committee.

(6) Five members of the executive of each Local Committee shall be nominated by the Committee, and two members shall be selected by the Commission.

(7) Members of a Local Committee and of the executive of a Local Committee shall hold office during the pleasure of the Commission.

(8) Any Local Committee appointed under the *Australian Soldiers' Repatriation Act* 1917-1918 and the executive of any such Local Committee shall continue as if appointed under this Act.

Amended by
No. 27, 1973,
s. 9.

(9) The executive of a Local Committee shall have and may exercise—

(a) such of the powers of the Committee as are prescribed; and

(b) such other powers as are prescribed:

Provided that, in the exercise of any powers conferred in pursuance of paragraph (b), the executive shall be responsible only to the Commission.

Voluntary
winding-up
of affairs of
Local
Committee.

Inserted by
No. 31, 1954,
s. 14.

110A. (1) The Commission may, at the request of a Local Committee, authorize the winding-up of the affairs of that Local Committee, and, upon the winding-up, the funds of the Local Committee shall be paid to the Commission.

(2) Where, under this section, the Commission receives the funds of a Local Committee for a district, the Commission may pay the whole or a part of those funds—

(a) to a person or body for disbursement within that district as if that person or body were a Local Committee for that district; or

(b) to a Local Committee for another district for disbursement within that other district.

111. (1) The Governor-General may arrange with the Governor of any State for the performance by an officer of the Public Service of the State for the Government of the Commonwealth of any work or services required to be performed under this Act.

Arrangements with States for employment of State officers.

Sub-section (1) amended by No. 216, 1973, s. 3.

(2) In any such case the Governor-General may by agreement with the Governor of the State or otherwise make arrangements for determining—

Amended by No. 216, 1973, s. 3.

- (a) the rate of payment to be made by the Government of the Commonwealth for the services to be performed or the work done by the officer; and
- (b) any matters which may require to be adjusted with regard to the performance of the work or services by the officer.

112. An appeal shall lie to the Commission from any determination of a Board under this Part, and the decision of the Commission shall be final.

Appeal to the Commission.

113. All sums of money granted in pursuance of this Act, other than moneys raised under section 110 or contributed under section 114, shall be payable out of moneys from time to time appropriated by Parliament for the purpose.

Moneys to be appropriated.

Amended by No. 22, 1943, s. 52; and No. 27, 1973, s. 9.

114. (1) The Commission may receive contributions in money or in kind for the purposes of providing for the granting of assistance and benefits to, or the care or welfare of, members of the Forces or persons who are or were, in the opinion of the Commission, dependent on any of those members.

Contributions.

Substituted by No. 34, 1950, s. 50.

(2) Contributions received by the Commission in pursuance of the last preceding sub-section may be applied for any of the purposes specified in that sub-section, but where a contributor desires that a contribution be applied for a particular purpose, for the benefit of a particular class of persons or for a particular institution maintained by the Commission, the Commission shall, if it accepts the contribution, apply the contribution for the purpose desired by the contributor.

(3) Subject to this section contributions received by the Commission shall be dealt with as prescribed or as the Commission determines.

114A. (1) The Commission may, by name or any other sufficient description, be appointed to be trustee—

Acceptance of trusts.

Inserted by No. 34, 1950, s. 50.

- (a) by appointment by or under an Act or by a prescribed authority in the exercise of a power conferred by or under an Act; or
- (b) under a will, settlement or other instrument creating a trust,

for the purpose of administering a trust for the benefit of members of the Forces, their dependants, their beneficiaries under a will or intestacy, or persons who are or were dependent upon a member of the Forces.

(2) For the purpose specified in the last preceding sub-section, the Commission is, and shall be deemed always to have been, capable of accepting any such trust and acting as a trustee and, subject to the regulations—

- (a) has the same powers, duties and liabilities;
- (b) is entitled to the same rights and immunities; and
- (c) is subject to the control and orders of a court,

as a natural person acting in the like capacity.

(3) The Commission may, at its discretion, decline to accept a trust or accept a trust subject to conditions.

Audit of
accounts of
Local
Committees.

115. The books and accounts kept—

- (a) by a Local Committee; or
- (b) in connexion with any repatriation fund raised prior to the passing of this Act,

shall be subject to audit as prescribed.

Priority in
bankruptcy
of money
advanced.

116. Claims in respect of moneys advanced by the Trustees of the Australian Soldiers' Repatriation Fund or by the Minister, the Commission, a Board or a Local Committee shall have the same priority with respect to the payment of debts as if the money had been advanced by the Crown.

Section 117
repealed by
No. 11, 1945,
s. 22.

* * * * *

Improper
use of gifts or
loans.

Amended by
No. 34, 1950,
s. 51; and
No. 42, 1966,
s. 12.

118. No person to whom a gift or loan of money or goods has been made or granted under this Act for any purpose shall without first obtaining the consent of the Commission—

- (a) use the money or goods for any other purpose; or
- (b) sell or otherwise dispose of, or in any way pledge, mortgage or deposit, by way of security, any goods so granted or any goods purchased with any money so given or lent.

Penalty: Two hundred dollars.

Regulations.
Inserted by
No. 74, 1947,
s. 3.

Sub-section (1)
amended by
No. 42, 1966,
s. 12.

118A. (1) The Governor-General may make regulations in relation to—

- (a) the establishment of patriotic funds;
- (b) the raising of moneys and acquiring of assets for patriotic funds;
- (c) the control and distribution of moneys and assets raised or acquired by patriotic funds;
- (d) the winding-up of patriotic funds and disposal of the assets and moneys of the funds; and

- (e) the provision of penalties, not exceeding a fine of One hundred dollars or imprisonment for six months, for any breach of the regulations.

(2) In this section—

Amended by
No. 34, 1950,
s. 52.

“patriotic funds” means any funds established, or to be established, for the purpose of providing comforts or financial or other assistance for—

- (a) members of the Defence Force or their families or dependants;
- (b) members of the Forces of any part of His Majesty’s dominions (other than Australia) or of any allied country; or
- (c) war victims,

or for any similar purpose in connexion with the war, or for purposes including any such purpose;

“The Defence Force” includes any Force raised or maintained under the *Defence Act* 1903-1945, the *Naval Defence Act* 1901-1934 or the *Air Force Act* 1923-1941, whether in Australia or overseas, and the Australian Army Nursing Service.

PART V—MISCELLANEOUS¹⁶

119.¹⁷ The Governor-General may enter into arrangements with the Government of another part of the Queen’s dominions or of a country that has at any time been a part of the Queen’s dominions by which—

Arrange-
ments with
Governments
of other parts
of the
Queen’s
dominions.
Substituted by
No. 69, 1953,
s. 22.

- (a) the same assistance and benefits (not being pensions) may be granted in the Commonwealth to, or in relation to, persons who are or have been members of the naval, military or air forces of that part of the Queen’s dominions or of that country and have been employed on active service during any war or warlike operations referred to in this Act as are granted in that part of the Queen’s dominions or in that country to, or in relation to, persons who have been members of the Defence Force of the Commonwealth and have been employed on that service; or
- (b) the Commission may act as the agent of the Government of that part of the Queen’s dominions or of that country in the granting to, or in relation to, persons who are or have been members of the naval, military or air forces of that part of the Queen’s dominions or of that country, of assistance, benefits and pensions.

Service
pensions for
South
African
Veterans.

Inserted by
No. 49, 1941,
s.7; amended by
No. 47, 1958,
s.17; and No. 27,
1973, s. 9.

120. The provisions of this Act in so far as they relate to service pensions or allowances under section 98A shall, in like manner as they extend to, and in relation to, any person who, during the war in South Africa which commenced on 11th October, 1899, was—

- (a) a member of any Naval or Military Force or contingent raised in Australia for active service in that war; or
- (b) a member of the Naval or Military Forces of any part of the King's dominions outside Australia, and —
 - (i) was engaged on active service in South Africa; and
 - (ii) proves to the satisfaction of the Commission that he was resident in Australia within the period of twelve months immediately prior to being enlisted or appointed for such service.

Post mortem
examination.

Inserted by
No. 58, 1952,
s.16.

120A. (1) Subject to this section, the Commission may, where it is of opinion that a *post mortem* examination may facilitate the determination of a question arising under any provision of this Act or the regulations, authorize a legally qualified medical practitioner to make a *post mortem* examination of the body of a deceased member of the Forces, and may appoint a place for the making of that examination.

(2) A *post mortem* examination of the body of a deceased member of the Forces shall not be authorized under this section—

- (a) where the Commission is aware that the member has expressed an objection to the making of a *post mortem* examination; or
- (b) where the member has died without having expressed such an objection of which the Commission is aware, and the widow, widower or nearest known relative of the member does not consent to the making of a *post mortem* examination.

Amended by
No. 216, 1973,
s. 3.

(3) Where, under the law of the State or Territory in which the death of a member of the Forces occurs a medical practitioner is under a duty to notify a coroner or a deputy coroner of that State or Territory of the death, the Commission shall not authorize a *post mortem* examination to be made under this section unless the coroner or deputy coroner decides that he does not require a *post mortem* examination to be made for the purposes of an inquiry under a law of the State or Territory.

Amended by
No. 216, 1973,
s. 3.

(4) A law of a State or Territory relating to—

- (a) the registration or licensing of persons qualified to make *post mortem* examinations or of the places at which *post mortem* examinations may be made; or
- (b) the conditions (including the requirement of the consent of any person) upon which *post mortem* examinations may be made,

does not apply to, or in relation to, a *post mortem* examination authorized by the Commission under this section.

(5) In this section, "member of the Forces" includes a member of the Forces within the meaning of Division 10 of Part III.

Added by
No. 104, 1973,
s. 18.

120AA. Where, in consequence of a false statement or representation or of a failure or omission to comply with any provision of this Act or the regulations, an amount has been paid by way of pension, allowance or benefit that would not have been paid but for the false statement or representation or the failure or omission, the amount so paid is recoverable in a court of competent jurisdiction from the person to whom, or on whose account, the amount was paid, or from the estate of that person, as a debt due to the Commonwealth.

Recovery of
over-
payments.
Inserted by
No. 47, 1963,
s. 21.

120B. (1) Where, by virtue of an assessment, decision or determination made under this Act, an amount of pension or allowance becomes payable to a person in respect of a period prior to the date of the assessment, decision or determination, there shall be deducted from the amount so payable to that person the amount of any payment made during that period by way of pension or allowance, whether under this Act or under such provisions of any other Act as are administered by the Minister, which would not have been made if the first-mentioned pension or allowance had then been payable.

Deduction
from
pensions,
allowances
or benefits of
certain
amounts.
Inserted by
No. 58, 1952,
s. 16.

(2) Where, by virtue of the provisions of this Act or of such provisions of any other Act as are administered by the Minister, an amount which has been paid by way of pension, allowance or benefit is recoverable from a person, that amount may be recovered by deductions from any pension, allowance or benefit payable to that person under any of those provisions.

Amended by
No. 47, 1963,
s. 22.

(3) Where—

- (a) pension, allowance or benefit under the *Social Services Consolidation Act* 1947, or under that Act as amended, or under the *Tuberculosis Act* 1948, has been paid (whether before or after the commencement of this sub-section) to a person in respect of a period and, on a date subsequent to that payment, a pension under this Act, a pension under this Act at an increased rate or a prescribed sustenance allowance becomes payable to that person or his spouse in respect of that period; and
- (b) the whole or a part of the pension, allowance or benefit paid to that person under the *Social Services Consolidation Act* 1947, or under that Act as amended, or under the *Tuberculosis Act* 1948, in respect of that period would not have been payable if, during that period, he or his spouse had been in receipt of the pension under this Act, the pension under this Act at the increased rate or the sustenance allowance,

Added by
No. 31, 1954,
s. 15; amended
by No. 68, 1956,
s. 14; No. 47,
1958, s. 18; and
No. 27, 1973,
s. 9.

the amount referred to in paragraph (b) shall be deducted from any pension or allowances payable to that person under this Act in a lump sum or by instalments, as the Commission determines.

Added by
No. 68, 1956,
s. 14.

- (4) The last preceding sub-section does not apply—
- (a) where the pension under this Act, or the pension under this Act at an increased rate, referred to in paragraph (a) of that sub-section became payable on a date before the date of commencement of that sub-section; or
 - (b) where the prescribed sustenance allowance referred to in paragraph (a) of that sub-section became payable on a date before the date of commencement of this sub-section.

Payment of
pension, &c.,
on death of
pensioner,
&c.

Inserted by
No. 2, 1973,
s. 19.

120C. Where an amount of pension, allowance or other benefit under this Act or the regulations—

- (a) has accrued and is unpaid on the death of the person to whom that pension, allowance or other benefit is payable; or
- (b) would have been payable to a deceased claimant in respect of a period before his death if the claimant had not died,

the Commission may pay that amount to—

- (c) the legal personal representative of the deceased person; or
- (d) if there is no legal personal representative of the deceased person and the Commission is satisfied that application will not be made for probate of the will, or for letters of administration of the estate, of the deceased person—the person whom the Commission determines to be best entitled to receive it,

and, if that amount is paid, the Commonwealth is not liable to any action, claim or demand for any further payment in respect of that amount.

Establishment
of hospitals,
&c.

