

# **Defence Force (Papua New Guinea) Retirement Benefits Act 1973**

**No. 86 of 1973**

## **TABLE OF PROVISIONS**

### **PART I—PRELIMINARY**

#### **Section**

1. Short title
2. Commencement
3. Interpretation
4. Marriage after retirement and attaining age of 55 years to be disregarded
5. Polygamous marriages
6. Transitional provisions: service before commencement of Act
7. Transitional provisions: benefits
8. Extension of Act to Papua New Guinea

### **PART II—DEFENCE FORCE (PAPUA NEW GUINEA) RETIREMENT BENEFITS BOARD**

#### *Division 1—Establishment and Constitution of Board*

9. Establishment of Board
10. Constitution of Board
11. Chairman of Board
12. Deputies of members of Board
13. Temporary appointment
14. Remuneration and allowances
15. Leave of absence
16. Resignation
17. Meetings of Board

#### *Division 2—Functions and Powers of Board*

18. Functions of Board
19. General powers of Board
20. Delegation
21. Accounts to be kept by Board
22. Annual reports by Board

TABLE OF PROVISIONS—*continued*

PART III—DEFENCE FORCE (PAPUA NEW GUINEA) RETIREMENT  
BENEFITS FUND

Section

23. Establishment of Fund
24. Payment of certain amounts into Fund
25. Payments by Commonwealth to Fund
26. Benefits to be paid from Fund
27. Investment, &c., of Fund
28. Borrowing
29. Cheques: manner of signing
30. Taxation
31. Actuarial investigations

PART IV—CONTRIBUTIONS

*Division 1—Contributions by Members*

32. Commencement and cessation of contributions
33. Cessation of membership
34. Rate of contributions
35. Deduction of contributions
36. Absence without leave

*Division 2—Contributions by the Commonwealth*

37. Commonwealth contributions in respect of pensions
38. Commonwealth contributions in respect of certain other benefits
39. Commonwealth contributions in respect of pensions resulting from active service

PART V—BENEFITS

*Division 1—Benefits on Retirement*

40. Pensions on superannuation
41. Gratuities, &c.
42. Non-completion of short service commission or of engagement

*Division 2—Invalidity Benefits*

43. Entitlement to invalidity benefit
44. Amount of invalidity benefit
45. Reclassification of percentage of incapacity
46. Board may require invalid pensioners to be medically examined
47. Incapacity of officer due to wilful action

*Division 3—Benefits on Death*

48. Widow's pension on death of contributor
49. Widow's pension on death of pensioner
50. Children's pensions
51. Death of certain members
52. Maximum amount of pension payable under this Division

*Division 4—General Provisions*

53. Refund of contributions
54. General provisions as to pensions
55. Commutation of pensions
56. Absence or desertion
57. Non-effective service to reduce gratuity
58. Insanity of pensioner
59. Desertion by male pensioner of wife or children
60. Imprisonment of pensioner
61. Instalments of pension
62. Payment of benefits otherwise than to pensioner

**TABLE OF PROVISIONS—continued**

**PART VI—FORMER MEMBERS WHO AGAIN BECOME CONTRIBUTORS**

**Section**

*Division 1—Former Members who were Pensioners*

- 63. Application of Division
- 64. Cancellation of previous pension
- 65. Benefits payable
- 66. Pension payable after commutation of previous pension
- 67. Pensions not to be doubled or reduced by this Division

*Division 2—Former Members who were not Pensioners*

- 68. Former members who were not pensioners

**PART VII—MISCELLANEOUS**

- 69. Disputes
- 70. Audit
- 71. Transfer of insurance policies to Board
- 72. Annual amount of pension to be calculated to nearest dollar
- 73. Cost of administration of this Act
- 74. Board may require information
- 75. No assignment of benefits
- 76. Attachment of benefits
- 77. Recovery of contributions
- 78. Regulations

**SCHEDULE 1**

**Periods of Service Qualifying Certain Officers for Pensions**

**SCHEDULE 2**

**Pension Factors**

**SCHEDULE 3**

**Gratuities on Retirement of Enlisted Members Not Entitled to Pension**

# Defence Force (Papua New Guinea) Retirement Benefits Act 1973

No. 86 of 1973

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## AN ACT

To provide for Retirement and Death Benefits for certain  
Members of the Defence Force who are Indigenous  
Inhabitants of Papua New Guinea.

[Assented to 19 June 1973]

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

### PART I—PRELIMINARY

1. This Act may be cited as the *Defence Force (Papua New Guinea) Retirement Benefits Act 1973*. Short title.
2. This Act shall come into operation on the day on which it receives the Royal Assent. Commence-  
ment.
3. (1) In this Act, unless the contrary intention appears— Inter-  
pretation.
  - “actuarial member”, in relation to the Board, means the member of the Board who is the Commonwealth Actuary or the member of the Board appointed under sub-section 10 (2), as the case requires;
  - “actuary” means a Fellow of the Institute of Actuaries (London), a Fellow of the Faculty of Actuaries (Edinburgh) or any other person of whose actuarial knowledge and experience the Governor-General approves;
  - “Administration” has the same meaning as in the Papua New Guinea Act;

- “ Administrator ” has the same meaning as in the Papua New Guinea Act;
- “ benefit ” means benefit under this Act;
- “ Board ” means the Defence Force (Papua New Guinea) Retirement Benefits Board established by this Act;
- “ child ” means a child who is under the age of sixteen years;
- “ contribution ” means a contribution under this Act to the Fund;
- “ contributor ” means a person who is required or permitted to contribute to the Fund under this Act;
- “ daily rate of pay ”, in relation to a member, in relation to a particular time, means the daily rate of pay for his rank at that time as prescribed for the purposes of this definition or, if it is not so prescribed, the sum of the daily rate of pay for his rank, and the daily rate of living out allowance, at that time, prescribed by or under the Defence Act or the Naval Defence Act, whichever is applicable;
- “ Defence Act ” means the *Defence Act* 1903–1970;
- “ District Court ” means a District Court established by or under an Ordinance of Papua New Guinea;
- “ enlisted member ” means a member other than an officer;
- “ Fund ” means the Defence Force (Papua New Guinea) Retirement Benefits Fund established by this Act;
- “ gratuity ” means a gratuity under this Act;
- “ invalidity benefit ” means benefit to which a member is entitled by virtue of section 43;
- “ marriage ” includes a native customary marriage that is valid and effectual by virtue of an Ordinance of Papua New Guinea relating to marriage, and “ married ” has a corresponding meaning;
- “ member ” means a person who—
- (a) is an indigenous inhabitant of Papua New Guinea and a member of the Service; and
  - (b) at the time when he engaged to serve, or was appointed, as a member of the Service, was a resident of Papua New Guinea;
- “ Naval Defence Act ” means the *Naval Defence Act* 1910–1968;
- “ officer ” means—
- (a) in relation to the Naval Forces—a member who is a commissioned officer or subordinate officer, but does not include a warrant officer, chief petty officer or petty officer; or
  - (b) in relation to the Military Forces—a member who is a commissioned officer,
- and includes a cadet enrolled at an officer cadet school;

