



# Sex Discrimination Amendment Act 1991

No. 71 of 1991

## TABLE OF PROVISIONS

### PART 1—PRELIMINARY

#### Section

1. Short title
2. Commencement
3. Application

### PART 2—AMENDMENTS OF THE SEX DISCRIMINATION ACT 1984

4. Principal Act
5. Interpretation
6. Discrimination in employment or in superannuation
7. Acts done under statutory authority
8. Insertion of new section:
  - 40A. Review of operation of subsections 40 (2) and (3)
9. Repeal of section 41 and substitution of new sections:
  41. Insurance
  - 41A. New superannuation fund conditions
  - 41B. Existing superannuation fund conditions
10. Commission may grant exemptions

### PART 3—AMENDMENTS OF THE MARRIAGE ACT 1961

11. Principal Act
12. Repeal of section 11 and substitution of new section:
  11. Marriageable age
13. Authorisation of marriage of person under age of 18 years in exceptional circumstances
14. Restriction on solemnization of marriages under this Part
15. Solemnization of marriages where a party to the marriage is not an Australian citizen etc.
16. Validity of marriages
17. Marriageable age—transitional

TABLE OF PROVISIONS—*continued*

Section

PART 4—AMENDMENTS OF THE WAR GRATUITY ACT 1945

- 18. Principal Act
- 19. Interpretation
- 20. Minimum war gratuity in case of death and total dependency
- 21. Death of member before date of entitlement
- 22. Payment of war gratuity before due date
- 23. Further amendments

SCHEDULE

FURTHER AMENDMENTS



# Sex Discrimination Amendment Act 1991

No. 71 of 1991

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**An Act to amend the *Sex Discrimination Act 1984*, the *Marriage Act 1961* and the *War Gratuity Act 1945*, and for related purposes**

[Assented to 25 June 1991]

The Parliament of Australia enacts:

## **PART 1—PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Sex Discrimination Amendment Act 1991*.

### **Commencement**

2. (1) Part 1, sections 4, 7 and 8, Parts 3 and 4 and the Schedule commence on 1 August 1991.

(2) Sections 5, 6 and 9 commence at the end of the period of 2 years beginning on the day on which this Act receives the Royal Assent.

(3) Section 10 commences on the day on which this Act receives the Royal Assent.

**Application**

3. The amendments of the *Marriage Act 1961* made by Part 3 do not apply to marriages solemnised before the commencement of that Part.

**PART 2—AMENDMENTS OF THE SEX DISCRIMINATION ACT 1984**

**Principal Act**

4. In this Part, “**Principal Act**” means the *Sex Discrimination Act 1984*<sup>1</sup>.

**Interpretation**

5. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definitions:

“**‘superannuation benefit’**, in relation to a member of a superannuation fund, means a benefit that is payable, under the terms and conditions relating to the fund:

- (a) in the event of the member’s death—to the estate of the deceased or to someone other than the deceased; or
- (b) in the event of the member’s physical or mental incapacity—to the member or to someone other than the member;

**‘superannuation fund’** means a superannuation or provident fund or scheme;

**‘superannuation fund conditions’**, in relation to a superannuation fund, means the terms and conditions that relate to membership of, or benefits payable from, the superannuation fund;”.

**Discrimination in employment or in superannuation**

6. Section 14 of the Principal Act is amended by adding at the end the following subsections:

“(4) Where a person exercises a discretion in relation to the payment of a superannuation benefit to or in respect of a member of a superannuation fund, it is unlawful for the person to discriminate, in the exercise of the discretion, against the member or another person on the ground, in either case, of the sex or marital status of the member or that other person.

“(5) Subsection (4) does not apply if section 41B applies to that member in respect of that fund.

“(6) In this section:

**‘member’**, in relation to a superannuation fund, includes a person who has been a member of the fund at any time.”.

**Acts done under statutory authority**

7. Section 40 of the Principal Act is amended:

- (a) by omitting paragraphs (1) (a) and (b);
- (b) by omitting subsections (2), (3) and (4) and substituting the following subsections:

“(2) Nothing in Division 1 or 2 affects anything done by a person in direct compliance with any of the following as in force on 1 August 1984:

- (a) the *Gift Duty Assessment Act 1941*;
- (b) the operation of:
  - (i) the definition of ‘pensioner’ in subsection 4 (1); or
  - (ii) the definition of ‘concessional beneficiary’ in subsection 84 (1);of the *National Health Act 1953*;
- (c) the *Income Tax Assessment Act 1936*;
- (d) the *Income Tax (International Agreements) Act 1953*;
- (e) the *Papua New Guinea (Members of the Forces Benefits) Act 1957*;
- (f) the *Sales Tax (Exemptions and Classifications) Act 1935*;
- (g) the *Seamen’s War Pensions and Allowances Act 1940*;
- (h) the *Social Security Act 1947*;
- (i) the *Taxation (Unpaid Company Tax) Assessment Act 1982*;
- (j) the *Social Services Act 1980* of Norfolk Island.

