



Australian Government



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An Act relating to Naval and Military Defence - [Defence Act 1909]



No. 15 of 1909.

**AN ACT**

Relating to Naval and Military Defence.

*Assented to 13<sup>th</sup> December, 1909.*

*W. J.*





# AN ACT

## Relating to Naval and Military Defence.

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

Short title and citation.

1.—(1.) This Act may be cited as the *Defence Act 1909*.

(2.) The *Defence Act 1903*, as amended by the *Defence Act 1904*, 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 Act 1903-1909*.

Commencement.

2. This Act shall commence on a day to be fixed by proclamation.

Amendment of Act.

3. Section two of the Principal Act is amended—  
(a) by omitting from the description of Part IV. thereof the word "Militia" and by inserting in lieu thereof the word "Citizen," and

(b) by adding at the end thereof the following words and figures:—

"Part XII.—Universal obligation in respect of Naval or Military Training, ss. 125-137.

"Part XIII.—Exemptions from Personal Service, ss. 138-141.

"Part XIV.—Registration and Enrolment for Naval and Military Training, ss. 142-146.

"Part XV.—Military College, s. 147-152."

4. After

*607*



4. After section eleven of the Principal Act the following section is inserted :—

Promotion from  
the ranks.

“ 11A. All promotions in the Citizen Forces to the rank of officer and non-commissioned officer shall be from those who have served in the ranks of the Citizen Forces, and the appointments and promotions shall be allotted to those in the next lower grade who are most successful in competitive examinations. The standards and manner of holding such examinations shall be prescribed in the regulations. All books required for such examinations shall be issued to candidates without charge.

“ Provided that the limitation in this section in respect to service in the ranks shall not apply, except as far as may be found possible, until the expiration of two years from the commencement of the training prescribed in section one hundred and twenty-five, paragraph (c) ;

“ Provided also that the limitation in this section shall not at any time apply to the appointment of officers in the Senior Cadets.”

Permanent  
Forces.

5. Section thirty-one of the Principal Act is amended by omitting the word “ Garrison.”

6. Section thirty-two of the Principal Act is repealed, and the following sections are substituted in lieu thereof :—

Constitution of  
Citizen Naval  
Forces.

“ 32.—(1.) The Citizen Naval Forces shall be divided into Militia Forces, Volunteer Forces, and Reserve Forces.

Naval Militia  
Forces.

“(2.) The Naval Militia Forces shall consist of officers, petty officers, and sailors who are not bound to continuous naval service, and who are paid for their services as prescribed.

Naval Volunteer  
Forces.

“(3.) The Naval Volunteer Forces shall consist of officers, petty officers, and sailors who are not bound to continuous naval service, and who are not ordinarily paid for their services in times of peace.

Naval Reserve  
Forces.

“(4.) The Naval Reserve Forces shall consist of—

(a) members of Rifle Clubs who are allotted to the Naval Reserve Forces ; and

(b) persons who, having served in the Active Naval Forces or otherwise as is prescribed, are enrolled as members of the Naval Reserve Forces.

Constitution of  
Citizen Military  
Forces.

“ 32A.—(1.) The Citizen Military Forces shall consist of Active Forces and Reserve Forces.

Active Forces.

“(2.) The Active Citizen Military Forces shall consist of the Militia Forces, the Volunteer Forces, those undergoing military training under the provisions of paragraph (c) of section one hundred and twenty-five of this Act, and officers on the unattached list.

Reserve Forces.

“(3.) The Military Reserve Forces shall consist of Citizen Forces, and shall include the officers shown on the Reserve of Officers' List, the members of Rifle Clubs who are allotted to the Military Reserve Forces, and all those liable to serve in time of war under section fifty-nine of this Act who are not included in the Active Forces.”

7. In



7. In section thirty-six of the Principal Act the words "of not less than three years" are omitted.

Amendment of  
s. 36 of  
Principal Act.

Section thirty-six of the Principal Act is also amended by adding the following provisos thereto :—

"Provided that the regulations may prescribe that any member of the Defence Force may, at his option, on the expiration of his original enlistment or subsequent re-engagement, re-engage to serve for a further period without any fresh oath of enlistment, subject nevertheless to the veto of the Minister or other authority mentioned in the regulations and to such other conditions as are specified in the regulations, and such member who so re-engages shall sign before his commanding officer an agreement to re-engage in accordance with the said regulations to be indorsed upon or attached to the original oath of enlistment, and such member shall, during the period of such re-engagement, continue to be bound by his original oath of enlistment.