“ Papua New Guinea Act ” means the *Papua New Guinea Act 1949–1973*;

“ pension ” means pension under this Act, and “ pensioner ” has a corresponding meaning;

“ permanent officer ” means an officer serving under a commission other than a short service commission;

“ rank ” means—

(a) in relation to a member of the Naval Forces—

(i) his confirmed rank or, if he is appointed provisionally or on probation, the rank to which he is so appointed; or

(ii) if he is provisionally promoted to another rank—that other rank; or

(b) in relation to a member of the Military Forces—

(i) his substantive rank in his permanent corps or unit or, if he is appointed provisionally or on probation, the rank to which he is so appointed in his permanent corps or unit; or

(ii) if he is provisionally promoted to another rank in his permanent corps or unit—that other rank;

“ retirement ”, in relation to an enlisted member, includes discharge, and “ retired ” and “ retires ” have corresponding meanings;

“ retiring age for the rank held ”, in relation to a member, means the age for compulsory retirement of a member of the rank and branch of the member as prescribed;

“ service ” means service as a member;

“ service for pension ” means continuous full time service as a member, but does not include—

(a) in the case of an enlisted member—service not served under engagement for a definite term; or

(b) subject to sub-section (6), service in respect of which a member is not permitted or required to contribute to the Fund;

“ the Service ” means the Military Forces or the Naval Forces, as the case requires;

“ the Service Board ” means the Military Board or the Naval Board, as the case requires.

(2) A reference in this Act to a statutory declaration includes a reference to a declaration made by virtue of a law of Papua New Guinea relating to the making of declarations.

(3) For the purposes of this Act, a member of the Service on continuous full time service shall not be deemed to have ceased to be on continuous full time service during any period when he is—

- (a) absent with or without leave;
- (b) awaiting or undergoing trial on any charge; or
- (c) undergoing punishment, detention or imprisonment,

and any such period shall be deemed to be a period of service.

(4) Where a member of the Service not on continuous full time service commences continuous full time service, then, for the purposes of this Act—

- (a) if he is an officer on the day on which he so commences—he shall be deemed to have been appointed as an officer on that day for the period for which he is to serve on continuous full time service; and
- (b) if he is an enlisted member on the day on which he so commences—he shall be deemed to have engaged to serve as a member of the Service on that day for the period for which he is to be on continuous full time service.

(5) Where a member of the Service on continuous full time service ceases to be on continuous full time service but continues to be a member of the Service, he shall, for the purposes of this Act, be deemed to have retired on the day on which he ceases to be on continuous full time service.

(6) For the purposes of sub-section 44 (4) and sections 41 and 57, service in respect of which, by virtue of section 36, a member is not permitted or required to contribute to the Fund shall be deemed to be service for pension.

(7) In determining the service for pension of a member for the purposes of a provision of this Act (other than sub-section 44 (4) and section 41), service of the member immediately before a period in respect of which he was not permitted or required to contribute to the Fund by virtue of section 36 and service of the member immediately after that period shall be deemed to be continuous.

(8) For the purposes of this Act, an officer shall be deemed to be serving under a short service commission if his appointment as an officer is for a period specified in the appointment.

(9) For the purposes of this Act, an enlisted member shall not be taken to have completed an engagement unless he has served under the engagement up to the date on which the engagement was due to terminate.

**Marriage after retirement and attaining age of 55 years to be disregarded.**

4. Where a male member marries after he has attained the age of fifty-five years and has retired, no pension is payable under this Act on his death to the woman or in respect of a child of the marriage, and the marriage shall be disregarded for the purposes of section 5.

5. (1) In this section—

“designated wife” means the person designated in a notice for the time being in effect under this section;

“polygamous husband” means a person who has two or more wives at the one time.

Polygamous marriages.

(2) Where—

(a) a person who is a polygamous husband becomes a contributor or becomes entitled to a pension by virtue of section 7;

(b) a person who is a contributor becomes a polygamous husband; or

(c) a pensioner who was unmarried at the time of his retirement becomes a polygamous husband,

he shall, within a period of one month thereafter, or such longer period as the Service Board may allow, unless during that period or extended period he ceases to be a polygamous husband, give notice to the Service Board, in writing, designating one of his wives as the person who is, for the purposes of this Act, to be regarded as being his wife.

(3) A notice given under this section shall not be revoked, but it ceases to have effect on the death of the designated wife or on the dissolution or annulment of her marriage.

(4) Where—

(a) after a person has given a notice under this section, his designated wife dies or her marriage is dissolved or annulled; and

(b) at the time of her death or of the dissolution or annulment of her marriage, as the case may be, he continues to be a polygamous husband,

he shall, within a period of one month after the death or the dissolution or annulment of the marriage, or such longer period as the Service Board may allow, unless during that period or extended period he ceases to be a polygamous husband, give notice to the Service Board, in writing, designating one of his wives as the person who is, for the purposes of this Act, to be regarded as being his wife.

(5) Where, at a time when a notice given by a person under this section is in effect, that person gives a second or subsequent notice under this section, the second or subsequent notice has no effect.

(6) So long as a contributor or pensioner is a polygamous husband, no person shall, for the purposes of this Act, be regarded as being his wife except—

(a) in the case of a pensioner who was married before his retirement and became a polygamous husband after his retirement—the person to whom he was married immediately before he became a polygamous husband; or

(b) in any other case—the person, if any, who is his designated wife.



