

# New Zealand.

ANNO VICESIMO NONO

## VICTORIÆ REGINÆ.

No. 53.

### ANALYSIS.

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## **AN ACT for the Regulation of the Volunteer Force.** Title. **[30th October 1865.]**

**W**HEREAS it is expedient to enable the Governor to accept the services of such persons as may be willing to enlist as Volunteers for Naval or Military duty and to provide for the proper management of such Volunteers Preamble.

**BE IT ENACTED** by the General Assembly of New Zealand in Parliament assembled and by the authority of the same as follows—

**I.** The Short Title of this Act shall be "The Volunteer Act 1865." Short Title.

**II.** In the interpretation of this Act and of any regulation made under its authority unless there be something in the subject or context repugnant to such construction or inconsistent therewith the words and phrases following shall have the meanings hereby respectively assigned to them that is to say— Interpretation.

The word "Corps" shall include a troop or company of Artillery troop of Cavalry company of Engineers a Rifle Company a company of Naval Volunteers or a Fire Brigade.

The term "Volunteer Force" shall mean the officers non-commissioned officers or privates enrolled under this Act including the permanent staff.

The term "Volunteer" shall mean a non-commissioned officer or private belonging to a Volunteer Corps inclusive of the permanent staff.

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The term "Inspector" shall mean the officer appointed for the time being to inspect the Volunteer Force.

The term "person" shall include where the case requires a body of persons corporate or incorporate.

The term "efficient Volunteer" shall mean any member of the Volunteer Force who holds a certificate of efficiency from the officer duly appointed to grant such certificates.

The term "Mutiny Act" shall mean the Act for punishing mutiny and desertion and for the better payment of the army and their quarters for the time being in force and includes the articles of war made under the authority of that Act for the time being in force.

The term "appointments" shall include accoutrements and equipments of every kind other than clothing.

Repeal of regulations.

III. All volunteer regulations issued under the authority of "The Militia Act 1858" "The Militia Act Amendment Act 1860" and "The Militia Acts Amendment Act 1862" are hereby repealed.

Governor may accept services of volunteers.

IV. The Governor may accept the services of any persons desiring to be formed under this Act into a Volunteer Corps and upon such acceptance the proposed corps shall be deemed lawfully formed under this Act as a Volunteer Corps.

Governor to fix head quarters of corps and regiments.

V. Upon the acceptance of the services of any Volunteer Corps and upon the formation of two or more corps into a regiment or other division the Governor shall appoint some place to be the head quarters of such corps regiment or other division.

Governor may continue services of existing corps.

VI. It shall be lawful for the Governor to continue the services of any Volunteer Corps whose services have been accepted before the passing of this Act provided their services are again tendered under the provisions of this Act and in accordance with the regulations issued under its authority within sixty days from the date on which this Act shall come into operation And provided further that any such corps has the number of enrolled members required by regulations issued under authority of this Act and all commissions of officers and all appointments of non-commissioned officers of such corps whose services are so continued shall be deemed to have been made under authority of this Act but so nevertheless that the seniority of the several persons commissioned or appointed before the passing of this Act shall remain and subsist as it would have done if this Act had not been passed.

Existing corps not re-tendering services to be disbanded.

VII. All existing Volunteer Corps whose services are not again tendered to the Governor as hereinbefore provided shall at the expiration of sixty days from the date on which this Act shall come into operation be considered to be disbanded and the commissions of the several officers of such disbanded corps shall thereupon lapse And if any officer non-commissioned officer or volunteer of such disbanded corps shall refuse to give up in good order to such person as the Governor may direct any article supplied to him as a volunteer at the public expense a sum of money equal to twice the cost price of such article or articles shall be recoverable from him with costs as a penalty under this Act is recoverable.

The Governor to be Commander-in-chief.

VIII. The Governor shall be Commander-in-chief of the Volunteer Force and shall have the power of convening general courts martial and of confirming the sentences thereof and of convening or issuing his warrant to convene district courts martial and shall have all the powers and may exercise and discharge all the duties and obligations appertaining to the office of Commander-in-chief respecting the Volunteer Force or any part thereof.