Inserted by
No. 104, 1973,
s. 19.

120D. The Commission may establish, control and administer hospitals and other institutions for the care and welfare of persons eligible to receive medical treatment under—

- (a) this Act;
- (b) the *Interim Forces Benefits Act 1947-1973*;
- (c) the *Repatriation (Far East Strategic Reserve) Act 1956-1973*; or
- (d) the *Repatriation (Special Overseas Service) Act 1962-1973*.¹⁸

Furnishing
of
information.

Inserted by
No. 58, 1935,
s. 26; amended
by No. 42, 1966,
s. 12.

121. The Commission may require any person, whom it believes to be in a position to do so, to furnish to the Commission a confidential report as to the circumstances or the financial transactions of any pensioner or applicant for a pension, or for assistance and benefits, under this Act; and any person who, on being required to do so by the Commission, fails, without just cause (proof whereof shall lie upon that person) to furnish a report within a reasonable time, or furnishes a report containing any statement which is untrue in any particular, shall be guilty of an offence.

Penalty: Two hundred dollars or imprisonment for six months.

122. The Commission shall furnish to the Minister annually, for **Report.**
Presentation to the Parliament, a report of the administration and operation of this Act.

123. Where prior to the passing of this Act a local fund for the repatriation of Australian soldiers has been raised in any district, the control of that fund shall, subject to the regulations, be vested in the trustees for the time being of the fund. **Funds raised prior to Act.**

123A. (1) A person shall not be taken to be a pensioner for the purposes of section 128 of the *Broadcasting and Television Act* 1942-1969 by reason that the person is in receipt of a service pension where that pension would not be payable if— **Modification of certain other laws.**

(a) any amendment of the *Repatriation Act* 1920-1968, being—

(i) an amendment alleviating the operation of the means test in relation to that person made after the date of commencement of the *Repatriation Act* 1968; or

(ii) an amendment of a rate of pension, allowance or benefit under Division 5 of Part III made after the date of commencement of the *Repatriation Act* (No. 3) 1973,

had not been made; and

(b) an amendment of the *Social Services Act* 1947-1968, being—

(i) an amendment alleviating the operation of the means test in relation to that person made after the commencement of the *Social Services Act* 1968; or

(ii) an amendment of a rate of pension, allowance or benefit made after the date of commencement of the *Social Services Act* (No. 4) 1973,

had not been made.

(2) A person shall not be taken to be a pensioner for the purposes of regulation 29 of the Telephone Regulations in force under the *Post and Telegraph Act* 1901-1968 by reason that the person is in receipt of, or is entitled to, a service pension, where that person would not be eligible to receive such a pension if any amendment referred to in paragraph (a) or paragraph (b) of the last preceding sub-section had not been made. **Amended by No. 104, 1973, s. 20.**

(3) Regulation 66 of the Repatriation Regulations in force under the *Repatriation Act* 1920-1968 immediately before the commencement of this section does not apply in relation to a person by reason that the person is receiving a service pension where that pension would not be payable if any amendment referred to in paragraph (a) or paragraph (b) of sub-section (1) had not been made. **Amended by No. 27, 1973, s. 9.**

Amended by
No. 27, 1973,
s. 9; and
No. 104, 1973,
s. 20.

(4) Regulation 179A of the Repatriation Regulations in force under the *Repatriation Act* 1920-1968 immediately before the commencement of this section has effect as if —

- (a) a reference in that regulation to a service pension did not include a reference to a service pension that a person would not be, or would not have been, as the case may be, eligible to receive if any amendment referred to in paragraph (a) or paragraph (b) of sub-section (1) had not been made;
- (b) sub-regulation (4) of that regulation were omitted and the following sub-regulation inserted in its stead:—

“(4) For the purposes of the application in relation to paragraph (b) of the last preceding sub-regulation of the definition of ‘pensioner’ in sub-regulation (1) of this regulation, a reference in that definition to a service pension shall be read as including a reference to a service pension of which a person is in receipt as the wife of a member of the Forces under section 85 of the Act.”; and

- (c) after sub-regulation (5) the following sub-regulation were inserted:—

“(5A) The reference in paragraph (b) of the last preceding sub-regulation to an age or invalid pension or a wife’s pension or a widow’s pension does not include a reference to such a pension that would not be payable if any amendment of the *Social Services Act* 1947-1968, being—

- (a) an amendment alleviating the operation of the means test in relation to the person in receipt of the pension made after the date of commencement of the *Social Services Act* 1968; or
- (b) an amendment of a rate of pension, allowance or benefit made after the date of commencement of the *Social Services Act* (No. 4) 1973,

had not been made.”.

(5) Nothing in this section prevents the making of regulations under this Act or the *Post and Telegraph Act* 1901-1968 that could have been made if this section had not been enacted.

Amended by
No. 27, 1973,
s. 9.

(6) In this section—

“amendment alleviating the operation of the means test”, in relation to a person, means an amendment that operates to diminish or eliminate any reduction that would otherwise be made in the rate of pension payable to or in respect of the person by reason of his means as assessed as defined by section 83 of this Act or section 18 or section 59 of the *Social Services Act* 1947-1969, as the case may be;

“service pension” has the same meaning as in Part III.

123B. A reference in any law to a Schedule to this Act that is identified in that law by an ordinal number shall be read as a reference to the Schedule to this Act that is identified in this Act by the corresponding cardinal number.

Interpretation.
Inserted by
No. 104, 1973,
s. 21.

124. (1) 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 giving effect to this Act, and, in particular, for prescribing a penalty of a fine not exceeding Fifty dollars or of imprisonment for a period not exceeding three months for any offence against the regulations, for providing the form and effect of securities given for advances made under this Act, and for providing for the granting of assistance and benefits—

Regulations.
Sub-section (1)
substituted by
No. 22, 1943,
s. 45; amended
by No. 22, 1943,
s. 52; No. 29,
1947, s. 13;
No. 34, 1950,
s. 54; No. 68,
1956, s. 15;
No. 46, 1961,
s. 8; No. 105,
1964, s. 19;
No. 64, 1965,
s. 11; No. 42,
1966, s. 12;
No. 27, 1973,
ss. 8 and 9; and
No. 104, 1973,
ss. 22 and 28.

- (a) to members of the Forces upon their discharge from service;
- (aa)¹⁹ to widows of members of the Forces (including persons specified in section 42) or to widowed mothers, unmarried mothers or widowed step-mothers of unmarried deceased members of the Forces, being widows, mothers or step-mothers who—
 - (i) are in receipt of, or entitled to receive, pensions in accordance with Table A in Schedule 3; or
 - (ii) would be entitled to receive such pensions but for paragraph (c) of the proviso to sub-section (1) of section 24, section 43, paragraph (c) of the proviso to sub-section (1) of section 101 or sub-section (6) of section 107C;
- (b) to the children of incapacitated or deceased members of the Forces while those children are, by reason of physical or mental disability, incapable of contributing to their own support, or are children, as defined in section 23 or 83, of the members;
- (c) to the children of incapacitated or deceased members of the Forces for the purposes of their education or training for any profession, trade or other calling;
- (d) in the form of free passages—
 - (i) from abroad to Australia for the wives and children of members of the Forces still on active service or who have been discharged, or for the widows and children of deceased members; and
 - (ii) to abroad for incapacitated members of the Forces and their wives and children or the widows and children of deceased members;
- (e) where by reason of special circumstances the Commission considers that assistance and benefits should be granted to—
 - (i) the wives of members of the Forces or the widows of deceased members of the Forces;

- (ii) the mothers or step-mothers of incapacitated or deceased members of the Forces—
 - (a) who are either widowed, divorced or deserted; or
 - (b) whose husbands are so incapacitated as to be unable to contribute materially to their support;
- (iii) the incapacitated fathers of incapacitated or deceased members of the Forces who were, prior to the enlistment of those members, dependent upon them;
- (iv) the mothers (being either widowed, divorced, deserted or unmarried) of members of the Forces who were born out of wedlock;
- (v) any person who was, prior to the death of a member of the Forces, recognized as his wife although not legally married to him; and
- (vi) persons in necessitous circumstances who are or were dependent on members of the Forces;
- (f) in the form of allowances to the persons specified in paragraphs (a), (b), (c) and (e);

* * * * * * *

- (h) by way of payment of funeral expenses in respect of—
 - (i) deceased members of the Forces;
 - (ii) deceased children of members of the Forces;
 - (iii) deceased spouses of members of the Forces;
 - (iv) deceased dependants (as defined by the regulations) of members of the Forces;
 - (v) deceased persons who, at the time of their death, were persons to whom section 42 applied;
 - (vi) deceased persons who, at the time of their death, were persons specified in section 120; and
 - (vii) deceased spouses and deceased children of persons specified in section 120.

Inserted by
No. 104, 1973,
s. 22.

(1AA) The power to make regulations conferred by sub-section (1) extends to—

- (a) the making of regulations with respect to members of the Forces within the meaning of Division 10 of Part III, and to the dependants, within the meaning of that Division, of those members, as if those members were members of the Forces within the meaning of this Part; and
- (b) the granting of assistance and benefits to a woman referred to in section 107P.²⁰

(1AB) The regulations may provide for—

Inserted by
No. 104, 1973,
s. 22.

(a) the provision, whether in hospitals or other institutions referred to in section 120D or independently of those hospitals or other institutions, of medical treatment for—

- (i) members of the Forces and the dependants of those members and persons referred to in section 120;
- (ii) persons referred to in sub-section (1AA); and
- (iii) persons who—

(A) have served in a theatre of war within the meaning of Part III, have served on Malayan service within the meaning of the *Repatriation (Far East Strategic Reserve) Act 1956-1973* or have served on special service within the meaning of the *Repatriation (Special Overseas Service) Act 1962-1973*; and

(B) are suffering from malignant neoplasia; and

(b) the provision, in hospitals or other institutions referred to in section 120D, of medical treatment for persons other than—

- (i) persons referred to in paragraph (a); or
- (ii) persons entitled to receive medical treatment under—

(A) the *Interim Forces Benefits Act 1947-1973*;

(B) the *Repatriation (Far East Strategic Reserve) Act 1956-1973*;

(C) the *Repatriation (Special Overseas Service) Act 1962-1973*; or

(D) the *Seamen's War Pensions and Allowances Act 1940-1973*.²⁰

(1AC) Medical treatment may be provided for the persons to whom paragraph (b) of sub-section (1AB) applies only if the provision of such treatment does not adversely affect the provision of medical treatment for persons referred to in a sub-paragraph of that paragraph.²⁰

Inserted by
No. 104, 1973,
s. 22.

(1A) Subject to sub-section (1C), where medical treatment is provided to a person under the regulations—

Inserted by
No. 105, 1964,
s. 19; amended
by No. 27, 1973,
s. 9.

- (a) in circumstances in which the regulations provide for payment in accordance with this sub-section; or
- (b) in any case in which, before the treatment is provided, the Commission, for special reasons, determines that payment should be made in accordance with this sub-section and notifies the person accordingly,

the person is liable to pay to the Commonwealth, as a debt due to the Commonwealth, such reasonable charges in respect of the treatment as the Commission notifies to him in writing.

Inserted by
No. 105, 1964,
s. 19.

(1B) Regulations made in pursuance of paragraph (a) of the last preceding sub-section may provide for payment in accordance with that sub-section in any case in which—

- (a) a person (whether before, during or after the provision of the treatment) recovers or receives; or
- (b) the Commission or a delegate of the Commission (whether before, during or after the provision of the treatment) notifies a person that the person is, in the opinion of the Commission or the delegate, as the case may be, entitled to recover or receive,

the whole or a part of the cost of the treatment, by way of damages or compensation, from another person.

Inserted by
No. 105, 1964,
s. 19; amended
by No. 27, 1973,
s. 9; and
No. 104, 1973,
s. 22.

(1C) Sub-section (1A) does not apply in relation to medical treatment in respect of a condition giving rise to an incapacity in respect of which the Commonwealth—

- (a) is liable to pay pension under this Act to the person;
- (b) would be so liable if the incapacity were great enough to warrant a pension assessment; or
- (c) would be so liable but for paragraph (c) of the proviso to sub-section (1) of section 24, section 43, paragraph (c) of the proviso to sub-section (1) of section 101, sub-section (6) of section 107C, section 107Q or section 107R.

Added by
No. 68, 1956,
s. 15.

(2) The regulations may make provision for or in relation to—

- (a) the payment of any pension or allowance to a person on behalf of, or as trustee of, the person to whom the pension or allowance is payable under this Act where the Commission or a delegate of the Commission is satisfied that, having regard to the age, infirmity, ill-health or improvidence of the person to whom the pension or allowance is payable under this Act, it is expedient that payment of the pension or allowance should be so made, or where the person to whom the pension or allowance is payable under this Act consents to payment of the pension or allowance being so made; and
- (b) the disbursement or accumulation of a pension or allowance so paid for the benefit of the person to whom it is payable under this Act or of members of the family of that person or of persons dependent on him.²¹

* * * * *

Heading omitted
by No. 104,
1973, s. 28.

