

DEFENCE FORCE RETIREMENT AND DEATH BENEFITS AMENDMENT ACT 1976

No. 33 of 1976

An Act to amend the *Defence Force Retirement and Death Benefits Act* 1973-1975, and for related purposes.

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

1. (1) This Act may be cited as the *Defence Force Retirement and Death Benefits Amendment Act* 1976.¹ Short title
and citation.

(2) The *Defence Force Retirement and Death Benefits Act* 1973-1975² is in this Act referred to as the Principal Act.

(3) The Principal Act, as amended by this Act, may be cited as the *Defence Force Retirement and Death Benefits Act* 1973-1976.

2. (1) Sections 1 and 2 shall come into operation on the day on which this Act receives the Royal Assent.¹ Commence-
ment.

(2) Section 9 shall be deemed to have come into operation on 1 October 1972.

(3) Section 16 shall be deemed to have come into operation on 9 September 1975.

(4) Sections 13 and 14 shall come into operation on the day on which the *Administrative Appeals Tribunal Act* 1975 comes into force.

(5) The remaining provisions of this Act shall come into operation on 1 July 1976.

3. Section 3 of the Principal Act is amended—

(a) by inserting after the definition of “child’s pension” in subsection (1) the following definition:—

“‘Commissioner for Superannuation’ means the Commissioner for Superannuation under the Superannuation Act, and includes an acting Commissioner for Superannuation under that Act;”;

Interpret-
ation.

- (b) by omitting from sub-section (1) the definitions of “Superannuation Act”, “Superannuation Board” and “Superannuation Fund” and substituting the following definition:—

“‘Superannuation Act’ means the *Superannuation Act 1976*;” and

- (c) by adding at the end thereof the following sub-section:—

“(3) A reference in this Act to a provision of the Superannuation Act shall, except where the context otherwise requires, be read as including a reference to that provision as modified by regulations made under that Act.”.

Definitions. 4. Section 7 of the Principal Act is amended by omitting the definition of “President of the Superannuation Board”.

Constitution of Authority. 5. Section 8 of the Principal Act is amended by omitting from paragraph (a) of sub-section (2) the words “the President of the Superannuation Board” and substituting the words “the Commissioner for Superannuation”.

Invalidity benefit payable to certain contributors under Superannuation Act. 6. Section 36 of the Principal Act is amended by omitting paragraph (b) of sub-section (1) and substituting the following paragraph:—

“(b) who, at the time he becomes so entitled—

(i) is an eligible employee for the purposes of the Superannuation Act whose liability to make contributions to the Commissioner for Superannuation is deferred by virtue of section 54 of the Superannuation Act; or

(ii) is a person whose entitlement to pension under that Act is suspended by force of sub-section 117(1) of that Act.”.

7. Section 46 of the Principal Act is repealed and the following section substituted:—

Superannuation Act. “46. Pension benefit is not payable under this Part in respect of a member of the scheme who dies before retirement and who, at the time of his death, was an eligible employee for the purposes of the Superannuation Act whose liability to make contributions under that Act was deferred by virtue of section 54 of that Act or was a person whose entitlement to pension under that Act was suspended by force of sub-section 117(1) of that Act.”.

8. Section 61 of the Principal Act is repealed and the following section substituted:—

“61. Where—

- (a) the liability of a person to make contributions under the Superannuation Act has been deferred by virtue of section 54 of that Act;
- (b) by reason of the retirement or death of the person, the amount of the deferred contributions has become payable;
- (c) the whole or any part of the amount so payable has not been paid; and
- (d) benefit has become payable to or in respect of the person under sub-section 32 (2) or section 48 or 56 of this Act,

Payment of refund of contributions or of lump sum payment to Commissioner for Superannuation in discharge of liability under Superannuation Act.

the amount of the benefit so payable shall, to the extent that it does not exceed the amount of the deferred contributions payable, be paid to the Commissioner for Superannuation and, upon being so paid, the amount of the deferred contributions payable shall, to the extent of that payment, be deemed to have been paid to the Commissioner under section 54 of the Superannuation Act.”

9. Section 62 of the Principal Act is amended, by omitting from sub-section (2) the word and figures “sub-section 69 (1) (a)” and substituting the word and figures “sub-section 69 (1A)”.

Recipient member who becomes an eligible member.

10. Section 68 of the Principal Act is amended by omitting from paragraph (b) of sub-section (1) the words “contributions under the Superannuation Act for reserve units of pension” and substituting the words “contributions under the *Superannuation Act* 1922, or that Act as amended and in force from time to time, for reserve units of pension or to supplementary contributions under the Superannuation Act”.

Transfer value payable in respect of previous employment.

11. Section 71 of the Principal Act is amended—

- (a) by omitting paragraph (b) of sub-section (1) and substituting the following paragraph:—

Eligible employment.

