Repatriation Institutions (Transfer) Act 1992

Act No. 48 of 1992 as amended

This compilation was prepared on 2 May 2000
taking into account amendments up to Act No. 146 of 1999

The text of any of those amendments not in force
on that date is appended in the Notes section

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Contents

Part 1—Preliminary 1

1 Short title [*see* Note 1] 1
2 Commencement [*see* Note 1] 1
3 Interpretation 1
4 Meaning of *affected employee* 2
5 Meaning of *offer of comparable job* 2
6 Meaning of *offer of continuing employment* and *acceptable continuing employment* 3

Part 2—Restriction on right to transfer certain repatriation institutions 5

7 Minister to notify intention to transfer 5

Part 3—Declaration of Parliament's intentions in relation to staff of repatriation institutions that become institutions operated by the States 6

8 Part sets out Parliament's intentions 6
9 Affected employees to be offered continuing employment in comparable jobs 6
10 Institution to continue to provide the same services 6
11 State to recognise Commonwealth entitlements etc 6
12 Certain affected employees to receive income supplementation 7
13 Certain affected employees to receive payments in respect of maternity leave 8
14 Certain affected employees to be able to remain in Commonwealth superannuation scheme 9

Part 4—Provisions relating to staff who receive offers of employment at State operated institutions 10

15 Certain affected employees taken to have resigned 10
16 Transferred staff have no entitlement to payment in lieu of accrued leave 11

Notes to the *Repatriation Institutions (Transfer) Act 1992* 13

An Act relating to the transfer of repatriation institutions and to the staff of transferred institutions

Part 1—Preliminary

1 Short title [*see* Note 1]

This Act may be cited as the *Repatriation Institutions (Transfer) Act 1992*.

2 Commencement [*see* Note 1]

This Act commences on the day on which it receives the Royal Assent.

3 Interpretation

(1) In this Act:

appropriate State institution, in relation to a State, means:

(a) a repatriation institution in the State that has become an institution operated by the State or an authority of the State; or

(b) any other institution in the State declared under subsection (2) to be an appropriate State institution.

commencement means the commencement of this Act.

Commission has the same meaning as in the *Veterans' Entitlements Act 1986*.

repatriation institution means a hospital or other institution that was operated by the Commission under paragraph 89(1)(a) of the *Veterans' Entitlements Act 1986* immediately before the commencement.

staff transfer day, in relation to a repatriation institution that becomes an institution operated by a State or an authority of a State, means the day on which the State or authority starts to operate the institution.

the Service means the APS within the meaning of the *Public Service Act 1999*.

(2) The Secretary to the Department may, in writing, declare an institution operated by a State or an authority of a State to be an appropriate State institution for the purposes of this Act.

4 Meaning of *affected employee*

(1) Subject to subsections (2) and (3), for the purposes of this Act, a person is or was an affected employee of a repatriation institution at a particular time (including a time before the commencement) if, at that time, the person is or was an officer or employee of the Department:

(a) employed at the institution; or

(b) usually employed at the institution but temporarily absent from that employment for any reason.

(2) A person is not an affected employee of a repatriation institution at a particular time if, at that time:

(a) the appointment, transfer or promotion of the person to an office or position in the Service has taken effect but the person has not started to perform the duties of the office or position; and

(b) if the person had started to perform the duties of the office or position, the person would not be an officer of the Department employed, or usually employed, at the institution.

(3) The Secretary to the Department may, in writing, determine that specified officers or employees employed, or usually employed, at a repatriation institution are not affected employees of the institution.

5 Meaning of *offer of comparable job*

(1) For the purposes of this Act, an offer of employment made to an affected employee of a repatriation institution is an offer of a comparable job if:

(a) the duties of the offered employment and the affected employee's employment at the institution are the same or nearly the same; and

(b) the salary applicable to the offered employment equals or exceeds 98% of the affected employee's salary at the institution; and

(c) if the affected employee's employment at the institution is full-time employment—the offered employment is full-time employment; and

(d) if the affected employee's employment at the institution is part-time employment—the offered employment is part-time employment; and

(e) the shift work requirements (if any) of the offered employment and the affected employee's employment at the institution are the same or nearly the same.

(2) For the purposes of this section, the duties and requirements of, and salary applicable to, an affected employee's employment at a repatriation institution are, if the affected employee is temporarily performing the duties of an office to which he or she has not been appointed, transferred or promoted, to be determined as if the affected employee were not performing, and were not required to perform, those duties.

