

# REPATRIATION ACTS AMENDMENT ACT 1978

## No. 129 of 1978

An Act relating to Repatriation and related matters.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

### PART I—PRELIMINARY

1. This Act may be cited as the *Repatriation Acts Amendment Act* 1978.<sup>1</sup> Short title

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.<sup>1</sup> Commence-  
ment

(2) The following sections and Part VII shall come into operation on 1 November 1978:

Sections 5, 6, 7, 8, 9, 10, 11, 13, 17, 20, 21, 22, 24, 27, 31, 33, 34 and 36.

### PART II—AMENDMENTS OF THE REPATRIATION ACT 1920

3. The *Repatriation Act* 1920<sup>2</sup> is in this Part referred to as the *Principal Act*. Principal Act

4. Section 6 of the *Principal Act* is amended by omitting from sub-section (1) the definition of “organization representing returned soldiers” and substituting the following definition: Interpret-  
ation

“ ‘organization representing returned soldiers’ means—

- (a) an organization representing persons who are members of the Forces as defined by section 23, 100 or 107B; or
- (b) an organization representing persons who are members of the Forces as defined by section 105 or 107F,

and includes an organization representing persons who were dependants of deceased members of the Forces, as defined by section 23, 100, 105, 107B or 107F, at the time of the deaths of those members;”.

**Duties of  
Boards**

**5.** Section 27 of the Principal Act is amended by omitting paragraphs (i) and (j) of sub-section (1) and substituting the following word and paragraph:

“and (j) determining whether a member of the Forces is permanently unemployable.”.

**Variation of  
rate of  
pension**

**6.** Section 35AAA of the Principal Act is amended—

(a) by omitting from sub-section (1) the definition of “relevant period” and substituting the following definition:

“ ‘relevant period’ means the period of 12 months commencing on 1 November 1979, and each subsequent period of 12 months;”; and

(b) by omitting paragraph (a) of sub-section (5) and substituting the following paragraph:

“(a) is the number, calculated to 3 decimal places, ascertained by dividing the index number for the last preceding June quarter by the highest index number in respect of any other preceding June quarter, being such a quarter in the year 1978 or any subsequent year; or”.

**Pension for  
pulmonary  
tuberculosis**

**7.** Section 37 of the Principal Act is repealed.

**Appeals**

**8.** Section 64 of the Principal Act is amended—

(a) by omitting from sub-section (1) “ or a pension payable by virtue of sub-section (3) of section 37”; and

(b) by omitting sub-section (1A); and

(c) by omitting from sub-section (2) “either of the last two preceding sub-sections” and substituting “sub-section (1)”.

**Assessment  
Appeal  
Tribunals**

**9.** Section 65 of the Principal Act is amended by omitting sub-paragraph (ii) of paragraph (b) of sub-section (1).

**Appeals by  
applicants  
under section  
85**

**10.** Section 70 of the Principal Act is amended by omitting paragraph (b) of sub-section (1).

**Date of  
operation of  
decisions  
and deter-  
minations of  
appeal**

**11.** Section 78 of the Principal Act is amended by omitting from sub-paragraph (ii) of paragraph (a) of sub-section (2) and from sub-section (2A) “or sub-section (1A)” (wherever occurring).

**12. (1) Section 83 of the Principal Act is amended—**Interpret-  
ation

- (a) by adding at the end of sub-paragraph (i) of paragraph (b) of the definition of “Child” in sub-section (1) “but is under the age of twenty-five years”; and
- (b) by adding at the end of paragraph (1a) of the definition of “Income” in sub-section (1) “or by way of any other allowance under the regulations that is prescribed for the purposes of this paragraph”.

(2) Where the maximum rate of pension applicable to a member of the Forces immediately before the commencement of this sub-section is a rate for the purpose of the calculation of which there has been taken into account a rate in respect of a particular child who has attained the age of 25 years, the appropriate rate in respect of that child shall continue to be taken into account for that purpose after the commencement of this sub-section notwithstanding the amendment made by paragraph (1) (a).

(3) Where the income of a member of the Forces for the purposes of Division 5 of Part III of the Principal Act immediately before the commencement of this sub-section is an amount of income for the purpose of the computation of which in accordance with sub-section 87 (3) of that Act there has been taken into account a rate in respect of a child who has attained the age of 25 years, the appropriate rate in respect of that child shall continue to be taken into account for that purpose after the commencement of this sub-section notwithstanding the amendment made by paragraph (1) (a).