“(b) subject to sub-sections (2) and (3), a period of employment of the person by the Commonwealth, by the Administration of a Territory or by an authority or other body, being—

- (i) a body corporate incorporated for a public purpose by an Act, regulations made under an Act or a law of a Territory;
- (ii) an authority or body, not being a body corporate, established for a public purpose by, or in accordance with, the provisions of an Act, regulations made under an Act or a law of a Territory;
- (iii) a company or other body corporate incorporated under a law of a State or Territory,

being a body corporate in which the Commonwealth has a controlling interest; or

- (iv) an authority or body established, whether by or in accordance with the provisions of an Act, regulations made under an Act, or a law of a Territory or otherwise and whether a body corporate or not, being an authority or body which is financed in whole or in substantial part, either directly or indirectly, by moneys provided by the Commonwealth;”;
- (b) by omitting from paragraph (c) of sub-section (1) the word “and” (last occurring);
- (c) by omitting paragraph (d) of sub-section (1) and substituting the following paragraphs:—
- “(d) subject to sub-section (5), a period of employment of the person during which he was a contributor to a State Fund within the meaning of Part VII of the *Superannuation Act 1922* or that Act as amended and in force from time to time (in this section referred to as the ‘superseded Superannuation Act’) or a contributor to a Public Service Superannuation Fund within the meaning of Part VIII of the superseded Superannuation Act; and
 - (e) subject to sub-section (5A), a period of employment of the person during which he was a contributor to a State Superannuation Fund within the meaning of section 132 of the Superannuation Act.”;
- (d) by omitting sub-section (5) and substituting the following sub-sections:—
- “(5) Paragraph (1) (d) does not apply in relation to a period of employment of a person unless—
- (a) an amount equal to the amount refunded to the person from a Fund referred to in that paragraph was, in accordance with Part VII or Part VIII of the superseded Superannuation Act, paid to the Superannuation Board established under that Act; and
 - (b) a period of employment during which the person was a contributor to the Superannuation Fund established under that Act that immediately followed the period of the first-mentioned employment was a period of eligible employment.
- “(5A) Paragraph (1) (e) does not apply in relation to a period of employment of a person unless—

- (a) an amount equal to the amount refunded to the person from the State Superannuation Fund was, in accordance with section 132 of the Superannuation Act, paid to the Commissioner for Superannuation; and
- (b) the person became an eligible employee immediately after, or within a period of 3 months after, his period of employment during which he was a contributor to the State Superannuation Fund.”; and
- (e) by omitting from sub-section (6) the letters and word “(c) or (d)” and substituting the letters and word “(c), (d) or (e)”.

12. Section 76 of the Principal Act is amended by omitting sub-section (6) and substituting the following sub-section:—

Election that
Divisions
apply.

“(6) This section does not apply in relation to a person to whom section 54 of the Superannuation Act applied immediately before he ceased to be an eligible member of the Defence Force and who, at the time when he ceased to be such a member, had not ceased to be an eligible employee for the purposes of that Act.”.

13. (1) Part XI of the Principal Act is repealed and the following Part substituted:—

“PART XI—REVIEW OF DECISIONS OF AUTHORITY

“99. (1) In this section—

‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

Review of
decisions of
Authority.

‘decision of the Authority’ means a decision of the Authority, or a delegate of the Authority, under this Act, under the *Defence Forces Retirement Benefits Act 1948* or that Act as amended and in force from time to time, or under any other Act that relates to retirement benefits for members of the Defence Force and modifies or affects the provisions of the *Defence Forces Retirement Benefits Act 1948* or that Act as amended and in force from time to time.

“(2) A person who is affected by a decision of the Authority and is dissatisfied with the decision may, by notice in writing given to the Authority, within a period of 30 days after the date on which the decision first comes to the notice of the person, or within such further period as the Authority allows, request the Authority to reconsider the decision.

“(3) There shall be set out in the request the ground on which the request is made.

“(4) Upon the receipt of the request the Authority shall reconsider the decision and may either confirm the decision or vary the decision in such manner as it thinks fit.

“(5) The Authority shall, by notice in writing to the person who made the request, inform the person of the result of its reconsideration of the decision.

“(6) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Authority, being decisions that have been confirmed or varied under sub-section (4).”.

(2) The Part inserted in the Principal Act by sub-section (1) of this section does not apply in respect of a decision in relation to which a request has been made to the Defence Force Retirement and Death Benefits Authority under section 100 of the Principal Act before the commencement of this section, and the Part repealed by sub-section (1) of this section, and the regulations in force by virtue of paragraph 131 (1) (a) of the Principal Act immediately before the commencement of this section, continue to have effect in relation to such a decision and proceedings under that Part in respect of such a decision.

Regulations. **14.** Section 131 of the Principal Act is amended by omitting paragraph (a) of sub-section (1).

Com-
missioner for
Super-
annuation
to be
Chairman of
Defence
Forces
Retirement
Benefits
Board. **15.** On and after 1 July 1976, each reference in section 5 of the *Defence Forces Retirement Benefits Act 1948-1975* to the President of the Superannuation Board shall be read as a reference to the Commissioner for Superannuation.

Amendments
of *Defence
Force Re-
organization
Act 1975*. **16.** (1) The heading to Part X of the *Defence Force Re-organization Act 1975*³ is amended by omitting the words “, AS AMENDED BY THE DEFENCE FORCE RETIREMENT AND DEATH BENEFITS ACT 1975”.

(2) Section 156 of the *Defence Force Re-organization Act 1975* is amended—

- (a) by omitting from sub-section (1) the words “, as amended by the *Defence Force Retirement and Death Benefits Act 1975*,”; and
- (b) by omitting sub-section (2).

(3) The *Defence Force Re-organization Act 1975*, as amended by this section, may be cited as the *Defence Force Re-organization Act 1975-1976*.

1976

*Defence Force Retirement and Death Benefits
Amendment*

No. 33

NOTES

1. Act No. 33, 1976; assented to 7 May 1976.
2. Act No. 81, 1973, as amended by No. 59, 1974; and No. 96, 1975.
3. Act No. 96, 1975.