(3) In this section:

salary does not include:

(a) an allowance; or

(b) shift penalty payments or restricted duties adjustment payments; or

(c) fringe benefits within the meaning of the *Fringe Benefits Tax Assessment Act 1986*.

6 Meaning of *offer of continuing employment* and *acceptable continuing employment*

(1) For the purposes of this Act, an offer of employment made by a State or an authority of a State to an affected employee of a repatriation institution is an offer of continuing employment if the employment offered:

(a) is to start on the staff transfer day in relation to the institution; and

(b) is at an appropriate State institution in the State.

(2) For the purposes of this Act, a person who was an affected employee of a repatriation institution that has become an institution operated by a State or an authority of a State is in acceptable continuing employment if:

(a) the person is employed at an appropriate State institution in the State; and

(b) there has been no period (other than periods of authorised leave from employment) since the staff transfer day during which the person has not been employed at an appropriate State institution in the State.

Part 2—Restriction on right to transfer certain repatriation institutions

7 Minister to notify intention to transfer

(1) This section applies in relation to the following repatriation institutions:

(a) Repatriation General Hospital Daw Park;

(b) Repatriation General Hospital Greenslopes;

(c) Repatriation General Hospital Heidelberg;

(d) Repatriation General Hospital Hollywood;

(e) the repatriation auxiliary hospitals, being:

(i) Lady Davidson Hospital; and

(ii) MacLeod Repatriation Hospital; and

(iii) Repatriation Hospital Kenmore.

(2) The Commonwealth must not enter into an agreement under which a repatriation institution to which this section applies is to become, before 1 January 1995, an institution operated by a State or an authority of a State unless:

(a) the Minister has determined in writing that the institution should be transferred to the State or authority; and

(b) the determination has not been disallowed and is no longer liable to be disallowed, or to be taken to have been disallowed, under section 48 of the *Acts Interpretation Act 1901*.

(3) A determination under subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Part 3—Declaration of Parliament's intentions in relation to staff of repatriation institutions that become institutions operated by the States

8 Part sets out Parliament's intentions

This Part sets out, in general terms, the intentions of the Parliament in relation to matters (other than matters dealt with in Part 4) affecting the affected employees of a repatriation institution that becomes an institution operated by a State or an authority of a State.

9 Affected employees to be offered continuing employment in comparable jobs

The Parliament intends that the Commonwealth should do its best to negotiate an agreement under which:

(a) all the affected employees are to receive offers of continuing employment from the State or authorities of the State before the staff transfer day; and

(b) as many as possible of those offers are to be offers of comparable jobs.

10 Institution to continue to provide the same services

The Parliament intends that the Commonwealth should, for the purpose of minimising disruption to the careers of the affected employees, do its best to negotiate an agreement under which the State or authority is to continue, for at least 3 years, to operate the institution as an institution that provides services that are the same, or nearly the same, as the services provided by the institution when operated by the Commission.

11 State to recognise Commonwealth entitlements etc.

The Parliament intends that the Commonwealth should do its best to negotiate an agreement under which the following conditions are

to apply to each of the affected employees who accepts an offer of continuing employment made by the State or an authority of the State for so long as the affected employee continues to be employed by the State or an authority of the State:

(a) all recreation leave, long service leave and sick leave accrued by the affected employee before the staff transfer day will be transferred at full value to the State system;

(b) the affected employee will be allowed to take whatever maternity leave the affected employee would have been entitled to take if the affected employee had remained in Commonwealth employment;

(c) any study leave arrangements made by the affected employee before the staff transfer day will be allowed to continue until the affected employee completes the relevant course of study;

(d) all service of the affected employee before the staff transfer day that would be recognised by the Commonwealth for the purpose of determining seniority, future leave entitlements or redundancy benefits will be recognised for that purpose in the State system;

(e) any period of probation served by the affected employee in the Service before the staff transfer day will not need to be served again under the State system.

12 Certain affected employees to receive income supplementation

(1) Subject to this section, the Parliament intends that, if the salary of an affected employee is reduced as a result of accepting an offer of continuing employment made by the State or an authority of the State, the Commonwealth should pay income supplementation to the affected employee.