SCHEDULE 1

Section 35 Substituted by
No. 58, 1952,
s. 17;

GENERAL PENSIONS RATES

TABLE OF PENSIONS PAYABLE, SUBJECT TO THE PROVISIONS OF THE
THIRD SCHEDULE, TO A WIDOWED MOTHER OR A WIDOW ON DEATH OF
A MEMBER OF THE FORCES, OR TO A MEMBER UPON HIS TOTAL
INCAPACITY

Column 1 Pension payable to Widowed Mother on Death of Member	Column 2 Pension payable to Widow on Death of Member	Column 3 Pension payable to Member on Total Incapacity
\$ Per fortnight 17	\$ Per fortnight 46	\$ Per fortnight 38

amended by
No. 69, 1953,
s. 23; No. 31,
1954, s. 16;
No. 39, 1955,
s. 23; No. 44,
1957, s. 4;
No. 58, 1959,
s. 8; No. 44,
1960, s. 7;
No. 46, 1961,
s. 9; No. 62,
1964, s. 4;
No. 64, 1965,
s. 12; No. 42,
1966, s. 9;
No. 66, 1968,
s. 12; No. 95,
1969, s. 6;
No. 60, 1970,
s. 5; No. 17,
1971, s. 6;
No. 68, 1971,
s. 4; No. 15,
1972, s. 6;
No. 82, 1972,
s. 19; No. 2,
1973, s. 20;
No. 27, 1973,
s. 9; and
No. 104, 1973,
ss. 23 and 28.

* * * * *

3. Where a member of the Forces is temporarily totally incapacitated to such an extent as to be precluded from earning other than a negligible percentage of a living wage while he is so incapacitated, and where the aggregate of the rate of pension payable to that member under Column 3 of the table in this Schedule and the amount (if any) payable to him under Schedule 5 is less than the Special Rate of Pension specified in Schedule 2, the Commission may grant an additional pension to a member at a rate not exceeding the amount of the difference between that aggregate sum and that Special Rate of Pension for such period, whether in excess of six months or not, as the Commission determines.

* * * * *

6. Where the incapacity of a member of the Forces is such that he is unable to earn a living wage by reason that he is unable to engage in a remunerative occupation except on a part-time basis or intermittently, the amount specified in Column 3 of the table in this Schedule shall, in its application in relation to him, be deemed to be Seventy-seven dollars sixty cents.

Amended by
 No. 23, 1922,
 s. 5; No. 32,
 1934, s. 12;
 No. 58, 1935,
 s. 27; No. 22,
 1943, s. 47;
 No. 29, 1947,
 s. 15; No. 39,
 1948, s. 11;
 No. 34, 1950,
 s. 56; No. 31,
 1951, s. 10;
 No. 58, 1952,
 s. 18; No. 69,
 1953, s. 24;
 No. 39, 1955,
 s. 24; No. 44,
 1957, s. 5;
 No. 47, 1958,
 s. 19; No. 58,
 1959, s. 9;
 No. 44, 1960,
 s. 8; No. 46,
 1961, s. 10;
 No. 47, 1963,
 s. 23; No. 62,
 1964, s. 5;
 No. 42, 1966,
 ss. 10 and 12;
 No. 66, 1968,
 s. 13; No. 95,
 1969, s. 7;
 No. 60, 1970,
 s. 6; No. 17,
 1971, s. 7;
 No. 68, 1971,
 s. 5; No. 15,
 1972, s. 7;
 No. 82, 1972,
 s. 20; No. 2,
 1973, s. 21; and
 No. 104, 1973,
 ss. 24 and 28.

SCHEDULE 2

RATE FOR SPECIAL PENSIONS—ONE HUNDRED AND ELEVEN DOLLARS TWENTY CENTS PER FORTNIGHT

The Special Rate of Pension may be granted to members of the Forces who have been blinded as the result of War Service, and to members who are totally and permanently incapacitated (*i.e.* incapacitated for life to such an extent as to be precluded from earning other than a negligible percentage of a living wage).

The Commission may grant a pension not exceeding the Special Rate of Pension to a member of the Forces who is suffering from tuberculosis and who has been an inmate of an establishment for persons so suffering: Provided that pension under this paragraph shall not be payable after the member's discharge from the establishment unless the medical officer in charge of the establishment, or a medical practitioner approved by the Commission, has certified that his being discharged is not a menace to public health.

* * * * *

In the case of a member who has been granted the Special Rate of Pension, the husband or wife of such member shall not be entitled to receive a pension exceeding the rate specified in the Third Schedule for a husband or wife of a member.

In the case of a member of the Forces who, as the result of war service—

- (a) has been blinded; or
- (b) in consequence of an injury or disease affecting the cerebro-spinal system, or of an injury or disease causing incapacity similar in effect or in severity to the incapacity resulting from an injury or disease affecting the cerebro-spinal system, is deemed by the Commission to be in need of an attendant,

an allowance at the rate of Twenty-six dollars per fortnight may be granted for an attendant.

In the case of a member of the Forces who, as the result of war service, has been blinded and also afflicted with total loss of speech or total deafness, an allowance at the rate of Forty-four dollars per fortnight may be granted for an attendant.

Where a member of the Forces referred to in the fourth or the fifth paragraph of this Schedule is maintained in an establishment at the public expense the allowance for an attendant shall cease to be payable as from the first day upon which a periodical payment of pension is made after the date of his admission to the establishment and, thereafter, shall not be payable while he remains in the establishment.

For the purpose of this Schedule the words "members of the Forces who have been blinded" shall be deemed to include members of the Forces whose eyesight is in the opinion of the Commission so defective that they have no useful sight.

SCHEDULE 3

Heading amended by No. 104, 1973, s. 28.

TABLE A

PENSIONS PAYABLE IN THE CASE OF DEATH OF A MEMBER OF THE FORCES

Table A substituted by No. 47, 1963, s. 24; amended by No. 42, 1966, s. 12; No. 64, 1967, s. 3; No. 66, 1968, s. 14; No. 60, 1970, s. 7; No. 68, 1971, s. 6; No. 82, 1972, s. 21; No. 2, 1973, s. 22; No. 27, 1973, s. 9; and No. 104, 1973, s. 25.

Class of Person Eligible for Pension	Rate of Pension Payable
Widow of the member	The rate specified in Column 2 of the table in Schedule 1, whichever is applicable
Widowed mother of— (a) unmarried member; or (b) unmarried member who was born out of wedlock and who was brought up by her, who became a widow before, or within three years after, the death of the member Unmarried mother of an unmarried member who was brought up by her	The rate specified in Column 1 of the table in Schedule 1, or, in prescribed cases, where the dependant is not in receipt of an age pension, an invalid pension or a widow's pension under the <i>Social Services Act</i> 1947-1963, such rate as is assessed, being a rate that does not exceed the total of the rate specified in Column 1 of the table in Schedule 1 and the rate per fortnight of age pension that would be payable to the dependant if the dependant were entitled to an age pension and that pension were payable at the maximum rate applicable to the dependant under sub-section (1A) of section 28 of the <i>Social Services Act</i> 1947-1963
Child of the member— (a) where (in the case of a child other than an ex-nuptial child) both the member and the wife or husband of the member are dead (b) where the last preceding paragraph does not apply in relation to the child and the Commission is satisfied that the child is not being maintained by a parent, adoptive parent or step-parent of the child (c) in any other case	 \$37.00 per fortnight \$37.00 per fortnight \$18.50 per fortnight
Widower or any other dependant of the member	(a) Subject to the succeeding paragraphs of this item, such rate as is assessed, being a rate that does not exceed the rate specified in Column 1 of the table in Schedule 1 (b) In prescribed cases, where the dependant is a parent of the member and is not in receipt of an age pension, an invalid pension, a widow's pension or a wife's pension under the <i>Social Services Act</i> 1947-1972, such rate as is assessed, being a rate that does not exceed the total of the rate specified in Column 1 of the table in Schedule 1 and the rate per fortnight of age pension that would be payable to the dependant if the dependant were entitled to age pension and that pension were payable at the maximum rate applicable to the dependant under sub-section (1A) of section 28 of the <i>Social Services Act</i> 1947-1963 (c) Where there is more than one dependant, none being a parent of a prescribed class, the aggregate amount payable in respect of those dependants shall not exceed the rate specified in Column 1 of the table in Schedule 1 plus \$4 per fortnight

Class of Person Eligible for Pension	Rate of Pension Payable
	<p>(d) Where there is more than one dependant, including a parent of a prescribed class, the aggregate amount payable in respect of those dependants shall not exceed the maximum rate that may be assessed under paragraph (b) of this item in respect of a parent to whom that paragraph applies plus—</p> <p>(i) where another parent of a prescribed class is included—the rate per fortnight of age pension that would be payable to the dependant if the dependant were entitled to an age pension and that pension were payable at the maximum rate applicable to the dependant under subsection (1A) of section 28 of the <i>Social Services Act</i> 1947-1963, plus \$4 per fortnight; or</p> <p>(ii) in any other case—\$4 per fortnight</p>

Table B
substituted by
No. 58, 1952,
s. 19; amended
by No. 47, 1958,
s. 20; No. 62,
1964, s. 6;
No. 42, 1966,
s. 12; No. 2,
1973, s. 22; and
No. 104, 1973,
ss. 25 and 28.

TABLE B
PENSIONS PAYABLE IN THE CASE OF TOTAL INCAPACITY OF A MEMBER OF THE FORCES

Class of Person Eligible for Pension	Rate of Pension Payable
Member of the Forces—	
General Rate	The rate specified in Column 3 of the table in Schedule 1
Special Rate	The rate specified in, or assessed in accordance with, Schedule 2 in the cases to which the provisions of that Schedule are applicable
Wife or husband of the member	\$8.10 per fortnight
Child of the member	\$2.75 per fortnight
Any other dependant of the member	<p>(a) Subject to the next succeeding paragraph, such rate, not exceeding the rate specified in Column 1 of the table in Schedule 1, as is assessed</p> <p>(b) The aggregate amount payable in respect of dependants of this class shall not exceed the rate so specified plus \$4 per fortnight</p>

Table C
substituted by
No. 34, 1950,
s. 57; amended
by No. 104,
1973, s. 28.

TABLE C
PENSIONS PAYABLE IN CASES OF PARTIAL OR SPECIFIC INCAPACITY OF MEMBERS OF THE FORCES

Class of Person Eligible for Pension	Rate of Pension Payable
Member or dependant	Such rate, being less than the rate or the maximum rate, as the case may be, prescribed by Table B of this Schedule, as is assessed, having regard to the nature and probable duration of the incapacity, or in accordance with Schedules 4 and 5 in the cases to which those Schedules apply

SCHEDULE 4

The rate of pension payable to a member of the Forces who is incapacitated by reason of a disability specified in the first column of this Schedule is a rate equal to such percentage of the General Rate of pension to which the member would be entitled under Schedule 3 if he were totally incapacitated as is set out in the second column of this Schedule opposite to the description of the disability.

Description of Disability	Percentage of General Rate
	Per centum
Loss of two or more limbs	100
Loss of both eyes	100
Loss of one eye, together with loss of leg, foot, hand or arm	100
Loss of both arms	100
Loss of both legs	100
Loss of both feet	100
Loss of both hands	100
Loss of hand and foot	100
Loss of all fingers and thumbs	100
Lunacy	100
Wounds, injuries, or disease, involving total permanent disabling effects	100
Very severe facial disfigurement	100
Amputation of leg at hip or of right arm at shoulder joint (if right handed), or of left arm at shoulder joint (if left handed)	{ 100 for first six months 80 thereafter
Severe facial disfigurement	80
Total loss of speech	100
Loss of leg or foot	{ 100 for first six months 75 thereafter
Loss of arm or hand	{ 100 for first six months 75 thereafter
Total deafness	100
Loss of vision in one eye	50

For the purposes of this Schedule a leg, foot, hand, arm or eye is deemed to be lost if it is rendered permanently and wholly useless.

SCHEDULE 5

1. Where a member of the Forces is suffering from a disability described in Column 1 of the following table, the amount and the rate of allowance (if any) specified, in relation to that disability, in Columns 2 and 3, respectively, of the table shall, subject to this Act, be payable in addition to the pension payable under Schedule 4.

Column 1 Description of Disability	Column 2 Amount	Column 3 Allowance
	\$ Per fortnight	\$ Per fortnight
Two arms amputated	73.20	44
Two legs and one arm amputated	73.20	26
Two legs amputated above the knee	73.20	26
Two legs amputated and loss of eye	73.20	..
One arm and one leg amputated and one eye destroyed	73.20	..
One leg and one arm amputated	73.20	..
One leg amputated above, and one leg amputated below, the knee	29.40	..
Two legs amputated below the knee	19.80	..
One arm amputated and one eye destroyed	17.10	..
One leg amputated and one eye destroyed	17.10	..
One leg amputated above the knee	8.50	..
One leg amputated below the knee	4.50	..
One arm amputated above the elbow	8.50	..
One arm amputated below the elbow	4.50	..
Loss of vision in one eye	6.60	..

Amended by
No. 23, 1922,
s. 6; No. 55,
1938, s. 3;
No. 34, 1950,
s. 58; No. 39,
1955, s. 26;
No. 27, 1973,
s. 9; and
No. 104, 1973,
s. 28.

