

Repatriation Act (No. 2) 1973

No. 27 of 1973

AN ACT

To amend the *Repatriation Act 1920-1972*, as amended
by the *Repatriation Act 1973*.

[Assented to 8 May 1973]

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

Short title
and citation.

1. (1) This Act may be cited as the *Repatriation Act (No. 2) 1973*.
- (2) The *Repatriation Act 1920-1972*,* as amended by the *Repatriation Act 1973*,† is in this Act referred to as the Principal Act.
- (3) Section 1 of the *Repatriation Act 1973* is amended by omitting sub-section (3).
- (4) The Principal Act, as amended by this Act, may be cited as the *Repatriation Act 1920-1973*.

Commence-
ment.

2. This Act shall come into operation on the day on which it receives the Royal Assent.

* 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; Nos. 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; and Nos. 15, 82 and 139, 1972.

† Act No. 2, 1973.

3. After section 35A of the Principal Act the following section is inserted:—

“35B. Sections 85A and 92 apply in relation to—

- (a) a pension to which section 35A applies; and
- (b) a pension payable in accordance with Table A in the Third Schedule the rate of which is required to be assessed having regard to the maximum rate of age pension under sub-section (1A) of section 28 of the *Social Services Act 1947–1973*,

as if those pensions were service pensions.”

Continuation
of payment
of certain
war pensions
after
pensioner
leaves
Australia.

4. Section 83 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “Child” and substituting the following definitions:—

“‘Australia’ includes the Territories of the Commonwealth;

“‘Child’, in relation to a member of the Forces, means a son (including an ex-nuptial son), step-son, adopted son or foster-son, or a daughter (including an ex-nuptial daughter), step-daughter, adopted daughter or foster-daughter, or a ward, of the member—

(a) who is under the age of sixteen years and of whom the member has the custody, care and control; or

(b) who—

- (i) has attained the age of sixteen years;
- (ii) is receiving full-time education at a school, college or university;
- (iii) is wholly or substantially dependent on the member; and
- (iv) is not in receipt of an invalid pension under Part III of the *Social Services Act 1947–1973*;” and

- (b) by omitting paragraph (c) of sub-section (3) and substituting the following paragraph:—

“(c) a reference in that section to a child under the age of sixteen years of whom a person has the custody, care and control shall, in relation to a member of the Forces, be read as a reference to a child of that member; and”.

5. After section 85 of the Principal Act the following section is inserted:—

“85A. (1) A person is not eligible to lodge a claim for a service pension unless he is residing in Australia.

“(2) A service pension shall not be granted to a claimant who has ceased to reside in Australia after he has lodged his claim unless the circumstances are such that the date of commencement of the period in respect of which the service pension, if granted, would be paid is a date not later than the date on which the claimant ceased to reside in Australia.”

Claimant
to be
resident in
Australia.

6. Section 92 of the Principal Act is repealed and the following section substituted:—

“ 92. (1) Except as provided by this section, the right of a person to commence, or to continue, to be paid a service pension granted to him is not affected by the fact that he leaves Australia after the commencement of this section.

“ (2) An allowance by way of supplementary assistance is not payable in respect of any period during which the service pensioner is outside Australia.

“ (3) Subject to sub-section (4), where—

- (a) a person who formerly resided in Australia has returned to Australia and, before the expiration of the period of twelve months that commenced on the date of his return, has lodged a claim for a service pension; and
- (b) that person leaves Australia (whether before or after his claim is determined) before the expiration of that period,

any service pension granted as a result of that claim is not payable in respect of any period during which the service pensioner is outside Australia.

“ (4) Where the Commission considers, in relation to a person referred to in paragraph (a) of sub-section (3) who has been granted a service pension as a result of the claim referred to in that paragraph, that the person's reasons for leaving, or wishing to leave, Australia before the expiration of the period referred to in that paragraph arose from circumstances that could not reasonably have been foreseen at the time of his return to Australia, the Commission may, by instrument in writing, determine that that sub-section does not apply in relation to that service pension.

“ (5) Where a person who is in receipt of a pension by virtue of this section or of Part IV_{AA} of the *Social Services Act 1947-1973* would, if that pension were cancelled, be eligible, if he were residing in Australia, for the grant of another pension, being a service pension, that other pension (excluding any allowance by way of supplementary assistance) may, on the cancellation of the pension that he is in receipt of, be granted and paid as if he were residing in Australia.

“ (6) A service pension payable by virtue of this section may be paid in such manner, at such places and in such instalments as the Commission determines.”.