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IX. No person shall be an officer in the Volunteer Force or a volunteer or a non-commissioned officer of the volunteer permanent staff who is not a British subject by birth or by naturalization and until he shall have received a certificate under the hand of the inspector or commanding officer of the district and countersigned by the adjutant of the permanent staff that he has passed an examination of his efficiency in drill and is competent to perform all other duties appertaining to his office.

Officers to be British subjects or naturalized

X. The Governor shall in the name and on behalf of Her Majesty by commission under the public seal of the Colony from time to time appoint officers to inspect the Volunteer Force and may revoke such commissions at pleasure such officers shall once in each year inspect each Volunteer Corps and annually prepare a report of their proceedings and of the efficiency and condition in all respects of each such Volunteer Corps which report shall be presented to each House of the General Assembly within fourteen days from the commencement of each session Provided always that any officer so appointed shall by virtue of such appointment and while holding the same be senior in rank to all officers of the Volunteer Force.

Governor to appoint inspector.

XI. The Governor may from time to time appoint for any Volunteer Corps a paid permanent staff and all persons so appointed shall be deemed to be officers or efficient volunteers for the purposes of this Act.

Governor to appoint permanent staff.

XII. Adjutants of the permanent staff shall except when on actual service rank as junior captains of the Volunteer Force.

Relative rank of permanent staff.

XIII. The Governor may in the name and on behalf of Her Majesty from time to time by commission under the public seal of the Colony appoint officers for the several Volunteer Corps and names for that purpose shall be submitted to him (through the adjutant of the permanent staff) by the corps to which such officers are proposed to be appointed Provided always that no names shall be so submitted unless they have been approved by not less than one-half of the enrolled members (being efficient volunteers) of any such corps Non-commissioned officers in the Volunteer Force shall be appointed and may be reduced in accordance with regulations issued under authority of this Act.

Appointment of officers.

XIV. The Governor may from time to time revoke or cancel the commission of any officer of the Volunteer Force.

Governor may cancel commissions.

XV. Every officer shall on receiving his commission and every volunteer shall on his enrolment in the muster roll of his corps or in either case as soon afterwards as may be take the following oath of allegiance before some Justice of the Peace or an officer of the corps who has taken such oath "I, A. B. do sincerely promise and swear that I will be faithful and bear true allegiance to Her Majesty Queen Victoria and that I will faithfully serve in the Volunteer Force until I shall be lawfully discharged" Provided that any person objecting from conscientious scruples to take an oath may make a solemn affirmation to the same effect as the oath.

Oath.

XVI. Any volunteer may except when on actual military service quit his corps on complying with the following conditions viz.—

Volunteers may quit their corps.

- (1.) Giving to the commanding officer of his corps three months notice in writing of his intention to quit the corps Provided that any volunteer who may desire his discharge for the purpose of leaving the district where he was enrolled shall be entitled to receive the same upon giving one fortnight's notice and fulfilling the conditions hereinafter provided Provided further that should any corps be called out for actual

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service all persons then on the roll of the corps shall be liable to serve whether they shall have given such notice or not

- (2.) Delivering up in good order fair wear and tear only excepted all arms clothing and appointments being public property or property of his corps issued to him
- (3.) Paying all money due or becoming due by him under the rules of his corps either before or at the time or by reason of his quitting it

And thereupon he shall cease to be a volunteer under this Act.

Governor may unite two or more Volunteer Corps into a regiment or battalion and may appoint officers.

XVII. The Governor may form two or more Volunteer Corps into a united body for military or other purposes and may appoint an officer to command the same and may appoint such other officers whether for financial or military administration as he may deem expedient and may revoke or cancel any such appointments but so nevertheless that each separate corps shall be severally deemed a Volunteer Corps for all the other purposes of this Act Provided always that in the absence of the officer appointed to command such united corps the officer on duty next senior in rank shall take the command.

