

NORTHERN TERRITORY OF AUSTRALIA

ADMINISTRATORS PENSIONS ACT

As in force at 13 November 2014

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 13 November 2014

ADMINISTRATORS PENSIONS ACT

**An Act to provide for the payment of pensions to former Administrators
and to their spouses**

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Administrators Pensions Act*.

2 Commencement

This Act shall be deemed to have come into operation on 1 January 1981.

3 Definitions

In this Act, unless the contrary intention appears:

Family Law Act means the *Family Law Act 1975* of the Commonwealth and includes regulations made under that Act.

member spouse, in relation to a superannuation interest, means the person who is the member spouse in relation to that interest under Part VIII B of the Family Law Act.

non-member spouse, in relation to a superannuation interest, means the person who is the non-member spouse in relation to that interest under Part VIII B of the Family Law Act.

splitting instrument means a superannuation agreement, a flag lifting agreement that provides for a payment split, or a splitting order, each within the meaning of Part VIII B of the Family Law Act.

superannuation contributions surcharge means the superannuation contributions surcharge imposed under the Surcharge Act.

superannuation interest means an interest that an Administrator or former Administrator has under this Act.

Surcharge Act means the *Superannuation Contributions Tax Imposition Act 1997* of the Commonwealth and includes regulations under that Act.

Surcharge Collection Act means the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth and includes regulations under that Act.

3AA Application of Act

- (1) This Act does not apply to an Acting Administrator or future Administrator.
- (2) In this section:

current Administrator means the Administrator holding office on the commencement of this section.

future Administrator means an Administrator appointed after the current Administrator ceases to hold office.

3AB Application of Criminal Code

Part IIAA of the Criminal Code applies to an offence against this Act.

Note for section 3AB

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Part 2 Tax related arrangements

3A Act to be administered so as to comply with superannuation surcharge laws and agreements with Commonwealth

This Act is to be administered in accordance with:

- (a) the Surcharge Act and the Surcharge Collection Act; and
- (b) a written agreement entered into by the Territory and the Commonwealth relating to exempt public sector superannuation schemes within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.

3B Surcharge debt accounts

- (1) The Treasurer must establish and maintain for the purposes of section 16 of the Surcharge Collection Act a surcharge debt account for each Administrator in relation to whom superannuation contributions surcharge is paid or payable by the Treasurer.
- (2) The Treasurer must debit to the surcharge debt account of an Administrator:
 - (a) superannuation contributions surcharge paid or payable by the Treasurer in respect of the Administrator; and
 - (b) interest paid or payable under the Surcharge Collection Act on the amount by which the account is in debit.
- (3) The Treasurer must credit to the surcharge debt account of an Administrator an amount paid under section 3C by the Administrator.

3C Advance payments to reduce superannuation contributions surcharge

- (1) An Administrator may, on lodging an approved election form with the Treasurer, pay an amount to the Territory for the purpose of reducing the amount by which the Administrator's surcharge debt account is in debit.
- (2) A payment under this section may be made on a periodic or single payment basis.
- (3) An election form lodged under subsection (1) is to specify the amount to be paid and the manner of payment.
- (4) An Administrator may, on lodging an approved election form with the Treasurer:
 - (a) vary in accordance with the form the amount or manner of payment of periodic payments; or
 - (b) revoke an election under this section.
- (5) In this section, **approved election form** means a form approved by the Treasurer.

3D Pension may be commuted to repay surcharge paid

The Treasurer may commute part of a pension payable under this Act in relation to an Administrator to a lump sum for the purposes of paying to the Territory an amount equal to the balance of the Administrator's surcharge debt account.

3E Commutation to pay deferred superannuation contributions surcharge

(1) If:

- (a) a former Administrator, or the surviving spouse or de facto partner of an Administrator or former Administrator who has died, is paid a pension under this Act; and
- (b) he or she has received from the Commissioner of Taxation notice under section 15 of the Surcharge Collection Act that he or she is liable to pay an amount of superannuation contributions surcharge specified in the notice; and
- (c) the superannuation contributions surcharge relates to surchargeable contributions, within the meaning of the Surcharge Collection Act, in relation to the former Administrator, or to an Administrator, or former Administrator, who has died,

the former Administrator or the surviving spouse may, within a reasonable period after the notice was given, request the Treasurer in writing to commute as much of the pension payable to him or her as is necessary to provide a lump sum equivalent to the amount.

- (2) The Treasurer must, if satisfied that the commuted amount will be used to pay the superannuation contributions surcharge, comply with a request under subsection (1).