“(3) Nothing in Division 1 or 2, as applying by reference to section 6, affects anything done by a person in direct compliance with any regulations, rules, by-laws, determinations or directions made under the *Gift Duty Assessment Act 1941*, the *Income Tax Assessment Act 1936* or the *Sales Tax (Exemptions and Classifications) Act 1935*.

“(4) For the period of 3 years beginning on the commencement of this subsection, nothing in Division 1 or 2, as applying by reference to section 6, affects anything done by a person for the purposes of the administration of:

- (a) a scheme established under the *Student Assistance Act 1973*; or
- (b) a current special educational assistance scheme within the meaning of that Act.”.

8. The Principal Act is amended by inserting after section 40 the following section:

*Sex Discrimination Amendment No. 71, 1991*

**Review of operation of subsections 40 (2) and (3)**

“40A. (1) The Minister must review the operation of subsections 40 (2) and (3) before 1 June 1996.

“(2) The review must include, but need not be limited to, a recommendation as to whether subsections 40 (2) and (3) should be repealed.

“(3) The Minister must cause copies of the review to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the review.”.

9. Section 41 of the Principal Act is repealed and the following sections are substituted:

**Insurance**

“41. (1) Nothing in Division 1 or 2 makes discrimination by one person (in this subsection called the ‘insurer’) against another person (in this subsection called the ‘client’) unlawful if:

- (a) the discrimination is on the ground of the client’s sex; and
- (b) the discrimination is in the terms on which an insurance policy is offered to, or may be obtained by, the client; and
- (c) the discrimination is based on actuarial or statistical data from a source on which it is reasonable for the insurer to rely; and
- (d) the discrimination is reasonable having regard to those data and any other relevant factors.

“(2) In this section:

‘insurance policy’ includes an annuity, a life assurance policy, an accident insurance policy and an illness insurance policy.

**New superannuation fund conditions**

“41A. (1) Nothing in Division 1 or 2 makes discrimination in relation to a superannuation fund by one person (in this subsection called the ‘discriminator’) against another person (in this subsection called the ‘aggrieved person’) unlawful if:

- (a) the discrimination is on the ground of the aggrieved person’s sex or marital status; and
- (b) the discrimination arises only because of one or more of the following:
  - (i) the superannuation fund conditions include a provision that:
    - (A) is based on actuarial or statistical data from a source on which it is reasonable for the discriminator to rely; and
    - (B) is reasonable having regard to those data and any other relevant factors;

*Sex Discrimination Amendment No. 71, 1991*

- (ii) in the case of a member who has no spouse (whether legal or de facto) or has no child—the superannuation fund conditions:
  - (A) do not provide for superannuation benefits in the event of the member’s death; or
  - (B) provide for less generous superannuation benefits in the event of the member’s death; or
  - (C) do not provide for superannuation benefits to someone other than the member in the event of the member’s physical or mental incapacity; or
  - (D) provide for less generous superannuation benefits to someone other than the member in the event of the member’s physical or mental incapacity;
- (iii) the superannuation fund conditions include a provision that relates to:
  - (A) the vesting in members or other persons of benefits arising directly or indirectly from amounts contributed to the fund; or
  - (B) the preservation of benefits arising directly or indirectly from amounts contributed to the fund; or
  - (C) the portability of benefits arising directly or indirectly from amounts contributed to another superannuation fund;if the inclusion of that provision results in only indirect discrimination against the aggrieved person on the ground of that person’s sex or marital status;
- (iv) the superannuation fund conditions include a provision that confers particular benefits, or more generous benefits, only on a person to whom subsection 41B (3) or (4) applies.

“(2) For the purposes of this section, discrimination against a person on the ground of the person’s sex or marital status is taken to be indirect if paragraph 5 (1) (b) or (c), subsection 5 (2), paragraph 6 (1) (b) or (c) or subsection 6 (2) applies to the discrimination.

“(3) This section does not apply to a person in respect of a superannuation fund if subsection 41B (3) or (4) applies to that person.

“(4) In this section:  
‘member’, in relation to a superannuation fund, includes a person who has been a member of the fund at any time.

**Existing superannuation fund conditions**

“41B. (1) This section applies to a person (in this section called the ‘member’) if:

- (a) the person was a member of a superannuation fund immediately before the commencement of this section; and

*Sex Discrimination Amendment No. 71, 1991*

- (b) unless the Commission has, under section 44, granted an exemption from the operation of this paragraph—before the commencement of this section, the person:
  - (i) had been given an option to obtain non-discriminatory benefits; and
  - (ii) had not exercised the option in accordance with subsection (5).