Governor may disband corps.

XVIII. The Governor may disband or discontinue the services of any Volunteer Corps or any part thereof whenever it seems expedient for him so to do and if any officer non-commissioned officer or volunteer of such disbanded corps shall refuse to give up in good order to such person as the Governor may direct any article supplied to him as a volunteer at the public expense a sum of money equal to twice the cost price of such article or articles shall be recoverable from him with costs as a penalty under this Act is recoverable.

Governor in Council may make regulations.

XIX. The Governor in Council may from time to time make and alter regulations respecting the enrolment discipline training exercise and accoutrements clothing equipment conveyance pay rations lodging and pensions of the Volunteer Force or any part thereof and may declare what is requisite to entitle a volunteer to be deemed an efficient volunteer for the purposes of this Act and generally for the more effectual carrying out of this Act and may appoint penalties for any breach of the provisions of this Act or of such regulations not exceeding five pounds for each offence or in default of payment imprisonment for any time not exceeding fourteen days for each offence And all such regulations shall have the same force and effect as though they formed a part of this Act and shall affect and govern all persons whom they may purport to affect and govern whether in the Volunteer Force or not Provided always that the regulations so to be made shall not be in any way repugnant to the provisions of this Act.

Volunteer Corps may make rules &c.

XX. The officers and volunteers belonging to a Volunteer Corps may from time to time make rules for the admission of honorary members and persons wishing to be enrolled in such corps and for the management of the property finances and civil affairs of the corps and may vest any such property in trustees for the benefit of the corps and may alter or repeal any such rules but any such rules shall not have effect unless and until the same be approved by the Governor A copy of the rules certified under the hand of the commanding officer as a true copy of the rules whereof the Governor's approval has been obtained shall be conclusive evidence of the rules of the corps Such rules and regulations may provide for the enforcement thereof against the several members of such corps by the imposition of fines which fines may be recovered in a summary way and it shall be the duty of the adjutant of the permanent staff to recover all such fines Provided that no such fine shall in any one case exceed the sum of five pounds.

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XXI. All money subscribed by or for the use of any corps except where duly vested in trustees as provided for in this Act and all arms stores ammunition or musical instruments or other articles whatever belonging to or used by any such corps not being the property of any one member of the corps shall be vested in the commanding officer of such corps for all purposes of any proceedings criminal or civil at law or in equity and shall for such purpose be deemed to be his property and may be so laid in any information action or suit and no such information action or suit shall be discontinued by the death resignation or removal of a commanding officer but the same may be proceeded in by the succeeding commanding officer.

Property of corps to be vested in commanding officer.

XXII. With respect to the discipline of officers and volunteers the following provisions shall take effect and be in force while they are not on actual military service—

Discipline when not on actual service.

(1.) The commanding officer of a Volunteer Corps may suspend and with the approval of the Commander-in-chief first obtained may discharge any volunteer and strike him out of the muster roll either for disobedience of orders by him while doing any military duty with his corps or for neglect of duty or misconduct by him as a member of the corps or for other sufficient cause the existence and sufficiency of such causes respectively to be judged of by the Commander-in-chief. The volunteer so discharged shall nevertheless be liable to deliver up in good order fair wear and tear only excepted all arms clothing and appointments being public property or property of his corps issued to him and to pay all money due or becoming due by him under the rules of his corps either before or at the time or by reason of his discharge.

(2.) If any officer of a Volunteer Corps or any volunteer while under arms or on march or duty or while engaged in any military exercise or drill with such and going to or returning from any place of exercise or assembly of such corps or regiment disobeys any lawful order of any officer under whose command he then is or is guilty of misconduct the officer then in command may order the offender if an officer into arrest and if not an officer into the custody of any volunteer belonging to the corps or regiment but so that the offender be not kept in such arrest or custody longer than during the time of the corps or regiment or such portion thereof as aforesaid then remaining under arms or on march or duty or assembled or continuing engaged in any such military exercise or drill as aforesaid.