"Provided also that, except in time of war, any member who has re-engaged after the completion of his original period of enlistment may claim his discharge under section forty and shall not be required to pay the sum therein prescribed."

8. Section forty-six of the Principal Act is amended by adding at the end thereof the following sub-section :—

Amendment of  
s. 46 of  
Principal Act.

"(4.) If the Parliament is not sitting at the date of the issue of the proclamation, it shall be summoned to meet within ten days after that date."

9. After section fifty-four of the Principal Act the following section is inserted :—

"54A.—(1.) Members of the Military Forces—

- (a) voluntarily serving with the Imperial Forces outside Australia ; or
- (b) on their way from Australia for the purpose of so serving ; or
- (c) on their way back to Australia after so serving,

Application of  
the Army Act.

shall be subject to the Army Act as if they were part of the Regular Forces, with such modifications and adaptations as are prescribed.

"(2.) Subject to any Imperial Act, members of the Imperial Forces, serving in Australia with the Defence Force, shall be subject to this Act."

10. The heading to Part IV. of the Principal Act, and sections fifty-nine, seventy-five, and one hundred and twenty-four of that Act, are amended by omitting the word "Militia," and inserting in lieu thereof the word "Citizen."

Persons liable  
to serve  
in time of war.

11. Section sixty of the Principal Act is repealed, and the following section substituted in lieu thereof :—

"60.—(1.) In time of war it shall be lawful for the Governor-General, by proclamation, to call upon all persons liable to serve in the Citizen Forces to enlist and serve as prescribed.

Calling out of  
the Reserves.

"(2.) A



“(2.) A proclamation under the last preceding sub-section may call upon all the persons liable to service in any military district or sub-district, who are specified in any one or more of the classes hereunder set out, so to enlist, but so that the persons specified in any class in that district or sub-district shall not be called upon to enlist until all the persons in that district or sub-district who are specified in the preceding classes are or have been called upon.

“(3.) The classes referred to in this section are as follow :—

Class I.—All men of the age of eighteen years and upwards but under thirty-five years, who are unmarried, or widowers without children ;

Class II.—All men of the age of thirty-five years and upwards but under forty-five years, who are unmarried, or widowers without children ;

Class III.—All men of the age of eighteen years and upwards but under thirty-five years, who are married, or widowers with children ;

Class IV.—All men of the age of thirty-five years and upwards but under forty-five years, who are married, or widowers with children ; and

Class V.—All men of the age of forty-five years and upwards but under sixty years.

“(4.) If the Parliament is not sitting at the date of the issue of the proclamation, it shall be summoned to meet within ten days after that date.”

12. Section sixty-two of the Principal Act is repealed, and the following section substituted in lieu thereof:—

Junior Cadets.

“62.—(1.) All those liable to be trained as Junior Cadets shall be trained as prescribed :

“Provided that where the required training is given by the masters of schools to the satisfaction of the prescribed officer, that training may be accepted as sufficient.

Senior Cadets.

“(2.) All those liable to be trained as Senior Cadets shall be allotted to the Naval or Military Forces, and shall be trained in elementary naval or military exercises, and in musketry on open ranges up to distances of five hundred yards, and shall be organized in naval or military units.

Uniform.

“(3.) Uniform shall not be worn by Junior Cadets. Senior Cadets shall wear such uniform as is prescribed.

Officers and N.C.Os.

“(4.) Officers and non-commissioned officers of Junior and Senior Cadets shall be appointed as prescribed, and without regard to the conditions prescribed for the corresponding ranks of the Citizen Forces.

Commandants.

“(5.) All Cadets in a military district shall be under the orders of the Military Commandant of that district, excepting such as are allotted to the Naval Forces, who shall be under the orders of the Naval Commandant.

“(6.) Commissioned



“(6.) Commissioned rank in the Junior and Senior Cadets shall be deemed honorary rank in the Defence Force, but shall not confer any right to any command in the Defence Force.”

Commissioned  
ranks.