**13. Section 85 of the Principal Act is amended by omitting paragraph (b) of sub-section (2).**Service  
pension in  
respect of a  
member  
permanently  
unemploy-  
able, &c.**14. Section 87 of the Principal Act is amended by omitting sub-section (1A) and substituting the following sub-sections:**Variation of  
rate of  
service  
pension  
according to  
income

“(1A) Sub-section (1) does not apply in relation to a claimant or pensioner who is permanently blind.

“(1B) Notwithstanding sub-section (1), where a claimant or pensioner—

- (a) has attained the age of 70 years; and
- (b) is in receipt of, or is qualified to receive, a service pension,

the annual rate at which that pension is granted shall not be less than—

(c) in the case of a member of the Forces who is a person referred to in paragraph (a) of sub-section (1A) of section 28 of the *Social Services Act* 1947, being that section in its application to members of the Forces by virtue of section 84 or 85 of this Act—\$2,675.40 per annum; or

(d) in any other case—\$2,230.80 per annum.”.

Service pensioner in a public institution

**15.** Section 95 of the Principal Act is amended by omitting sub-section (1D).

Receipt of income to be notified

**16.** Section 96 of the Principal Act is amended by omitting from paragraph (a) of sub-section (6A) “has attained the age of 70 years” and substituting “, having attained the age of 70 years, is in receipt of pension at the rate referred to in paragraph (c) or (d) of sub-section (1B) of section 87, whichever is the appropriate rate”.

Extension of application of Act to certain members of the Forces

**17.** Section 107H of the Principal Act is amended by omitting from sub-section (1) “37,”.

Deduction from pensions, allowances or benefits of certain amounts

**18.** Section 120B of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (3) “or a prescribed sustenance allowance” and substituting “, a prescribed sustenance allowance or any other allowance under the regulations that is prescribed for the purposes of this sub-section”; and
- (b) by omitting from paragraph (b) of sub-section (3) “or the sustenance allowance” and substituting “, the sustenance allowance or the other allowance under the regulations”.

Prescribed persons

**19.** (1) Section 123AB of the Principal Act is amended—

- (a) by inserting after sub-section (4) the following sub-section:

“(4A) For the purposes of sub-sections (3) and (4), a child referred to in paragraph (b) of the definition of ‘child’ in sub-section (6) in relation to a person shall be deemed to be a child of whom the person has the custody, care and control.”; and

- (b) by inserting at the end of sub-paragraph (i) of paragraph (b) of the definition of “child” in sub-section (6) “but is under the age of 25 years”.

(2) Where, immediately before the commencement of this section, a child of a person was a child who had attained the age of 25 years, the appropriate rate in respect of that child shall be taken into account at any time after the commencement of this section in the calculation of the prescribed rate of income applicable to that person for the purposes of section 123AB of the *Repatriation Act* 1920 notwithstanding the amendment made by paragraph (1) (b).

**20.** (1) Schedule 1 to the Principal Act is amended by omitting the Schedule 1 table and substituting the following table:

Column 1	Column 2	Column 3
Pension payable to Widowed Mother on Death of Member	Pension payable to Widow on Death of Member	Pension payable to Member on Total Incapacity
\$ Per fortnight 17	\$ Per fortnight 106.40	\$ Per fortnight 76.90

(2) Schedule 1 to the Principal Act is further amended by omitting from paragraph 6 “\$114.70” and substituting “\$140.30”.

**21.** Schedule 2 to the Principal Act is amended—

Schedule 2

(a) by omitting—

“RATE FOR SPECIAL PENSIONS—\$166.50 PER FORTNIGHT”

and substituting—

“RATE FOR SPECIAL PENSIONS—\$203.80 PER FORTNIGHT”; and

(b) by omitting—

“The Commission may grant a pension not exceeding the Special Rate of Pension to a member of the Forces who is suffering from tuberculosis and who has been an inmate of an establishment for persons so suffering: Provided that pension under this paragraph shall not be payable after the member’s discharge from the establishment unless the medical officer in charge of the establishment, or a medical practitioner approved by the Commission, has certified that his being discharged is not a menace to public health.”.

**22.** Schedule 5 to the Principal Act is amended by omitting from Schedule 5 column 2 of the table “103.60” (wherever occurring) and substituting “126.90”.