(7) Subject to sub-section (8), on the death of a contributor or pensioner who was a polygamous husband at the time of his death, no person shall, for the purposes of this Act, be regarded as being his widow except—

- (a) in the case of a pensioner who was married before his retirement and became a polygamous husband after his retirement—the person to whom he was married immediately before he became a polygamous husband; or
- (b) in any other case—the person, if any, who was his designated wife at the time of his death.

(8) Where a person who is required to give a notice under this section fails to give such a notice and dies within the period or the extended period prescribed by this section for the giving of the notice, no person shall, for the purposes of this Act, be regarded as being his widow except the person, if any, who, according to the records of the Service, is recognized by the Service Board as being his wife at the time of his death.

**Transitional provisions: service before commencement of Act.**

6. (1) In relation to a person who was a member immediately before the date of commencement of this Act, a period of service of that person that—

- (a) occurred before that date; and
- (b) if this Act had been in force at all relevant times, would, together with any period of service of that person occurring on and after that date, have been regarded as continuous full time service as a member,

shall, subject to sub-section (2), be deemed to be continuous full time service as a member for the purposes of this Act.

(2) For the purpose of calculating the rate of a pension, but not for the purpose of ascertaining whether benefit is payable under this Act, a part of a period of service referred to in sub-section (1), being a part that occurred before 1st July, 1966, shall be reduced by a number of days equal to two-fifths of the number of days in that part, calculated to the nearest day.

**Transitional provisions: benefits.**

7. (1) Benefits are, and shall be deemed to have been, payable to or in respect of a person who retired or died within the period commencing on 1st January, 1972, and ending on the commencement of this Act as if this Act had come into operation on that date.

(2) For the purposes of the application of this Act in pursuance of sub-section (1) in respect of a person who, being a polygamous husband within the meaning of section 5, died within the period referred to in sub-section (1) of this section, sub-section (7) of that section applies as if the reference in sub-section (7) to the designated wife of that person were a reference to the woman, if any, who, according to the records of the Service, was recognized by the Service Board as being the wife of that person at the time of his death.

(3) Where—

(a) but for this sub-section, benefits would be payable in pursuance of this section to or in respect of a person; and

(b) an amount that had been standing to the credit of the pay account of that person by virtue of sub-regulation 8 (4) of the Naval Forces (Papua and New Guinea Division) Regulations or sub-regulation 9 (6) of the Military Financial (Pacific Islanders) Regulations was paid out before the commencement of this Act,

benefits are not payable to or in respect of that person until arrangement has been made, to the satisfaction of the Board, for the payment of that amount to the Fund in such manner, and within such time, as the Board approves.

8. This Act extends to Papua New Guinea.

Extension of Act to Papua New Guinea.

PART II—DEFENCE FORCE (PAPUA NEW GUINEA) RETIREMENT BENEFITS BOARD

*Division 1—Establishment and Constitution of Board*

9. (1) There is hereby established a board to be known as the Defence Force (Papua New Guinea) Retirement Benefits Board.

Establishment of Board.

(2) The Board—

(a) is a body corporate with perpetual succession;

(b) shall have a common seal;

(c) may acquire, hold and dispose of real or personal property; and

(d) may sue and be sued in its corporate name.

(3) The common seal of the Board shall be kept in such custody as the Board directs and shall not be used except as authorized by the Board.

(4) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Board affixed to a document and shall presume that it was duly affixed.

10. (1) The Board shall consist of five members, of whom, subject to sub-section (2)—

Constitution of Board.

(a) two shall be appointed by the Governor-General upon the nomination of the Minister;

(b) one shall be the Commonwealth Actuary;

(c) one, being a contributor and a member of the Naval Forces, shall be appointed by the Governor-General upon the nomination of the Naval Board and with the approval of the Minister of State for the Navy; and

(d) one, being a contributor and a member of the Military Forces, shall be appointed by the Governor-General upon the nomination of the Military Board and with the approval of the Minister of State for the Army.

(2) The Governor-General may, upon the nomination of the Minister, appoint an actuary (other than the Commonwealth Actuary) to be a member of the Board and, so long as that person holds office, the Commonwealth Actuary is not a member of the Board.

(3) A member appointed under paragraph (1) (a) or under sub-section (2) holds office during the pleasure of the Governor-General.

(4) A member appointed under paragraph (1) (c) or (d) holds office, subject to sub-section (5) and section 16, for a term of three years, but is eligible for re-appointment.

(5) If, in the opinion of the Governor-General, it is necessary or desirable to do so, he may terminate the appointment of a member appointed under paragraph (1) (c) or (d).

(6) The appointment of a member is not invalid by reason only of a defect or irregularity in connexion with his nomination or the approval of his appointment.

(7) The exercise of a power, or the performance of a function, by the Board is not invalid by reason only of a vacancy or vacancies in the membership of the Board.

**Chairman  
of Board.**

11. (1) The Governor-General shall appoint one of the members of the Board referred to in paragraph 10 (1) (a) to be the Chairman of the Board.

(2) The Chairman may resign his office as Chairman by writing under his hand delivered to the Minister.

**Deputies of  
members of  
Board.**

12. (1) The Minister may appoint a person to be the deputy of a member of the Board.

(2) The deputy of a member, if any, appointed under sub-section 10 (2) shall be an actuary.

(3) The deputy of a member appointed under paragraph 10 (1) (c) or (d) shall be a contributor and a member of the Naval Forces or the Military Forces, as the case may be, and his appointment shall be on the nomination of the Naval Board or the Military Board, as the case may be.

(4) The deputy of a member is entitled, in the event of the absence of the member from a meeting of the Board, to attend that meeting and, when so attending, shall be deemed to be a member, but shall not preside at that meeting.

**Temporary  
appoint-  
ment.**

13. Where a member of the Board or the deputy of a member dies or resigns, the Minister may appoint any person to act in his place until a person is appointed to replace that member or deputy.

**14.** (1) For each day on which a member of the Board or the deputy of a member attends a meeting of the Board, he shall be paid such remuneration (if any) as is prescribed. Remuneration and allowances.

(2) Members and deputies of members shall be paid such allowances (if any), other than annual allowances, as are prescribed.

**15.** The Minister may grant leave of absence to a member of the Board upon such terms and conditions as the Minister determines. Leave of absence.

**16.** A member of the Board or the deputy of a member may resign his office by writing under his hand delivered to the Minister. Resignation.

**17.** (1) Subject to this section, meetings of the Board shall be held at such times and places as the Board from time to time determines. Meetings of Board.