13. Section sixty-three of the Principal Act is amended by inserting therein, after paragraph (d), the following paragraphs:—

Amendment of  
s. 63 of  
Principal Act.

“(da) Establish and maintain factories for the manufacture of naval and military equipment and uniforms ;

“(db) Authorize the employment of persons in a civil capacity for any purpose in connexion with the Defence Force, or in any factory established in pursuance of this Act ;”

and by adding thereto the following sub-sections:—

“(2.) Persons employed in a civil capacity in pursuance of this section shall not be subject to the *Commonwealth Public Service Act* 1902, but shall be engaged for such periods and shall be subject to such conditions as are prescribed.

“(3.) All appointments in the Department of Defence (other than such appointments to the Central Staff as ought in the opinion of the Governor-General to be under the *Commonwealth Public Service Act* 1902) shall be appointments in the Naval or Military Defence Forces, and members of the Permanent Naval or Military Forces who have served not less than five years therein shall, in cases of equality of qualifications, have preference over other applicants for those appointments.”

14. Section sixty-seven of the Principal Act is repealed, and the following section substituted in lieu thereof:—

“67. The owner of any vehicle, horse, mule, bullock, boat, or vessel, or of any goods, required for naval or military purposes, shall, when required to do so by an officer authorized in that behalf by the regulations, furnish it for those purposes, and shall be recompensed therefor in the manner prescribed, and the owners of such vehicles and animals may be required by the regulations to register them periodically.”

Registration and  
impressment of  
vehicles, &c.

15. Section sixty-nine of the Principal Act is repealed, and the following section substituted in lieu thereof:—

“69. The Governor-General may give a general or particular authority to the Defence Force, or any part thereof, to enter upon and use any lands for training, manœuvres, or other naval or military exercises or purposes, and compensation shall be made, in the manner prescribed, for any damage or loss sustained by the owner or occupier of the lands, by reason of such entry or use.”

Authority to  
enter lands  
for training.

16. Section seventy-two of the Principal Act is amended by adding at the foot thereof the words—

Amendment of  
s. 72.

“Penalty : Fifty pounds.”

17. (1.) Section



Amendment of  
section 79 of  
the Principal  
Act,

17. (1.) Section seventy-nine of the Principal Act is amended—

(a) by omitting therefrom the words “deliver up the article to any officer or in default to pay its value to such officer,” and inserting in lieu thereof the words “be imprisoned for a period not exceeding three months unless in the meantime he delivers up the article or pays its value”; and

(b) by adding thereto the following sub-sections:—

“(2.) When an order has been made under this section the Court may by warrant in writing authorize any member of the Police Force of the Commonwealth or of a State or part of the Commonwealth to take possession of the article and to deliver it to an officer or as the Court thinks fit to direct.

“(3.) Any member of the Police Force of the Commonwealth or of a State or part of the Commonwealth having any warrant under this section may in the day time enter any building, premises, or place where the article is or is supposed to be, and may break open any part of the building, premises, or place, or any chest, receptacle, or thing therein, and may seize or take possession of the article and deliver it in accordance with the warrant.”

Intoxicating  
liquors.

18. After section one hundred and twenty-three of the Principal Act the following sections are inserted:—

“123A. No intoxicating or spirituous liquors shall be sold or supplied and no person shall have such intoxicating or spirituous liquors in his possession at any naval or military canteen, camp, fort, or post during such time as training of persons as prescribed in paragraphs (a), (b), and (c) of section one hundred and twenty-five is proceeding in such naval or military camp, fort, or post, except as prescribed for purely medical purposes.

Religion.

“123B. No member of the Forces who has conscientious objection shall be compelled to answer any question as to his religion, nor shall any regulation or other order compel attendance at any religious service.”

19. After section one hundred and twenty-three B of the Principal Act the following section is inserted:—

“123C. All married men in the permanent forces who have served for three years shall be entitled to be placed on the Married Establishment.”

Married  
Establishment.

20. After section one hundred and twenty-four of the Principal Act the following Parts and sections are inserted:—

“PART XII.—UNIVERSAL OBLIGATION IN RESPECT OF NAVAL OR MILITARY TRAINING.

Persons who are  
liable to be  
trained.