**PART III—AMENDMENTS OF REPATRIATION (FAR EAST  
STRATEGIC RESERVE) ACT 1956**

**Principal Act**      **23.** The *Repatriation (Far East Strategic Reserve) Act 1956*<sup>3</sup> is in this Part referred to as the Principal Act.

**Extension of certain provisions of Repatriation Act**      **24.** Section 7 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:  
“ (1) Subject to this Act, the provisions of Divisions 1 to 4 (inclusive) of Part III (other than sections 24, 42, 44 and 54) and sections 114, 114A, 119, 120A and 120B of, and the Schedules to, the Repatriation Act extend to and in relation to—  
    (a) members of the Forces within the meaning of this Act; and  
    (b) the dependants of those members.”.

**Formal amendments**      **25.** The Principal Act is amended as set out in Schedule 1.

**PART IV—AMENDMENTS OF THE REPATRIATION  
(SPECIAL OVERSEAS SERVICE) ACT 1962**

**Principal Act**      **26.** The *Repatriation (Special Overseas Service) Act 1962*<sup>4</sup> is in this Part referred to as the Principal Act.

**Extension of certain provisions of Repatriation Act**      **27.** Section 7 of the Principal Act is amended by omitting paragraph (e) of sub-section (3).

**Formal amendments**      **28.** The Principal Act is amended as set out in Schedule 2.

**PART V—AMENDMENTS OF THE REPATRIATION (TORRES  
STRAIT ISLANDERS) ACT 1972**

**Principal Act**      **29.** The *Repatriation (Torres Strait Islanders) Act 1972*<sup>5</sup> is in this Part referred to as the Principal Act.

**Definitions**      **30.** Section 4 of the Principal Act is amended—  
    (a) by omitting “the third day of September, One thousand nine hundred and thirty-nine” from the definition of “the war” and substituting “3 September 1939”; and  
    (b) by omitting “the third day of September, One thousand nine hundred and forty-five” from that definition and substituting “3 September 1945”.

31. Sections 7 and 8 of the Principal Act are repealed.

Repeal of  
sections 7  
and 8

PART VI—AMENDMENT OF THE SEAMEN’S WAR  
PENSIONS AND ALLOWANCES ACT 1940

32. The *Seamen’s War Pensions and Allowances Act* 1940<sup>6</sup> is in this Principal Act referred to as the Principal Act.

33. Section 18 of the Principal Act is amended by omitting from sub-section (4A) “\$114.70” and substituting “\$140.30”. Rates of pension on death or total incapacity

34. Section 18AA of the Principal Act is amended— Variation of rate of pension

(a) by omitting from sub-section (1) the definition of “relevant period” and substituting the following definition:

“ ‘relevant period’ means the period of 12 months commencing on 1 November 1979, and each subsequent period of 12 months;”; and

(b) by omitting paragraph (a) of sub-section (5) and substituting the following paragraph:

“(a) is the number, calculated to 3 decimal places, ascertained by dividing the index number for the last preceding June quarter by the highest index number in respect of any other preceding June quarter, being such a quarter in the year 1978 or any subsequent year; or”.

35. Section 59 of the Principal Act is amended by omitting paragraph (f) of sub-section (1). Regulations

36. Schedule 1 to the Principal Act is amended by omitting the table Schedule 1 and substituting the following table:

Column 1	Column 2	Column 3
Rate of pension payable per fortnight to widow on death of Australian mariner	Aggregate of rates of pensions payable per fortnight to dependants other than widow and children on death of Australian mariner	Rate of pension payable per fortnight to Australian mariner on total incapacity
\$ 106.40	\$ 17.60	\$ 76.90

## PART VII—GENERAL

## Interpretation

**37.** In this Part, unless the contrary intention appears—

“determining Authority” means—

- (a) a Repatriation Board;
- (b) the Repatriation Commission; or
- (c) an Assessment Appeal Tribunal;

“member of the Forces” means a person who is a member of the Forces for the purposes of any of the Repatriation Acts;

“pension” means a pension payable under any of the Repatriation Acts, but does not include a service pension;

“Repatriation Acts” means the *Repatriation Act* 1920, the *Repatriation (Far East Strategic Reserve) Act* 1956 and the *Repatriation (Special Overseas Service) Act* 1962;

“service pension” means a service pension payable under Division 5 of Part III of the *Repatriation Act* 1920, including that Division as extended by virtue of the *Repatriation (Special Overseas Service) Act* 1962;

“tuberculosis amendments” means the amendments made by the following sections:

Sections 5, 7, 8, 9, 10, 11, 13, 17, 24, 27 and 31.

