

# Repatriation (Torres Strait Islanders)

No. 139 of 1972

An Act making provision for Repatriation purposes with respect to certain Torres Strait Islanders, and certain Aboriginal Natives of Australia, who served in the Defence Force during the War and with respect to Residents of the Torres Strait Islands.

[Assented to 2 November 1972]

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

## PART I.—PRELIMINARY.

1.—(1) This Act may be cited as the *Repatriation (Torres Strait Islanders) Act 1972*. Short title and citation.

(2.) The *Repatriation Act 1920–1971*,\* as amended by the *Repatriation Act 1972*† and by the *Repatriation Act (No. 2) 1972*,‡ is in this Act referred to as the Principal Act.

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\* Act No. 6, 1920, as amended by No. 34, 1921; No. 23, 1922; No. 14, 1929; No. 74, 1930; Nos. 10 and 47, 1931; No. 32, 1934; No. 58, 1935; Nos. 29 and 67, 1936; Nos. 12, 24 and 42, 1937; No. 55, 1938; Nos. 37 and 96, 1940; No. 49, 1941; No. 22, 1943; No. 11, 1945; No. 49, 1946; Nos. 1, 29 and 74, 1947; No. 39, 1948; No. 38, 1949; Nos. 34 and 80, 1950; No. 31, 1951; No. 58, 1952; No. 69, 1953; No. 31, 1954; No. 39, 1955; Nos. 68 and 97, 1956; No. 44, 1957; No. 47, 1958; No. 58, 1959; No. 44, 1960; No. 46, 1961; Nos. 75 and 91, 1962; No. 47, 1963; Nos. 62 and 105, 1964; No. 64, 1965; No. 42, 1966; No. 64, 1967; Nos. 66 and 120, 1968; No. 95, 1969; Nos. 4 and 60, 1970; and Nos. 17 and 68, 1971.

† Act No. 15, 1972.

‡ Act No. 82, 1972.

(3.) Section 1 of the *Repatriation Act (No. 2) 1972* is amended by omitting sub-section (4.).

(4.) The Principal Act, as amended by this Act, may be cited as the *Repatriation Act 1920–1972*.

Commence-  
ment.

2. This Act shall come into operation on the date of commencement of the *Native Members of the Forces Benefits Act 1972*.

Parts.

3. This Act is divided into Parts, as follows:—

Part I.—Preliminary (Sections 1–3).

Part II.—Application of certain Commonwealth Laws in relation to Torres Strait Islands Members (Sections 4–8).

Part III.—Amendments of the Principal Act and Consequential Provision (Sections 9–15).

**PART II.—APPLICATION OF CERTAIN COMMONWEALTH LAWS IN RELATION TO TORRES STRAIT ISLANDS MEMBERS.**

Definitions.

4. In this Part, unless the contrary intention appears—

“the Commission” means the Repatriation Commission;

“the Native Members of the Forces Benefits Act” means the *Native Members of the Forces Benefits Act 1957* or that Act as amended at any time before the commencement of this Act;

“the Pensions Board” means the Pensions Board constituted by regulations under the *Native Members of the Forces Benefits Act*;

“the Repatriation Act” means the *Repatriation Act 1920–1960* or that Act as amended at any time that is relevant for the purposes of the provision in which the expression occurs;

“the Torres Strait Islands” means the islands of that name forming part of the territory of the State of Queensland;

“the war” means the war that commenced on the third day of September, One thousand nine hundred and thirty-nine, and includes any other war in which His late Majesty became engaged after that date and before the third day of September, One thousand nine hundred and forty-five;

“Torres Strait Islander” means a person who is a descendant of an indigenous inhabitant of the Torres Strait Islands;

“Torres Strait Islands member” means—

- (a) a male Torres Strait Islander; or
- (b) a male Aboriginal native of Australia,

who served during the war in the Defence Force at a rate of pay less than the minimum rate of pay that was prescribed as payable to a male member of the Australian Military Forces and whose service has been terminated by discharge or death.

5. For avoidance of doubt, it is by this Act declared that, consequent upon the enactment of the *Native Members of the Forces Benefits Act 1972*, the laws of the Commonwealth providing for benefits, advantages and assistance in respect of members of the Defence Force who served during the war apply, according to their tenor, in relation to Torres Strait Islands members.

Application of certain Commonwealth laws in relation to Torres Strait Islands members.

6. Where a pension or other benefit under the *Native Members of the Forces Benefits Act* was, immediately before the commencement of this Act, payable to, or in respect of, a person who is a Torres Strait Islands member, then, on the commencement of this Act—

Pension, &c., to continue to be payable.

- (a) the pension or other benefit continues to be payable as if it were a pension or other benefit under the *Repatriation Act*; and
- (b) any assessment, decision or determination made in relation to it before the commencement of this Act may be reviewed, and may be varied or revoked, in accordance with the *Repatriation Act* as if it were—
  - (i) in the case of an assessment, decision or determination of the Pensions Board—an assessment, decision or determination of a *Repatriation Board* under the *Repatriation Act*; or
  - (ii) in the case of an assessment, decision or determination of the Commission—an assessment, decision or determination under the *Repatriation Act*.

7.—(1.) In this section, “claim to which this section applies” means a claim for a pension or an allowance (other than a service pension) under the *Native Members of the Forces Benefits Act* made, before the commencement of this Act, by a person who is a Torres Strait Islands member.

Claims for pensions (other than service pensions) made before commencement of this Act.