“125. All male inhabitants of Australia (excepting those who are exempted by this Act), who have resided therein for six months, and are British subjects, shall be liable to be trained, as prescribed, as follows:—

(a) From twelve years to fourteen years of age, in the Junior Cadets; and

(b) From



(b) From fourteen to eighteen years of age, in the Senior Cadets; and

(c) From eighteen to twenty years of age, in the Citizen Forces; and

(d) From twenty to twenty-six years of age, in the Citizen Forces:

“ Provided that, except in time of imminent danger of war, service under paragraph (d) shall be limited to one registration or one muster-parade in each year.

“ 126.—(1.) The training in the Junior Cadets shall begin on the first day of July in the year in which the persons liable reach the age of twelve years, and shall continue for two years: Training years.

“ Provided that, in the case of persons who reach the age of thirteen years in the year in which this Part commences, the training shall begin on the first day of July in that year, and continue for one year.

“(2.) The training in the Senior Cadets shall begin on the first day of July in the year in which the persons liable reach the age of fourteen years, and shall continue for four years:

“ Provided that, in the case of persons who reach the age of fifteen, sixteen, or seventeen years in the year in which this Part commences, the training shall begin on the first day of July in that year, and continue for three years, two years, or one year respectively.

“(3.) The training in the Citizen Forces shall begin on the first day of July in the year in which the persons liable reach the age of eighteen years, and shall continue for two years.

“ 127. The prescribed training shall be, in each year ending the thirtieth day of June, of the following duration:— Duration of training.

(a) In the Junior Cadets not exceeding one hundred and twenty hours; and

(b) In the Senior Cadets four whole-day drills, twelve half-day drills, and twenty-four night drills; and

(c) In the Citizen Forces sixteen whole-day drills or their equivalent:

“ Provided that, in the case of those allotted to the Naval Forces and to the Artillery and Engineers in the Military Forces, the training shall be twenty-five whole-day drills or their equivalent.

“ Provided also that the duration of a whole-day drill shall be not less than six hours, of a half-day drill not less than three hours, and of a night drill not less than one hour and a half.

“ 128. The prescribed military training in the Citizen Forces shall for the first year be in units organized on the same basis as the Militia and Volunteer Forces. First year's training in Citizen Forces.

“ 129. The prescribed military training in the Citizen Forces shall for the second year be in the units of the Militia and Volunteer Forces. Second year's training in Citizen Forces.

“ 130. Persons who are being trained under the provisions of paragraph (c) of section one hundred and twenty-five of this Act shall receive pay as prescribed. Persons undergoing training to be paid.

“ 131. This



Exception of persons reaching eighteen before this Part commences.

"131. This Act shall not, so far as concerns the obligation to render personal services for purposes of training, apply to any person who reaches the age of eighteen years in or before the year in which this Part commences.

Persons liable to training not to join Militia.

"132. A person who is liable to be trained in pursuance of this Part shall not while the liability continues be permitted, except as prescribed, to enrol himself as a member of the Militia Forces.

Efficiency required.

"133. At the termination of each annual training in the Senior Cadets and Citizen Forces, each member shall be classified by the officer appointed in that behalf as 'efficient' or 'non-efficient.' Those who are classified as non-efficient, either for failure to attend during the prescribed period, or because they have not attained a sufficient standard of efficiency, shall be required to attend an equivalent additional training for each year in which they are non-efficient.

Employers may not prevent employees from serving.

"134.—(1.) No employer shall prevent, or attempt to prevent, any employee who is serving or liable to serve in the Cadets or Citizen Forces from rendering the personal service required of him, or from attending any camp of instruction appointed to be held by the Head-Quarters of the Commonwealth or any Military District, or in any way penalize, or attempt to penalize, any employee for rendering or being liable to render such personal service, or for attending such camp, either by reducing his wages or dismissing him from his employment or in any other manner:

"Provided that this section shall not be construed to require an employer to pay an employee for any time when he is absent from employment for the purpose of training.

"Penalty : One hundred pounds.

"(2.) In any proceedings for any contravention of this section, it shall lie upon the employer to show that any employee, proved to have been dismissed or to have been penalized or to have suffered a reduction in wages, was so dismissed penalized or reduced for some reason other than for having rendered or being liable to render the personal service required of him or for attending the camp.

Penalty for evading service.