“(2) This section applies to a person (in this section also called the ‘member’) if:

- (a) at any time before the commencement of this section, the person became a member of a superannuation fund; and
- (b) at a later time before that commencement, the person ceased to be a member of the fund.

“(3) Nothing in Division 1 or 2 makes discrimination against the member unlawful if the discrimination:

- (a) is on the ground of the member’s sex or marital status; and
- (b) is in the superannuation fund conditions.

“(4) Nothing in Division 1 or 2 makes discrimination against a person unlawful if:

- (a) the person derives, or would, apart from the discrimination, derive, benefits because the member is or was a member of the superannuation fund; and
- (b) the discrimination:
  - (i) is on the ground of the sex or marital status of the member or the person; and
  - (ii) is in the superannuation fund conditions.

“(5) If the administrators of the fund required the member to exercise the option referred to in subsection (1) before the end of a particular period, subsection (1) does not apply unless that period was at least 2 months long and ended before the commencement of this section.

“(6) For the purposes of this section, the member is taken to obtain non-discriminatory benefits where, if section 41A applied to the member in respect of the fund, the superannuation fund conditions that relate to the benefits would not give rise to discrimination that is unlawful under Division 1 or 2.”.

**Commission may grant exemptions**

**10.** Section 44 of the Principal Act is amended:

- (a) by omitting from subsection (1) “a specified provision of Division 1 or 2” and substituting “a provision of Division 1 or 2, or paragraph 41B (1) (b), as specified in the instrument”;
- (b) by omitting from subsection (3) “exemption or further



exemption” and substituting “exemption, or further exemption, from the operation of a provision of Division 1 or 2”.

### **PART 3—AMENDMENTS OF THE MARRIAGE ACT 1961**

#### **Principal Act**

11. In this Part, “**Principal Act**” means the *Marriage Act 1961*<sup>2</sup>.

12. Section 11 of the Principal Act is repealed and the following section is substituted:

#### **Marriageable age**

“11. Subject to section 12, a person is of marriageable age if the person has attained the age of 18 years.”.

#### **Authorisation of marriage of person under age of 18 years in exceptional circumstances**

13. Section 12 of the Principal Act is amended:

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

“(1) A person who has attained the age of 16 years but has not attained the age of 18 years may apply to a Judge or magistrate in a State or Territory for an order authorising him or her to marry a particular person of marriageable age despite the fact that the applicant has not attained the age of 18 years.”;

(b) by omitting from paragraph (2) (a) “or 14 years, as the case may be”.

#### **Restriction on solemnization of marriages under this Part**

14. Section 77 of the Principal Act is amended by omitting from paragraph (1) (c) “the woman about to be married” and substituting “1 party to the intended marriage”.

#### **Solemnization of marriages where a party to the marriage is not an Australian citizen etc.**

15. Section 78 of the Principal Act is amended:

(a) by omitting from subsection (1) “the man about to be married” and substituting “1 party to the intended marriage (in this section called the ‘**non-Australian**’)”;

(b) by omitting from paragraphs (2) (a) and (b) “the man about to be married” and substituting “the non-Australian”.

#### **Validity of marriages**

16. Section 88D of the Principal Act is amended by omitting from subsection (3) “the female party is under the age of 14 years or the male party” and substituting “either party”.

**Marriageable age—transitional**

17. (1) If an application under section 12, 15, 16 or 17 of the Principal Act was pending immediately before the commencement of this section, the Principal Act applies as if sections 12 and 13 of this Act had not been enacted.

(2) If, before the commencement of this section:

(a) notice of an intended marriage had been received:

(i) by the authorised celebrant under section 42 of the Principal Act; or

(ii) by the marriage officer under section 66 of the Principal Act; and

(b) the marriage had not been solemnised;

the Principal Act applies as if sections 12 and 13 of this Act had not been enacted.

**PART 4—AMENDMENTS OF THE WAR GRATUITY ACT 1945**

**Principal Act**

18. In this Part, “Principal Act” means the *War Gratuity Act 1945*<sup>3</sup>.

**Interpretation**

19. Section 2 of the Principal Act is amended:

(a) by omitting “wife, widow” from the definition of “dependants” and substituting “spouse”;

(b) by omitting “his” (twice occurring) from the definition of “dependants” and substituting “his or her”;

(c) by omitting “five,” from the definition of “month”;

(d) by omitting the definition of “death due to war service” and substituting the following definition:

“‘death due to war service’ means death of a member which occurred in circumstances in which:

(a) the Commonwealth is liable to pay pension under Part II of the *Veterans’ Entitlements Act 1986*; or

(b) the Commonwealth would be liable to pay pension under that Part if pension were payable to a female veteran’s spouse;”;

(e) by inserting the following definition:

“‘spouse’ in relation to a member, includes:

(a) a de facto spouse of the member; or

(b) a widow or widower of the member; or

(c) a person who was a de facto spouse of the member immediately before the member’s death;”.