## Claims for pensions or service pensions in respect of pulmonary tuberculosis

**38.** (1) Subject to sub-section (2), where—

- (a) a claim for a pension in respect of incapacity or death caused by pulmonary tuberculosis has been lodged before the commencement of this Part; or
- (b) an application for a service pension made by a member of the Forces on the ground that he is suffering from pulmonary tuberculosis has been lodged before the commencement of this Part,

then—

- (c) that claim or application may be dealt with;
- (d) an appeal in relation to that claim or application may be made and dealt with; and
- (e) a pension or service pension arising out of that claim or application may be granted,

as if the tuberculosis amendments had not been made.

(2) Sub-section (1) does not authorize the grant of a pension or a service pension unless the grant is to take effect on and from a date before the commencement of this Part.



(3) Where, as a result of a claim or application, or an appeal, referred to in sub-section (1), a pension or service pension becomes payable on and from a date before the commencement of this Part, that pension or service pension shall, for the purposes of this Part, be deemed to have been payable since before the commencement of this Part.

**39.** (1) This section applies to a pension payable in respect of incapacity or death caused by pulmonary tuberculosis, being a pension that has been so payable since before the commencement of this Part.

(2) Subject to section 40, the tuberculosis amendments do not apply in relation to a pension to which this section applies.

(3) Subject to section 40—

(a) where a pension to which this section applies was, immediately before the commencement of this Part, payable to a member of the Forces at the rate of \$74.40 per fortnight, that pension shall, after the commencement of this Part, continue to be paid at that rate; and

(b) where a pension to which this section applies was, immediately before the commencement of this Part, payable to a dependant of a member of the Forces in respect of the incapacity of that member, that pension shall, after the commencement of this Part, continue to be paid at the rate at which it was payable immediately before the commencement of this Part.

**40.** (1) In this section, “review”, in relation to a pension, means a review conducted under section 31 of the *Repatriation Act* 1920 for the purpose of—

(a) assessing the nature, and probable duration, of the incapacity in respect of which the pension is payable; and

(b) assessing the appropriate rate of that pension having regard to—

(i) the assessment referred to in paragraph (a);

(ii) any relevant provisions of the Repatriation Acts in force at the time of the review; and

(iii) the provisions of this Part.

(2) The Repatriation Commission shall, as soon as practicable after the commencement of this Part, conduct a review with respect to every pension payable in respect of incapacity caused by pulmonary tuberculosis, being a pension that has been so payable since before the commencement of this Part.

Pensions  
(other than  
service  
pensions)  
payable in  
respect of  
pulmonary  
tuberculosis  
to continue  
in force

Review of  
pensions  
(other than  
service  
pensions)  
payable in  
respect of  
pulmonary  
tuberculosis

(3) Where a pension is the subject of a review in accordance with sub-section (2), the incapacity (if any) in respect of which the pension is payable shall, for the purposes of that review and thereafter for all purposes of the Repatriation Acts, be treated as if it had resulted from an occurrence that happened during the war service or special service of the member of the Forces concerned.

(4) The Repatriation Commission shall not, on the completion of a review with respect to a pension in accordance with sub-section (2), and a determining Authority shall not, at any time after the completion of that review under sub-section (2), determine the rate of the pension to be a rate less than—

- (a) where the pension is payable to a member of the Forces—the rate of \$74.40 per fortnight; or
- (b) where the pension is payable to a dependant of a member of the Forces—the rate at which the pension was payable immediately before the commencement of this Part.

(5) Where the Repatriation Commission, on the completion of a review with respect to a pension in accordance with sub-section (2), determines the rate of the pension to be a rate that is higher than the rate referred to in the appropriate paragraph of sub-section (4), the Repatriation Commission shall direct that the rate so determined shall be deemed to have taken effect on the first pay day after the commencement of this Part.

Service  
pensions  
payable to  
members of  
the Forces in  
respect of  
pulmonary  
tuberculosis  
to continue  
in force

**41.** The tuberculosis amendments do not apply in relation to any service pension payable to a member of the Forces who is suffering from pulmonary tuberculosis, being a service pension that has been so payable since before the commencement of this Part, and such a pension continues to be payable as if those amendments had not been made.