Substituted by
No. 34, 1950,
s. 59; amended
by No. 31, 1951,
s. 11; No. 58,
1952, s. 20;
No. 69, 1953,
s. 26; No. 31,
1954, s. 17;
No. 39, 1955,
s. 27; No. 44,
1957, s. 6;
No. 47, 1958,
s. 21; No. 58,
1959, s. 10;
No. 44, 1960,
s. 9; No. 46,
1961, s. 12;
No. 47, 1963,
s. 25; No. 62,
1964, s. 7;
No. 64, 1965,
s. 13; No. 42,
1966, s. 11;
No. 66, 1968,
s. 15; No. 95,
1969, s. 8;
No. 60, 1970,
s. 8; No. 17,
1971, s. 8;
No. 68, 1971,
s. 7; No. 15,
1972, s. 8;
No. 82, 1972,
s. 22; No. 2,
1973, s. 22;
No. 27, 1973,
s. 9; and
No. 104, 1973,
ss. 26 and 28.

2. For the purposes of this Schedule—

- (i) amputation below the knee or below the elbow shall, where the knee or elbow action is lost, be deemed to be amputation above the knee or above the elbow, as the case may be;
- (ii) amputation of a foot shall be deemed to be amputation of a leg below the knee;
- (iii) amputation of a hand shall be deemed to be amputation of an arm below the elbow; and
- (iv) a leg, foot, hand or arm shall be deemed to have been amputated, and an eye shall be deemed to have been lost or destroyed, if it has been rendered permanently and wholly useless.

3. The allowance specified in Column 3 of the table in paragraph 1 of this Schedule in relation to the first two disabilities described in Column 1 of that table shall be payable for an attendant and the allowance specified in Column 3 of that table in relation to the third disability described in Column 1 of that table shall be payable for an attendant in those cases only where two legs have been amputated either at the hip or one at the hip and the other in the upper third.

4. Where a member of the Forces is maintained in an establishment at the public expense, an allowance for an attendant shall cease to be payable as from the first day upon which a periodical payment of pension is made after the date of his admission to the establishment and, thereafter, shall not be payable while he remains in the establishment.

5. A person shall not be entitled to receive a benefit under both Schedule 2 and this Schedule at one and the same time.

6. Where the total amount per fortnight of pension payable under this Act to a member of the Forces referred to in paragraph 6 of Schedule 1 would, but for this paragraph, by reason of the payment to him in accordance with this Schedule of an amount per fortnight specified in column 2 of the table in paragraph 1 of this Schedule, exceed the amount per fortnight set out in Schedule 2 at the rate for Special Pensions, the amount per fortnight payable to him under this Schedule shall be reduced by the amount of the excess.

SCHEDULE 6

Added by
No. 66, 1968,
s. 16; amended
by No. 95, 1969,
s. 9; No. 60,
1970, s. 9;
No. 27, 1973,
s. 9; and
No. 104, 1973,
ss. 27 and 28.

1. This Schedule applies in relation to a member of the Forces to whom there is payable pension (other than pension payable under Schedule 2) at a rate of an amount per fortnight that—

- (a) is less than the amount specified in paragraph 6 of Schedule 1; and
- (b) is, after deducting any amount payable under Schedule 5, not less than seventy-five per centum of the amount of pension per fortnight specified in relation to the member in column 3 of the table in Schedule 1.

2. There is payable to a member of the Forces in relation to whom this Schedule applies, in addition to any other pension, an allowance—

- (a) where the amount of pension (excluding any amount payable under Schedule 5) per fortnight payable to the member is equal to the amount of pension per fortnight specified in relation to the member in column 3 of the table in Schedule 1—at the rate of Six dollars per fortnight; or
- (b) in any other case—at the rate of the amount per fortnight that bears the same proportion to Six dollars as the amount of pension (excluding any amount payable under Schedule 5) per fortnight payable to the member bears to the amount of pension per fortnight specified in relation to the member in column 3 of the table in Schedule 1.

3. For the purposes of this Schedule—

(a) where—

- (i) the incapacity of a member results from a disability that is, or from disabilities at least one of which is, capable of being alleviated by the use of aids to vision or hearing aids; and
- (ii) the assessment of the rate of the pension of the member has not been affected by sub-section (1) of section 37,

the amount per fortnight at which pension is payable to the member shall, except for the purposes of comparison with the amount referred to in sub-paragraph (a) of paragraph 1 of this Schedule, be deemed to be the amount that would be so payable if the rate of pension were assessed having regard to the incapacity remaining after any disability or disabilities capable of being alleviated by the use of aids to vision or hearing aids were so alleviated; and

(b) where the rate of pension of the member has been assessed in accordance with sub-section (1) of section 37, the amount per fortnight at which pension is payable to the member shall, except for the purposes of comparison with the amount referred to in sub-paragraph (a) of paragraph 1 of this Schedule, be deemed to be the amount that would be so payable if the rate of pension—

- (i) were assessed without regard to sub-section (1) of section 37; and
- (ii) where the incapacity of the member results from a disability that is, or from disabilities at least one of which is, capable of being alleviated by the use of aids to vision or hearing aids—were also assessed having regard to the incapacity remaining after any disability or disabilities capable of being alleviated by the use of aids to vision or hearing aids were so alleviated.

4. In this Schedule, “pension” does not include a service pension, an allowance under Schedule 2, an allowance specified in column 3 of the table in Schedule 5 or an allowance under this Schedule.

SCHEDULE 7

Section 90

Added by
No. 82, 1972,
s. 23; amended
by No. 104,
1973, s. 28.

CONVERSION FACTORS FOR CALCULATING THE VALUE AS PROPERTY
EQUIVALENT OF SUPERANNUATION PENSIONS

Column 1	Column 2	Column 1	Column 2
Age next birthday	Conversion factor	Age next birthday	Conversion factor
16	15.9	58	9.8
17	15.9	59	9.6
18	15.8	60	9.3
19	15.8	61	9.1
20	15.7	62	8.8
21	15.7	63	8.5
22	15.6	64	8.3
23	15.5	65	8.0
24	15.5	66	7.8
25	15.4	67	7.5
26	15.3	68	7.3
27	15.2	69	7.0
28	15.2	70	6.7
29	15.1	71	6.5
30	15.0	72	6.2
31	14.9	73	6.0
32	14.7	74	5.7
33	14.6	75	5.5
34	14.5	76	5.3
35	14.4	77	5.0
36	14.3	78	4.8
37	14.1	79	4.6
38	14.0	80	4.3
39	13.8	81	4.1
40	13.7	82	3.9
41	13.5	83	3.7
42	13.3	84	3.5
43	13.1	85	3.3
44	13.0	86	3.2
45	12.8	87	3.0
46	12.6	88	2.8
47	12.4	89	2.7
48	12.2	90	2.5
49	12.0	91	2.4
50	11.7	92	2.3
51	11.5	93	2.2
52	11.3	94	2.1
53	11.0	95	2.0
54	10.8	96	1.9
55	10.6	97	1.8
56	10.3	98	1.7
57	10.1	99	1.6

NOTES

1. The *Repatriation Act 1920-1973* comprises the *Australian Soldiers' Repatriation Act 1920* as amended by the other Acts specified in the following table:

Act	Number and year	Date of Assent	Date of commencement
<i>Australian Soldiers' Repatriation Act 1920</i>	No. 6, 1920	19 May 1920	1 July 1920 (<i>see Gazette 1920</i> , p. 909)
<i>Australian Soldiers' Repatriation Act 1921</i>	No. 34, 1921	17 Dec 1921	17 Dec 1921
<i>Australian Soldiers' Repatriation Act 1922</i>	No. 23, 1922	18 Oct 1922	18 Oct 1922
<i>Australian Soldiers' Repatriation Act 1929</i>	No. 14, 1929	25 Mar 1929	1 June 1929 (<i>see Gazette 1929</i> , p. 1317)
<i>Australian Soldiers' Repatriation Act 1930</i>	No. 74, 1930	16 Dec 1930	1 June 1929
<i>Financial Emergency Act 1931 (a)</i>	No. 10, 1931	17 July 1931	20 July 1931 (<i>see Gazette 1931</i> , p. 1195)
<i>Financial Emergency Act (No. 2) 1931 (a)</i>	No. 47, 1931	4 Nov 1931	4 Nov 1931
<i>Australian Soldiers' Repatriation Act 1934</i>	No. 32, 1934	4 Aug 1934	S. 9: 30 Oct 1933 Remainder: Royal Assent
<i>Australian Soldiers' Repatriation Act 1935</i>	No. 58, 1935	6 Dec 1935	1 Jan 1936
<i>Financial Relief Act (No. 2) 1936 (a)</i>	No. 29, 1936	21 Sept 1936	21 Sept 1936
<i>Australian Soldiers' Repatriation Act 1936</i>	No. 67, 1936	3 Dec 1936	S. 8: 1 Jan 1936 Remainder: Royal Assent
<i>Australian Soldiers' Repatriation Act 1937</i>	No. 12, 1937	2 Sept 1937	Ss. 3-5 and 7: 16 Sept 1937 S. 6: 10 Mar 1937 Remainder: Royal Assent
<i>Australian Soldiers' Repatriation Act (No. 2) 1937</i>	No. 24, 1937	16 Sept 1937	16 Sept 1937
<i>Australian Soldiers' Repatriation Act (No. 3) 1937</i>	No. 42, 1937	13 Dec 1937	1 Jan 1938 (<i>see Gazette 1937</i> , p. 2347)
<i>Australian Soldiers' Repatriation Act 1938</i>	No. 55, 1938	10 Dec 1938	7 Jan 1939
<i>Australian Soldiers' Repatriation Act 1940</i>	No. 37, 1940	4 June 1940	S. 15: 1 July 1920 Remainder: 3 Sept 1939
<i>Australian Soldiers' Repatriation Act (No. 2) 1940</i>	No. 96, 1940	17 Dec 1940	2 Jan 1941
<i>Australian Soldiers' Repatriation Act 1941</i>	No. 49, 1941	3 Dec 1941	S. 7: 1 Nov 1941 Ss. 3-6: 18 Dec 1941 Remainder: Royal Assent
<i>Australian Soldiers' Repatriation Act 1943</i>	No. 22, 1943	1 Apr 1943	1 Apr 1943(b)
<i>Re-establishment and Employment Act 1945</i>	No. 11, 1945	28 June 1945	27 Aug 1945 (<i>see Gazette 1945</i> , p. 1859)
<i>Australian Soldiers' Repatriation Act 1946</i>	No. 49, 1946	15 Aug 1946	15 Aug 1946
<i>Commonwealth Public Service Act 1947</i>	No. 1, 1947	14 Mar 1947	14 Mar 1947
<i>Australian Soldiers' Repatriation Act 1947</i>	No. 29, 1947	11 June 1947	10 July 1947

Act	Number and year	Date of Assent	Date of commencement
<i>Australian Soldiers' Repatriation Act (No. 2) 1947</i>	No. 74, 1947	5 Dec 1947	5 Dec 1947
<i>Australian Soldiers' Repatriation Act 1948</i>	No. 39, 1948	22 Oct 1948	S. 9: 3 Jan 1949 (<i>see Gazette 1948, p. 4323</i>) Remainder: Royal Assent
<i>Australian Soldiers' Repatriation Act 1949</i>	No. 38, 1949	18 July 1949	7 July 1949
<i>Australian Soldiers' Repatriation Act 1950</i>	No. 34, 1950	12 Dec 1950	(c)
<i>Statute Law Revision Act 1950</i>	No. 80, 1950	16 Dec 1950	31 Dec 1950
<i>Repatriation Act 1951</i>	No. 31, 1951	21 Nov 1951	21 Nov 1951
<i>Repatriation Act 1952</i>	No. 58, 1952	2 Oct 1952	2 Oct 1952
<i>Repatriation Act 1953</i>	No. 69, 1953	28 Oct 1953	28 Oct 1953
<i>Repatriation Act 1954</i>	No. 31, 1954	6 Oct 1954	6 Oct 1954
<i>Repatriation Act 1955</i>	No. 39, 1955	19 Oct 1955	19 Oct 1955
<i>Repatriation Act 1956</i>	No. 68, 1956	5 Oct 1956	5 Oct 1956
<i>Repatriation Act (No. 2) 1956</i>	No. 97, 1956	15 Nov 1956	1 Sept 1957 (d)
<i>Repatriation Act 1957</i>	No. 44, 1957	15 Oct 1957	15 Oct 1957
<i>Repatriation Act 1958</i>	No. 47, 1958	30 Sept 1958	(e)
<i>Repatriation Act 1959</i>	No. 58, 1959	30 Sept 1959	30 Sept 1959
<i>Repatriation Act 1960</i>	No. 44, 1960	27 Sept 1960	Ss.3-6: 1 Mar 1961 (<i>see Gazette 1961, p. 606</i>) Remainder: Royal Assent
<i>Repatriation Act 1961</i>	No. 46, 1961	27 Sept 1961	S. 8: 29 Sept 1960 Remainder: Royal Assent
<i>Repatriation Act 1962</i>	No. 75, 1962	10 Dec 1962	10 Dec 1962
<i>Repatriation Act (No. 2) 1962</i>	No. 91, 1962	14 Dec 1962	28 May 1963 (f)
<i>Repatriation Act 1963</i>	No. 47, 1963	25 Sept 1963	(g)
<i>Repatriation Act 1964</i>	No. 62, 1964	23 Sept 1964	23 Sept 1964
<i>Repatriation Act (No. 2) 1964</i>	No. 105, 1964	20 Nov 1964	20 Nov 1964 (h)
<i>Repatriation Act 1965</i>	No. 64, 1965	6 Oct 1965	6 Oct 1965
<i>Repatriation Act 1966</i>	No. 42, 1966	30 Sept 1966	30 Sept 1966
<i>Repatriation Act 1967</i>	No. 64, 1967	10 Oct 1967	10 Oct 1967
<i>Repatriation Act 1968</i>	No. 66, 1968	27 Sept 1968	27 Sept 1968
<i>Salaries Act 1968 (j)</i>	No. 120, 1968	2 Dec 1968	2 Dec 1968 (k)
<i>Repatriation Act 1969</i>	No. 95, 1969	27 Sept 1969	27 Sept 1969
<i>Repatriation Act 1970</i>	No. 4, 1970	24 Mar 1970	24 Mar 1970
<i>Repatriation Act (No. 2) 1970</i>	No. 60, 1970	28 Sept 1970	28 Sept 1970
<i>Repatriation Act 1971</i>	No. 17, 1971	7 Apr 1971	1 Apr 1971
<i>Repatriation Act (No. 2) 1971</i>	No. 68, 1971	29 Sept 1971	29 Sept 1971
<i>Repatriation Act 1972</i>	No. 15, 1972	24 Apr 1972	24 Apr 1972
<i>Repatriation Act (No. 2) 1972</i>	No. 82, 1972	27 Sept 1972	27 Sept 1972
<i>Repatriation (Torres Strait Islanders) Act 1972</i>	No. 139, 1972	2 Nov 1972	2 Nov 1972 (l)
<i>Repatriation Act 1973</i>	No. 2, 1973	16 Mar 1973	16 Mar 1973 (m)
<i>Repatriation Act (No. 2) 1973</i>	No. 27, 1973	8 May 1973	8 May 1973
<i>Repatriation (No. 3) 1973</i>	No. 104, 1973	26 Sept 1973	26 Sept 1973
<i>Statute Law Revision Act 1973</i>	No. 216, 1973	19 Dec 1973	31 Dec 1973

