



Federal Magistrates Amendment (Disability and Death Benefits) Act 2007

No. 163, 2007

**An Act to amend the *Federal Magistrates Act 1999*,
and for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Federal Magistrates Amendment (Disability and Death Benefits) Act 2007

No. 163, 2007

**An Act to amend the *Federal Magistrates Act 1999*,
and for related purposes**

[Assented to 25 September 2007]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Federal Magistrates Amendment
(Disability and Death Benefits) Act 2007*.

Federal Magistrates Amendment (Disability and Death Benefits) Act 2007 No. 163, 2007

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2 Commencement

This Act commences on the day after it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Federal Magistrates Act 1999

1 Section 5

Insert:

beneficiary, in respect of a payment under clause 9D of Schedule 1, has the meaning given by subclause 9D(4) of that Schedule.

2 Section 5

Insert:

Commonwealth superannuation contribution, in respect of a Federal Magistrate or retired disabled Federal Magistrate, means a Commonwealth contribution to the Magistrate's choice of:

- (a) a complying superannuation fund (within the meaning of section 45 of the *Superannuation Industry (Supervision) Act 1993*); or
- (b) a retirement savings account (within the meaning of section 8 of the *Retirement Savings Accounts Act 1997*).

3 Section 5

Insert:

eligible child has the meaning given by clause 9F of Schedule 1.

4 Section 5

Insert:

eligible spouse has the meaning given by clause 9E of Schedule 1.

5 Section 5

Insert:

living with a person has the meaning given by subclause 9E(8) of Schedule 1.

6 Section 5

Insert:

marital relationship has the meaning given by subclause 9E(5) of Schedule 1.

7 Section 5

Insert:

prior judicial service, in relation to a retired disabled Federal Magistrate, means service, prior to the Magistrate's appointment as a Federal Magistrate, as one of the following:

- (a) a Justice or Judge of a federal court;
- (b) the holder of an office, being an office the holder of which has, by virtue of an Act, the same status as a Justice or Judge of a federal court;
- (c) a Federal Magistrate;
- (d) a Judge or acting Judge of a court of a State or Territory;
- (e) a magistrate of a State or Territory;
- (f) in the case of a State or Territory office that qualifies the holder of the office for a pension or retiring allowance under a law of the State or Territory relating to pensions or retiring allowances payable to retired Judges—a holder of the office (including an acting holder).

Note: If the Magistrate was appointed as a Federal Magistrate more than once, see section 5A.

8 Section 5

Insert:

retired disabled Federal Magistrate means a person certified by the Minister to be a retired disabled Federal Magistrate under paragraph 9A(2)(a) of Schedule 1.

9 Section 5

Insert:

retires, in relation to a Federal Magistrate, means ceases, otherwise than by death, to hold any office as a Federal Magistrate.

10 After section 5

Insert:

5A Prior judicial service

For the purposes of the definition of *prior judicial service*, if a retired disabled Federal Magistrate was appointed as a Federal Magistrate more than once, the reference to the Magistrate's appointment as a Federal Magistrate is taken to be a reference to the Magistrate's most recent appointment as a Federal Magistrate.

11 Before clause 1 of Schedule 1

Insert:

Part 1—Appointment of Federal Magistrates

12 After clause 3 of Schedule 1

Insert:

Part 2—Terms and conditions of Federal Magistrates

Division 1—Terms and conditions of serving Federal Magistrates

13 After clause 9 of Schedule 1

Insert:

Division 2—Disability and death benefits

9A Certification of retired disabled Federal Magistrates

- (1) If:
 - (a) a Federal Magistrate retires; and
 - (b) the Magistrate has not attained the age of 70 years;the Minister may be requested to certify that the Magistrate is a retired disabled Federal Magistrate.
- (2) On receiving the request, the Minister must:
 - (a) if the Minister is satisfied that the retirement was due to permanent disability or infirmity—certify that the Magistrate is a retired disabled Federal Magistrate; or

- (b) otherwise—refuse to so certify.
- (3) If the Minister refuses to so certify, application may be made to the Administrative Appeals Tribunal for review of the refusal.

9B Pensions for retired disabled Federal Magistrates

- (1) A retired disabled Federal Magistrate is entitled to a pension until:
 - (a) he or she attains the age of 70 years; or
 - (b) he or she dies;whichever happens first.

