

# Superannuation Act (No. 2) 1973

No. 83 of 1973

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## AN ACT

To amend the *Superannuation Act 1922-1971*, as amended  
by the *Superannuation Act 1973*.

[Assented to 19 June 1973]

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

1. (1) This Act may be cited as the *Superannuation Act (No. 2) 1973*.

Short title  
and citation.

(2) The *Superannuation Act 1922-1971*,\* as amended by the *Superannuation Act 1973*,† is in this Act referred to as the Principal Act.

(3) Section 1 of the *Superannuation Act 1973* is amended by omitting sub-section (3).

(4) The Principal Act, as amended by this Act, may be cited as the *Superannuation Act 1922-1973*.

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\* Act No. 33, 1922, as amended by No. 45, 1924; No. 22, 1930; No. 10, 1931; No. 45, 1934; No. 28, 1937; No. 53, 1942; No. 18, 1943; Nos. 15 and 30, 1945; No. 2, 1946; Nos. 1 and 35, 1947; No. 19, 1948; No. 76, 1950; Nos. 49 and 62, 1951; No. 92, 1952; No. 11, 1954; No. 27, 1955; Nos. 19 and 112, 1956; No. 94, 1957; No. 45, 1958; No. 102, 1959; No. 102, 1963; Nos. 97 and 154, 1965; Nos. 69 and 86, 1966; No. 52, 1967; Nos. 49 and 57, 1968; Nos. 14 and 26, 1969; and No. 46, 1971.

† Act No. 46, 1973.

## Commencement.

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

(2) The amendments of the Principal Act made by sections 4 to 11 (inclusive) of this Act shall be deemed to have come into operation on 1st October, 1972.

## Interpretation.

3. Section 4 of the Principal Act is amended—

- (a) by omitting from the definition of “Approved authority” in sub-section (1) the words “the Canberra Community Hospital Board” and substituting the words “the Canberra Hospital Management Board”;
- (b) by inserting in sub-section (6), after the words “the Minister administering the Act or other law by or under which the approved authority is constituted”, the words “, or a person authorized in writing by the Minister so administering that Act or that other law to exercise his powers under this sub-section,”; and
- (c) by omitting from sub-section (6) the words “direct that that person” and substitute the words “direct that the first-mentioned person”.

## Members of the Defence Force.

4. Section 4AA of the Principal Act is amended—

- (a) by omitting from sub-section (2) the words “to the Defence Forces Retirement Benefits Fund” (first occurring) and substituting the words “to the Commonwealth under the *Defence Force Retirement and Death Benefits Act 1973*”; and
- (b) by omitting from sub-section (2) the words “to the Defence Forces Retirement Benefits Fund” (last occurring) and substituting the words “to the Commonwealth under that Act”.

5. (1) Section 35A of the Principal Act is repealed and the following section substituted:—

“35A. Where an employee becomes liable to contribute to the Commonwealth under the *Defence Force Retirement and Death Benefits Act 1973*, his liability to make contributions to the Superannuation Fund is deferred until, for any reason (including death)—

- (a) he ceases (otherwise than by reason of the operation of section eighteen of the *Defence Force Retirement and Death Benefits Act 1973*) to be liable to contribute to the Commonwealth under that Act; or

(b) he ceases to be an employee, whichever first occurs, but, upon his so ceasing to be liable or so ceasing to be an employee, the amount of the deferred contributions shall be paid to the Superannuation Fund.”

## Deferment of contributions of contributors under Defence Force Retirement and Death Benefits Act.

(2) Where an amount of deferred contributions becomes payable to the Superannuation Fund under section 35A of the Principal Act as amended by this Act in respect of an employee, there shall also be paid to the Fund the amount of any deferred contributions in respect of the employee the liability for which was deferred under section 35A of the *Superannuation Act 1922-1968*, or of that Act as amended and in force from time to time, before the repeal effected by sub-section (1) of this section.

6. Section 48A of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(2) Where—

- (a) a person (in this sub-section referred to as ‘the contributor’) to whom retirement pay or invalidity pay was payable under the *Defence Force Retirement and Death Benefits Act 1973* has become a contributor;
- (b) the person has died since he became a contributor and child’s pension is payable under the *Defence Force Retirement and Death Benefits Act 1973* to a person by virtue of the contributor having been a person to whom retirement pay or invalidity pay was so payable; and
- (c) pension would, but for this section, be payable under this Act in respect of the person to whom the child’s pension is payable by reason of the contributor’s having been a contributor,

Pension not payable in respect of children in certain circumstances.

the last-mentioned pension is not payable.”.