- (a) The *Financial Emergency Act* 1931, the *Financial Emergency Act (No. 2)* 1931 and the *Financial Relief Act (No. 2)* 1936 were repealed by section 12 of the *Statute Law Revision Act* 1950. That section provides that the repeals do not affect the operation of any amendment made by a repealed Act or any provision made by it for the citation of an Act as so amended.
- (b) Section 2 of the *Australian Soldiers' Repatriation Act* 1943 provides as follows:
- "2. This Act (other than paragraph (a) of section thirty, except to the extent to which it relates to a service pension to a member of the Forces, and sections thirty-three, thirty-nine, forty-six, forty-seven, forty-eight and forty-nine) shall come into operation on the day on which it receives the Royal Assent, section thirty-nine shall be deemed to have come into operation on the third day of September, One thousand nine hundred and thirty-nine and paragraph (a) of section thirty, except to the extent above-mentioned, and sections thirty-three, forty-six, forty-seven, forty-eight, and forty-nine shall come into operation on a date to be fixed by Proclamation, not being a date later than six weeks after the day on which this Act receives the Royal Assent."
- The date fixed by Proclamation was 6 May 1943 (*see Gazette* 1943, p. 838).
- (c) Section 2 of the *Australian Soldiers' Repatriation Act* 1950 provides as follows:
- "2. (1) Sections six, eight, nine, ten and eleven of this Act shall come into operation on a date to be fixed by Proclamation.
- "(2) The amendments of the Principal Act effected by paragraphs (a) and (f) of section twelve and by paragraphs (a) and (c) of section thirty-three, and sections twenty, twenty-one, twenty-two, twenty-three, thirty-six, thirty-seven and fifty-five to sixty-one (inclusive) of this Act shall be deemed to have come into operation on the second day of November, One thousand nine hundred and fifty.
- "(3) Sub-section (2) of section forty-five, inserted in the Principal Act by section twenty-five of this Act, shall be deemed to have come into operation on the second day of November, One thousand nine hundred and fifty.
- "(4) The amendment of the Principal Act effected by paragraph (b) of section thirty-three of this Act shall be deemed to have come into operation on the thirteenth day of July, One thousand nine hundred and fifty.
- "(5) Sections three and forty-eight of this Act shall be deemed to have come into operation on the twenty-seventh day of June, One thousand nine hundred and fifty.
- "(6) Sections forty-two, forty-four and fifty, inserted in the Principal Act by sections twenty-four, twenty-five and twenty-eight, respectively, of this Act, shall be deemed to have come into operation on the twenty-seventh day of June, One thousand nine hundred and fifty.
- "(7) The remaining provisions of this Act shall come into operation on the day on which this Act receives the Royal Assent."
- The date fixed by Proclamation was 21 June 1951 (*see Gazette* 1951, p. 1482).
- (d) By section 2 of the *Repatriation Act (No. 2)* 1956, that Act commenced on the date of commencement of the *Repatriation (Far East Strategic Reserve) Act* 1956. The last-mentioned Act commenced on a date fixed by Proclamation. The date fixed was 1 September 1957 (*see Gazette* 1957, p. 2631).
- (e) By section 2 of the *Repatriation Act* 1958, sections 1, 2, 5, 9, 13, 16 and 18 to 22 (inclusive) of that Act commenced on the date of Royal Assent, and the other sections commenced on the date of commencement of the *Social Services Act* 1958. The date of Royal Assent was 30 September 1958. The *Social Services Act* 1958 commenced on a date fixed by Proclamation. The date fixed was 15 October 1958 (*see Gazette* 1958, p. 3383).
- (f) By section 2 of the *Repatriation Act (No. 2)* 1962, that Act commenced on the date of commencement of the *Repatriation (Special Overseas Service) Act* 1962. The last-mentioned Act commenced on a date fixed by Proclamation. The date fixed was 28 May 1963 (*see Gazette* 1963, p. 1869).
- (g) Section 2 of the *Repatriation Act* 1963 provides as follows:
- "2. (1) Subject to the next succeeding sub-section and to sub-section (2) of section twenty-four of this Act, this Act shall come into operation on the day on which it receives the Royal Assent.
- "(2) The amendment effected by paragraph (a) of section ten of this Act shall come into operation on the date fixed under sub-section (2) of section two of the *Social Services Act* 1963."
- Sub-section 2 (2) of the *Social Services Act* 1963 was proclaimed to commence on 7 November 1963 (*see Gazette* 1963, p. 3863).

- (h) By sub-section 2 (2) of the *Repatriation Act (No. 2) 1964*, the amendment made by section 19 (1)(b) of that Act commenced on a date fixed by Proclamation. The date fixed was 6 August 1965 (*see Gazette 1965*, p. 3401).
- (j) The *Salaries Act 1968* was repealed by section 7 of the *Statute Law Revision Act 1973*. That section provides that the repeal does not affect the operation of any amendment made by the repealed Act or any provision made by it for the citation of an Act as so amended.
- (k) By section 2 of the *Salaries Act 1968*, the amendments made by that Act were deemed to have taken effect on 1 December 1968.
- (l) By section 2 of the *Repatriation (Torres Strait Islanders) Act 1972*, that Act commenced on the date of commencement of the *Native Members of the Forces Benefits Act 1972*. The last-mentioned Act commenced on the date of Royal Assent.
- (m) Sections 2 and 24 of the *Repatriation Act 1973* provide as follows:
 - "2. Subject to section 24, this Act shall come into operation on the day on which it receives the Royal Assent."
 - "24. The amendments made by sections 20, 21 and 23—
 - (a) shall be deemed to have come into operation on the seventh day of December, 1972; and
 - (b) apply in relation to an instalment of a pension falling due on that date and to all subsequent instalments."

All the sections, other than sections 1 to 12, of the *Australian Soldiers' Repatriation Act 1920-1941*, as amended by the *Australian Soldiers' Repatriation Act 1943*, were re-numbered by sub-section 51 (1) of, and the First Schedule to, the last-mentioned Act. Sub-section 51 (2) of that Act provides as follows:

"(2) Any reference in any law of the Commonwealth or of any Territory of the Commonwealth, or in any instrument or document, to any section of the Principal Act shall, if that section has been re-numbered in pursuance of this section, be read as a reference to that section as so re-numbered."

The *Interim Forces Benefits Act 1947-1973* provides for certain benefits for members of the Interim Forces by reason of their service with those Forces.

The *Repatriation (Far East Strategic Reserve) Act 1956-1973* provides for benefits for certain members of the Defence Force who have served in Malaysia with, or in connexion with, the British Commonwealth Far East Strategic Reserve.

The *Repatriation (Special Overseas Service) Act 1962-1973* provides for benefits for certain members of the Defence Force who have served on special service outside Australia.

The *Repatriation (Torres Strait Islanders) Act 1972* makes provision for repatriation purposes with respect to certain Torres Strait Islanders, and certain Aboriginal natives of Australia, who served in the Defence Force during the war and with respect to residents of the Torres Strait Islands.

- 2.—Ss. 9, 15 (11), 59 and 66—By section 15 of, and Schedule 4 to, the *Remuneration and Allowances Acts 1973*, the rate per annum of the salary applicable to the office of member (other than the Chairman) of the Repatriation Commission is \$17,043, that of Chairman of a War Pensions Entitlement Appeal Tribunal \$17,043, that of Chairman of a War Pensions Assessment Appeal Tribunal \$14,633, that of member (other than the Chairman) of a War Pensions Entitlement Appeal Tribunal \$12,974, that of Chairman of a Repatriation Board \$10,824 and that of member (other than the Chairman) of a Repatriation Board \$9,961.
- 3.—S. 14 (2)—By Proclamation dated 24 January 1962, it was notified that as from 15 February 1962, for the purposes of the administration of the Act, all that portion of the State of New South Wales being the County of Yancowinna is attached to the State of South Australia; *see Gazette 1962*, p. 439.

4. Section 22 provided for the appointment of officers of the Repatriation Commission; *see* Division 9C of Part III of the *Public Service Act* 1922-1973.
5. The definition of "Unmarried member of the Forces" in section 23 was inserted by paragraph 4 (1) (g) of the *Repatriation Act* 1973. Sub-section 4 (2) of that Act provides as follows:
 "(2) The amendment made by paragraph (g) of sub-section (1) does not affect a pension that was being paid immediately before the commencement of this section and that pension continues to be payable as if that amendment had not been made."
- 6.—S. 23—By Proclamation published on 31 August 1921, that day, at the hour of midnight reckoned according to Greenwich standard time, was deemed to be the date of the termination of the war that commenced on 4 August 1914; *see Gazette* 1921, p. 1251.
7. Section 24A was substituted by sub-section 5 (1) of the *Repatriation Act* 1973. Sub-section 5 (2) of that Act provides as follows:
 "(2) Proceedings taken by virtue of the section repealed by sub-section (1) that were pending immediately before the commencement of this section may be continued as if that section had not been repealed."
- 8.—S. 63 (1)—Now cited as the *Public Service Act* 1922-1973.
- 9.—S. 83 (1)—By section 28 of the *War Gratuity Act* 1945-1966, any war gratuity or any interest credited or paid to any person in pursuance of that Act is not to be deemed to be property or income for the purposes of the Repatriation Act.
10. Sub-section 86 (1) was substituted by sub-section 9 (1) of the *Repatriation Act* 1973. Sub-section 9 (2) of that Act provides as follows:
 "(2) Where a service pension that was being paid immediately before the commencement of this section would, but for this sub-section, cease to be payable by virtue of the amendment made by sub-section (1), that pension continues to be payable as if that amendment had not been made, but, unless that pension is payable by reason that the pensioner is suffering from pulmonary tuberculosis, the rate of that pension shall not, at any time, exceed the rate at which that pension was being paid immediately before the day on which the *Social Services Act* 1973 received the Royal Assent."
11. Section 92 was substituted by section 6 of the *Repatriation Act (No. 2)* 1973. Section 10 of that Act provides as follows:
 "10. Where, immediately before the commencement of this Act—
 (a) a service pensioner was absent from Australia and its Territories; and
 (b) the Commission was satisfied that the absence was of a temporary nature within the meaning of section 92 of the Principal Act,
 the payment of service pension during the period of that absence may continue to be made to the pensioner as if section 92 of the Principal Act had not been repealed."
12. Section 98A was amended by sub-section 13 (1) of the *Repatriation Act (No. 2)* 1972. Sub-sections 13 (2) and (3) of that Act provide as follows:
 "(2) Where, on the relevant pension pay day for the purposes of section 24 of this Act—

- (a) a member of the Forces is in receipt of a service pension;
- (b) the wife of the member is in receipt of a service pension by reason of being his wife and is not living apart from the member; and
- (c) the member is also in receipt of an allowance by way of supplementary assistance under the *Repatriation Act* 1920-1972,

the wife shall, by force of this sub-section, be deemed—

- (d) to have been granted an allowance by way of supplementary assistance at a rate ascertained by the Commission in accordance with section 98A of the *Repatriation Act* 1920-1972; and
- (e) to be entitled to be paid the first fortnightly instalment of the allowance so granted on that pay day.