Annual rate of pension

- (2) The annual rate of the pension is 60% of the annual rate of salary the Magistrate would have been entitled to from time to time if he or she had not retired.
- (3) However, the rate of the pension must be reduced by the amount of any pension or retiring allowance:
 - (a) payable to the Magistrate, whether under a law or otherwise, out of money provided in whole or in part by the Commonwealth, a State or a Territory (other than a Commonwealth superannuation contribution the Magistrate was entitled to under a determination under subclause 8(1)); and
 - (b) payable to the Magistrate by reason of prior judicial service, or prior judicial service and any other service.
- (4) For the purposes of subclause (2), the annual rate of salary is the annual rate of remuneration determined under clause 5:
 - (a) excluding any allowances that are paid in lieu of any other entitlement; and
 - (b) if any arrangements have been entered into for any amount of the annual rate of remuneration (other than an allowance covered by paragraph (a)) to be provided in the form of another benefit—including that amount.

When pension is due and payable

- (5) The pension is due daily, but is payable on the days on which salary payments are made to Federal Magistrates.

Safety, Rehabilitation and Compensation Act 1988

- (6) For the purposes of Division 3 of Part II of the *Safety, Rehabilitation and Compensation Act 1988*:
- (a) the pension is taken to be a pension payable to the Magistrate under a superannuation scheme; and
 - (b) the Magistrate is not required to pay superannuation contributions to that scheme.

9C Superannuation for retired disabled Federal Magistrates

- (1) A retired disabled Federal Magistrate who has not attained the age of 65 years is entitled to a Commonwealth superannuation contribution until:
- (a) he or she attains the age of 65 years; or
 - (b) he or she dies;
- whichever happens first.
- (2) The amount of the Commonwealth superannuation contribution is the amount of the Commonwealth superannuation contribution (if any) the Magistrate would have been entitled to from time to time, under a determination under subclause 8(1), if he or she had not retired.
- (3) The Commonwealth superannuation contribution is to be made by payments on the days on which salary payments are made to Federal Magistrates.

9D Death benefits

- (1) A payment is payable under this section if:
- (a) a Federal Magistrate, or a retired disabled Federal Magistrate, who has not attained the age of 65 years dies; and
 - (b) the Magistrate leaves one or more eligible spouses or eligible children.

Amount

- (2) The amount of the payment is the amount of the Commonwealth superannuation contribution (if any) the Magistrate would have been entitled to, under a determination under subclause 8(1), during the period in subclause (3) if:
-

- (a) the Magistrate had neither died nor retired before the end of that period; and
 - (b) the amount of the Commonwealth superannuation contribution the Magistrate was entitled to under that determination did not change during that period.
- (3) The period in this subclause is the period:
- (a) beginning on the day on which the Magistrate died; and
 - (b) ending on the day on which the Magistrate would have attained the age of 65 years.

Beneficiaries

- (4) The *beneficiaries* in respect of the payment are each eligible spouse and eligible child the Magistrate leaves.
- (5) If there is only one beneficiary in respect of the payment, the payment is payable to the beneficiary.
- (6) If there is more than one beneficiary in respect of the payment, the payment is payable to the beneficiaries in the proportions (totalling 100% of the amount of the payment) the Minister considers appropriate, having regard to the respective circumstances of each beneficiary.

Note: For review of decisions under subclause (6), see subclause (10).

Beneficiaries—eligible children

- (7) If the payment (or a proportion of the payment) is payable to an eligible child, the Minister may, in writing, direct that:
- (a) some or all of the payment or proportion be paid to a specified person for the benefit of the child (including for the support or education of the child); or
 - (b) if the Minister is satisfied that, by reason of special circumstances, it is desirable to do so in the interests of the child—some or all of the payment or proportion be spent in a specified manner for the benefit of the child.

Note: For review of decisions under subclause (7), see subclause (10).

- (8) The Minister may be requested to give a direction under subclause (7) in respect of an eligible child.
- (9) On receiving an application, the Minister must:
-

- (a) if he or she is satisfied that he or she should make a direction in respect of the child—give such a direction; or
- (b) if he or she is not so satisfied—refuse to give such a direction.

Note: For review of decisions under paragraph (9)(b), see subclause (10).

Applications for review

- (10) Application may be made to the Administrative Appeals Tribunal for review of the following:
 - (a) a decision by the Minister under subclause (6);
 - (b) a direction by the Minister under subclause (7);
 - (c) a refusal by the Minister under paragraph (9)(b) to give a direction.