(2) The Parliament intends that the Commonwealth should not pay income supplementation to an affected employee in respect of a time after the affected employee has stopped being in acceptable continuing employment.

(3) Subject to the intention expressed in subsection (2), the Parliament intends that the Commonwealth should be able to determine the amount of income supplementation that is payable to an affected employee and the period during which it is payable.

(4) The Parliament intends that the Commonwealth should be able to determine a period, not exceeding 6 months, as the minimum period before the staff transfer day during which an affected employee must have been an officer or employee in order to be entitled to be paid income supplementation.

(5) In this section:

salary:

(a) includes:

(i) an allowance payable to a person because the person is temporarily performing the duties of an office to which he or she has not been appointed, transferred or promoted; and

(ii) shift penalty payments; and

(iii) restricted duties adjustment payments; but

(b) does not include:

(i) any other allowance; or

(ii) fringe benefits within the meaning of the *Fringe Benefits Tax Assessment Act 1986*.

13 Certain affected employees to receive payments in respect of maternity leave

(1) The Parliament intends that an affected employee:

(a) who accepts an offer of continuing employment made by the State or an authority of the State and is on maternity leave while in acceptable continuing employment; and

(b) who would, if the employment in acceptable continuing employment were employment in an office or position in the Service, be entitled to be paid a total amount in respect of that maternity leave that exceeds the total amount the employee is actually entitled to be paid in respect of the maternity leave;

should be paid an amount equal to the excess.

(2) The Parliament intends that the payments referred to in subsection (1) should be made directly by the Commonwealth, or by the State out of money provided by the Commonwealth.

14 Certain affected employees to be able to remain in Commonwealth superannuation scheme

The Parliament intends that each of the affected employees who accepts an offer of continuing employment made by the State or an authority of the State should be able, at the affected employee's option, to remain in a Commonwealth superannuation scheme for so long as the employee continues to be employed by the State or an authority of the State.

Part 4—Provisions relating to staff who receive offers of employment at State operated institutions

15 Certain affected employees taken to have resigned

(1) This section applies if:

(a) a State, or an authority of a State, starts to operate a repatriation institution in the State under an agreement with the Commission; and

(b) at a time before the staff transfer day (including a time before the commencement), the State, the authority or another authority of the State made an offer of continuing employment to a person who was an affected employee of the institution at that time; and

(c) the person was an affected employee of the institution immediately before the staff transfer day.

(2) By force of this subsection, the person is taken to resign from the Service at the start of the staff transfer day if, before the staff transfer day, the person accepted the offer and the acceptance is still effective at the start of the staff transfer day.

(3) By force of this subsection, the person is taken to resign from the Service at the start of the staff transfer day if:

(a) the offer was an offer of a comparable job, determined by reference to the time at which the offer was made; and

(b) either:

(i) the person did not accept the offer before the start of the staff transfer day; or

(ii) the person accepted the offer before the start of the staff transfer day but the acceptance is not still effective at the start of the staff transfer day, otherwise than because of the withdrawal of the offer; and

(c) the person is not taken by subsection (2) to resign from the Service because of the application of this section in relation to another offer of employment made to the person.

16 Transferred staff have no entitlement to payment in lieu of accrued leave

A person who is taken to resign from the Service by force of subsection 15(2) is not entitled to any payment under subsection 16(4) or 17(2) of the *Long Service Leave (Commonwealth Employees) Act 1976* in respect of resignation from the Service.

Table of Acts

Notes to the *Repatriation Institutions (Transfer) Act 1992*

Note 1

The *Repatriation Institutions (Transfer) Act 1992* as shown in this compilation comprises Act No. 48, 1992 amended as indicated in the Tables below.

Table of Acts

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
Repatriation Institutions (Transfer) Act 1992	48, 1992	17 June 1992	17 June 1992	
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 782-788): 5 Dec 1999 (*see Gazette* 1999, No. S584) *(a)*	—

Act Notes

(a) The *Repatriation Institutions (Transfer) Act 1992* was amended by Schedule 1 (items 782-788) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

(1) In this Act, ***commencing time*** means the time when the *Public Service Act 1999* commences.

(2) Subject to this section, this Act commences at the commencing time.

Table of Amendments

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Ss. 3, 4	am. No. 146, 1999
S. 13	am. No. 146, 1999
S. 16	am. No. 146, 1999
S. 17	rep. No. 146, 1999