



ANNO QUADRAGESIMO PRIMO ET QUADRAGESIMO
SECUNDO

VICTORIÆ REGINÆ.

A.D. 1878.

No. 125.

*An Act to provide for the Enlistment, Regulation, and Discipline of
a Permanent Military Force.*

[Assented to, 30th November, 1878.]

WHEREAS it is expedient to provide for the enlistment, regulation, and discipline of a Permanent Military Force in South Australia—Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly of the said province, in this present Parliament assembled, as follows: Preamble.

PRELIMINARY.

1. This Act may be cited as the “Military Force Act, 1878.” Short title.
2. In this Act, unless the context shall otherwise indicate, the following terms shall have the following meanings— Interpretation clause.
 - “Commanding Officer” shall mean the officer for the time being in command of the Force raised under this Act:
 - “Force” shall mean the South Australian Military Force authorised to be raised under this Act, and shall include Reserve and Police enrolled pursuant to this Act:
 - “Reserve” shall mean the South Australian Military Reserve Force authorised to be raised under this Act:
 - “Term of Service” shall mean the term for which a man shall enlist or re-engage pursuant to this Act.
 - “Member” shall mean man or officer.

CONSTITUTION

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Governor may maintain a Military Force.

3. The Governor in the name and on behalf of Her Majesty, may raise and maintain a permanent Military Force to be called "The South Australian Military Force," which may consist of one major, three lieutenants, and one hundred and thirty rank and file either artillery or infantry, as the Governor shall order, or such other number of officers or men as Parliament shall from time to time authorise and provide for; and every man enlisting in the force shall enlist for three or five years, and shall take and subscribe before the Commanding Officer, who is hereby authorised to administer the same, such oath of enlistment contained in the First Schedule to this Act as shall be applicable to his intended service; and any man enlisting for three years may before the expiration thereof, with the approval of the Commanding Officer, extend the term of his enlistment to five years, and shall thereafter be entitled to the same privileges, excepting extra pay for the time already served, as if he had originally enlisted for five years; and any man enlisted for five years, whether originally or not, may, on the expiration of such five years, with the approval of the Commanding Officer, re-engage for a further term of five years.

Military forces to be subject to Mutiny Act.

4. Every man who shall have taken and subscribed the oath of enlistment shall be bound thereby, during his term of service, and during such term and until discharged or dismissed, shall be subject to the provisions of the Mutiny Act in force for the time being in Her Majesty's Army, as if he had been duly enlisted and attested for Her Majesty's Army for general service, and as if the Force formed part of Her Majesty's army, and shall in like manner during the same time be subject to the Queen's Rules and Regulations, the Rules and Articles of War, and to such other rules, regulations, and discipline of whatever nature or kind to which Her Majesty's Army is for the time being subject so far as the same are not inconsistent with this Act and any rules and regulations made thereunder; and every officer of the force shall be subject to the like provisions, rules, regulations, articles, and discipline so far as the same shall be applicable to his rank.

OFFICERS.

Governor to issue commissions.

5. The Governor, by commission under his hand and the seal of the Province, may appoint any duly qualified officer to be Commanding Officer of the Force, to have, subject to the authority of the Government, the general command and control of the Force; and may also appoint fit and proper persons to be officers to the Force, and may cancel any commission: Provided that every such officer on his appointment shall take and subscribe before some Justice of the Peace the oath of allegiance to Her Majesty contained in "The Promissory Oaths Act, 1869."

Summary discharge for felony, &c.

6. Every member of the Force who may be convicted of felony shall be summarily discharged, and the Commanding Officer may summarily discharge any member of the Force who from his improper conduct shall, in the opinion of the Commanding Officer, be
unfit

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unfit to continue in the Force, and every member discharged pursuant to this section shall forfeit all arrears of pay and benefits for past services

PAY AND PRIVILEGES.

7. The Governor may fix the scale of pay and allowances to be received by all persons serving in the Force; but such pay and allowances shall not exceed the sums appropriated by Parliament for the service, and every man enlisting for five years shall receive the sum of Threepence per day more than if he had enlisted for three years.

Pay.

8. Every man re-engaging for five years pursuant to section 3, shall receive a bonus of Two Pounds; and on completing the term of his re-engagement, in addition to his ordinary pay, he shall receive deferred pay at the rate of Sixpence per day for such term.