9E Relationship definitions

*Meaning of **eligible spouse***

- (1) For the purposes of this Act, subclauses (2), (3) and (4) set out the 3 circumstances in which a person is an **eligible spouse** of a Federal Magistrate, or a retired disabled Federal Magistrate, who dies.
- (2) A person is an **eligible spouse** of a Federal Magistrate who dies if the person had a marital relationship with the Magistrate at the time of the death of the Magistrate.
- (3) A person is an **eligible spouse** of a retired disabled Federal Magistrate who dies if:
 - (a) the person had a marital relationship with the Magistrate at the time of the Magistrate's death; and
 - (b) the marital relationship began:
 - (i) before the Magistrate retired; or
 - (ii) before the Magistrate attained the age of 60 years.
- (4) A person is an **eligible spouse** of a Federal Magistrate, or a retired disabled Federal Magistrate, who dies if:
 - (a) the person had previously had a marital relationship with the Magistrate; and

- (b) the person did not, at the time of the Magistrate's death, have a marital relationship with the Magistrate but was legally married to him or her; and
- (c) in the Minister's opinion, the person was wholly or substantially dependent upon the Magistrate at the time of the Magistrate's death; and
- (d) in the case of a marital relationship that began after the Magistrate retired—the marital relationship began before the Magistrate attained the age of 60 years.

Note: For review of decisions under paragraph (4)(c), see subclause (9).

Meaning of marital relationship

- (5) For the purposes of this Act, a person had a *marital relationship* with another person at a particular time if:
 - (a) the person had been living with the other person as the other person's husband or wife for a continuous period of at least 3 years up to that time; or
 - (b) both:
 - (i) the person had been living with the other person as the other person's husband or wife for a continuous period of less than 3 years up to that time; and
 - (ii) the Minister, having regard to any relevant evidence, is of the opinion that the person ordinarily lived with the other person as the other person's husband or wife on a permanent and bona fide domestic basis at that time;whether or not the person was legally married to the other person.

Note 1: Subclause (7) lists some of the evidence relevant to subparagraph (5)(b)(ii).

Note 2: For review of decisions under subparagraph (5)(b)(ii), see subclause (9).

- (6) For the purposes of this Act, a marital relationship is taken to have begun at the beginning of the continuous period mentioned in paragraph (5)(a) or subparagraph (5)(b)(i).
- (7) For the purpose of subparagraph (5)(b)(ii), relevant evidence includes, but is not limited to, evidence establishing any of the following:
 - (a) that the person was wholly or substantially dependent on that other person at the time;

- (b) that the persons were legally married to each other at the time;
- (c) that the persons had a child who was:
 - (i) born of the relationship between the persons; or
 - (ii) adopted by the persons during the period of the relationship;
- (d) that the persons jointly owned a home which was their usual residence.

*Meaning of **living with** a person*

- (8) For the purposes of this Act, a person is taken to be **living with** another person if the Minister is satisfied that the person would have been living with that other person except for a period of:
 - (a) temporary absence; or
 - (b) absence because of special circumstances (for example, absence because of the person's illness or infirmity).

Note: For review of decisions under subclause (8), see subclause (9).

Applications for review

- (9) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Minister under paragraph (4)(c), subparagraph (5)(b)(ii) or subclause (8).

9F Meaning of *eligible child*

- (1) For the purposes of this Act, a person is an **eligible child** of a Federal Magistrate, or a retired disabled Federal Magistrate, who dies if:
 - (a) the person:
 - (i) has not attained the age of 16 years; or
 - (ii) has not attained the age of 25 years and is receiving full-time education at a school, college or university; and
 - (b) one of the following applies:
 - (i) the person is a child or adopted child of the Magistrate;
 - (ii) in the Minister's opinion, the person was wholly or substantially dependent on the Magistrate at the time of the Magistrate's death;

- (iii) in the Minister's opinion, the person would have been wholly or substantially dependent on the Magistrate but for the Magistrate's death.
- (2) Application may be made to the Administrative Appeals Tribunal for review of a decision by the Minister under subparagraph (1)(b)(ii) or (iii).

9G Appropriation

The following are to be paid out of the Consolidated Revenue Fund, which is appropriated accordingly:

- (a) pensions under clause 9B;
- (b) Commonwealth superannuation contributions under clause 9C;
- (c) payments under clause 9D.

Division 3—Remuneration of a Federal Magistrate not to be diminished

9H Remuneration of a Federal Magistrate not to be diminished

- (1) The remuneration of a Federal Magistrate is not to be diminished during his or her continuance in office.
- (2) In subclause (1):

diminished has the same meaning as in paragraph 72(iii) of the Constitution.

remuneration has the same meaning as in paragraph 72(iii) of the Constitution.

14 Before clause 10 of Schedule 1

Insert:

Part 3—Acting Chief Federal Magistrate

15 Clause 11 of Schedule 1

Repeal the clause.

16 Application

The amendments made by this Schedule apply in relation to persons who are Federal Magistrates at or after the commencement of this item.

*[Minister's second reading speech made in—
House of Representatives on 29 March 2006
Senate on 10 September 2007]*

(32/06)

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