



Defence Legislation Amendment Act 1993

No. 95 of 1993

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Defence Legislation Amendment Act 1993

No. 95 of 1993

An Act to amend Acts relating to defence, and for related purposes

[Assented to 22 December 1993]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Defence Legislation Amendment Act 1993*.

Commencement

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

PART 2—AMENDMENTS OF THE DEFENCE ACT 1903

Principal Act

3. In this Part, “**Principal Act**” means the *Defence Act 1903*¹.

Amendment of Part heading

4. The heading to Part IIIAA of the Principal Act is amended by omitting “**INTERIM**”.

Determination of benefit

5.(1) Section 52 of the Principal Act is amended:

- (a) by omitting from subsection (1) “an interim” and substituting “a”;
- (b) by omitting from paragraph (3)(b) “*Superannuation Benefit (Interim Arrangement) Act 1988*” and substituting “*Superannuation (Productivity Benefit) Act 1988*”.

(2) A determination under subsection 52(1) of the Principal Act has effect, and is taken always to have had effect, as if the amendments made by section 4 of this Act and paragraph (1)(a) of this section had commenced immediately after the commencement of section 3 of the *Defence (Superannuation Interim Arrangement) Amendment Act 1988* (which inserted Part IIIAA of the Principal Act).

Appeals from AAT

6. Section 61CZD of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsection:

“(1) A party to a proceeding before the AAT may appeal to the Federal Court, on a question of law only, from any decision of the AAT in that proceeding.”;

- (b) by omitting from subsection (2) “, or an application for leave to appeal,”;
- (c) by omitting from subsection (3) “, and applications for leave to appeal,”.

Forces serving together

7. Section 116C of the Principal Act is amended by omitting subsection (5) and substituting the following subsections:

“(5) The Governor-General may declare that specified parts of the Defence Force and specified parts of the forces of specified countries are to be taken for the purposes of this section to be serving together or acting in combination.

“(5A) The Governor-General may declare that, whenever specified parts of the Defence Force and specified parts of the forces of specified countries are in fact serving together or acting in combination, the forces are to be taken for the purposes of this section to be serving together or acting in combination.

“(5B) A declaration under subsection (5) or (5A) has effect accordingly. Except as provided in such a declaration, forces are not taken for the purposes of this section to be serving together or acting in combination.

“(5C) A declaration under subsection (5) or (5A) must be in writing.”.

Salvage claims by crew of Naval ships

8. Section 117A of the Principal Act is amended by inserting in paragraph (2)(a) “of” after “Chief”.

Delegation

9. Section 120A of the Principal Act is amended by inserting after subsection (1) the following subsection:

“(2) The Governor-General may, by instrument in writing, delegate all or any of his or her powers under subsections 116C(5) and 116C(5A) to:

- (a) an officer of the Army who holds the rank of Major-General or a higher rank; or
- (b) an officer of the Navy who holds the rank of Rear-Admiral or a higher rank; or
- (c) an officer of the Air Force who holds the rank of Air Vice-Marshal or a higher rank.”.

PART 3—AMENDMENTS OF THE DEFENCE FORCE (HOME LOANS ASSISTANCE) ACT 1990

Principal Act

10. In this Part, “Principal Act” means the *Defence Force (Home Loans Assistance) Act 1990*².

Definitions

11. Section 3 of the Principal Act is amended:

- (a) by inserting “a warlike service member,” after “operational service member,” in subparagraph (a)(i) of the definition of “eligible person”;
- (b) by inserting after paragraph (f) of the definition of “eligible person” the following paragraph:

“(fa) a warlike service member; or”;

- (c) by inserting “a warlike service member” after “operational service member,” in subparagraph (g)(ii) of the definition of “eligible person”;
- (d) by inserting the following definitions:
 - “ ‘**warlike service**’ means duty declared under subsection 3C(1) to be warlike service;
 - ‘**warlike service member**’ has the meaning given by section 3B;”.

12. After section 3A of the Principal Act the following sections are inserted:

Warlike service member

“3B.(1) A warlike service member is a member who:

- (a) is a non-DSH member; and
- (b) has been allotted for duty declared under subsection 3C(1) to be warlike service; and
- (c) has performed some or all of that duty.

“(2) An allotment for duty:

- (a) may be taken into account for the purposes of subsection (1) even though it takes effect retrospectively; and
- (b) may be taken into account for those purposes whether it occurs before or after the commencement of this section; and
- (c) will not be taken into account for those purposes unless it is made by written instrument signed by the Vice Chief of the Defence Force.

Minister may declare warlike service

“3C.(1) The Minister may declare duty to be warlike service for the purposes of this Act.

“(2) A declaration under subsection (1):

- (a) must be in writing; and
- (b) may take effect retrospectively; and
- (c) may relate to duty even if it was performed before the commencement of this section.

“(3) The Minister may by writing revoke or vary a declaration under subsection (1).

“(4) An instrument under subsection (3) may take effect retrospectively, except in so far as it results in duty ceasing to be warlike service for the purposes of this Act.