(2) The Chairman of the Board may at any time convene a meeting.

(3) If the Chairman is not available, the actuarial member may convene a meeting and, if neither the Chairman nor that member is available, the remaining member appointed under paragraph 10 (1) (a) may convene a meeting.

(4) The Chairman shall preside at all meetings at which he is present.

(5) If the Chairman is absent from a meeting, the actuarial member shall preside at the meeting.

(6) If the Chairman and the actuarial member are both absent from a meeting, the members present shall elect one of their number (not being a deputy) to preside at the meeting.

(7) At a meeting of the Board—

(a) three members constitute a quorum;

(b) no decision shall be made except by a majority of votes of the persons voting; and

(c) the member presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(8) In this section, unless the contrary intention appears, “ member ” includes a deputy member.

#### *Division 2—Functions and Powers of Board*

**18.** The functions of the Board are to control and administer the Fund in accordance with this Act. Functions of Board.

**19.** The Board has power to do all things that are necessary or convenient to be done for or in connexion with the performance of its functions. General powers of Board.

**20.** (1) The Board may, by writing under its common seal, delegate to any person, either generally or otherwise as provided by the instrument of delegation, all or any of its powers and functions under this Act (except this power of delegation). Delegation.

(2) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation and, when so exercised or performed, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Board.

(3) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Board.

Accounts to be kept by Board.

21. The Board shall cause to be kept proper accounts and records of the transactions and affairs of the Board and of the Fund and shall do all things necessary to ensure that all payments out of the Fund are correctly made and properly authorized and that adequate control is maintained over the assets of the Fund and the assets of, or in the custody of, the Board and over the incurring of liabilities by the Board.

Annual reports by Board.

22. (1) The Board shall, as soon as practicable after the end of each financial year, submit to the Minister a report of its operations during that year, together with financial statements in respect of that year in such form as the Treasurer approves.

(2) Before submitting financial statements under sub-section (1), the Board shall submit them to the Auditor-General, who shall report to the Minister—

- (a) whether the statements are based on proper accounts and records;
- (b) whether the statements are in agreement with the accounts and records;
- (c) whether the receipt, expenditure and investment of moneys, and the acquisition and disposal of assets, by the Board during the year have been in accordance with this Act; and
- (d) as to such other matters arising out of the statements as the Auditor-General considers should be reported to the Minister.

(3) The Minister shall cause the report and financial statements of the Board, together with the report of the Auditor-General, to be laid, as soon as practicable after their receipt by the Minister, before each House of the Parliament and before the House of Assembly of Papua New Guinea.

(4) The first report and financial statements of the Board under this section shall be submitted to the Minister as soon as practicable after the 30th June next following the commencement of this Act, and shall relate to the operations of the Board during the period that commenced on the commencement of this Act and ended on that date.

### PART III—DEFENCE FORCE (PAPUA NEW GUINEA) RETIREMENT BENEFITS FUND

Establishment of Fund.

23. There is hereby established a fund, to be known as the Defence Force (Papua New Guinea) Retirement Benefits Fund, which shall consist of—

- (a) the contributions of members;

- (b) payments made by the Commonwealth to the Fund under this Act, including payments under section 24; and
- (c) income derived from the investment of the Fund.

24. Where, immediately before the date of commencement of this Act, an amount was, by virtue of sub-regulation 8 (4) of the Naval Forces (Papua and New Guinea Division) Regulations or sub-regulation 9 (6) of the Military Financial (Pacific Islanders) Regulations, standing to the credit of the pay account of a person who becomes a contributor on that date or is a person referred to in section 7, that amount ceases to be payable to that person and shall be paid into the Fund.

Payment of certain amounts into Fund.

25. (1) Payments by the Commonwealth to the Fund (not being payments under section 24) shall be made from the Consolidated Revenue Fund, which is appropriated accordingly.

Payments by Commonwealth to Fund.

(2) A payment by the Commonwealth to the Fund in respect of a benefit payable under this Act shall be made when, or as soon as practicable after, that benefit becomes payable.

26. (1) Subject to sub-section (2), payments in respect of benefits shall be made from the Fund.

Benefits to be paid from Fund.

(2) Where, but for this sub-section, the Commonwealth would be liable to pay to the Fund an amount equal to the whole or a part of a payment to be made to a person from the Fund under this Act, that amount may be paid to that person by the Commonwealth instead of from the Fund, and the Consolidated Revenue Fund is appropriated accordingly.

27. (1) Moneys of the Fund shall, so far as is practicable, be invested by the Board—

Investment, &c., of Fund.

- (a) in securities issued or guaranteed by the Commonwealth;
- (b) in securities issued or guaranteed by the Administration;
- (c) in loans, upon the security of securities issued by the Commonwealth, to persons who are for the time being declared under a law of the Commonwealth or of a State, being a law relating to companies, to be authorized dealers in the short-term money market; or

(d) in any other manner approved by the Minister,

and in such proportions, as between investments or classes of investments, as are approved by the actuarial member of the Board.

(2) The Board shall not invest moneys of the Fund at a rate of interest of less than four and three-quarters per centum per annum except with the approval of the Administrator.

(3) Moneys of the Fund that are not invested by the Board may be lodged either at call or on fixed deposit, or partly at call and partly on

fixed deposit, with the Reserve Bank of Australia or any other bank approved by the Minister.

**Borrowing.** 28. The Board may borrow for the Fund, and the Treasurer may lend to the Board, on the security of moneys of the Fund invested in securities issued by the Commonwealth, moneys not exceeding in the aggregate two-thirds of the amount of moneys so invested.

**Cheques: manner of signing.** 29. Cheques drawn on a bank account of the Board shall be signed as prescribed.

**Taxation.** 30. The income of the Fund is not subject to tax under a law of a State.

**Actuarial investigations.** 31. (1) The actuarial member of the Board shall make an investigation as to the state and sufficiency of the Fund as at 30th June, 1975, or an earlier date determined by the Board, and as at the expiration of each succeeding period of three years.

(2) The actuarial member of the Board shall report to the Board the result of the investigation, and shall state whether any reduction or increase is necessary in the rates of contributions payable to the Fund or in the proportion payable by the Commonwealth in respect of any pension and, where the Fund is found to be more than sufficient to provide for the benefits which are a charge upon the Fund, he shall also state what additional benefits, if any, could, in his opinion, be provided out of the surplus.

