

Repatriation Acts Amendment Act (No. 2) 1979

No. 124 of 1979

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* Short title
(No. 2) 1979.¹

2. (1) Subject to this section, this Act shall come into operation on the day on which it receives the Royal Assent.¹ Commencement

(2) Section 13 shall come into operation on 1 November 1979.

(3) Sections 6 and 20 shall come into operation on 2 November 1979.

(4) Section 11 shall come into operation on a date to be fixed by Proclamation.

PART II—AMENDMENTS OF THE REPATRIATION ACT 1920

3. The *Repatriation Act* 1920² is in this Part referred to as the *Principal Act*. Principal Act

4. Section 23 of the *Principal Act* is amended by omitting the definition of “Service pension” and substituting the following definition: Interpretation

“ ‘Service pension’ means a pension granted under Division 5 (including that Division as extended by Division 5A or 5B); ”

5. Section 24AA of the *Principal Act* is amended by omitting from paragraph (a) of sub-section (1) “the approved form” and substituting “an approved form”. Claim for pension to be in accordance with an approved form

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 6 months commencing on 1 May 1980, and each subsequent period of 6 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—

(i) if the relevant period commences on 1 May—the index number for the last preceding December quarter; or

(ii) if the relevant period commences on 1 November—the index number for the last preceding June quarter,

by the highest index number in respect of a December or June quarter that preceded that quarter, not being a December or June quarter that occurred before the June quarter in the year 1979; or”.

Interpretation

7. Section 83 of the Principal Act is amended by omitting sub-section (4).

Grant of
service
pension

8. Section 84 of the Principal Act is amended—

(a) by inserting in sub-section (2) “the Commission or” after “if”;

(b) by omitting from sub-section (2) “the Board” and substituting “the Commission or the Board, as the case may be,”;

(c) by omitting from sub-section (3) “a Board” and substituting “the Commission or a Board”; and

(d) by omitting from sub-section (3) “the Board” and substituting “the Commission or the Board, as the case may be,”.

Service
pension in
respect of a
member
permanently
unemploy-
able, &c.

9. Section 85 of the Principal Act is amended by inserting after sub-section (1) the following sub-sections:

“(1AA) For the purposes of sub-section (1), the maximum rate of pension per annum applicable to a wife of a member of the Forces shall be ascertained without regard to sub-section (1A) of section 32 of the *Social Services Act 1947* but, if the Commission or a Board is satisfied that—

(a) the living expenses of the wife and her husband are, or are likely to be, greater than they would otherwise be by reason that they are unable, as a result of the illness or infirmity of either or both of them, to live together in a matrimonial home; and

(b) the inability is likely to continue indefinitely,

the Commission or the Board, as the case may be, may determine that the maximum rate per annum of the service pension that may be granted to the wife is to be the maximum rate of pension per annum that would be applicable to the wife under section 32 of the *Social Services Act 1947* if the wife were qualified to receive a wife's pension under that Act and a direction were in force in relation to the wife under sub-section (1A) of that section.

“(1AB) Where it appears to the Commission or a Board that sufficient reason exists for reviewing a determination given under sub-section (1AA), the Commission or the Board, as the case may be, may review the determination and may affirm it or make a determination annulling it.”

10. Section 86 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section: Restrictions
as to dual
pensions

“(1) Notwithstanding anything contained in this Division (including this Division as extended by Division 5A or 5B)—

- (a) a person is not entitled to receive more than one service pension at the same time;
- (b) a person is not entitled to receive at the same time a service pension and a pension under Part III, IV or IVAAA of the *Social Services Act 1947*; and
- (c) a widow who is in receipt of a war pension in respect of her husband's death or a child who is in receipt of a war pension in respect of his father's death is not entitled to receive a service pension under section 94 at the same time.”

11. (1) Section 95 of the Principal Act is repealed and the following section substituted:

“95. (1) In this section—

‘pensioner contribution’ means an amount per annum equal to the product of 364 and an amount equal to the amount in force, from time to time, for the purposes of sub-paragraph (iii) of paragraph (b) of sub-section (2) of section 47 of the *National Health Act 1953*, or, if that product is not a multiple of \$2.60, the next lower amount that is such a multiple; Service
pensioner in
a public
institution

‘service pension’ includes an allowance under section 98A;

‘wife's portion’, in relation to a male service pensioner in relation to whose income sub-section (2) of section 87 applies and the maximum rate of whose service pension is increased by reason of the operation of sub-section (1B) or (1F) of section 28 of the *Social Services Act 1947* in its application for the purposes of this Division, means the amount per annum by which the amount per annum of his service pension is greater than the amount that, but for the operation of those sub-sections, would be the amount per annum of his service pension.