“(5) Subject to this section, an instrument under subsection (1) or (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.”.

Criteria for issue of certificate

13. Section 12 of the Principal Act is amended by inserting in paragraph (1)(c) “, a warlike service member” after “operational service member”.

Subsidy period—eligible persons

14. Section 23 of the Principal Act is amended:

(a) by inserting “, a warlike service member” after “operational service member” in paragraph (a) of the definition of “entitlement period” in subsection (3);

(b) by inserting after paragraph (ba) of the definition of “entitlement period” in subsection (3) the following word and paragraph:

“or (bb) in relation to a person who is or has been a warlike service member:

(i) the total of:

(A) the number of completed years (if any) of effective full-time service served by the person; and

(B) the number of additional years of subsidy to which the person is entitled under subsection (5); or

(ii) 25 years;

whichever is less; or”;

(c) by inserting “or has been a warlike service member” after “subsection 3A(1)” in the definition of “rejoining member” in subsection (3);

(d) by adding at the end the following subsections:

“(4) If, but for this subsection, a person would have 2 or more entitlement periods, the person’s entitlement period is taken to be the longer or longest of those periods.

“(5) A person who is or has been a warlike service member is entitled to additional years of subsidy in accordance with the following table:

Period, or total of periods, during which the person performed warlike service	Additional years of subsidy
Not more than 3 months	2
More than 3 but not more than 6 months	3
More than 6 but not more than 9 months	4
More than 9 months	5

Examples: 1. A person who has performed a total of 4 days warlike service is entitled to 2 additional years of subsidy.

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2. A person who has performed a total of 3 months and 6 days warlike service is entitled to 3 additional years of subsidy.
3. A person who has performed a total of 9 months and one day warlike service is entitled to 5 additional years of subsidy.

“(6) If a warlike service member is repatriated from warlike service because of wounds, injury or illness, he or she is taken for the purposes of subsection (5) to have continued to perform that warlike service until the end of:

- (a) the period for which, in the opinion of the Secretary, the member could reasonably have expected at the time of repatriation to be posted on that warlike service, but for the circumstances leading to the repatriation; or
- (b) the period for which the unit to which the member was attached performed that warlike service;

whichever ended first.

“(7) In forming an opinion for the purposes of paragraph (6)(a), the Secretary must have regard to:

- (a) any information given to the member about the expected length of the posting;
- (b) any information given to the commander of the unit about the expected length of the posting of members of that unit;
- (c) any other relevant matter.”.

Subsidy period—widows and widowers

15. Section 24 of the Principal Act is amended by omitting paragraph (aa) of the definition of “prescribed member” in subsection (4) and substituting the following paragraph:

“(aa) who was neither an operational service member nor a warlike service member; and”.

**PART 4—AMENDMENT OF THE MILITARY
SUPERANNUATION AND BENEFITS ACT 1991**

Principal Act

16. In this Part, “**Principal Act**” means the *Military Superannuation and Benefits Act 1991*³.

Object of Part

17. The object of this Part is to prevent certain persons who ceased to be members of the Military Superannuation and Benefits Scheme before 22 April 1993 from taking advantage of an unintended benefit.

18. After section 51 of the Principal Act the following section is inserted:

Transitional—MSB Instrument No. 3 of 1993 to have retrospective effect

Application

“51A.(1) This section applies to a member benefit that was or is payable under the Rules to a person because the person ceased to be a member during either of the following periods:

- (a) the period beginning on 1 October 1991 and ending at the end of 26 May 1992;
- (b) the period beginning on 9 September 1992 and ending at the end of 21 April 1993.

Retrospective effect

“(2) In calculating the member benefit, the Rules have effect as if MSB Instrument No. 3 of 1993 had been made, and had come into force, on 1 October 1991.

Repayment of excess

“(3) If:

- (a) the member benefit has been paid to the person; and
- (b) the amount paid exceeds the amount that the person would have been entitled to be paid if MSB Instrument No. 3 of 1993 had been made, and had come into force, on 1 October 1991;

the person is liable to repay the amount of the excess.

Recovery of repayment

“(4) If a person is liable to repay an amount under subsection (3):

- (a) the amount may be recovered as a debt due to the Board or the Commonwealth, as the case may be; and
- (b) the amount may be deducted from any other amount that is payable to the person by the Board or the Commonwealth, as the case may be.

Definition

“(5) In this section:

‘**MSB Instrument No. 3 of 1993**’ means Instrument No. 3 of 1993 made under subsection 5(1) on 19 April 1993 and notified in the *Gazette* on 22 April 1993.”.

PART 5—AMENDMENTS OF THE ROYAL AUSTRALIAN AIR FORCE VETERANS’ RESIDENCES ACT 1953

Principal Act

19. In this Part, “**Principal Act**” means the *Royal Australian Air Force Veterans’ Residences Act 1953*⁴.

Amendment of preamble

20. The preamble to the Principal Act is amended by omitting “Two hundred and twenty-nine thousand pounds” and substituting “£229,000”.