(3) The Board shall furnish the Minister and the Treasurer with a copy of a report made under sub-section (2), together with its recommendations on the report.

(4) A person who is the actuarial member of the Board by virtue of an appointment made under sub-section 10 (2) shall be paid, in respect of an investigation and report made by him under this section, such fees as the Minister determines.

#### PART IV—CONTRIBUTIONS

##### *Division 1—Contributions by Members*

**Commencement and cessation of contributions.** 32. (1) Except as otherwise provided by this Act—

(a) a person who becomes a member on or after the date of commencement of this Act shall contribute to the Fund from the date upon which he becomes a member; and

(b) a person who was a member immediately before the date of commencement of this Act shall contribute to the Fund from that date.

(2) Notwithstanding sub-section (1), where a member would, but for this sub-section, be required to contribute to the Fund from a date that is not a pay-day, that member shall contribute to the Fund from the pay-day next succeeding that date.

(3) An enlisted member shall not contribute to the Fund unless he is serving, or has served, under an engagement or re-engagement for a period of one year or longer.

(4) A person shall not contribute to the Fund in respect of any period after the day on which—

(a) he ceases to be a member;

(b) a period of two years after he attains the retiring age for the rank held by him expires; or

(c) he attains the age of sixty years,

whichever first occurs, or, if that day is not a pay-day, after the pay-day last preceding that day.

(5) A reference in this section to a period includes a reference to a period wholly or partly occurring before the date of commencement of this Act.

(6) In determining, for the purposes of the application of Part VI, whether a person who, having ceased to be a member, again becomes a member is required by this section to contribute to the Fund—

(a) a reference in sub-section (3) to engagement or re-engagement does not include a reference to engagement or re-engagement of the person before he again became a member; and

(b) the reference in sub-section (4) to the day on which he ceases to be a member is a reference to the day on which he ceases to be a member after he again became a member.

33. (1) Subject to sub-section (2), a member who retires ceases to be a member, for the purposes of this Act, on the day following the date of his retirement. Cessation of membership.

(2) Where a contributor retires and, without a break in the continuity of his service, again becomes a member, he shall, for the purposes of this Act, be deemed not to have ceased to be a member by reason of that retirement.

34. (1) A member shall contribute to the Fund at the rate of an amount per fortnight equal to one-twenty-sixth of an amount equal to six per centum of his annual rate of pay at the time the contribution is due. Rate of contributions.

(2) For the purposes of sub-section (1), the annual rate of pay of a member at a particular time is—

(a) if the amount ascertained by multiplying his daily rate of pay at that time by three hundred and sixty-five is a multiple of One hundred dollars—the amount so ascertained; or



(b) if the amount so ascertained is not a multiple of One hundred dollars—the next lower amount that is such a multiple.

(3) The amount of a contribution payable in respect of a day shall be one-fourteenth of the amount of a fortnightly contribution.

Deduction of contributions.

35. (1) The contributions of members shall be deducted fortnightly from their pay and shall be paid, without deduction for postage, forwarding or exchange, to the Board.

(2) Notwithstanding sub-section (1), where a member is on leave of absence, either without pay or at less than full pay, the Board may permit the contributions falling due during his absence to be paid by him, or deducted from his pay, as the case may be, in such smaller sums, and at such periods, as the Board approves.

Absence without leave.

36. A member is not permitted, and shall not be required, to contribute to the Fund in respect of any continuous period of more than twenty-one days during which he is absent without leave.

#### *Division 2—Contributions by the Commonwealth*

Commonwealth contributions in respect of pensions.

37. (1) Except where otherwise provided by this Act, the Commonwealth shall pay to the Fund an amount equal to sixty per centum of each payment of pension made under this Act.

(2) Notwithstanding sub-section (1), the Treasurer, after considering a report made by the actuarial member of the Board under section 31 and the recommendations of the Board on the report, may direct that the Commonwealth shall pay to the Fund, in respect of each payment of pension made under this Act, such amount as he considers appropriate, not being less than sixty per centum of that payment of pension.

Commonwealth contributions in respect of certain other benefits.

38. Subject to sub-section 26 (2), in respect of each payment of benefit made under this Act, other than a pension or a refund of the amount of a member's contributions, the Commonwealth shall pay to the Fund an amount equal to that payment.

Commonwealth contributions in respect of pensions resulting from active service.

39. (1) Where the Treasurer, after receiving a report from the Board in respect of a period to which this section applies, is of the opinion that, by reason of contributors having died, having been injured, having contracted a disease or otherwise having suffered any disability while on active service after the commencement of this Act, the number of pensions that have become payable under this Act during that period by reason of the death of contributors during that period, or the retirement of contributors during that period on the ground of invalidity or incapacity, is greater than the number of pensions that would otherwise have become so payable during that period, the Treasurer may direct that the Commonwealth shall pay to the Fund, in addition to any amounts that have or may become payable to the Fund under this Division, such amount as the Treasurer considers appropriate.

(2) Where the Commonwealth Actuary is not a member of the Board, the Board shall, before furnishing a report to the Treasurer for the purposes of this section, consult with the Commonwealth Actuary.

(3) In this section—

“ active service ” has the same meaning as in the Defence Act;

“ period to which this section applies ” means the period commencing on the date of commencement of this Act and ending on the 30th June next following that date, the financial year next succeeding that 30th June, and each succeeding financial year.

## PART V—BENEFITS

### *Division 1—Benefits on Retirement*

40. (1) Where a contributor (other than a contributor entitled to Pensions on super-annuation. invalidity benefit)—

(a) is an officer and—

(i) retires on or after attaining the retiring age for the rank held by him; and

(ii) has, not later than two years after attaining that age, completed twenty years of service for pension;

(b) is an officer and—

(i) retires, with the approval of the Service Board, before attaining the retiring age for the rank held by him; and

(ii) has completed the number of years of service for pension specified in Schedule 1 in relation to that rank;

(c) is an enlisted member and—

(i) retires on completion of his engagement or, if he has had successive and continuous engagements, on completion of the last of those engagements; and

(ii) has completed twenty years of service for pension; or

(d) is an enlisted member who, before the completion of his engagement or, if he has had successive and continuous engagements, before the completion of the last of those engagements—

(i) retires with the approval of the Service Board; or

(ii) is retrenched or is otherwise discharged for reasons other than disciplinary reasons,

and has, immediately before commencing to serve under the engagement during which he retires, completed twenty years of service for pension,

he is entitled, on his retirement, to a pension in accordance with this section.