Part 3 Pensions**4 Pension payable**

- (1) Subject to sections 6 and 7, there is payable to a person who became the Administrator at any time after the commencement of the *Administrators Pensions Amendment Act 1999* and who:
 - (a) held that office for a period of not less than 5 years – an annual pension for life equal to 60% of the annual basic salary payable to him or her immediately before he or she ceased to hold that office; or

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- (b) held that office for a period of less than 5 years:
- (i) if the Commissioner within the meaning of the *Public Sector Employment and Management Act* is satisfied that his or her ceasing to hold the office arose from a mental or physical incapacity to perform the duties of that office; or
 - (ii) if he or she ceased to hold that office for reasons other than voluntary retirement or the expiration of the period of his or her appointment,

an annual pension for life equal to 60% of the annual basic salary payable to him or her immediately before he or she ceased to hold that office; or

- (c) held that office for a period of less than 5 years due to voluntary retirement or the expiration of the period of his or her appointment – an annual pension for life equal to A% of the annual basic salary payable to him or her immediately before he or she ceased to hold that office, where:

$$A\% = 60\% \times \left(\frac{\text{(years served as Administrator)}}{5} \right),$$

and with a part year being taken into account as a fraction of a whole year calculated on the basis of days.

- (2) Despite subsection (1) but subject to sections 6 and 7, the Treasurer may, before the appointment of an Administrator, determine that the annual pension for life payable under this Act to that Administrator, if he or she becomes eligible for the pension under this Act, is to be, in the place of the amount of pension he or she would have been entitled to receive under subsection (1) if the direction were not made, an amount per annum specified in the direction.
- (3) If the Treasurer makes a determination under subsection (2), he or she must table a copy of the direction in the Legislative Assembly within 3 sitting days of the Legislative Assembly after the day on which the direction was given.

5 Pension of spouse or de facto partner

- (1) Subject to sections 6 and 7, where an Administrator in office, or a former Administrator receiving or entitled to receive a pension under this Act, dies leaving a surviving spouse or de facto partner (***the surviving partner***), there is payable to the surviving partner for life a pension at two-thirds of the rate of pension:

- (a) that would have been payable to the Administrator had he or she retired immediately before the date of his or her death and been eligible to receive a pension under this Act; or
- (b) payable to the former Administrator (disregarding any amount of reduction of pension pursuant to section 7) immediately before the date of his or her death,

as the case may be.

- (2) If the Administrator or former Administrator (***the deceased***) is survived by both a spouse and a de facto partner, the two-thirds pension is payable under subsection (1) to:

- (a) the de facto partner if:
 - (i) the de facto partner was the de facto partner of the deceased for a continuous period of at least 2 years immediately preceding the deceased's death; and
 - (ii) the spouse had not lived with the deceased at any time during that period; or

- (b) the spouse if paragraph (a) does not apply.

6 Variation of amount of pension

A pension payable under this Act shall be adjusted at such times and by the same percentage as the basic salary payable to the Administrator for the time being.

7 Reduction of amount where other pension payable

- (1) Subject to subsection (2), the amount of pension that, but for this section, would be payable under this Act to a person in respect of a period shall be reduced by the amount of pension or retiring allowance payable to that person in respect of that period in respect of any remunerative activity undertaken by the former Administrator.
- (2) For the purposes of calculating the amount of pension payable in accordance with subsection (1), the Treasurer shall determine, after considering such actuarial advice as he or she thinks fit, the appropriate rate at which any lump sum payment in respect of any remunerative activity undertaken by the former Administrator, and payable as a result of his or her retirement or death, shall be taken into account, and it shall be taken into account accordingly as if it were a pension or retiring allowance.

Part 5 General matters

8 Appropriation

An amount payable under this Act shall be paid monthly, or at such shorter intervals as the Treasurer directs, out of the public moneys of the Territory and the appropriation for that purpose is hereby established or increased to the extent necessary.

9 Act to be administered so as to comply with Family Law Act provisions in relation to superannuation

- (1) This section applies despite any other provision of this Act.
- (2) This Act is to be administered in accordance with the provisions of the Family Law Act relating to superannuation.
- (3) Subject to the provisions of the Family Law Act relating to superannuation, this Act is to be administered in relation to a person in accordance with the provisions of a splitting instrument, if any, that applies in relation to the person.
- (4) The Treasurer may prepare written administrative instructions that are necessary or convenient to give effect to:
 - (a) the provisions of the Family Law Act relating to superannuation; and
 - (b) splitting instruments; and
 - (c) Acts of the Commonwealth relating to superannuation and regulations under those Acts.
- (5) Without limiting the generality of subsection (4), administrative instructions for the purposes of that subsection may include, but are not limited to, the following:
 - (a) the methods of calculating and paying a superannuation interest to member spouses and non-member spouses, including calculations that may reduce the superannuation interest of a member spouse;
 - (b) the establishing of interests and accounts, including accounts under the *Superannuation Act*, for non-member spouses.
- (6) An administrative instruction prepared under subsection (4) takes effect on the date specified in the instruction.