7. After section 98 of the Principal Act the following section is inserted:—

“ 98AA. Where—

- (a) a person and the husband or wife of the person are each receiving an allowance by way of supplementary assistance at a rate ascertained in accordance with sub-section (3A) of section 98A; and

Right to be paid service pension outside Australia.

Rate of supplementary allowance during period when spouse overseas.

- (b) the wife or husband of the person ceases, by virtue of section 92, to receive the allowance during a period during which he or she is outside Australia,

the rate of the allowance of the first-mentioned person during the period referred to in paragraph (b) is the rate that would be applicable if the person were a person to whom sub-section (3) of section 98A applies.”.

8. Section 124 of the Principal Act is amended by omitting from paragraph (b) of sub-section (1) the words “ under the age of twenty-one years ” and substituting the words “ children, as defined in section 23 or 83, of the members ”. Regulations.

9. The Principal Act is amended as set out in the Schedule.

Formal
amendments.

10. Where, immediately before the commencement of this Act—

- (a) a service pensioner was absent from Australia and its Territories;
and

Pensioners
temporarily
absent from
Australia.

- (b) the Commission was satisfied that the absence was of a temporary nature within the meaning of section 92 of the Principal Act,

the payment of service pension during the period of that absence may continue to be made to the pensioner as if section 92 of the Principal Act had not been repealed.

SCHEDULE

Section 9

FORMAL AMENDMENTS

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

Sections 6 (1) (definition of "organization representing returned soldiers"), 10 (2), 27 (1) (h), 36 (3), 38 (a), 40A (1), 42 (1), 44, 49 (1), 51, 52, 53 (5), 60 (2), 64 (1) and (1A), 65 (3) and (6), 69 (1) and (2), 70 (1), 72 (4B) and (5), 78 (1), (2), (2A) and (3), 79 (1), 82 (2), 83 (1) (definitions of "Income" and "Mental hospital"), (3) and (4), 84 (1) and (2), 85 (3B) and (5), 86 (3), 93, 94 (2), 94B (1) and (6), 95 (1A) and (4), 96 (2), (3), (4) (definition of "prescribed rate"), (6), (8) and (9), 98A (3), (6) and (9), 98B (2), (3), (4) and (7A), 99 (1), (1A) and (2), 100 (definition of "dependant"), 101 (1), 102, 104 (1), (1A) and (2), 105 (definition of "dependant"), 107, 107A (1), (1A) and (2), 107B (1) (definition of "dependant") and (2), 107C (2), 107D, 107E (1), (1A) and (2), 107F (definition of "dependant"), 107G, 108 (3), (3A), (4), (5) and (6), 110 (3), 113, 120, 123A (1) and (6), 124 (1) (aa), (g) and (h) and (1C).

2. The following provisions of the Principal Act are amended by omitting the words "of this Act", "to this Act", "of this Part", "of this section" and "of this sub-section" (wherever occurring):—

Sections 6 (1) (definition of "organization representing returned soldiers"), 23, 27 (1) (h), 35 (1), 35AA (2) and (3), 36 (3), 37 (1), 39 (4), 40A (1), 42 (1), 44, 46 (1) (a) and (b), 49 (1) and (4), 50 (2) (definition of "member of the Forces"), 53 (5), 64 (1), (1A), (6A), (7) and (9), 65 (1), (3) and (6), 69 (1), 70 (1), 72 (5), 78 (1), (2), (2A) and (3), 79 (1), 82 (2), 85 (3B) and (4), 90 (1C), 93, 94 (2), 94B (3), (4) and (6), 95 (1D), (2), (3) and (4), 96 (2), (3), (6), (8) and (9), 98A (1B), 98B (2) (a), 99 (1), (1A), (2), 100 (definition of "dependant"), 101 (1A), 102, 104 (1A) and (2), 105 (definition of "dependant"), 107, 107A (2), 107B (1) (definition of "dependant"), 107D, 107E (1A), 107F (definition of "dependant"), 107G, 108, 110 (3) and (9), 123A (4) (a) and (6) (definition of "service pension"), 124 (1) (aa), (f), (g) and (h), (1A) and (1C).