7. Section 48C of the Principal Act is repealed and the following section substituted:—

“48C. (1) Where—

- (a) the liability of an employee to make contributions to the Superannuation Fund has been deferred by virtue of section thirty-five A of this Act; and
- (b) before he has ceased to be liable to contribute to the Commonwealth under the *Defence Force Retirement and Death Benefits Act 1973* he ceases to be an employee and becomes entitled to a pension under this Act by reason that he was retired on the ground of invalidity or of physical or mental incapacity to perform his duties,

Pension to or in respect of certain contributors under Defence Force Retirement and Death Benefits Act.

his entitlement to that pension is suspended until such time as he ceases to be liable to contribute to the Commonwealth under the *Defence Force Retirement and Death Benefits Act 1973*, but, if he dies before he so ceases to be liable to contribute to the Commonwealth under that Act, he shall, for the purposes of sections forty-seven and forty-eight of this Act, be deemed to have been a pensioner at the time of his death in receipt of pension at the rate at which pension would, but for this sub-section, have been payable to him at that time.

“(2) Where—

(a) the liability of an employee to make contributions to the Superannuation Fund has been deferred by virtue of section thirty-five A of this Act and—

(i) he ceases to be such an employee and, upon so ceasing, becomes entitled to a pension under this Act by reason that he was retired on the ground of invalidity or of physical or mental incapacity to perform his duties and—

(A) he has been or is discharged from the Defence Force on the ground of invalidity or of physical or mental incapacity to perform his duties, section thirty-six of the *Defence Force Retirement and Death Benefits Act 1973* applies to him and, in the opinion of the Board, the ground on which he was retired as an employee is related to the ground on which he was discharged from the Defence Force; or

(B) he dies after ceasing to be an employee but before being discharged from the Defence Force from causes that, in the opinion of the Board, are related to the ground on which he was retired as an employee; or

(ii) he dies—

(A) before being discharged from the Defence Force; or

(B) after having been discharged from the Defence Force on the ground of invalidity or of physical or mental incapacity to perform his duties, from causes that, in the opinion of the Board, are related to the ground on which he was discharged from the Defence Force; and

(b) the rate of any pension payable to or in respect of him under this Act (including pension that became payable before he was discharged from the Defence Force) is less than the rate of any corresponding benefit that, but for section thirty-six or forty-six of the *Defence Force Retirement and Death Benefits Act 1973*, would be payable to or in respect of him under that Act,

the Board may increase the rate of the pension payable under this Act to such extent as it considers appropriate in the circumstances.

“(3) Where—

(a) the liability of an employee to make contributions to the Superannuation Fund has been deferred by virtue of section thirty-five A of this Act; and

(b) at any time after the death of the person benefit under the *Defence Force Retirement and Death Benefits Act 1973* would, but for section thirty-six or forty-six of that Act, be payable in respect of him under that Act but no pension is payable in respect of him under this Act at that time,

the Board may pay such benefit corresponding to the benefit under that Act as it considers appropriate in the circumstances.

“(4) An employee who is liable to contribute to the Commonwealth under the *Defence Force Retirement and Death Benefits Act 1973* shall, for the purposes of this section, be deemed not to have ceased to be liable to contribute to the Commonwealth by reason only of the operation of section eighteen of that Act in relation to him.”.

8. Section 68 of the Principal Act is amended by inserting after the words “*Defence Forces Retirement Benefits Act 1948–1959*” the words “or under the *Defence Force Retirement and Death Benefits Act 1973*”.

Rights under other Acts and State Acts.

9. Section 119D of the Principal Act is amended—

(a) by omitting from sub-paragraph (ii) of paragraph (a) of sub-section (1) the word “and” (last occurring); and

(b) by inserting in sub-section (1), after sub-paragraph (ii) of paragraph (a), the following sub-paragraph:—

“(iia) in the case of the superannuation scheme constituted by the provisions of the *Defence Force Retirement and Death Benefits Act 1973*—to a transfer value payable in respect of the employee under Division 3 of Part IX of that Act or to a refund of contributions and a lump sum payable under sub-section (2) of section thirty-two of that Act; and”.

Transfer value payable in respect of previous employment.

10. Section 119s of the Principal Act is amended—

(a) by inserting in paragraph (a) of sub-section (4), after the words “*Defence Forces Retirement Benefits Act 1948–1971*”, the words “or had not ceased to be an eligible member of the Defence Force as defined by section three of the *Defence Force Retirement and Death Benefits Act 1973*”; and

(b) by inserting in paragraph (b) of sub-section (4), after the words “Part VIc of that Act”, the words “or under Division 3 of Part IX of the *Defence Force Retirement and Death Benefits Act 1973*”.

Transfer value.

11. Section 119r of the Principal Act is amended—

(a) by inserting in paragraph (a) of sub-section (8), after the words “*Defence Forces Retirement Benefits Act 1948–1971*”, the words “or had not ceased to be an eligible member of the Defence Force as defined by section three of the *Defence Force Retirement and Death Benefits Act 1973*”; and

(b) by omitting from paragraph (b) of sub-section (8) the words “that Act,” and substituting the words “whichever of those Acts is applicable,”.

Deferred benefit.