“(3) An allowance payable under the last preceding sub-section may be cancelled or suspended, and the rate at which it is payable may be increased or reduced, in accordance with the *Repatriation Act* 1920-1972.”

13. Sub-paragraph 99 (2) (b) (viii) was added by paragraph 15 (1) (b) of the *Repatriation (Torres Strait Islanders) Act* 1972. Sub-section 15 (2) of that Act provides as follows:

“(2) Where a person was immediately before the commencement of this Act, a dependant, for the purposes of regulations in force under the *Native Members of the Forces Benefits Act* 1957-1968, of another person who is a Torres Strait Islands member for the purposes of Part II of this Act, then, on the commencement of this Act, that first-mentioned person shall, unless and until the Repatriation Commission otherwise determines, be deemed to be a person whom the Repatriation Commission has, by instrument in writing, determined, for the purposes of sub-paragraph (viii) of paragraph (b) of sub-section (2) of section 99 of the *Repatriation Act* 1920-1972, to be a person who is dependent on that other person.”

- 14.—Ss. 102, 107, 107D, 107G and 108 (2) and (3)—Section 21 of the *Repatriation Act* 1952 provides as follows:

“21. A person who, before the commencement of this Act, satisfied the Commission that he or she was resident in Australia or a Territory of the Commonwealth within the period of twelve months immediately preceding his or her appointment, enlistment or enrolment in the naval, military or air forces, or a service auxiliary to any of those forces, of a part of the Queen’s dominions, other than the Commonwealth, shall be deemed to have been domiciled in Australia or a Territory of the Commonwealth for the purposes of section one hundred and two, one hundred and seven, one hundred and seven D or one hundred and seven G, or paragraph (c) or (d) of sub-section (2) or paragraph (d) of sub-section (3) of section one hundred and eight, as the case requires, of the Principal Act as amended by this Act.”

- 15.—Divs. 8 and 9—Section 5 of the *Repatriation (Far East Strategic Reserve) Act* 1956-1973 provides as follows:

“5. Notwithstanding anything contained in the Repatriation Act, Divisions 8 and 9 of Part III of that Act do not apply to or in relation to members of the Forces in respect of service which constitutes Malayan service for the purposes of this Act.”

- 16.—Pt. V—As to the interpretation of certain words and phrases in this Part, see section 108.

17. Section 119 was substituted by sub-section 22 (1) of the *Repatriation Act* 1953. Sub-section 22 (2) of that Act provides as follows:

“(2) An arrangement in force under section one hundred and nineteen of the Principal Act at the date of commencement of this section continues in force notwithstanding the repeal of that section effected by the last preceding sub-section.”

18. Section 120D was inserted by sub-section 19 (1) of the *Repatriation Act (No. 3) 1973*. Sub-section 19 (2) of that Act provides as follows:

“(2) A hospital or other institution that was, immediately before the commencement of this section, controlled and administered by the Commission shall be deemed to have been established under the section inserted in the Principal Act by sub-section (1) and that section applies in relation to that hospital or other institution accordingly.”

19. Paragraph 124 (1) (aa) was inserted by paragraph 19 (1) (a) of the *Repatriation Act (No. 2) 1964*. Sub-section 19 (2) of that Act provides as follows:

“(2) A regulation made, or purporting to have been made, under the *Repatriation Act 1920*, or under that Act as amended at any time, and in force, or purporting to be in force, immediately before the date of commencement of this Act, being a regulation that makes provision for assistance or benefits to persons referred to in paragraph (aa) inserted by paragraph (a) of the last preceding sub-section, shall be deemed to be, and to have been, as valid and effectual as it would be, or have been, if that last-mentioned paragraph had come into operation on the date on which the regulation was made or purported to be made.”

20. Sub-sections 124 (1AA), (1AB) and (1AC) were inserted by sub-section 22 (1) of the *Repatriation Act (No. 3) 1973*. Sub-section 22 (2) of that Act provides as follows:

“(2) Regulations providing for medical treatment that purported to have been made before the commencement of this Act shall be deemed to have been as validly made as they would have been if the amendments made by this Act had been in force when the regulations purported to have been made.”

Section 29 of that Act provides as follows:

“29. Regulations providing for benefits and assistance to persons referred to in sub-section 124 (1AA) of the Principal Act as amended by this Act may be made as if the amendments made by this Act had come into operation on 7 December 1972 and regulations so made may provide that benefits or assistance purporting to have been granted to those persons before the commencement of this Act that would have been validly granted if those regulations had come into force on that date shall be deemed to have been validly granted.”

21. Sub-section 124 (2) was added by sub-section 15 (1) of the *Repatriation Act 1956*. Sub-sections 15 (2), (3) and (4) of that Act provide as follows:

“(2) Regulation nine of the Repatriation Regulations shall be deemed to have been valid and effectual at all times before the commencement of this Act and shall continue to apply to and in relation to every trust continued in existence by the next succeeding sub-section.

“(3) Every trust which, by reason of the operation of the last preceding sub-section, is deemed to have been subsisting immediately before the commencement of this Act shall continue in existence until the commencement of regulations made by virtue of sub-section (2) of section one hundred and twenty-four of the Principal Act, as amended by this section.

“(4) Regulations made by virtue of sub-section (2) of section one hundred and twenty-four of the Principal Act, as amended by this section, may provide for the further continuation of trusts to which the last preceding sub-section applies, and any trust so continued shall be deemed to have been validly created under those regulations.”

REPATRIATION (FAR EAST STRATEGIC RESERVE) ACT 1956-1973

TABLE OF PROVISIONS

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1. Short title
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An Act to provide Benefits for certain Members of the Defence Force who have served in Malaya with, or in connexion with, the British Commonwealth Far East Strategic Reserve, and for purposes connected therewith.

- | | |
|--|--|
| <p>1. This Act may be cited as the <i>Repatriation (Far East Strategic Reserve) Act 1956-1973</i>.¹</p> | <p>Short title.
Short title amended; No. 32, 1918, s. 2.</p> |
| <p>2. This Act shall come into operation on a date to be fixed by Proclamation.¹</p> | <p>Commencement.</p> |
| <p>3. (1) In this Act, unless the contrary intention appears—
 “adopted”, in relation to a child, means adopted in accordance with the law of a State, a Territory or another country;
 “Board” means a Repatriation Board constituted under the Repatriation Act;
 “dependant” means, in relation to a male member of the Forces, a dependant specified in paragraph (b) of sub-section (2) of section seven of this Act and, in relation to a female member of the Forces, a dependant specified in paragraph (c) of that sub-section;
 “Malaya” means the Federation of Malaya and the Colony of Singapore;</p> | <p>Interpretation.
Sub-section (1) amended by No. 107, 1964, s. 3; No. 81, 1972, s. 3; No. 4, 1973, s. 3; and No. 216, 1973, s. 3.</p> |

“Malayan service” means, in relation to a member of the Forces, the service of the member, after the commencement of this Act, while—

- (a) a member of, or attached to, a body, unit or detachment of the Naval, Military or Air Forces at a time when it was allotted for duty in Malaya as part of, or in association with, the Australian Contingent, British Commonwealth Far East Strategic Reserve; or
- (b) allotted for duty in Malaya, in connexion with the Far East Strategic Reserve, with any Naval, Military or Air Forces of a part of the Queen’s dominions other than the Commonwealth,

but does not include service as a member of the Naval Forces in the complement of a sea-going vessel;

“member” or “member of the Forces” means a person who, while a member of the Defence Force, has served on Malayan service;

“pension” means a pension under this Act, and includes the amounts and allowances specified in the Schedules to the Repatriation Act as applied by section seven of this Act;

“port” includes airport;

“the Commission” means the Repatriation Commission established by the Repatriation Act;

“the Far East Strategic Reserve” means the British Commonwealth Far East Strategic Reserve;

“the Repatriation Act” means the *Repatriation Act 1920-1956*.

(2) For the purposes of this Act, the Malayan service of a member of the Forces shall be deemed to have commenced—

- (a) if he was in Australia at the time when he was allotted for duty of the kind referred to in paragraph (a) or (b) of the definition of “Malayan service” in the last preceding sub-section, whichever is applicable—at the time of his departure from the last port of call in Australia by reason of the allotment or at the time of the commencement of this Act, whichever was the later; or
- (b) if he was outside Australia at the time when he was so allotted—at the time of the allotment or at the time of the commencement of this Act, whichever was the later.

(3) For the purposes of this Act—

- (a) where a member of the Forces has returned to Australia, his Malayan service shall, subject to the next succeeding paragraph, be deemed to have ended at the time of his arrival at the first port of call in Australia; and
- (b) where a member of the Forces has been allotted for duty in an area outside Australia other than Malaya and has proceeded to that area, before or after the allotment, without first returning to

Australia, his Malayan service shall be deemed to have ended at the time of his arrival in that area or, if he was in that area at the time of the allotment, at that time.

(3A) Notwithstanding the preceding provisions of this section, the Malayan service of a member of the Forces does not include service after the commencement of the *Repatriation (Special Overseas Service) Act 1962*.

Inserted by
No. 90, 1962,
s. 3.

(4) In this Act, unless the contrary intention appears, “child”, “member of the family”, “parents”, “step-daughter”, “step-son”, “widow” and “wife” have the same respective meanings as in Part III of the Repatriation Act except that, for the purposes of this sub-section, a reference in that Part to a member of the Forces shall be read as a reference to a member of the Forces for the purposes of this Act.

Substituted by
No. 4, 1973, s. 3.

4. This Act extends to all the Territories.

Extension of
Act to
Territories.
Amended by
No. 216, 1973,
s. 3.

5. Notwithstanding anything contained in the Repatriation Act, Divisions 8 and 9 of Part III of that Act do not apply to or in relation to members of the Forces in respect of service which constitutes Malayan service for the purposes of this Act.

Divisions 8
and 9 of Part
III of
Repatriation
Act not to
apply to
Malayan
service of
members of
the Forces.

6. (1) Upon the incapacity or death of a member of the Forces whose incapacity or death has resulted from an occurrence that happened during the member’s Malayan service (including the contracting of a disease during that service), the Commonwealth is, subject to this Act, liable to pay to the member, or the dependants of the member, or both, as the case may be, pensions in accordance with Division 1 of Part III of the Repatriation Act as applied by the next succeeding section.

Liability of
the
Common-
wealth to
pay pensions
to members
of the
Forces.

(2) Subject to the next succeeding sub-section, the Commonwealth is not liable under the last preceding sub-section if the incapacity or death of a member—

- (a) was due to the member’s serious default or wilful act;
- (b) arose from intentionally self-inflicted injuries; or
- (c) arose from, or from an occurrence that happened during the commission of, a serious breach of discipline by the member.

(3) Where the death of a member is, in the opinion of the Commission, due to venereal disease contracted during Malayan service, the last preceding sub-section does not affect the liability of the Commonwealth to pay pensions to the widow and children, or widower and children, as the case may be, of the member.

(4) Where the origin of the cause of an incapacity or the death of a member of the Forces existed before the commencement of the member's Malayan service and, in the opinion of the Commission or a Board—

- (a) the incapacity from which the member is suffering was contributed to in any material degree, or has been aggravated, by the conditions of the member's Malayan service or the member's death has been contributed to in any material degree by those conditions; and
- (b) neither the incapacity or death, nor the origin of the cause of the incapacity or death, was due to the member's serious default or wilful act,

the incapacity or death shall be deemed to have resulted from an occurrence that happened during the member's Malayan service.

(5) A pension is not payable to or in relation to a member for any period before the termination of the service in respect of which the liability of the Commonwealth to pay pension arises.

(6) Where a pension is granted, the Commission or a Board may, subject to this Act, approve of the payment of the pension as from a date not more than three months before the date of lodgment of the claim for pension.

(7) The right conferred by this Act on a member of the Forces to payment by way of pension in respect of an incapacity, or on a person other than the member to payment by way of pension in respect of the death or incapacity of a member, is in substitution for the right (if any) of that member or that other person to a payment in respect of the incapacity, or the incapacity or death of the member, as the case may be, to which, but for this sub-section, he would have been entitled under the *Naval Defence Act 1910-1952*, the *Defence Act 1903-1956* or the *Air Force Act 1923-1956*, and any such right of the member or other person under any of those Acts is, by force of this sub-section, determined.

Amended by
No. 107, 1964,
s. 4.

(8) If the member or a dependant of the member is entitled under—

- (a) the law of a country other than the Commonwealth that is or has been a part of the dominions of the Crown; or
- (b) the law of a State,

to receive any payment in respect of incapacity or death resulting from employment in connexion with warlike operations in which the Sovereign is or has been engaged, the rate or the amount of that payment shall be taken into account in assessing the rate of pension payable under this Act, so that the total payments to the member, or the dependants of the member, or both, as the case may be, shall not exceed the total payments to which they respectively or collectively would be entitled if eligible solely under this Act.