Establishment of Fund

21. Section 3 of the Principal Act is amended by omitting from subsection (3) “Two hundred and twenty-nine thousand pounds” and substituting “£229,000”.

Constitution of Trust

22. Section 5 of the Principal Act is amended:

- (a) by omitting from subsection (2) “Governor-General” and substituting “Minister”;
- (b) by omitting subsection (6) and substituting the following subsection:
“(6) The Minister may terminate the appointment of a member at any time.”.

Deputies of members

23. Section 6 of the Principal Act is amended:

- (a) by omitting subsection (1) and substituting the following subsections:
“(1) The Minister may appoint a person to be the deputy of a member of the Trust.
“(1A) The Minister may terminate the appointment of a deputy at any time.”;
- (b) by omitting from subsection (2) “subsection (3) of the last preceding section” and substituting “subsection 5(3)”;
- (c) by omitting from subsection (3) “subsection (4) of the last preceding section” and substituting “subsection 5(4)”;
- (d) by omitting from subsection (4) “subsection (5) of the last preceding section” and substituting “subsection 5(5)”.

Transitional—members and deputies of members of Trust

24.(1) A person who, immediately before the commencement of this Act, held office as a member of the Trust appointed under section 5 of the Principal Act continues to hold office as if the person had been appointed by the Minister under section 5 of the Principal Act as amended by this Act.

(2) A person who, immediately before the commencement of this Act, held office as a deputy of a member of the Trust appointed under section 6 of the Principal Act continues to hold office as if the person had been appointed by the Minister under section 6 of the Principal Act as amended by this Act.

**PART 6—AMENDMENTS OF THE SERVICES TRUST FUNDS
ACT 1947**

Principal Act

25. In this Part, “**Principal Act**” means the *Services Trust Funds Act 1947*⁵.

Title

26. The long title of the Principal Act is amended by omitting “**the Third day of September, One thousand nine hundred and thirty-nine**” and substituting “**3 September 1939**”.

Appointment of trustees

27. Section 5 of the Principal Act is amended:

- (a) by omitting from subsection (1) “Governor-General shall” and substituting “Minister must”;
- (b) by omitting subsection (2) and substituting the following subsection:

“(2) The Minister may terminate the appointment of a trustee or a chairman of trustees at any time.”.

Powers of trustees

28. Section 8 of the Principal Act is amended by omitting from paragraph (b) “Australia” (first occurring) and substituting “the Commonwealth”.

Transitional—trustees

29. A person who, immediately before the commencement of this Act, held office as a trustee of a fund, or as a chairman of trustees of a fund, appointed under section 5 of the Principal Act continues to hold office as if the person had been appointed by the Minister under section 5 of the Principal Act as amended by this Act.

NOTES

1. No. 20, 1903, as amended. For previous amendments, see No. 12, 1904; No. 15, 1909; Nos. 30 and 37, 1910; No. 15, 1911; No. 5, 1912; No. 36, 1914; No. 3, 1915; No. 36, 1917; Nos. 16 and 47, 1918; No. 1, 1927; No. 50, 1932; No. 45, 1934; Nos. 13, 38, 70 and 74, 1939; No. 4, 1941; No. 11, 1945; No. 78, 1947; No. 35, 1948; No. 71, 1949; No. 80, 1950; Nos. 19 and 59, 1951; No. 98, 1952; No. 20, 1953; No. 72, 1956; No. 92, 1964; No. 51, 1965; No. 93, 1966; No. 33, 1970; No. 216, 1973; No. 96, 1975; Nos. 4 and 20, 1977; Nos. 19, 132 and 155, 1979; No. 70, 1980; Nos. 61 and 178, 1981; Nos. 80 and 153, 1982; No. 39, 1983; Nos. 164 and 165, 1984; Nos. 65 and 193, 1985; Nos. 76 and 163, 1986; No. 65, 1987; Nos. 67, 75, 87, 99, 100 and 104, 1988; No. 41, 1989; Nos. 75 and 108, 1990; Nos. 21 and 62, 1991; and Nos. 91 and 92, 1992.
2. No. 14, 1991, as amended. For previous amendments, see No. 152, 1991; and Nos. 70 and 91, 1992.

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NOTES—continued

3. No. 135, 1991, as amended. For previous amendments, see Nos. 91 and 92, 1992.
4. No. 23, 1947, as amended. For previous amendments, see No. 67, 1950; No. 216, 1973; No. 96, 1975; No. 37, 1976; No. 36, 1978; No. 61, 1981; No. 164, 1984; and No. 65, 1987.
5. No. 23, 1947, as amended. For previous amendments, see No. 67, 1950; No. 216, 1973; No. 96, 1975; No. 37, 1976; No. 36, 1978; No. 61, 1981; No. 164, 1984; and No. 65, 1987.

*[Minister's second reading speech made in—
House of Representatives on 1 September 1993
Senate on 19 October 1993]*