“(2) If an applicant for service pension is, or a service pensioner becomes, an inmate of a benevolent home, his service pension shall, so long as he remains an inmate of a benevolent home, be dealt with as follows:

- (a) in the case of a male service pensioner referred to in the definition of ‘wife’s portion’ in sub-section (1)—there shall be paid to his wife so much of his service pension as does not exceed the wife’s portion in relation to him;
- (b) there shall be paid to the person controlling the benevolent home for the maintenance of the service pensioner in the benevolent home so much of his service pension, or so much of the remainder of his service pension after deducting any wife’s portion, as does not exceed the pensioner contribution in relation to him;
- (c) the balance (if any) of his service pension shall be paid to the service pensioner.

“(3) A service pension dealt with in accordance with sub-section (2) shall be so dealt with—

- (a) where it is granted in pursuance of an application made by a person who is an inmate as specified in sub-section (2)—as from the date of the application; and
- (b) where a service pensioner becomes such an inmate—on and after the first pension pay day after he becomes such an inmate.

“(4) This section does not apply to a member of the Forces who is suffering from pulmonary tuberculosis and is undergoing treatment for that disease in a benevolent home.”

(2) Subject to sub-section (4), where a service pensioner was, immediately before the commencement of this section, a service pensioner to whom section 95 of the Principal Act applied, that section continues to apply, after the commencement of this section, in relation to that service pensioner so long as that service pensioner remains an inmate of a benevolent home.

(3) For the purposes of section 95 of the Principal Act in its application in relation to a service pensioner by virtue of sub-section (2) of this section—

- (a) the reference in sub-paragraph (1A) (a) (i) of that section to the maximum rate of age pension specified in paragraph (a) of sub-section (1A) of section 28 of the *Social Services Act 1947* shall be read as a reference to that maximum rate as in force on the date of commencement of this section;
- (b) the reference in sub-paragraph (1A) (a) (ii) of that section to the maximum rate of supplementary assistance specified in paragraph (d) of sub-section (3) of section 30A of the *Social Services Act 1947* shall be read as a reference to that maximum

rate as in force on the date of commencement of this section; and

- (c) the reference in paragraph (1A) (aa) of that section to sub-section (1B) or sub-section (1F) of section 28 of the *Social Services Act 1947* shall be read as a reference to sub-section (1B) or sub-section (1F), as the case may be, of that section as in force from time to time.

(4) When the application, by virtue of sub-section (2) of this section, of section 95 of the Principal Act in relation to a service pensioner results in there being payable to the person controlling the benevolent home for the maintenance of the service pensioner in the benevolent home an amount not less than the pensioner contribution, within the meaning of section 95 of the *Repatriation Act 1920*, in relation to the service pensioner, then—

- (a) section 95 of the *Repatriation Act 1920* applies in relation to the service pensioner; and
- (b) section 95 of the Principal Act ceases to apply in relation to the service pensioner.

12. After Division 5A of Part III of the Principal Act the following Division is inserted:

“Division 5B—Extension of Application of Provisions of Division 5 to Certain Members of the Forces of an Allied Country

“98F. The date of commencement of a service pension payable under Division 5, as extended by this Division, shall not be earlier than 7 February 1980.

Date of commencement of service pension

“98G. (1) Subject to this Division, the provisions of Division 5 extend to and in relation to—

Extension of application of Division 5 to members of Forces of an allied country

- (a) a male or female member of the Forces of an allied country within the meaning of this Division;
- (b) the wife, as defined in sub-section (1) of section 83, of such a male member; and
- (c) a child, as defined in sub-section (1) of section 83, of such a male or female member.

“(2) For the purposes of the extension of the provisions of Division 5 as provided in sub-section (1), a reference in that Division to a member of the Forces or to a member shall be read as a reference to a member of the Forces of an allied country within the meaning of this Division.

“98H. (1) In this Division—

‘government-in-exile’, in relation to a country, includes any person, or group of persons, claiming to represent, or administer, the country or a part of the country or the people of the country;

Interpretation

‘member of the Forces of an allied country’ means a person who—

- (a) has served in a theatre of war as a person appointed or enlisted as a member of the naval, military or air forces, or a member of the nursing or auxiliary services or the women’s branch of the naval, military or air forces, raised by a country, not being a country that was, at that time, a part of the dominions of the Crown; and
- (b) has, at any time, been continuously resident in Australia for a period of not less than 10 years,

but does not include—

- (c) a person who has served, at any time, in the forces of a country that was, at that time, at war with Australia or in forces engaged in supporting or assisting those forces; or
- (d) a person who has served, at any time, in forces that were, at that time, engaged in war-like operations against the Naval, Military or Air Forces of Australia.