7. (1) Subject to this Act, the provisions of Divisions 1 to 4 (inclusive) of Part III (other than section twenty-four, sub-sections (3) and (4) of section thirty-seven and sections forty-two, forty-four and fifty-four) and sections one hundred and fourteen, one hundred and fourteen A, one hundred and nineteen, one hundred and twenty A and one hundred and twenty B of, and the Schedules to, the Repatriation Act extend to and in relation to—

Extension of certain provisions of Repatriation Act.

- (a) members of the Forces within the meaning of this Act; and
- (b) the dependants of those members.

(2) In the application, by virtue of the last preceding sub-section, of the provisions of the Repatriation Act specified in that sub-section—

Amended by No. 81, 1972, s. 4; and No. 4, 1973, s. 4.

- (a) a reference to a member of the Forces or to a member shall be read as a reference to a member of the Forces within the meaning of this Act;
- (b) a reference to dependants shall be read, in relation to male members of the Forces, as a reference to—
 - (i) the wife or widow of a member;
 - (ii) the widowed mother of an unmarried member;
 - (iii) a child of a member of the Forces;
 - (iv) a parent of a deceased member who is at any time after the death of the member without adequate means of support;
 - (v) any other member of the family of a member who was wholly or partly dependent upon his earnings at any time during his Malayan service;
 - (vi) an ex-nuptial child of a son or daughter of a member, being an ex-nuptial child wholly or partly dependent upon the earnings of the member at any time during the member's Malayan service; and
 - (vii) a parent or grandparent of a member who is an ex-nuptial child, being a parent or grandparent wholly or partly dependent upon the earnings of the member at any time during his Malayan service;
- (c) a reference to dependants shall be read, in relation to female members of the Forces, as a reference to—
 - (i) the husband or widower of a member who was married to the member before or during her Malayan service;
 - (ii) a child of a member of the Forces; and
 - (iii) such other members of the family of a member, or, in the case of a member who is an ex-nuptial child, such of the parents or grandparents of the member, as were wholly or partly dependent upon her earnings at the time of the commencement of, or at any time during, her Malayan service;

- (d) a reference to war service shall be read as a reference to Malayan service; and
- (e) a pension under this Act shall be deemed to be a pension under Division 1 of Part III of the Repatriation Act.

Added by No. 4,
1973, s. 4.

(3) Section 120C of the Repatriation Act applies in relation to a pension, allowance or other benefit under this Act or the regulations as if it were a pension, allowance or other benefit under that Act.

Pensions
payable to
certain
dependent
females.

8. (1) Where—

- (a) a person was, both at the time of the commencement of the Malayan service of a member of the Forces and at the time of the happening, during that service, of an occurrence (including the contracting of a disease) that resulted in his death or incapacity, recognized as the wife of the member, though not legally married to him; and
- (b) the Commission is satisfied that that person was wholly or partly dependent upon the earnings of the member at those times,

a pension under this Act may be paid to that person at a rate not exceeding the rate of pension that would have been payable to her under this Act if she had been legally married to the member.

(2) A pension may be paid under this section in addition to any pension payable to the wife or widow, as the case may be, of the member.

Pension to
divorcee of
member.

9. Where, at the time of the happening during a member's Malayan service of an occurrence (including the contracting of a disease) that resulted in his incapacity or death, a person who had been the wife of the member but had been divorced was dependent upon alimony payable by the member, a pension under this Act may, on discontinuance of the payment of the alimony, be paid to that person at a rate equal to—

- (a) the amount of the alimony; or
- (b) the rate of pension which would have been payable to her if she had not been divorced,

whichever is the less.

Limitations
on pensions
to
dependants
of female
members.

10. (1) A pension under this Act shall not be granted or continued to a dependant of a female member of the Forces, being a dependant who is not a child of the member, unless—

- (a) where the pension is in respect of the incapacity of the member—the member is being paid, or, in the case of a deceased member, was immediately before her death being paid, a pension at a rate not less than fifty per centum of the rate for total incapacity and the dependant is wholly or substantially dependent upon the member or would, but for the death or incapacity of the member, be so dependent; or

- (b) where the pension is in respect of the death of the member—the dependant would, but for the death of the member, be so dependent,

and, where the dependant is the husband of the member, unless the husband is, by reason of physical or mental incapacity, unable to earn a livelihood, is without adequate means of support and is not separated from the member.

(2) A pension under this Act shall not be granted or continued to a dependant of a female member of the Forces, being a dependant who is a child of the member, unless the member is dead and the child is without adequate means of support or, if the member is not dead, unless—

- (a) the father or step-father of the child—
 - (i) is, by reason of physical or mental incapacity, unable to earn a livelihood and is without adequate means of support; or
 - (ii) is dead or is separated or divorced from, or has deserted, the member; and
- (b) the child is wholly or substantially dependent upon the member and is without adequate means of support.

11. Where the incapacity or death of a member was, or the incapacity and death of a member were both, attributable partly to the Malayan service of the member and partly to the service of the member in or in connexion with—

Maximum rates of pensions where death, &c., attributable partly to other service.

- (a) the present war within the meaning of section twenty-three of the Repatriation Act;
- (b) the war within the meaning of section one hundred of that Act; or
- (c) the warlike operations in Korea or Malaya before the commencement of this Act,

the Commonwealth is not liable to pay to a person, in respect of the incapacity or death, pensions at rates which, in the aggregate, exceed the rate at which pension would be payable to that person if the incapacity or death, or both the incapacity and death, as the case may be, were attributable wholly to the Malayan service of the member.

12. (1) The Commission may, with the approval of the Minister, by writing under its seal delegate any of its powers and functions under this Act (except this power of delegation), or under the provisions of the Repatriation Act as applied by section seven of this Act, in relation to a matter or class of matters, or to a State or Territory, so that the delegated powers and functions may be exercised by the delegate with respect to the matter or class of matters, or with respect to the State or Territory, specified in the instrument of delegation.

Delegation.
Sub-section (1) amended by No. 216, 1973, s. 3.

(2) A delegation under the last preceding sub-section is revocable in writing at will and does not prevent the exercise of a power or function by the Commission.

Regulations.
Sub-section (1)
amended by
No. 90, 1962,
s. 4; No. 93,
1966, s. 3; and
No. 81, 1972,
s. 5.

13.² (1) 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 and, in particular, prescribing matters for or in relation to—

- (a) the granting of assistance and benefits to—
 - (i) members of the Forces;
 - (ii) children (including step-children, adopted children and ex-nuptial children) of members of the Forces, whether children as defined by section three of this Act or not;
 - (iii) dependants (as defined by the regulations), other than children, of members of the Forces; and
 - (iv) persons to whom section eight of this Act applies;
- (aa) the granting of assistance by way of payment of funeral expenses in respect of any of the persons referred to in the last preceding paragraph; and
- (b) prescribing penalties not exceeding a fine of Fifty dollars or imprisonment for three months for offences against the regulations.

Inserted by
No. 107, 1964,
s. 5.

(1A) Subject to sub-section (1C) of this section, where medical treatment is provided to a person under the regulations—

- (a) in circumstances in which the regulations provide for payment in accordance with this sub-section; or
- (b) in any case in which, before the treatment is provided, the Commission, for special reasons, determines that payment should be made in accordance with this sub-section and notifies the person accordingly,

the person is liable to pay to the Commonwealth, as a debt due to the Commonwealth, such reasonable charges in respect of the treatment as the Commission notifies to him in writing.

Inserted by
No. 107, 1964,
s. 5.

(1B) Regulations made in pursuance of paragraph (a) of the last preceding sub-section may provide for payment in accordance with that sub-section in any case in which—

- (a) a person (whether before, during or after the provision of the treatment) recovers or receives; or
- (b) the Commission or a delegate of the Commission (whether before, during or after the provision of the treatment) notifies a

person that the person is, in the opinion of the Commission or the delegate, as the case may be, entitled to recover or receive, the whole or a part of the cost of the treatment, by way of damages or compensation, from another person.

(1C) Sub-section (1A) of this section does not apply in relation to medical treatment in respect of a condition giving rise to an incapacity in respect of which the Commonwealth—

Inserted by
No. 107, 1964,
s. 5.

- (a) is liable to pay pension under this Act to the person;
- (b) would be so liable if the incapacity were great enough to warrant a pension assessment; or
- (c) would be so liable but for sub-section (8) of section six of this Act.

(2) The regulations may make provision for or in relation to—

- (a) the payment of any pension or allowance to a person on behalf of, or as trustee of, the person to whom the pension or allowance is payable under this Act where the Commission or a delegate of the Commission is satisfied that, having regard to the age, infirmity, ill-health or improvidence of the person to whom the pension or allowance is payable under this Act, it is expedient that payment of the pension or allowance should be so made, or where the person to whom the pension or allowance is payable under this Act consents to payment of the pension or allowance being so made; and
- (b) the disbursement or accumulation of a pension or allowance so paid for the benefit of the person to whom it is payable under this Act or of members of the family of that person or of persons dependent on him.

(3) In this section, “medical treatment” means any treatment with a view to restoring a person to, or maintaining a person in, physical or mental health or alleviating suffering, and includes—

Added by
No. 107, 1964,
s. 5.

- (a) any accommodation, nursing care or transport in relation to such treatment; and
- (b) the supply, renewal and repair of artificial replacements and surgical and other aids and appliances.

NOTES

1. The *Repatriation (Far East Strategic Reserve) Act 1956-1973* comprises the *Repatriation (Far East Strategic Reserve) Act 1956* as amended by the other Acts specified in the following table:

Act	Number and year	Date of Assent	Date of commencement
<i>Repatriation (Far East Strategic Reserve) Act 1956</i>	No. 91, 1956	15 Nov 1956	1 Sept 1957 (<i>see Gazette 1957, p. 2631</i>)
<i>Repatriation (Far East Strategic Reserve) Act 1962</i>	No. 90, 1962	14 Dec 1962	28 May 1963 (a)
<i>Repatriation (Far East Strategic Reserve) Act 1964</i>	No. 107, 1964	20 Nov 1964	S. 5: 6 Aug 1965 (<i>see Gazette 1965, p. 3401</i>) Remainder: Royal Assent 1 Dec 1966
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	No. 93, 1966	29 Oct 1966	1 Dec 1966
<i>Repatriation (Far East Strategic Reserve) Act 1972</i>	No. 81, 1972	27 Sept 1972	27 Sept 1972
<i>Repatriation (Far East Strategic Reserve) Act 1973</i>	No. 4, 1973	16 Mar 1973	16 Mar 1973
<i>Statute Law Revision Act 1973</i>	No. 216, 1973	19 Dec 1973	31 Dec 1973

(a) By section 2 of the *Repatriation (Far East Strategic Reserve) Act 1962* that Act commenced on the day on which the *Repatriation (Special Overseas Service) Act 1962* commenced. The last-mentioned Act commenced on a date fixed by Proclamation. The date fixed was 28 May 1963 (*see Gazette 1963, p. 1869*).

2. Section 13 was amended by section 5 of the *Repatriation (Far East Strategic Reserve) Act 1964*. Section 6 of that Act provides as follows:

“6. Where assistance or a benefit granted to a person on or after the first day of September, One thousand nine hundred and fifty-seven, and before the eleventh day of May, One thousand nine hundred and sixty-three, is of a kind that could validly have been granted to the person on that last-mentioned date under regulations under the *Repatriation (Far East Strategic Reserve) Act 1956-1962* in force on that last-mentioned date, then, for the purpose of validating the grant of the assistance or benefit—

- (a) those regulations shall be deemed to have been in force on the date on which the grant was made; and
- (b) the grant shall be deemed to have been made in accordance with those regulations.”

REPATRIATION (SPECIAL OVERSEAS SERVICE) ACT 1962-1973

TABLE OF PROVISIONS

Section

1. Short title
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11. Maximum rates of pensions where death, &c., attributable partly to other service
12. Evidence
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An Act to provide Benefits for certain Members of the Defence Force who have served outside Australia, and for purposes connected therewith.

Title amended
by No. 110,
1965, s. 3.

1. This Act may be cited as the *Repatriation (Special Overseas Service) Act 1962-1973*.¹

Short title.
Short title
amended;
No. 32, 1918,
s. 2.

2. This Act shall come into operation on a date to be fixed by Proclamation.¹

Commence-
ment.

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

“adopted”, in relation to a child, means adopted in accordance with the law of a State or a Territory of the Commonwealth or of another country;

“Board” means a Repatriation Board constituted under the Repatriation Act;

“member” or “member of the Forces” means a person who, while a member of the Defence Force, has served on special service;

“pension” means a pension under this Act, and includes the amounts and allowances specified in the Schedules to the Repatriation Act as applied by section seven of this Act;

“port” includes airport;

“special duty”, in relation to a special area, means duty relating directly to the warlike operations or state of disturbance by

Interpreta-
tion.

Sub-section (1)
amended by
No. 108, 1964,
s. 3; No. 110,
1965, s. 4;
No. 78, 1968,
s. 3; No. 80,
1972, s. 3; and
No. 3, 1973, s. 3.

reason of which the declaration in respect of the area has been made by regulations in accordance with section four of this Act;

“special service”, in relation to a person, means service of the person as a member of the Naval, Military or Air Forces during a period comprising—

- (a) a period when he is outside Australia and he or his unit is allotted for special duty in a special area; and
- (b) if, at the end of that period, he is outside Australia and travels to a place other than the place where he is at the end of that period, being a place to which he or his unit is allotted for duty other than special duty—the period commencing at the end of that period and ending at the time when—
 - (i) he arrives at that other place;
 - (ii) he commences a further period of special service; or
 - (iii) he ceases to be outside Australia,
 whichever first occurs;

“the Commission” means the Repatriation Commission constituted under the Repatriation Act;

“the Repatriation Act” means the *Repatriation Act* 1920-1962;

“unit”, in relation to a person, means a body, contingent or detachment of the Naval, Military or Air Forces of which he is a member or to which he is attached.