(2) Subject to this Act, the rate of pension payable to a person whose age on retirement is sixty years is an annual amount ascertained in accordance with the formula—

$$\frac{ab}{210}$$

where—

a is an amount equal to the total amount of pay that was applicable to him during the period of three years immediately preceding his retirement; and

b is the number of years of service for pension (not exceeding thirty-five) completed by him.

(3) Subject to this Act, the rate of pension payable to a person whose age on retirement is less than fifty-one years is an annual amount ascertained in accordance with the formula—

$$\frac{abc}{210}$$

where—

a is an amount equal to the total amount of pay that was applicable to him during the period of three years immediately preceding his retirement;

b is the factor specified in Schedule 2 in relation to his age on retirement; and

c is the number of years of service for pension (not exceeding thirty-five) that he would have completed if his period of service for pension had included the period commencing on the date of his retirement and ending on the date on which he attains the age of sixty years.

(4) Subject to this Act, the rate of pension payable to a person whose age on retirement is fifty-one years or more but less than sixty years is an annual amount determined by the Board on the advice of the actuarial member of the Board, being not more than the amount that would have been payable to the person if his age on retirement had been sixty years nor less than the amount that would have been payable to him if his age on retirement had been fifty years.

(5) For the purposes of this section, the amount of pay that was applicable to a person during a period shall be calculated on the basis of the daily rate of pay that was from time to time applicable to him during that period, but any cents in the amount so calculated shall be disregarded.

Gratuities,  
&c.

41. (1) Where a contributor is an officer and—

(a) retires on or after attaining the retiring age for the rank held by him;

(b) has, on retirement, completed ten years of service for pension; and

(c) is not entitled to a pension or to invalidity benefit,  
he is entitled, in addition to a refund of the amount of his contributions,  
to a gratuity calculated under sub-section (3).

(2) Where a contributor is an officer serving under a short service  
commission and—

- (a) retires on completion of his commission;
- (b) has, on retirement, completed twelve years of service for pension;  
and
- (c) is not entitled to a pension or to invalidity benefit,

he is entitled, in addition to a refund of the amount of his contributions,  
to a gratuity calculated under sub-section (3).

(3) A gratuity payable under sub-section (1) or (2)—

- (a) to an officer whose period of service for pension does not include  
service as an enlisted member—is an amount equal to Sixty  
dollars multiplied by the number of years of service for pension  
completed by him; or
- (b) to an officer whose period of service for pension includes service  
as an enlisted member—is an amount equal to the sum of—
  - (i) Forty dollars multiplied by the number of years of service  
for pension as an enlisted member completed by him; and
  - (ii) Sixty dollars multiplied by the difference between the  
total number of years of service for pension, and the  
number of years of service for pension as an enlisted  
member, completed by him.

(4) Where a contributor is an enlisted member and—

- (a) retires on completion of his engagement or, if he has had succes-  
sive and continuous engagements, on completion of the last of  
those engagements;
- (b) has, on retirement, completed eight years of service for pension;  
and
- (c) is not entitled to a pension or invalidity benefit,

he is entitled, in addition to a refund of the amount of his contributions,  
to a gratuity equal to the amount specified in Schedule 3 in relation to the  
number of years of service for pension completed by him.

(5) A contributor who is retrenched and is not entitled to a pension or  
gratuity or invalidity benefit is entitled to a lump sum payment of an  
amount equal to two and one-half times the amount of his contributions  
or, if he so desires, to a pension at a rate that is certified by the actuarial  
member of the Board to be the actuarial equivalent of such a payment.

42. Except where paragraph 40 (1) (d) or section 43 or 47 applies, if a  
contributor, other than a permanent officer, ceases to be a member  
before completing the commission or engagement under which he was  
serving immediately before he ceased to be a member, he is entitled, as  
from the date on which he ceased to be a member, to any benefits to  
Non-completion  
of short  
service  
commission  
or of  
engagement.

which he would have been entitled if he had retired immediately before commencing to serve under that commission or engagement.

*Division 2—Invalidity Benefits*

Entitlement  
to invalidity  
benefit.

43. (1) Subject to sub-section (4), where—

- (a) a contributor is retired before attaining the retiring age for the rank held by him;
- (b) an officer who is a contributor has been granted an extension of service for a period that does not extend beyond the period of two years after the attainment by him of the retiring age for the rank held by him and is retired before the expiration of the period of the extension;
- (c) an enlisted member who is a contributor has been engaged for a period of service extending beyond the date of the attainment by him of the retiring age for the rank held by him and is retired before the expiration of a period of two years after that date and before the expiration of the period of the engagement; or
- (d) the retiring age for the rank held by an enlisted member who is a contributor has been extended and the member is retired before the attainment by him of the extended age and before the expiration of a period of two years after the attainment by him of the age that was, before the extension, the retiring age for the rank held by him,

on the ground of invalidity or of physical or mental incapacity to perform his duties (not, in the opinion of the Board, due to wilful action on his part for the purpose of obtaining benefit), he is entitled to benefit in accordance with sections 44 and 45 but, subject to section 53, is not otherwise entitled to benefit.

(2) Where a person is, or is about to become, entitled to benefit by virtue of sub-section (1) the Board shall determine the percentage of total incapacity of the person in relation to civil employment and shall classify the person—

- (a) if the percentage of incapacity is sixty or over—as Class A;
- (b) if the percentage of incapacity is thirty or over but less than sixty—as Class B; or
- (c) if the percentage of incapacity is less than thirty—as Class C.

(3) Where a person is classified under sub-section (2) after the date of his retirement, he shall be deemed to have been so classified on and from that date and he is entitled to benefit accordingly.

(4) Where—

- (a) a member, within six months of becoming a contributor, has retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and

(b) the Board is satisfied that—

- (i) the invalidity or incapacity was caused, or was substantially contributed to, by a physical or mental condition that existed at the time when he became a contributor (whether or not it was disclosed to the Board); and
- (ii) the condition was not aggravated, or, if it was aggravated, was not materially aggravated, by his service as a member,

sub-section (1) does not apply in relation to him.

(5) Where a person who has ceased to be a member again becomes a member, sub-section (4) applies in relation to him as if he had become a contributor at the time when he commenced to make contributions after again becoming a member.