“(2) In this Division, a reference to forces raised by a country—

- (a) shall be read as not including a reference to irregular forces; and
- (b) shall, in relation to any period during which there was, with respect to the country, a government-in-exile, be read as including a reference to forces (other than irregular forces) of that government-in-exile.

“(3) Where—

- (a) a person has had more than one period of residence in Australia;
- (b) the longest of those periods is less than 10 years but is not less than 5 years; and
- (c) the aggregate of those periods exceeds 10 years,

the period specified in paragraph (b) of the definition of ‘member of the Forces of an allied country’ in sub-section (1) shall, in relation to that person, be deemed to be reduced by the excess.

Person not
member of
Forces of
allied
country

“98J. Notwithstanding anything contained in this Division, a person is not a member of the Forces of an allied country by reason of service in the forces raised by a country (other than Australia) unless that service would, if the person had been a member of the Naval, Military or Air Forces of Australia, have resulted in the person being a member of the Forces for the purposes of Division 5.”

Prescribed
persons

13. Section 123AB of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (2) “\$1,716” and substituting “\$2,080”; and
- (b) by omitting from paragraph (b) of sub-section (2) “\$1,495” and substituting “\$1,768”.

- 14.** Section 124 of the Principal Act is amended— Regulations
- (a) by omitting from sub-paragraph (i) of paragraph (a) of sub-section (1AA) “and” (last occurring); and
- (b) by inserting after sub-paragraph (i) of paragraph (a) of sub-section (1AA) the following sub-paragraph:
- “(ia) members of the Forces of an allied country, within the meaning of Division 5B of Part III, and the wives and children, as defined in sub-section (1) of section 83, of those members; and”.
- 15.** Schedule 2 to the Principal Act is amended— Schedule 2
- (a) by omitting “\$29.40” and substituting “\$35”; and
- (b) by omitting “\$49.80” and substituting “\$70”.
- 16.** Schedule 3 to the Principal Act is amended— Schedule 3
- (a) by omitting from Table A “\$41.80” (wherever occurring) and substituting “\$50”; and
- (b) by omitting from Table A “\$20.90” and substituting “\$25”.
- 17.** Schedule 5 to the Principal Act is amended— Schedule 5
- (a) by omitting from column 3 of the table in paragraph (1) “49.80” and substituting “70”; and
- (b) by omitting from column 3 of the table in paragraph (1) “29.40” (wherever occurring) and substituting “35”.

PART III—AMENDMENTS OF THE SEAMEN’S WAR PENSIONS AND ALLOWANCES ACT 1940

- 18.** The *Seamen’s War Pensions and Allowances Act 1940*³ is in this Principal Act
Part referred to as the Principal Act.
- 19.** Section 18 of the Principal Act is amended— Rates of
pension on
death or
total
incapacity
- (a) by omitting from paragraph (a) of sub-section (7) “\$20.90” and substituting “\$25”; and
- (b) by omitting from sub-section (8) “\$41.80” and substituting “\$50”.
- 20.** 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 6 months commencing on 1 May 1980, and each subsequent period of 6 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—

- (i) if the relevant period commences on 1 May—the index number for the last preceding December quarter; or
- (ii) if the relevant period commences on 1 November—the index number for the last preceding June quarter,

by the highest index number in respect of a December or June quarter that preceded that quarter, not being a December or June quarter that occurred before the June quarter in the year 1979; or”.

Schedule 2

21. Schedule 2 to the Principal Act is amended—

- (a) by omitting from column 2 “29.40” (wherever occurring) and substituting “35”; and
- (b) by omitting from column 2 “49.80” and substituting “70”.

PART IV—APPLICATION OF CERTAIN AMENDMENTS

Application
of certain
amendments

22. The amendments made by sections 15, 16, 17, 19 and 21, in so far as they affect instalments of pensions or allowances, apply in relation to an instalment of a pension or an allowance falling due on 1 November 1979 and to all subsequent instalments.

NOTES

1. Act No. 124, 1979; assented to 29 October 1979.
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; No. 56, 1977; Nos. 129 and 170, 1978; and No. 18, 1979.
3. 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. 32, 1954; 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; No. 56, 1977; No. 129, 1978 (as amended by No. 18, 1979); and No. 18, 1979.