

Defence (Re-establishment) Act 1973

No. 101 of 1973

AN ACT

To amend the *Defence (Re-establishment) Act* 1965–1968.

[Assented to 19 September 1973]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

Short title
and citation.

1. (1) This Act may be cited as the *Defence (Re-establishment) Act* 1973.

(2) The *Defence (Re-establishment) Act* 1965–1968* is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Defence (Re-establishment) Act* 1965–1973.

Commence-
ment.

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.

(2) Sections 10 and 11 shall come into operation on a date to be fixed by Proclamation.

(3) At any time after this Act receives the Royal Assent and before the date fixed by sub-section (2), regulations may be made for the purposes of the Principal Act as amended by section 10, but regulations so made shall not come into operation before the date so fixed.

* Act No. 54, 1965, as amended by Act No. 93, 1966; No. 89, 1967; and No. 10, 1968.

3. Section 3 of the Principal Act is amended by omitting the words— Parts.

“ Part V—Rehabilitation of Disabled Persons (Sections 47–49).”
and substituting the words—

“ Part V—Rehabilitation of Disabled Former National Servicemen
(Sections 47–49)

Part VA—Rehabilitation of Disabled Former Regular Servicemen
(Sections 49A–49D)”.

4. Section 4 of the Principal Act is amended—

Inter-
pretation.

(a) by inserting in sub-section (1), after the definition of “ Australia ”,
the following definition:—

“ ‘ former regular serviceman ’ means a person who is a
former regular serviceman in accordance with section
4A;” ; and

(b) by omitting sub-section (2) and substituting the following sub-
section:—

“ (2) For the purposes of this Act—

(a) a person who has been discharged from the Defence
Force or a part of the Defence Force shall be deemed to
have been so discharged by a dishonourable discharge if—

(i) the discharge was in accordance with the sentence
of a service tribunal; or

(ii) the Naval Board, the Military Board or the Air
Board or a person authorized by one of those
Boards has stated that the discharge was on
disciplinary grounds; and

(b) a person whose appointment as an officer in the Defence
Force or a part of the Defence Force has been terminated
shall be deemed to have been discharged from the Defence
Force or from that Part and, if—

(i) the termination of the appointment was in accord-
ance with the sentence of a service tribunal; or

(ii) the Naval Board, the Military Board or the Air
Board or a person authorized by one of those
Boards has stated that the termination of the
appointment was on disciplinary grounds,

shall be deemed to have been so discharged by a dis-
honourable discharge.”.

5. After section 4 of the Principal Act the following sections are inserted:—

Former
regular
serviceman.

“ 4A. (1) Subject to this section, a person is a former regular serviceman for the purposes of this Act if—

- (a) he has served on continuous full-time service as a member of the Defence Force during which he completed three years' effective full-time service and that continuous full-time service as such a member ended, on or after 7th December, 1972, by reason of—
 - (i) his discharge, or the termination of his appointment, otherwise than by a dishonourable discharge; or
 - (ii) in the case of a member referred to in sub-section (5)—his ceasing to serve on continuous full-time service in pursuance of a voluntary undertaking referred to in that sub-section, otherwise than by a dishonourable discharge;
- (b) he was engaged to serve as a member of the Defence Force for a period of continuous full-time service of not less than three years but that service ended, on or after 7th December, 1972, by reason of 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 7th December, 1972, by reason of his discharge 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—

- (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 sub-section (6) that was brought to an end by the discharge 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.

“(6) In this section, ‘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.

Directions
by Minister
for Defence.

“4B. The administration of Parts IV and VI, in so far as they apply in relation to former regular servicemen, and of Part VA is subject to any direction of the Minister for Defence with respect to a matter of policy.”.

Provision of
training
facilities.

6. (1) Section 44 of the Principal Act is amended by inserting after sub-section (1) the following sub-section:—

“(1A) The Minister may, on behalf of the Commonwealth, establish a scheme, to be known as the Former Regular Servicemen Vocational Training Scheme, for the vocational training of former regular servicemen.”.