Privileges.

9. If any member of the Force shall be killed or wounded in actual service or whilst on duty, such member, or his widow or family, shall be entitled to such pension or gratuity as Parliament may provide in that behalf.

Allowances to wounded and family of persons killed.

10. No tolls or dues shall be demanded from any member of the Force, being on actual duty, either in respect of himself or of any prisoners under charge, or of any conveyances or beasts of burden employed in the service of the Force passing any toll-gate, turnpike-road, bridge, or ferry, under a penalty upon any toll-collector demanding or receiving any such toll or due, of a sum not exceeding Five Pounds for every such offence.

No tolls.

REGULATIONS AND COURTS MARTIAL.

11. The Governor may make regulations, not inconsistent with this Act, for the employment, training, removal, discharge, or dismissal, and for the discipline and better government of the Force, and for carrying this Act into effect; and all such regulations shall be published in the *Government Gazette*, and after publication shall be judicially noticed, and shall have the force of law; and the production of a copy of the *Government Gazette* purporting to contain a copy thereof, shall be conclusive evidence of such regulations; provided that all such regulations shall be laid before both Houses of Parliament within fourteen days after the making thereof if Parliament be then sitting, and if Parliament be not sitting then within fourteen days after the commencement of the next sitting of Parliament.

Governor may make regulations.

12. Any such regulations may provide for the enforcement thereof by the Commanding Officer, by forfeiture of pay, not exceeding thirty days, or by confinement in barracks not exceeding thirty days, or by any penalty not exceeding Ten Pounds, to be recovered in a summary way before a Special Magistrate or two or more Justices of the Peace.

Enforcement of Regulations.

13. The

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Procedure of Courts-martial.

13. The Governor, either by general or special warrant under his hand, may delegate to the commanding officer power to convene courts-martial, and to confirm the sentences thereof; and the composition of courts-martial and the modes of procedure and the powers and privileges thereof shall be, so far as applicable to this Act and any regulations thereunder, those which may at the time being be in force with respect to courts-martial in Her Majesty's Regular Army, and the pay and allowances of officers and others attending such courts may be fixed by regulations to be made by the Governor, and officers of the staff may, if required, serve upon courts-martial.

Proceedings to be filed with Attorney-General

14. When the proceedings of any court-martial other than a regimental court-martial have been duly confirmed and the sentence promulgated, the proceedings are to be returned to the president, who shall transmit the same to the Attorney-General for record in his office; and any person who has been tried by any such court-martial, or any person in his behalf, shall be entitled on demand, to be made within the space of six months from the date of the final decision on the proceedings, to a copy of such proceedings (paying for the same at the rate of sixpence per folio of seventy-two words) whether such sentence shall be approved or not, so soon after the receipt of the proceedings at the office of the Attorney-General as such copy can be conveniently supplied.

Copy how obtained.

Apprehension of deserters.

15. All constables and peace officers are hereby directed and required to take cognizance of any written order purporting to be under the hand of the commanding officer under this Act, authorising the apprehension of any deserter or absconder from the force, and his conveyance to any place named in such order, and to aid and assist in the execution of such order, and to lodge any such deserter or absconder in some place of security until such order can be executed; and every gaoler or keeper of a prison or gaol is hereby directed and required to receive into his custody any offender under sentence of imprisonment by a court-martial upon delivery to him of a warrant of commitment in the form set forth in the Second Schedule under the hand and seal of the president of the court or the commanding officer: And such gaoler or keeper shall keep such offender in a proper place of confinement, with or without hard labor, and with or without solitary confinement, according to the sentence of the court and for the time specified in the said order, and shall also in like manner receive into his custody and keep any absconder or deserter upon receipt of an order in writing to that effect under the hand of the commanding officer.

No *certiorari*.

16. No proceedings of any court constituted or appointed under this Act shall be set aside or deemed void for want of form only or be removed by *certiorari* or otherwise into the Supreme Court.

RESERVES.

Reserve Force.

17. The Governor, in the name and on behalf of Her Majesty, may cause to be enrolled and kept up in the province a force, to be

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be called "The South Australian Military Reserve Force," hereinafter referred to as the Reserve, and which shall consist of all such men as shall be willing to be enrolled therein, and who from previous military or quasi-military experience and otherwise shall, in the opinion of the commanding officer, be deemed suitable to be enrolled therein; and every man accepting an appointment pursuant to section 8 shall be enrolled in the Reserve, and every man enrolling in the Reserve shall take and subscribe an oath of enrolment in the form contained in the Third Schedule, in like manner as is herein provided concerning the oath of enlistment, and with the like effect so far as practicable.