(7) If a provision of this Act or the administrative instructions made under this section is inconsistent with:

- (a) a provision of the Family Law Act relating to superannuation; or
- (b) a splitting instrument,

the provision of this Act or the administrative instructions is taken to have been complied with if the provision of the Family Law Act or a splitting instrument, as the case may be, has been complied with.

10 Treasurer may charge fees for additional services

The Treasurer may charge a person the reasonable cost of performing on behalf of the person a service in relation to this Act that the Treasurer undertakes at the request of the person.

10A Confidentiality of information

(1) A person commits an offence if the person:

- (a) obtains information in the course of performing functions connected with the administration of this Act; and
- (b) engages in conduct that results in the disclosure of the information.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

(2) Strict liability applies in relation to subsection (1)(a).

(3) Subsection (1) does not apply if:

- (a) the person discloses the information:
 - (i) for the administration of this Act; or
 - (ii) with the consent of the person to whom the information relates; or
 - (iii) for legal proceedings arising out of the operation of this Act; or
- (b) the information is otherwise available to the public.

Note for subsection (3)

In addition to the circumstances mentioned in subsection (3), a person who discloses confidential information will not be criminally responsible for an offence

if the disclosure is justified or excused by or under a law (see section 43BE of the Criminal Code).

**11 Transitional matters for Judges and Administrators Pensions
Legislation Amendment Act 2006**

- (1) The amendments made to this Act by Part 3 of the *Judges and Administrators Pensions Legislation Amendment Act 2006* have effect in relation to:
- (a) the current Administrator within the meaning of section 3AA;
and
 - (b) anyone who held office as Administrator before the current Administrator.
- (2) However, the amendments do not create an entitlement to an amount of pension for a period before the commencement of this section.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2**LIST OF LEGISLATION*****Administrators Pensions Act 1981 (Act No. 96, 1981)***

Assent date 12 November 1981
 Commenced 1 January 1981 (s 2)

Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)

Assent date 30 June 1993
 Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and *Gaz S53*, 29 June 1993)

Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)

Assent date 21 March 1995
 Commenced 1 April 1995 (s 2, s 2 *Financial Management Act 1995* (Act No. 4, 1995) and *Gaz S13*, 31 March 1995)

Administrators Pensions Amendment Act 1998 (Act No. 66, 1998)

Assent date 23 September 1998
 Commenced 20 October 1998 (*Gaz S41* 20 October 1998)

Administrators Pensions Amendment Act 1999 (Act No. 60, 1999)

Assent date 14 December 1999
 Commenced 14 December 1999

Administrators Pensions Amendment Act 2003 (Act No. 11, 2003)

Assent date 18 March 2003
 Commenced 28 May 2003 (*Gaz G21*, 28 May 2003, p 3)

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date 7 January 2004
 Commenced 17 March 2004 (*Gaz G11*, 17 March 2004, p 8)

Administrators Pensions Amendment Act 2006 (Act No. 5, 2006)

Assent date 26 April 2006
Commenced 26 April 2006

Judges and Administrators Pensions Legislation Amendment Act 2006 (Act No. 21, 2006)

Assent date 28 June 2006
Commenced 28 June 2006

Financial Management Amendment Act 2009 (Act No. 15, 2009)

Assent date 18 June 2009
Commenced 18 June 2009

Superannuation Legislation Amendment and Repeal Act 2014 (Act No. 39, 2014)

Assent date 13 November 2014
Commenced pts 1 and 2: 13 November 2014; rem: nc (s 2)

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 45 *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003*
(Act No. 1, 2004)

4 LIST OF AMENDMENTS

pt 1 hdg ins No. 39, 2014, s 35
s 3 sub No. 66, 1998, s 4
amd No. 11, 2003, s 4; No. 5, 2006, s 3
s 3AA ins No. 5, 2006, s 4
s 3AB ins No. 39, 2014, s 36
pt 2 hdg ins No. 39, 2014, s 37
ss 3A – 3D ins No. 66, 1998, s 4
s 3E ins No. 60, 1999, s 3
amd No. 1, 2004, s 43; No. 39, 2014, s 38
pt 3 hdg ins No. 39, 2014, s 39
s 4 amd No. 28, 1993, s 3; No. 66, 1998, s 5
sub No. 60, 1999, s 4
amd No. 39, 2014, s 40
s 5 amd No. 66, 1998, s 5; No. 1, 2004, s 44; No. 21, 2006, s 8
s 7 amd No. 66, 1998, s 5; No. 60, 1999, s 5
pt 5 hdg ins No. 39, 2014, s 41
s 8 amd No. 5, 1995, s 19; No. 15, 2009, s 16
s 9 ins No. 11, 2003, s 5
amd No. 39, 2014, s 42
s 10 ins No. 11, 2003, s 5
s 10A ins No. 39, 2014, s 43
s 11 ins No. 21, 2006, s 9