"135.—(1.) Every person who in any year, without lawful excuse, evades or fails to render the personal service required by this Part shall be guilty of an offence, and shall, in addition to the liability under section one hundred and thirty-three of this Act, be liable to a penalty not exceeding One hundred pounds and not less than Five pounds:

"Provided that, in the case of a cadet, no penalty shall be recoverable under this section until the end of the year in which he attains the age of eighteen years.

"(2.) Any penalty under this section may be recovered summarily on the information or complaint of a prescribed officer.

"(3.) In fixing the amount of the penalty, the Court shall have regard to the means of the person offending and those of his parents.

"(4) In



"(4.) In addition to any penalty imposed, or (where the Court is of opinion that the imposition of a penalty would involve undue hardship) in lieu of imposing any penalty, the Court may, if it thinks fit, commit the offender to confinement in the custody of any prescribed authority for a time corresponding in duration to the time which, in the opinion of the Court, would be taken up in rendering the personal service required.

"(5.) Any person committed to the custody of a prescribed authority in pursuance of this section may be detained by that authority at any prescribed institution or place, and while so detained shall be subject to the regulations governing that institution or place, and to training and discipline as prescribed.

"(6.) It shall not be necessary for the confinement to be continuous; but the person having the custody of the offender may (subject to the regulations) release him for such periods, and call upon him to return to custody at such times, as he thinks fit; to the intent that he may follow his occupation, and that the times and periods of his confinement may correspond, as nearly as practicable, with the times and periods which he ought to have occupied in rendering personal service.

"(7.) Any person detained in any prescribed institution or place in pursuance of this section who escapes therefrom, or who being released from custody fails to return thereto, may be arrested without warrant by any prescribed person, and taken back to the institution or place, and may on the application of any prescribed officer be ordered by any Court of summary jurisdiction to be detained for such additional period not exceeding twenty days as the Court thinks fit to order.

"136. Every person who, without lawful excuse, evades or fails to render the personal service required by this Part, shall, unless and until he has performed equivalent personal service as prescribed, be and remain ineligible for employment of any kind in the public service of the Commonwealth.

Disqualification  
of persons who  
evade service.

"137. All persons employed upon sea-going vessels registered in Australia, or upon vessels engaged wholly or partly in the coastal or inter-state trade of Australia, shall be subject to the provisions of this Act, and employment upon such vessels in Australian waters shall be deemed residence in Australia.

Sea-going  
persons.

#### "PART XIII.—EXEMPTIONS FROM PERSONAL SERVICE.

"138.—(1.) The following shall be exempt from the training mentioned in Part XII. of this Act in time of peace, so long as the employment, condition, or status on which the exemption is based is still continuing :—

Exemptions  
from training  
in time of peace.

(a) Those who have been reported by the prescribed medical authorities as unfit for any naval or military service whatever; and

(b) Those who are not substantially of European origin or descent, of which the medical authorities appointed in that behalf under the regulations shall be the judges: Provided that this exemption shall not extend to duties of a non-combatant nature; and

(c) School



(c) School teachers who have qualified at a school of naval or military instruction, or other prescribed course as Instructors or Officers of the Junior or Senior Cadets; and

(d) Members of the Permanent Naval or Military Forces.

“(2.) Persons liable to be trained in the Junior Cadets who are certified by any prescribed medical authority to be unfit to undergo the whole or any part of the prescribed training may be exempted from that training by any prescribed authority.

Burden of proving exemption.

“139. Where any question arises as to whether a person is exempt from training, the burden of proving the exemption shall rest on the person claiming the exemption, and applications for exemption shall be decided by the Courts authorized in that behalf by the regulations.

Exemption of certain districts.

“140. The Governor-General may by proclamation—

(a) exempt from the training mentioned in Part XII. of this Act in time of peace all persons residing within any area specified in the proclamation;

(b) vary or extend any area so specified; or

(c) withdraw any exemption under this section.

Persons not permitted to serve.

“141. No person shall be permitted to serve in the Cadets or in the Defence Force who is found by any Court appointed in that behalf by the regulations—

(a) to have been convicted of any disgraceful or infamous crime, or

(b) to be of notoriously bad character.

#### “PART XIV.—REGISTRATION AND ENROLMENT FOR NAVAL AND MILITARY TRAINING.

Registration.