XXIII. Two or more Volunteer Corps may with the approval of the Governor unite together to make rules for the appropriation of joint funds and may vest such funds in trustees to be applied for the benefit of such united corps and such trustees shall have the power of suing or being sued in respect of such trusts.

Two or more corps may be financially united.

XXIV. There shall be paid out of moneys to be appropriated by the General Assembly for the benefit of the several Volunteer Corps after rates not exceeding the following—

Capitation allowance.

An annual allowance of three pounds to Cavalry Corps and an annual allowance of two pounds ten shillings to corps of Engineers or Rifle or other Volunteer Corps for every officer and efficient volunteer to be appropriated in such manner as the regulations issued under the authority of this Act may direct.

XXV. Every officer of the Volunteer Force and every efficient volunteer after three years service or upwards in any Volunteer Corps

Exemption from training in militia after certain service.

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except in case of dismissal from the force shall be exempt from liability to be trained in the militia of New Zealand for a like period as he may have served in any Volunteer Corps. Provided that the period of service of every volunteer enrolled and now serving under "The Militia Act 1858" shall be reckoned for the purpose of this section and every such volunteer shall for the same purpose be deemed to be an efficient volunteer.

Volunteers exempt from serving on juries.

XXVI. Every officer of the Volunteer Force and every efficient volunteer shall while called out on actual service in any Volunteer Corps if he shall so claim it be exempt from serving on juries within the Colony of New Zealand.

Arms of volunteers exempt from seizure.

XXVII. The arms and accoutrements of every officer of a Volunteer Corps and of every volunteer and the horses used by any of the same while serving in any Volunteer Corps in discharge of their duties as members of such corps shall be exempt from seizure in execution and from distress and assessment.

Exemption from tolls &c.

XXVIII. Any duty or toll leviable at any pier wharf quay landing place ferry or bridge or at any turnpike gate or bar or at any other gate or bar on a public road shall not be demanded or taken for—

- (1.) Any officer of the Volunteer Force or any volunteer being on march or duty or going to or returning from the place appointed for and on the day for exercise inspection review or other public duty and being in uniform
- (2.) Any horse when ridden or used by any officer or volunteer on march on duty or going or returning as aforesaid
- (3.) Any cart waggon or carriage public or private employed only in carrying or conveying any officer or volunteer being on march or duty or going or returning as aforesaid and being in uniform with or without any conductor or driver of such cart waggon or carriage or domestic servant of such officer or volunteer
- (4.) Any cart waggon or carriage public or private employed only in carrying or conveying or returning empty from carrying or conveying having been employed only in carrying or conveying any arms or baggage of any officer or volunteer being on march or duty or going to or returning from the place appointed for exercise inspection review or other public duty or any military stores belonging to or for the use of or any gun belonging to or used by the Volunteer Force
- (5.) Any horse or other beast drawing any such cart waggon or carriage as aforesaid

If any person knowingly demands or takes any duty or toll in contravention of the present section or if any person makes any false representation respecting himself or any other person or any animal or thing with intent to obtain for himself or otherwise or fraudulently obtain for himself or otherwise any exemption under the present section he shall for every such offence be liable to a penalty not exceeding five pounds.

Governor may call out volunteers for actual service.

XXIX. The Governor may at any time call out for actual service any Volunteer Corps or any part thereof and every officer and volunteer belonging to any corps so called out shall be bound to assemble at such place as the Governor may direct and shall remain on actual service until released by the Governor's authority. Provided always that no member of the Volunteer Force shall except with his own consent or in case of emergency be compelled to march to or serve at any place being distant more than twenty miles from the head quarters of the corps to which he belongs.

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XXX. During the time when any Volunteer Corps is on actual service or is undergoing inspection by the inspector the Mutiny Act shall apply to and the powers thereby created shall be exercised by the officers and volunteers of such corps. Provided that no volunteer shall be liable to any corporal punishment except death or imprisonment for any offence against the said Act.