18. Every man enrolled in the Reserve shall continue a member thereof until he shall attain the age of forty-five years, or be discharged or dismissed, and all the provisions of this Act shall apply to the Reserve in like manner as to the force, except as follows:—

Term of service.

- i. No member of the Reserve shall be required to attend more than six drills in each year, nor to serve except as herein after mentioned :
- ii. The pay of every member of the Reserve shall be Five Pounds per annum, and he shall in addition receive pay as a member of the force whilst engaged in active service :
- iii. The said sum of Five Pounds per annum shall be paid half-yearly, but so that six months' pay shall be always retained ; and any member of the Reserve permanently quitting the colony shall forfeit all unpaid pay.

19. On a summons, by Proclamation in the *Government Gazette*, by the Governor, and in all cases of actual invasion of the colony, or hostile attack thereon, or upon the making of any general signals of alarm as provided in the regulations, the Reserve shall assemble, as provided by the regulations, and every member shall be liable to march or embark on board any ship or vessel, and to serve, and shall be subject to the Mutiny Act, and all rules, regulations, articles, and discipline to which members of the force shall be subject, as if he were a member of the force, until the Governor by Proclamation in the *Government Gazette*, shall signify that the services of the Reserve are no longer required.

Liable to actual service in case of invasion, &c.

20. If any member of the Reserve, not being absent from the province, the proof whereof shall be on him, or laboring under any infirmity disabling him from active service, refuse or neglect to join as may be directed, and to assemble and march or embark upon any such summons invasion, attack, or general signal of alarm as aforesaid, he shall be deemed a deserter, and shall be liable to punishment as such, or to a penalty not exceeding One Hundred Pounds, with or without imprisonment, for any term not exceeding twelve calendar months, with or without hard labor.

Neglect to obey summons.

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POLICE.

Police.

21. The Governor, in the name and on behalf of Her Majesty, may cause to be enrolled, for military service, all such members of the Police Force as shall be willing to undertake military service in time of need, and who shall take and subscribe the oath of enrolment in the form contained in the Fourth Schedule, in like manner as is herein provided concerning the oath of enlistment.

Terms of service.

22. Every man so enrolled in the Police shall continue a member thereof until he shall attain the age of forty-five years, or be discharged or dismissed; and all men so enrolled shall be subject to the following provisions:—

- I. They shall be drilled, for the purpose of enabling them to take part in military evolutions and movements:
- II. In time of peace, whenever summoned by the Governor by proclamation in the *Government Gazette*, but not oftener than four times in every year, they shall serve in connection with the Volunteer and Military Forces, or either of them, as may be required:
- III. Whenever the Reserve shall be called out pursuant to section 19, they the Police so enrolled shall assemble for military service, and every member of the Police so enrolled shall be subject to all the liabilities mentioned in sections 19 and 20, as if he were a member of the Reserve.

Drill and officers.

23. The Police so enrolled shall be drilled by or under officers of the Police Force, and when serving in time of peace in connection with volunteers or military, shall merely act as a Police Force, assisting in the manœuvres, and shall at all times be commanded by the officers of the Police Force, who shall enrol as aforesaid, and who shall be under the command of the commanding officer of the force when military police shall be brigaded with volunteers or military.

Pay.

24. The pay of every member of the Police so enrolled shall, when on actual service, be one shilling per day, in addition to his pay as a member of the Police Force, and to be paid in like manner as such last-mentioned pay; and no member of the Police Force shall be liable to any stoppage of or deduction from his pay on account of absence caused by his duties as a member of the Police so enrolled.

Extra allowances

25. Every member of the Police so enrolled shall, in addition, be entitled to such extra pay and allowance as the Governor may think necessary to make, not exceeding the sums appropriated by Parliament for the service; and any member of the Police Force who shall have served satisfactorily in the Police so enrolled for five years, shall be deemed of sufficient experience to be enrolled in the Reserve.

OFFENCES.

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OFFENCES.