44. (1) A person who is entitled to invalidity benefit and is classified as Class A under section 43 is entitled to a pension at the rate of an annual amount ascertained in accordance with the formula—

Amount of  
invalidity  
benefit.

$$\frac{ab}{70c}$$

where—

- a is an amount equal to the total amount of pay that was applicable to him during the last three years of service for pension completed by him before his retirement or, if he had not, at the time of his retirement, completed three years of service for pension, during the whole period of service for pension completed by him;
- b is the number of years of service for pension (not exceeding thirty-five) that he would have completed if his period of service for pension had included the period commencing on the date of his retirement and ending on the date on which he attains the age of sixty years; and
- c is the number three or, if he had not, at the time of his retirement, completed three years of service for pension, the number (or fraction) ascertained by dividing the number of days in the whole period of service for pension completed by him by three hundred and sixty-five.

(2) A person who is entitled to invalidity benefit and is classified as Class B under section 43 is entitled to a pension at the rate of an annual amount equal to the annual amount of pension to which he would have been entitled if he had been classified as Class A multiplied by—

- (a) if, immediately before retirement, he was a permanent officer—the factor specified in Schedule 2 in relation to the retiring age for the rank held by him;
- (b) if, immediately before retirement, he was an officer serving on a short service commission or an enlisted member and his age on retirement is an age specified in Schedule 2—the factor specified

in that Schedule in relation to the age that he would have attained on completion of his current commission or engagement, or in relation to the age of forty years, whichever is the greater; or

- (c) in any other case—a factor determined by the Board on the advice of the actuarial member of the Board, being a factor not less than sixty-two per centum nor greater than one.

(3) A person who is entitled to invalidity benefit, is classified as Class C under section 43 and has, on retirement, completed twenty years of service for pension is entitled to a pension at the rate of an annual amount equal to the annual amount of pension to which he would have been entitled if he had been classified as Class A multiplied by—

- (a) if his age on retirement is less than fifty-one years—the factor specified in Schedule 2 in relation to his age on retirement; or  
(b) if his age on retirement is fifty-one years or more—a factor determined by the Board on the advice of the actuarial member of the Board, being a factor not less than sixty-two per centum nor greater than one.

(4) A person who is entitled to invalidity benefit, is classified as Class C under section 43 and has not, on retirement, completed twenty years of service for pension is entitled, in addition to a refund of the amount of his contributions—

- (a) if he was an officer immediately before retirement and his period of service for pension does not include service as an enlisted member—to a gratuity equal to Sixty dollars multiplied by the number of years of service for pension completed by him;  
(b) if he was an officer immediately before retirement and his period of service for pension includes service as an enlisted member—to a gratuity equal to the sum of—  
(i) Forty dollars multiplied by the number of years of service for pension as an enlisted member completed by him; and  
(ii) Sixty dollars multiplied by the difference between the total number of years of service for pension, and the number of years of service for pension as an enlisted member, completed by him; or  
(c) if he was an enlisted member immediately before retirement—to a gratuity equal to Forty dollars multiplied by the number of years of service for pension completed by him.

(5) For the purposes of this section, the amount of pay that was applicable to a person during a period shall be calculated on the basis of the daily rate of pay that was from time to time applicable to him during that period, but any cents in the amount so calculated shall be disregarded.

Reclassification of percentage of incapacity.

45. (1) The Board may, from time to time, if it is satisfied that the percentage of incapacity of a person classified under section 43 has altered, or, because of the nature of his employment, should be varied, reclassify him accordingly.

(2) Where a person is reclassified, the Board shall specify the date from which the reclassification has effect and, on and from that date, the person shall, for the purposes of this Act, be deemed to have been, or to be, as the case may be, classified accordingly.

(3) The power of the Board to specify a date under sub-section (2) extends to specifying a date earlier than the date on which the relevant reclassification is made, but, in the case of a pensioner, not earlier than the day immediately following the day on which the last payment of his pension became due.

(4) If, upon reclassification as Class C, a person would, but for this sub-section, be entitled in accordance with section 44 to invalidity benefit consisting of a refund of the amount of his contributions and a gratuity, he is entitled to that benefit only to the extent that it exceeds the sum of the payments of pension received by him as invalidity benefit.

46. (1) The Board may, by notice in writing to a person to whom a pension, being invalidity benefit, is being paid, require that person to submit himself for medical examination by a legally qualified medical practitioner at a time and place specified in the notice.

Board may require invalid pensioners to be medically examined.

(2) A notice to a person under sub-section (1) may be given by delivering it to him personally or by sending it by post addressed to him at his address last-known to the Board.

(3) Where a person fails to comply with a notice given to him under this section and does not satisfy the Board that there was reasonable excuse for the failure, the Board may suspend the person's pension.

(4) Where the Board suspends a person's pension under this section, his pension is not payable in respect of the period commencing on the day on which he was required by the notice to submit himself for examination and ending on the day immediately preceding the day on which he submits himself for medical examination at a time and place approved by the Board.

(5) The cost of any medical examination carried out for the purposes of this section, including reasonable expenditure incurred in travelling to and from the place of the examination, shall be treated as part of the cost of the administration of this Act.

47. Where an officer is retired on the ground of invalidity or physical or mental incapacity to perform his duties and the invalidity or incapacity is, in the opinion of the Board, due to wilful action on his part for the purpose of obtaining benefit, no benefit (other than a refund of the amount of his contributions) is payable to or in respect of the officer.

Incapacity of officer due to wilful action.

### *Division 3—Benefits on Death*

48. On the death before retirement of a contributor who is survived by a widow, there shall be paid to the widow a pension at the rate equal to five-eighths of the rate of the pension that would have been

Widow's pension on death of contributor.



payable to the contributor if, on the date of his death, he had become entitled to invalidity benefit and had been classified as Class A under section 43.

Widow's  
pension on  
death of  
pensioner.

49. (1) On the death of a pensioner who is survived by a widow, there shall be paid to the widow—

- (a) if the pensioner, at the time of his death, was in receipt of a pension, being invalidity benefit, and the Board is satisfied that his death was due to the disease or injury which was the cause of his retirement—a pension at the rate at which a pension would be paid to her if section 48 applied; or
- (b) in any other case—a pension at the rate equal to five-eighths of the rate of the pension that was payable to the pensioner at the time of his death.