**Minimum war gratuity in case of death and total dependency**

20. Section 14 of the Principal Act is amended:

- (a) by omitting from subsection (1) “widow or widower” and substituting “spouse”;
- (b) by omitting from subsection (1) “his” (twice occurring) and substituting “the member’s”;
- (c) by omitting from subsection (3) “he” and substituting “the member”.

**Death of member before date of entitlement**

21. Section 17 of the Principal Act is amended:

- (a) by omitting from subsection (1) “he” and substituting “the deceased member”;
- (b) by omitting from paragraph (1)(b) “his” and substituting “the deceased’s”;
- (c) by omitting from subsection (1) “either the widow or widower” and substituting “the spouse”.

**Payment of war gratuity before due date**

22. Section 21 of the Principal Act is amended by omitting paragraphs (b), (c) and (d) and substituting the following word and paragraphs:

- “or (b) the spouse of a member; or
- (c) the widowed mother or widowed father of an unmarried deceased member; or
- (d) the mother or father of a deceased member, or an older sister or brother of a deceased member who acted as a parent to the member, if a prescribed authority is satisfied that she or he was totally dependent on the member at the time of the member’s death or is in needy circumstances; or”.

**Further amendments**

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

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**SCHEDULE**

**FURTHER AMENDMENTS**

***War Gratuity Act 1945***

**Section 5:**

Repeal the section.

**Paragraphs 7 (1) (b), (e) and (f):**

After “his”, insert “or her”.

**Subsection 7 (1) (proviso (ii)):**

Omit “his” (twice occurring), substitute “the member’s”.

**Section 8:**

Omit “his”, substitute “the member’s”.

**Paragraph 9 (1) (e):**

Omit “his”, substitute “the member’s”.

**Subsection 11 (1):**

After “his” (twice occurring), insert “or her”.

After “he”, insert “or she”.

**Paragraph 11 (2) (a):**

Omit “his” (wherever occurring), substitute “the member’s”.

Omit “he”, substitute “the member”.

**Subsection 11 (2):**

Omit “his” (twice occurring), substitute “the member’s”.

**Subsection 12 (1):**

Omit “his”, substitute “the member’s”.

Omit “he”, substitute “the member”.

**Subsection 12 (2):**

Omit “his” (twice occurring), substitute “the member’s”.

**Subsection 13 (1):**

Omit “he”, substitute “the member”.

**Subsection 13 (2):**

Omit “he”, substitute “the member”.

**SCHEDULE—continued**

**Paragraph 15 (a):**

Omit “his”, substitute “the member’s”.

**Paragraph 15 (c):**

Omit “him” (twice occurring), substitute “the member”.

Omit “his” (twice occurring), substitute “the member’s”.

**Paragraph 16 (a):**

After “his”, insert “or her”.

**Section 24:**

After “his” (twice occurring), insert “or her”.

**Section 25:**

After “his”, insert “or her”.

**Section 26:**

Omit “his”, substitute “the member’s”.

**Subsection 27 (4):**

Omit “he”, substitute “the member”.

**Subsection 27 (5):**

Omit “he” (twice occurring), substitute “the member”.

**Subsection 33 (1):**

Omit “his” (twice occurring), substitute “the Minister’s”.

**The Schedule:**

After “himself” (twice occurring), insert “or herself”.

After “his” (wherever occurring), insert “or her”.

After “him”, insert “or her”.

After “he” (wherever occurring), insert “or she”.

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**NOTES**

1. No. 4, 1984, as amended. For previous amendments, see No. 72, 1984; No. 65, 1985; Nos. 76 and 126, 1986; Nos. 38, 75, 80 and 87, 1988 and No. 115, 1990.
2. No. 12, 1961, as amended. For previous amendments, see No. 93, 1966, Nos. 35 and 216, 1973; Nos. 37 and 209, 1976; No. 2, 1982; No. 7, 1985; No. 38, 1988 and No. 115, 1990.
3. No. 16, 1945, as amended. For previous amendments, see No. 41, 1947; No. 93, 1966; No. 37, 1976; and No. 28, 1986.

*Sex Discrimination Amendment No. 71, 1991*

*[Minister's second reading speech made in—  
House of Representatives on 6 March 1991  
Senate on 18 April 1991]*