Volunteers when on actual service or undergoing inspection to be under Mutiny Act.

XXXI. It shall not be lawful for any person not holding a commission in the Militia or Volunteer Force to sit on any volunteer court martial.

None but militia or volunteer officers to sit on courts martial.

XXXII. Volunteers on actual service shall be paid and rationed at such rates and after such scales as the Governor may from time to time appoint and no volunteer shall be deemed to have been released from actual service and struck off pay and rations until his corps has been returned to the head quarters thereof.

Pay rations &c. of volunteers when on actual service.

XXXIII. A summary conviction or adjudication under this Act or under regulations issued under authority of it or an adjudication made on appeal therefrom shall not be quashed for want of form or be removed by *certiorari* and a warrant of commitment on any such conviction shall not be held void by reason of any defect therein if it is therein alleged that the person therein named has been convicted and there is a good conviction to sustain the same.

Convictions not to be quashed for want of form.

XXXIV. Any pecuniary penalty recovered summarily under this Act on the prosecution of the commanding officer of a Volunteer Corps or administrative regiment or on the presentation of an adjutant of the permanent staff shall unless otherwise specially appropriated by any section of this Act be paid to the commanding officer and be applied as part of the general fund of the corps or regiment.

Penalties to go to fund of corps.

XXXV. Any pecuniary penalty duly inflicted under this Act shall not in any way be released or invalidated on account of the person upon whom such penalty was inflicted having ceased to belong to the Volunteer Force.

Continued liability.

XXXVI. Any person who wilfully contravenes any enactment of this Act or any regulation made thereunder when no other penalty is imposed for such contravention shall thereby incur a penalty not exceeding ten pounds for each offence but this shall not prevent his being indicted and punished for any greater offence if the facts amount to such.

Contravention of Act or regulations punishable by penalties.

XXXVII. All penalties incurred under this Act or under any regulations orders or articles of engagement lawfully made or entered into under it shall be recoverable with costs on the evidence of one credible witness on complaint or information before one Justice of the Peace if the amount do not exceed five pounds and before two Justices of the Peace if the amount exceed that sum and to the recovery of such penalties all the provisions of any law then in force relative to summary convictions and orders by Justices of the Peace shall apply in so far as may not be inconsistent with this Act and any officer or volunteer shall be a competent witness in any such case although the penalty is applicable to the purposes of such company.

Recovery of penalties.

XXXVIII. All orders given by the Commander-in-chief or by any officer authorized to be given by this Act or given in execution of this Act shall be valid and effectual if verbally given on parade or issued in any other manner customary in Her Majesty's military service unless in cases where this Act specially requires any such order to be in writing and the production of an order in writing purporting to be made according to the provisions of this Act shall be *prima facie* evidence of such order without proving the signature thereto or the authority of the person making such order.

Orders how may be given.

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Limitation of actions

. XXXIX. No action or prosecution against any officer or volunteer for anything done or purporting to be done in pursuance of this Act shall be commenced after the end of three months from the doing of such act nor until one month's notice in writing of the action and of the cause thereof has been given to the defendant and in any such action the defendant may plead the general issue and give the Act and this special matter in evidence at the trial and no plaintiff shall recover in any such action if a tender of sufficient amends was made before the action was brought or if a sufficient sum of money has been paid into Court by the defendant after the action was brought.

Costs.

XL. If a verdict passes for the defendant in any action referred to in the next preceding section or the plaintiff becomes nonsuited or discontinues the action after issue joined or if on demurrer or otherwise judgment is given against the plaintiff the defendant shall recover his full costs as between attorney and client and shall have the same remedy therefore as any defendant hath in other cases and though a verdict is given for the plaintiff he shall not have costs against the defendant unless the judge before whom the trial has been had certified his approbation of the action and verdict therein.

Act to come into operation.

XLI. This Act shall come into operation on the first day of January one thousand eight hundred and sixty-six.