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

Provision	Amendment
Section 23 (definition of "The present war")	Omit "the fourth day of August, One thousand nine hundred and fourteen", substitute "4th August, 1914".
Section 37 (3)	Omit "of this Part".
Section 45 (2)	Omit "the second day of October, One thousand nine hundred and thirty-one", substitute "2nd October, 1931".
Section 49 (5)	Omit "of this section" (second occurring).
Section 49 (6)	Omit "of this section" (second and last occurring).
Section 51	Omit "of this Act".
Section 52	Omit "of this Act".
Section 60 (2)	Omit "of this Act".
Section 69 (2)	Omit "of this Act" (first occurring).
Section 83 (1)	Omit "of this Part".
Section 83 (1) (definition of "Income")	Omit "to this Act".
Section 83 (1) (definition of "Mental hospital")	Omit "of this Act".
Section 85 (1)	Omit "of this section" (wherever occurring).
Section 90 (2)	Omit "of this section".
Section 98A (6)	Omit "of this Act".
Section 98B (4)	Omit "of this Act".
Section 98B (7A)	Omit "of this section" (first occurring) and "of this Act" (first occurring).
Section 100 (definition of "member of the Forces")	Omit "the first day of July, One thousand nine hundred and forty-seven", substitute "1st July, 1947".
Section 100 (definition of "the war")	Omit "the third day of September, One thousand nine hundred and thirty-nine", substitute "3rd September, 1939". Omit "the third day of September, One thousand nine hundred and forty-five", substitute "3rd September, 1945".

SCHEDULE—continued

Provision	Amendment
Section 101 (1)	Omit " of this Act " (first occurring) and " of this Part ". Omit " the first day of July, One thousand nine hundred and fifty-one," substitute " 1st July, 1951,". Omit " the third day of January, One thousand nine hundred and forty-nine," substitute " 3rd January, 1949,".
Section 101 (1AA)	Omit " the first day of July, One thousand nine hundred and fifty-one," substitute " 1st July, 1951,".
Section 101 (2)	Omit " of this Part ".
Section 102 (a)	Omit " the first day of July, One thousand nine hundred and forty-seven," substitute " 1st July, 1947,". Omit " the first day of July, One thousand nine hundred and fifty-one," substitute " 1st July, 1951,".
Section 104 (1)	Omit " of this Act " (wherever occurring) and " of this Part ". Omit " of and of the Schedules to this Act ", substitute " and of the Schedules ".
Section 105 (definition of " member of the Forces ")	Omit " the third day of September, One thousand nine hundred and thirty-nine ", substitute " 3rd September, 1939,". Omit " the first day of July, One thousand nine hundred and forty-seven," substitute " 1st July, 1947,".
Section 107 (a)	Omit " the first day of July, One thousand nine hundred and forty-seven," substitute " 1st July, 1947,". Omit " the first day of July, One thousand nine hundred and fifty-one," substitute " 1st July, 1951,".
Section 107A (1)	Omit " of this Part ". Omit " of, and of the Schedules to, this Act ", substitute " and of the Schedules ".
Section 107A (1A)	Omit " of this Part " and " of this Act ".
Section 107B (1) (definition of " operational area ")	Omit " the twenty-sixth day of June, One thousand nine hundred and fifty," substitute " 26th June, 1950,". Omit " the twenty-eighth day of June, One thousand nine hundred and fifty ", substitute " 28th June, 1950 ".
Section 107C (1)	Omit " of this Part ".
Section 107C (2)	Omit " of this Act ".
Section 107C (3)	Omit " of this Part ".
Section 107E (1)	Omit " of this Part " and " of this Act ". Omit " of, and of the Schedules to, this Act ", substitute " and of the Schedules ".
Section 107E (2)	Omit " of this Part " and " of this Act ". Omit " of, and of the Schedules to, this Act ", substitute " and of the Schedules ".
Section 108 (3) (d)	Omit " the first day of July, One thousand nine hundred and forty-seven," substitute " 1st July, 1947,". Omit " the thirtieth day of June, One thousand nine hundred and fifty-one," substitute " 30th June, 1951,".
Section 110 (2A)	Omit " the eighth day of February, One thousand nine hundred and thirty-four," substitute " 8th February, 1934,".
Section 110 (3D)	Omit " of this section " (second occurring).
Section 120	Omit " of this Act " (second occurring). Omit " the eleventh day of October, One thousand eight hundred and ninety-nine," substitute " 11th October, 1899,".
Section 120B (3)	Omit " of this sub-section " (second occurring).
Section 123A (3)	Omit " of this section " (second occurring).
The First Schedule, paragraph 3	Omit " to this Act " (wherever occurring).
The Third Schedule, Table A	Omit " twenty-eight " (wherever occurring), substitute " 28 ".
The Fourth Schedule	Omit " to this Act ".
The Fifth Schedule, paragraph 6	Omit " to this Act " (wherever occurring).
The Sixth Schedule, paragraph 3	Omit " thirty-seven of this Act " (wherever occurring), substitute " 37 ".