

REPATRIATION (FAR EAST STRATEGIC RESERVE).

No. 91 of 1956.

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.

[Assented to 15th November, 1956.]

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

1. This Act may be cited as the *Repatriation (Far East Strategic Reserve) Act 1956*. Short title.

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

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

“Board” means a Repatriation Board appointed under the Repatriation Act ;

“child” means—

(a) in relation to a male member of the Forces—a child, under the age of sixteen years, of the member, being his son, daughter, step-son, step-daughter, adopted child or ex-nuptial child, but not including an ex-nuptial child born more than nine months after the commencement of the member's Malayan service, unless the member has adopted the child ; and

(b) in relation to a female member of the Forces—a child, under the age of sixteen years, of the member, being her son, daughter, step-son, step-daughter, adopted child or ex-nuptial child, but not including an ex-nuptial child born more than nine months after the termination of the member's Malayan service, unless the member has adopted the child ;

“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 ;

“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 ;

“member of the family”, in relation to a member of the Forces, means the wife, father, mother, adoptive father, adoptive mother, grandfather, grandmother, step-father, step-mother, foster-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother, half-sister, step-brother, step-sister, adoptive brother, adoptive sister, adopted child or mother-in-law of the member ;

“parents” includes—

(a) the mother of a member of the Forces, being a member who was born out of wedlock and brought up by her ;

(b) the step-mother or adoptive mother of a member of the Forces, being a member 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 the amounts and allowances specified in the Second and Fifth 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.

(4.) For the purposes of this Act, a person whose birth was ex-nuptial but whose parents have married each other since his or her birth shall be deemed to be a son or daughter, as the case may be, of those parents and shall be deemed not to be an ex-nuptial child.

4. This Act extends to all the Territories of the Commonwealth.

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.

Extension
of Act to
Territories.

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
Commonwealth
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.

(8.) If the member or a dependant of the member is entitled under—

- (a) the law of a part of the Queen's dominions other than the Commonwealth ; 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—

- (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 ;
 - (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 ; 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.

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.

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—

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 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.

Delegation.

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 of the Commonwealth, 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 of the Commonwealth, specified in the instrument of delegation.

(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.

13.—(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 members of the Forces and to the dependants (including persons to whom section eight of this Act applies) of members; and
- (b) prescribing penalties not exceeding a fine of Twenty-five pounds or imprisonment for three months for offences against the regulations.

(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.