(2.) Where, at the commencement of this Act, no determination of the Pensions Board has been made with respect to a claim to which this section applies, the claim shall be treated, for the purposes of the *Repatriation Act*, as a claim made under that Act.

(3.) Where—

- (a) the Pensions Board has made a determination with respect to a claim to which this section applies; and
- (b) at the commencement of this Act, no appeal from that determination has been made to the Commission or, if such an appeal has been made, the appeal has not been determined by the Commission,

then, for the purposes of section 28 of the Repatriation Act—

- (c) that determination of the Pensions Board shall be treated as a determination of a Repatriation Board under the Repatriation Act; and
- (d) that claim shall be treated as a claim under the Repatriation Act.

(4.) Where the Commission has, before the commencement of this Act, determined an appeal against a determination of the Pensions Board with respect to a claim to which this section applies, then, for the purposes of section 64, 67 or 70 of the Repatriation Act, whichever is the appropriate provision—

- (a) that determination of the Commission shall be treated as a determination under section 28 of the Repatriation Act;
- (b) that determination of the Pensions Board shall be treated as a determination of a Repatriation Board under the Repatriation Act; and
- (c) that claim shall be treated as a claim under the Repatriation Act.

(5.) Where—

- (a) a claim referred to in sub-section (2.) of this section is granted; or
- (b) an appeal made by virtue of sub-section (3.) or (4.) of this section is upheld,

by virtue of sub-section (3.) of section 37 of the Repatriation Act, the pension arising out of the granting of the claim or the upholding of the appeal is not payable in respect of any period before the commencement of this Act.

Claims for service pensions made before commencement of this Act.

8. Where—

- (a) a claim for a service pension under the Native Members of the Forces Benefits Act was made, before the commencement of this Act, by a person who is a Torres Strait Islands member; and
- (b) at the commencement of this Act, no determination has been made by the Pensions Board or the Commission with respect to the claim,

the claim shall be treated, for the purposes of the Repatriation Act, as a claim made under that Act.

PART III.—AMENDMENTS OF THE PRINCIPAL ACT  
AND CONSEQUENTIAL PROVISION.

9. Section 29 of the Principal Act is amended by adding at the end thereof the following sub-section—

Date of operation of determination of Commission on appeal.

“(2.) The last preceding sub-section does not apply in relation to a person whose claim for pension was rejected by a Board but subsequently granted on appeal to the Commission if—

- (a) the person was, at any time during the period of three months after the determination of the Board, a resident of the Torres Strait Islands; and
- (b) the appeal to the Commission was lodged within a further three months after the expiration of the period referred to in the last preceding paragraph.”

10. Section 67 of the Principal Act is amended by inserting in sub-section (1.), after the words “whichever is the later”, the words “, or, if the appellant was at any time during that period a resident of the Torres Strait Islands, within a further three months after the expiration of that period”.

Appeals to Assessment Appeal Tribunals.

11. Section 69 of the Principal Act is amended by inserting in sub-section (2.), after the word “application”, the words “or, if the appellant was at any time during that period a resident of the Torres Strait Islands, within a further three months after the expiration of that period”.

Effect of decision of Assessment Appeal Tribunals.

12. Section 70 of the Principal Act is amended by inserting in sub-section (1.), after the word “determination” (first occurring), the words “or, if the appellant was at any time during that period a resident of the Torres Strait Islands, within a further three months after the expiration of that period”.

Appeals by applicants under s. 85.

13. Section 78 of the Principal Act is amended by omitting paragraphs (a) and (b) of sub-section (2A.) and inserting in their stead the following paragraphs:—

Date of operation of decisions and determinations on appeal.

- “(a) the appeal is so lodged within three months after the making of the determination or, if the appellant was at any time during that period a resident of the Torres Strait Islands, within a further three months after the expiration of that period; and
- (b) in a case where the determination of the Commission was made on an appeal to the Commission from a determination of a Board—the appeal to the Commission was lodged within three months after the making of the determination of the Board or, if the appellant was at any time during that period a resident of the Torres Strait Islands, within a further three months after the expiration of that period.”

Tribunal may set aside decisions in certain circumstances.

14. Section 80A of the Principal Act is amended by inserting in paragraph (b), after the word “ decision ”, the words “ or, if the appellant was at any time during that period a resident of the Torres Strait Islands, within a further three months after the expiration of that period ”.

Extension and application of Act to certain male members of the Forces.

15.—(1.) Section 99 of the Principal Act is amended—

(a) by omitting from sub-paragraph (vi) of paragraph (b) of sub-section (2.) the word “ and ”; and

(b) by adding at the end of paragraph (b) of sub-section (2.) the following word and sub-paragraph:—

“ ; and (viii) in the case of a member of the forces who is a Torres Strait Islands member for the purposes of Part II. of the *Repatriation (Torres Strait Islanders) Act 1972*—a person whom the Commission, by instrument in writing, determines, for the purposes of this sub-paragraph, to be a person who is dependent on the member.”.

(2.) Where a person was, immediately before the commencement of this Act, a dependant, for the purposes of regulations in force under the *Native Members of the Forces Benefits Act 1957–1968*, of another person who is a Torres Strait Islands member for the purposes of Part II. of this Act, then, on the commencement of this Act, that first-mentioned person shall, unless and until the Repatriation Commission otherwise determines, be deemed to be a person whom the Repatriation Commission has, by instrument in writing, determined, for the purposes of sub-paragraph (viii) of paragraph (b) of sub-section (2.) of section 99 of the *Repatriation Act 1920–1972*, to be a person who is dependent on that other person.