“142. All male inhabitants of Australia, who have resided therein for six months, shall register themselves, or be registered by a parent, guardian, or other person acting *in loco parentis*, in the manner prescribed—

(a) during the month of January in the year in which they will reach the age of fourteen years (or, in the case of persons who in the year in which this Part commences will reach the age of fifteen, sixteen, or seventeen years, during the month of January in that year), or

(b) if not then present in Australia, or if for any other reason not registered at the prescribed time, within such further time and in such manner as is authorized by the regulations.

Allotment to arms and corps.

“143.—(1.) All persons liable to be trained under paragraphs (c) and (d) of section one hundred and twenty-five of this Act and not exempted by this Act shall be allotted to the several arms and corps.

“(2.) Of all persons liable to be trained, such a number as are required shall first be allotted for training in the Naval Forces.

“(3.) All



"(3.) All persons liable to be trained under paragraphs (b), (c), and (d) of section one hundred and twenty-five of this Act who are forbidden by the doctrines of their religion to bear arms shall, so far as possible, be allotted to non-combatant duties.

"144. All persons liable to be trained shall attend at the prescribed times and places for inspection, and shall give such information as is prescribed, and shall submit to the prescribed medical examination. Inspection.

"145.—(1.) Every person shall, on his form of registration, notify his address, and shall in the prescribed manner notify any change of address, and the address so notified shall be deemed his place of abode for the purposes of this Act. Registered address.

"(2.) All notices posted to a person's place of abode shall be deemed to have been delivered to him, and all printed notices exhibited at the post-office or prescribed place of the district in which his place of abode is shall be deemed a notice to him, and all postmasters are required to exhibit such notices as are sent to them by the prescribed authority, and to keep and issue such forms as are prescribed, and to send such forms when so required by the regulations to the prescribed persons. Notices and forms of registration, &c.

"146.—(1.) Every person who registers shall receive a printed Record Book, in which shall be entered such information as is prescribed, and all records of service, and the production of such book shall be *prima facie* evidence of the entries therein contained. Record book.

"(2.) No entry shall be made in the Record Book except by those authorized by the regulations. Unauthorized entries.

#### "PART XV.—MILITARY COLLEGE.

"147. There shall be established a Military College under a Director, who shall be a highly qualified officer with a general knowledge of the science of war, and a staff consisting of such Assistant Directors as may be prescribed. Military College.

"148. No applicant or officer shall be appointed to, or receive promotion in the Administrative and Instructional Staff until he has passed, as prescribed, a course at the Military College. Staff appointments.

"149. No officer, other than officers of the cadets, shall be promoted, except probationally, to any rank higher than that of Captain until he has passed, as prescribed, a course of practical and theoretical instruction by the members of the staff of the Military College to perfect him in the practice of his own arm of the Forces, and to accustom him to the uses and possibilities of other arms. Promotion to rank above Captain.

"150. No officer shall be promoted above the rank of Major until he has passed as prescribed a course of instruction by the members of the staff of the Military College during which he shall have shown himself fitted to command in the field a force of all arms. Promotion to rank above Major.

"Provided that sections one hundred and forty-nine and one hundred and fifty shall not apply to officers of the Medical, Veterinary, Ordnance, and other Departmental Services.

"151. Officers



Pay and  
allowances.

"151. Officers attending the Military College shall receive such pay and allowances as may be prescribed.

School of  
Instruction.

"152. A Special School of Instruction shall be established for the training of an instructional staff of non-commissioned officers, and all future appointments of persons to act as instructors shall be made from amongst those who have, at the close of the prescribed course, satisfied the Director or some person duly appointed by him that they are competent. Provided that persons who have acted as instructors in the British army, or those who, having served in the British army, satisfy the Director that they have the necessary qualifications, may be appointed without passing through such course."

I HEREBY CERTIFY that the above is a fair print of the Bill intituled "An Act relating to Naval and Military Defence," which has been passed by the Senate and the House of Representatives, and that the said Bill originated in the House of Representatives.

In the name and on behalf of His Majesty, I assent to this Act.

*De Wey*  
Governor-General.

*C. Swan Duffy*

*13<sup>th</sup> December, 1909.*

*Clerk of the House of Representatives.*