Application  
of certain  
amendments

**42.** (1) The amendments made by sections 20, 21, 22, 33 and 36 have effect in relation to every instalment of pension that falls due after the commencement of this Part.

(2) In this section, “pension” includes a pension under the *Seamen’s War Pensions and Allowances Act 1940*.

## SCHEDULE 1

## Section 25

## FORMAL AMENDMENTS OF REPATRIATION (FAR EAST STRATEGIC RESERVE) ACT 1956

1. The following provisions are amended by omitting any number expressed in words that is used to identify a section of the Act, or of another Act, and substituting that number expressed in figures:

Section 3 (1) (definitions of “dependant” and “pension”), 11, 12 (1) and 13 (1).

2. The following provisions are amended by omitting “of this Act” and “of this section” (wherever occurring):

Sections 3 (1) (definition of “dependant”), 13 (1) and (1A).

3. The Act is further amended as set out in the following table:

Provision	Amendment
Paragraph 13 (1) (b)	(a) Omit “Fifty dollars”, substitute “\$50”. (b) Omit “three”, substitute “3”.
Paragraph 13 (1C) (a)	Omit “Australia”, substitute “the Commonwealth”.

## SCHEDULE 2

## Section 28

## FORMAL AMENDMENTS OF REPATRIATION (SPECIAL OVERSEAS SERVICE) ACT 1962

1. The following provisions are amended by omitting any number expressed in words that is used, whether with or without the addition of a letter, to identify a section of the Act, or of another Act, and substituting that number expressed in figures:

Sections 3 (1) (definitions of “pension” and “special duty”), 7 (1), (2) (c), (3) (b) and (3) (f), 11, 13 (1), 14 (1) and (4).

2. The following provisions are amended by omitting “ of this Act” and “ of this section” (wherever occurring):

Sections 3 (1) (definition of “special duty”) and (3), 14 (1) and (1A).

3. The Act is further amended as set out in the following table:

Provision	Amendment
Paragraph 14 (1) (c)	(a) Omit “Fifty dollars”, substitute “\$50”. (b) Omit “three”, substitute “3”.
Paragraph 14 (1C) (a)	Omit “Australia”, substitute “the Commonwealth”.
Sub-section 14 (4)	Omit “of this Act” (first occurring).

## NOTES

1. Act No. 129, 1978; assented to 26 October 1978.
2. Act No. 6, 1920, as amended. For previous amendments *see* Act 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; Nos. 17 and 68, 1971; Nos. 15, 82 and 139, 1972; Nos. 2, 27 and 104, 1973; No. 216, 1973 (as amended by No. 20, 1974); Nos. 3, 24 and 90, 1974; Nos. 35, 56 and 111, 1975; Nos. 27, 91 and 112, 1976; and No. 56, 1977.
3. Act No. 91, 1956, as amended. For previous amendments *see* Act No. 90, 1962; No. 107, 1964; No. 93, 1966; No. 81, 1972; No. 4, 1973; No. 216, 1973 (as amended by No. 20, 1974); and No. 90, 1974.
4. Act No. 89, 1962, as amended. For previous amendments *see* Act No. 108, 1964; No. 110, 1965; No. 93, 1966; No. 78, 1968; No. 80, 1972; No. 3, 1973; No. 216, 1973 (as amended by No. 20, 1974); and No. 90, 1974.
5. Act No. 139, 1972, as amended. For previous amendments *see* Act No. 216, 1973 (as amended by No. 20, 1974).
6. Act No. 60, 1940, as amended. For previous amendments *see* Act No. 77, 1946; No. 80, 1950; Nos. 17 and 75, 1952; No. 70, 1953; No. 40, 1955; No. 45, 1957; No. 48, 1958; No. 59, 1959; No. 46, 1960; No. 47, 1961; Nos. 64 and 113, 1964; No. 65, 1965; No. 43, 1966; No. 102, 1967; No. 67, 1968; No. 96, 1969; No. 61, 1970; Nos. 18 and 69, 1971; Nos. 16 and 83, 1972; Nos. 6 and 106, 1973; Nos. 4, 25 and 90, 1974; Nos. 35 and 111, 1975; Nos. 27, 91 and 112, 1976; and No. 56, 1977.