26. Any person who shall—

Penalty for offences

- i. Knowingly buy, sell, take in exchange, conceal, or without satisfactorily accounting for the same, receive or have in his possession, any arms, ammunition, accoutrements, clothing, appointments, stores, or property, delivered for the use of the force, or any member thereof, or solicit any person to buy, sell, take in exchange, or conceal the same :
- ii. Or who shall falsely represent himself to be a member of the force :
- iii. Or who not being a member of the force shall wear the uniform, or any part of the uniform thereof :
- iv. Or who ceasing to be a member of the force shall not forthwith give up to the proper officer all arms, ammunition, accoutrements, clothing appointments, stores, or property in his possession, as a member of the force :

shall for every such offence be liable to a penalty not exceeding Twenty Pounds, with or without imprisonment, for any term not exceeding six months, with or without hard labor.

27. Every proceeding under this Act for anything to which any penalty is attached by this Act, or any rule to be made thereunder, may be had and taken before, and be heard and determined in a summary way, by any special magistrate, or two justices of the peace, under the provisions of an Ordinance of the Governor and Legislative Council, No. 6 of 1850, intituled "To facilitate the performance of the duties of justices of the peace out of sessions with respect to summary convictions and orders," or of any Act now in force or hereafter to be in force relating to the duties of justices of the peace with respect to summary convictions and orders ; and all convictions and orders made by such magistrate or justices may be enforced as in the said Ordinance, or in any other Act as aforesaid is or shall be provided.

Recovery of penalties.

28. There shall be an appeal to the Local Court of Adelaide, of full jurisdiction only, from every conviction by any special magistrate, or justices, for any offence against this Act, and from every order dismissing any information or complaint, or from any other order made by such magistrate or justices under this Act, and the proceedings in such appeal shall be conducted in manner appointed by the said Ordinance No. 6 of 1850, for appeals to Local Courts, or any Act to be hereafter in force, regulating such appeal, and the Local Court of Adelaide aforesaid shall also have power to make such order as to the payment of the cost of the appeal as it shall think fit, although such costs may exceed Ten Pounds.

Appeal.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. F. DRUMMOND JERVOIS, Governor.

SCHEDULES

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SCHEDULES

FIRST SCHEDULE.

Oath of Enlistment.

I, _____ swear that I will well and truly serve Our Sovereign Lady the Queen, Her heirs and successors, in the South Australian Military Force, pursuant to the Military Force Act, 1878, and that I will resist Her Majesty's enemies and cause Her Majesty's peace to be kept both on land and at sea, and that I will, in all matters appertaining to my service, faithfully discharge my duty according to law.

So help me God.

SECOND SCHEDULE.

To the _____ in the Province of South Australia, and to the
Keeper of the Gaol at _____ in the said province.

Whereas, A. B. _____ was this day duly convicted by court-martial for that [*state offence as in conviction*] and it was by the said court adjudged that the said A. B. for the said offence should be imprisoned in the gaol at _____ in the said province [*and there kept to hard labor or solitary confinement*] for the space of _____

These are therefore to command you the said _____ to take the said A. B. and him safely to convey to the gaol at _____ aforesaid, and there to deliver him to the keeper thereof, together with this precept: And I do hereby command you the said keeper of the said gaol, to receive the said A. B. into your custody in the said gaol, there to imprison him [*and keep him to hard labor or in solitary confinement*] for the space of _____ and for your so doing this shall be your sufficient warrant

Given under my hand and seal this _____ day of _____ in the
year of our Lord 18 _____

M. N. (President or Commanding Officer.)

THIRD SCHEDULE.

Oath of Enrolment.

I, _____ swear that I will well and truly serve Our Sovereign Lady the Queen, Her heirs and successors, in the South Australian Military Reserve Force, pursuant to the Military Force Act, 1878, and that I will resist Her Majesty's enemies and cause Her Majesty's peace to be kept both on land and at sea, and that I will, in all matters appertaining to my service, faithfully discharge my duty according to law.

So help me God.

FOURTH SCHEDULE.

Oath of Enrolment.

I, _____ swear that I will well and truly serve Our Sovereign Lady the Queen, Her heirs and successors, in the Police, for military purposes if required, pursuant to the Military Force Act, 1878, and that I will resist Her Majesty's enemies and cause Her Majesty's peace to be kept both on land and at sea, and that I will, in all matters appertaining to my service, faithfully discharge my duty according to law.

So help me God.