(2) Where a Minister has, before the commencement of this section, approved the provision of vocational training for a person who would, if this section had been in force at the time of the approval, have been a former regular serviceman within the meaning of the Principal Act, as amended by this Act, that Minister may, on the establishment of the Former Regular Servicemen Vocational Training Scheme, direct that section 44 of the Principal Act as amended by this Act is to be deemed to have applied since the date of the approval, in relation to the vocational training, before the establishment of that Scheme, of that person, as if that training had been provided under that Scheme.

Rehabili-
tation
allowance
during
treatment.

7. Section 48 of the Principal Act is amended by omitting from paragraph (b) the words “wife’s allowance and child’s allowance” and substituting the words “wife’s pension”.

Heading of
Part V.

8. The heading of Part V of the Principal Act is amended by omitting the word “Persons” and substituting the words “Former National Servicemen”.

9. After Part V of the Principal Act the following Part is inserted:—

“PART VA—REHABILITATION OF DISABLED FORMER REGULAR SERVICEMEN

Inter-
pretation.

“49A. (1) In this Part—

‘Director-General’ means the Director-General of Social Services;

‘Social Services Act’ means the *Social Services Act 1947–1973*.

“(2) For the purposes of this Part, a disabled person is a former regular serviceman who, by reason of injury, disease or deformity, is hindered in obtaining, or maintaining himself in, employment, or in undertaking work on his own account, of a kind that, but for that injury, disease or deformity, would, in the opinion of the Director-General, be suitable to his age, experience and qualifications.

“ 49B. Part VIII of the Social Services Act (other than sections 135B, 135D and 135H) applies in relation to a disabled person as if he were a pensioner for the purposes of that Part.

Application of Part VIII of the Social Services Act.

“ 49C. (1) While a disabled person is receiving treatment or training under Part VIII of the Social Services Act, he shall be paid a rehabilitation allowance at a rate determined in accordance with sub-section (2).

Payments during treatment or training.

“ (2) The rate of rehabilitation allowance payable to a disabled person under sub-section (1) is a rate equal to the rate of the invalid pension under Part III of the Social Services Act, and the rate of any allowance by way of supplementary assistance under that Part, that would be payable to the disabled person, and the rate of any wife's pension under that Part that would be payable to another person and the rate of any allowance by way of supplementary assistance that would be payable under that Part to that other person, if that disabled person were qualified to receive an invalid pension under that Part and the means as assessed, for the purposes of that Part, of the disabled person and of the other person (if any) were nil.

“ (3) While a disabled person is receiving training, he shall be paid, in addition to any rehabilitation allowance—

- (a) a training allowance at a rate equal to the rate of training allowance specified in sub-section (1) of section 135D of the Social Services Act; and
- (b) where the Director-General is satisfied that it is necessary for a disabled person to live away from his usual place of residence for the purpose of receiving training—a living away from home allowance at a rate equal to the rate of living away from home allowance specified in sub-section (3) of section 135D of the Social Services Act.

“ (4) A payment under this section shall, for the purposes of the Social Services Act, be deemed to be a payment of a corresponding kind under section 135D of that Act.

“ (5) While a disabled person is in receipt of a rehabilitation allowance, any pension or benefit (including an allowance by way of supplementary assistance) payable to him under Part III, IV or IVAAA of the Social Services Act and any benefit payable to him and any wife's pension (including any allowance by way of supplementary assistance) payable to another person by reason of the disabled person being a pensioner or beneficiary under that Act shall be suspended.

“ 49D. A disabled person is not entitled to receive any assistance or benefit under this Part—

Persons not entitled to assistance.

- (a) if he is entitled to receive the like assistance or benefit from the Repatriation Commission; or

- (b) unless he applies to the Director-General for that assistance or benefit within a period of twelve months commencing on—
- (i) where the disabled person is a former regular serviceman on the date of commencement of this Part—that date; or
 - (ii) in any other case—the date on which he becomes a former regular serviceman.”.

Definitions.

10. Section 50 of the Principal Act is amended by adding at the end of the definition of “ eligible person ” in sub-section (1), after paragraph (b), the words “ and includes a former regular serviceman ”.

Conditions to be complied with by applicants.

11. Section 55 of the Principal Act is amended by inserting in paragraph (b) of sub-section (1), after the word “ success, ”, the words “ or, in the case of a former regular serviceman, has reasonable prospects of succeeding in, ”.