Inserted by
No. 110, 1965,
s. 4.

(1A) For the purposes of the definition of “special service” in the last preceding sub-section—

- (a) a person who travels from a place in Australia to a place outside Australia shall be deemed to have departed from Australia when he departs from the last port of call in Australia; and
- (b) a person who travels to Australia from a place outside Australia shall be deemed to have arrived in Australia when he arrives at the first port of call in Australia.

Substituted by
No. 3, 1973, s. 3.

(2) In this Act, unless the contrary intention appears, “child”, “member of the family”, “parents”, “step-daughter”, “step-son”, “widow” and “wife” have the same respective meanings as in Part III of the Repatriation Act except that, for the purposes of this sub-section, a reference in that Part to a member of the Forces shall be read as a reference to a member of the Forces for the purposes of this Act.

Added by
No. 78, 1968,
s. 3.

(3) Where a member of the Naval, Military or Air Forces who is serving on special service—

- (a) returns to Australia in accordance with the Rest and Recuperation arrangements of the Naval, Military or Air Forces;
- (b) returns to Australia on emergency or other leave granted on compassionate grounds;

- (c) returns to Australia on duty; or
- (d) returns to Australia for the purpose of receiving medical or surgical treatment as directed by the medical authorities of the Naval, Military or Air Forces,

so much of the period of service of the member in Australia after his return as does not exceed fourteen days shall, for the purposes of the definition of "special service" in sub-section (1) of this section, be deemed to be a period when the member is outside Australia.

4. (1) The regulations may declare that, by reason of warlike operations, or a state of disturbance, in or affecting a specified area outside Australia, that area shall become, on a specified date, a special area for the purposes of this Act or shall be deemed to have become, on a specified date (which may be a date before the commencement of the regulations or before the commencement of this Act), a special area for the purposes of this Act.

Special areas.

(2) The regulations may declare that a special area shall, on and after a specified date, be no longer a special area for the purposes of this Act.

5. This Act extends to all the Territories of the Commonwealth.

Extension of Act to Territories.

6. (1) Upon the incapacity or death of a member of the Forces whose incapacity or death has resulted from an occurrence that happened during a period of special service of the member (including the contracting of a disease during such a period), the Commonwealth is, subject to this Act, liable to pay to the member, to the dependants of the member or to both, as the case may be, pensions in accordance with Division 1 of Part III of the Repatriation Act as applied by the next succeeding section.

Liability of Commonwealth to pay pensions to members of the Forces.

(2) In the application of the last preceding sub-section in relation to, or to matters arising out of, an incapacity or the death of a member, a reference to the dependants of a member of the Forces shall be read as a reference to—

(a) in the case of a male member—

- (i) the wife or widow of the member;
- (ii) the widowed mother of the member, if the member is unmarried;
- (iii) a child of the member;
- (iv) if the member is deceased, a parent of the member who is at any time after the death of the member without adequate means of support;
- (v) any other member of the family of the member who was wholly or partly dependent upon his earnings at any time during the relevant period of special service;

- (vi) an ex-nuptial child of a son or daughter of the member, being an ex-nuptial child wholly or partly dependent upon the earnings of the member at any time during the relevant period of special service; and
 - (vii) where the member is an ex-nuptial child, the parent or grandparent of the member, being a parent or grandparent wholly or partly dependent upon the earnings of the member at any time during the relevant period of special service; and
- (b) in the case of a female member—
- (i) the husband or widower of the member if he was married to the member before or during the relevant period of her special service;
 - (ii) a child of the member; and
 - (iii) such other members of the family of the member, or, if the member is an ex-nuptial child, such of the parents or grandparents of the member as were wholly or partly dependent upon her earnings at the time of the commencement of, or at any time during, the relevant period of special service.

(3) Subject to the next succeeding sub-section, the Commonwealth is not liable under this section if the incapacity or death of a member—

- (a) was due to the member's serious default or wilful act;
- (b) arose from intentionally self-inflicted injuries; or
- (c) arose from, or from an occurrence that happened during the commission of, a serious breach of discipline by the member.

(4) Where the death of a member is, in the opinion of the Commission, due to venereal disease contracted during the member's special service, the last preceding sub-section does not affect the liability of the Commonwealth to pay pensions to the widow, widower or children of the member.

(5) Where the origin of the cause of an incapacity or of the death of a member of the Forces existed before the commencement of a period of special service of the member and, in the opinion of the Commission or a Board—

- (a) the incapacity from which the member is suffering was contributed to in any material degree, or has been aggravated, by the conditions of that special service or the member's death has been contributed to in any material degree by those conditions; and
- (b) neither the incapacity or death, nor the origin of the cause of the incapacity or death, was due to the member's serious default or wilful act,

the incapacity or death shall be deemed to have resulted from an occurrence that happened during that period of special service.

(6) Where the incapacity of a member of the Forces has resulted from an occurrence that happened during a period of special service of the member a pension is not payable in respect of that incapacity for any period before the termination of that period of special service.

(7) Where a pension is granted, the Commission or a Board may, subject to this Act, approve of the payment of the pension as from a date not more than three months before the date of lodgment of the claim for pension.

(8) The right conferred by this Act on a member of the Forces to payment by way of pension in respect of an incapacity, or on a person other than a member to payment by way of pension in respect of an incapacity or the death of a member, is in substitution for the right (if any) of that member or of that other person to a payment in respect of the incapacity, or of the incapacity or death of the member, as the case may be, to which, but for this sub-section, he would have been entitled under the *Naval Defence Act* 1910-1952, the *Defence Act* 1903-1956 or the *Air Force Act* 1923-1956, and any such right of the member or other person under any of those Acts is, by force of this sub-section determined.

(9) If a person or persons who is or are entitled under this Act to pension in respect of the incapacity or death of a member is or are also entitled under—

Amended by
No. 108, 1964,
s. 4.

(a) the law of a country other than the Commonwealth that is or has been a part of the dominions of the Crown; or

(b) the law of a State,

to receive any payment or payments in respect of the incapacity or death of the member resulting from employment in relation to warlike operations in which the Sovereign is or was engaged, or in connexion with the British Commonwealth Far East Strategic Reserve, the rate or amount of every such payment shall be taken into account in assessing the rate or rates of pension payable under this Act so that the total payments to that person or those persons, as the case may be, shall not exceed the total payments to which that person, or those persons respectively or collectively, would be entitled if eligible solely under this Act.

* * * * *

Sub-section (10)
omitted by
No. 3, 1973, s. 4.

7. (1) Subject to this Act, the provisions of Divisions 1 to 4 (inclusive) of Part III (other than sections twenty-four, forty-two, forty-four and fifty-four) and sections one hundred and fourteen, one hundred and fourteen A, one hundred and nineteen, one hundred and twenty A, one hundred and twenty B and one hundred and twenty-one of, and the Schedules to, the Repatriation Act extend to and in relation to—

Extension of
certain
provisions of
Repatriation
Act.

Sub-section (1)
amended by
No. 78, 1968,
s. 4.

- (a) members of the Forces within the meaning of this Act; and
- (b) the dependants of those members.

Substituted by
No. 78, 1968,
s. 4; amended by
No. 3, 1973, s. 5.

(2) Subject to this Act, the provisions of Division 5 of Part III of the Repatriation Act extend to and in relation to—

- (a) a member of the Forces within the meaning of this Act;
- (b) the wife, as defined by sub-section (1) of section 83 of the Repatriation Act, of such a member; and
- (c) a child, as defined by sub-section (1) of section eighty-three of the Repatriation Act, of such a member.

Added by
No. 78, 1968,
s. 4.

(3) In the application, by virtue of the last two preceding sub-sections, of the provisions of the Repatriation Act specified in those sub-sections in relation to a member—

- (a) a reference to a member of the Forces or to a member shall be read as a reference to a member of the Forces within the meaning of this Act;
- (b) a reference to dependants shall be read, in relation to, or to matters arising out of, an incapacity or the death of the member, as a reference to the persons who are dependants of the member for the purposes of the application of sub-section (1) of section six of this Act in relation to that incapacity or death;
- (c) a reference to war service shall be read as a reference to special service;
- (d) a reference to service in a theatre of war shall be read as a reference to service on special service;
- (e) the reference in sub-section (3) of section thirty-seven of the Repatriation Act to Division 1 of Part III of that Act shall be read as a reference to section six of this Act; and
- (f) a pension under section six of this Act shall be deemed to be a pension under Division 1 of Part III of the Repatriation Act.

Added by
No. 3, 1973,
s. 5.

(4) Section 120C of the Repatriation Act applies in relation to a pension, allowance or other benefit under this Act or the regulations as if it were a pension, allowance or other benefit under that Act.

Pensions in
relation to
service other
than special
service.

Inserted by
No. 110, 1965,
s. 5.

7A. (1) Upon the incapacity or death of a person whose incapacity or death has resulted from an occurrence that happened, other than during a period of special service of the person but when the person was a member of the Naval, Military or Air Forces and in an area outside Australia, as a result of action by hostile forces, the Commonwealth is liable to pay a pension or pensions, in accordance with this Act, in respect of the incapacity or death as if the person had been serving on special service when the occurrence happened and the day on which the occurrence happened were the period of that special service.

(2) For the purposes of the last preceding sub-section, an occurrence that happened while a person was engaged in warlike operations against

hostile forces in an area outside Australia shall be deemed to have happened as a result of action by hostile forces.

(3) In this section, “occurrence”, in relation to a person, includes the contracting of a disease by the person but does not include an occurrence that happened before the commencement of this section.

8. (1) Where—

- (a) a person was, both at the time of the commencement of a period of special service of a member and at the time of the happening, during that period, of an occurrence (including the contracting of a disease) that resulted in the member’s incapacity or death, recognized as the wife of the member though not legally married to him; and
- (b) the Commission is satisfied that that person was wholly or partly dependent upon the earnings of the member at those times,

Pensions payable to certain dependent females.

a pension under this Act may be paid to that person at a rate not exceeding the rate of pension that would have been payable to her under this Act if she had been legally married to the member.

(2) A pension may be paid under this section in addition to any pension payable to the wife or widow, as the case may be, of the member.

9. Where, at the time of the happening during a member’s special service of an occurrence (including the contracting of a disease) that resulted in the incapacity or death of the member, a person who had been the wife of the member but had been divorced was dependent upon alimony or maintenance payable by the member, a pension under this Act may, on discontinuance of the payment of the alimony or maintenance, as the case may be, be paid to that person at a rate equal to—

Pension to divorcee of member.

- (a) the amount of the alimony or maintenance, as the case may be; or
- (b) the rate of pension which would have been payable to her if she had not been divorced,

whichever is the less.

10. (1) A pension under this Act in respect of the incapacity or death of a female member of the Forces shall not be granted or continued to a person, other than the member or a child of the member, unless—

Limitations on pensions to dependants of female members.

- (a) where the pension is in respect of the incapacity of the member—the member is being paid, or, in the case of a deceased member, was immediately before her death being paid, a pension at a rate not less than fifty per centum of the rate for total incapacity and the person is wholly or substantially dependent upon the member or would, but for the death or incapacity of the member, be so dependent; or

- (b) where the pension is in respect of the death of the member—the person would, but for the death of the member, be so dependent,

and, where the person is the husband of the member, unless the husband is, by reason of physical or mental incapacity, unable to earn a livelihood, is without adequate means of support and is not separated from the member.

(2) A pension under this Act shall not be granted or continued to a child of a female member of the Forces unless the member is dead and the child is without adequate means of support, or, if the member is not dead, unless—

- (a) the father or step-father of the child—
 - (i) is, by reason of physical or mental incapacity, unable to earn a livelihood and is without adequate means of support; or
 - (ii) is dead or is separated or divorced from, or has deserted, the member; and
- (b) the child is wholly or substantially dependent upon the member and is without adequate means of support.

Maximum rates of pensions where death, &c., attributable partly to other service.

11. Where the incapacity or death of a member was, or the incapacity and death of a member were both, attributable partly to the special service of the member and partly to—

- (a) the service of the member in or in connexion with—
 - (i) the present war within the meaning of section twenty-three of the *Repatriation Act*;
 - (ii) the war within the meaning of section one hundred of that Act; or
 - (iii) the warlike operations in Korea or Malaya before the commencement of the *Repatriation (Far East Strategic Reserve) Act 1956*; or
- (b) “Malayan service” of the member within the meaning of section three of the *Repatriation (Far East Strategic Reserve) Act 1956-1962*,

the Commonwealth is not liable to pay to a person, in respect of the incapacity or death, pensions at rates which in the aggregate, exceed the rate at which pension would be payable to that person if the incapacity or death, or both the incapacity and death, as the case may be, were attributable wholly to the special service of the member.