(2) For the purposes of sub-section (1), the pension payable to the widow of a male pensioner shall, in any case where the male pensioner had commuted any portion of his pension, be calculated upon the rate of pension that would have been payable to the male pensioner at the time of his death if no portion of his pension had been commuted.

Childrens'  
pensions.

50. (1) On the death of a male contributor or male pensioner, a pension shall be paid in respect of—

- (a) each child of the contributor or pensioner and his widow; and
- (b) each child (other than a child referred to in paragraph (a) ) who was dependent on the contributor or pensioner immediately before his death and is—
  - (i) a child of, or a child adopted by, the contributor or pensioner;
  - (ii) a child of the widow of the contributor or pensioner (not being a child by her re-marriage); or
  - (iii) a child of a person who, but for section 5, would be a widow of the contributor or pensioner (not being a child by her re-marriage).

(2) Where the deceased contributor or pensioner is also survived by a widow and a pension is payable under this section in respect of a child of the widow, the pension shall be paid to the widow during her lifetime.

(3) A pension payable under this section in respect of a child, otherwise than in accordance with sub-section (2), shall, in the discretion of the Board—

- (a) be paid to the guardian of the child to be used for the support and education of the child; or
- (b) be expended by the Board for the benefit of the child.

(4) A pension payable under this section in respect of a child shall be at the rate of One hundred and thirty dollars a year.

(5) Where—

- (a) a pension is or pensions are payable under this section by reason of the death of a contributor or pensioner who is not survived by a widow; and
- (b) the present value, as determined by the Commonwealth Actuary, of the pension or pensions is less than the amount of the contributions made by the deceased contributor or pensioner,

the amount of the difference shall be paid to the personal representatives of the deceased contributor or pensioner or, failing them, to such persons, if any, as the Board determines.

51. Where—

- (a) a male member who is unmarried or is a widower without children; or
- (b) a female member,

Death of certain members.

dies before retirement, the amount of the contributions paid by the member shall be paid to the personal representatives of the member or, failing them, to such persons, if any, as the Board determines, and no other benefit is payable in respect of the member.

52. Notwithstanding anything to the contrary in this Division, the aggregate annual amount of a pension or pensions payable under this Division by reason of the death of a person shall not exceed—

Maximum amount of pension payable under this Division.

- (a) if that person died before his retirement—the annual amount of the pension that would have been payable to that person if, on the date of his death, he had become entitled to invalidity benefit and had been classified as Class A under section 43; or
- (b) if that person was entitled to a pension at the date of his death—the annual amount of that pension.

*Division 4—General Provisions*

53. (1) Where a contributor ceases to be a member and is not entitled to a pension or to a benefit under sub-section 41 (5), he is entitled to a refund of the amount of his contributions.

Refund of contributions.

(2) Where a contributor, other than a permanent officer, ceases to be a member before completing the commission or engagement under which he was serving immediately before he ceased to be a member and is entitled to a pension by virtue of section 42, he is entitled to a refund of the amount of any contributions paid in respect of the period served under the uncompleted commission or engagement.

54. (1) A pension, other than a pension referred to in sub-section (2) or (3), ceases on the death of the pensioner.

General provisions as to pensions.

(2) A pension under section 48 or 49 ceases on the death or remarriage of the pensioner.

(3) A pension payable in respect of a child ceases when the child—

(a) attains the age of sixteen years;

(b) dies; or

(c) in the case of a child referred to in paragraph 50 (1) (b), ceases to be dependent,

whichever first occurs.

Com-  
mutation  
of pensions.

55. (1) Subject to the regulations, a person who is entitled to a pension under section 40 may apply to the Board for the commutation of a portion, not exceeding one-third, of his pension.

(2) On an application made under this section, the Board may, in its discretion, grant or refuse the application or grant it subject to such conditions as the Board thinks fit.

Absence or  
desertion.

56. A pension or gratuity is not payable to, or in respect of, a member who absents himself without leave for more than twenty-one consecutive days or becomes a deserter and who, during the period of absence or desertion, becomes incapacitated or dies.

Non-  
effective  
service to  
reduce  
gratuity.

57. (1) Where a person is entitled to a gratuity and the period of service for pension of that person includes a period of non-effective service, the amount of the gratuity that would, but for this section, be payable to the person is reduced by an amount that bears to that first-mentioned amount the same proportion as the period of non-effective service bears to the period of service for pension.

(2) In sub-section (1), “period of non-effective service”, in relation to a person, means a period of service of the person exceeding twenty-one consecutive days during which period any or all of the following occurred, that is to say—

(a) he was on leave of absence without pay;

(b) he was absent without leave;

(c) he was awaiting trial on a charge in respect of an offence of which he was later convicted;

(d) he was undergoing trial on such a charge;

(e) he was undergoing field punishment, detention or imprisonment.

Insanity of  
pensioner.

58. (1) Where a male pensioner is detained as a patient in a hospital for the insane, the Board may cause the whole or part of his pension to be paid during the period of detention, in such manner and subject to such conditions as the Board directs, to his wife or, if his wife is dead or divorced, for the benefit of such of his children (including adopted children) as are dependent on him.

(2) Where a female pensioner is detained as a patient in a hospital for the insane, the Board may cause the whole or part of her pension and of any pension payable to her in respect of children to be paid, in such

manner and subject to such conditions as the Board directs, during the period of detention, for the benefit of such of the children of the pensioner, and such of the children of her late husband (including children who were adopted by him and were dependent on him immediately before his death), as are dependent on her.

59. (1) Where a pensioner deserts his wife or leaves her without means of support, the wife may, from time to time, apply to a District Court and, on proof that the wife has been deserted or left without means of support, the Court may order the payment to the wife, during such period as it thinks fit, of the whole or part of the pension which otherwise would be payable to the pensioner.

Desertion by male pensioner of wife or children.

(2) Where a pensioner whose wife is dead or divorced deserts any of his children (including adopted children) who are dependent on him, or leaves them without means of support, the guardian of the children, or the Board, may, from time to time, apply to a District Court and, on proof that any such child has been deserted or left without means of support, the Court may order the payment to the guardian of the child, during such period as it thinks fit, of the whole or part of the pension which otherwise would be payable to the pensioner.

(3) The Board shall comply with any order made under this section and the amount of the pension payable to the pensioner shall be reduced by the amount payable to the wife or the guardian, as the case may be, in pursuance of the order.

60. (1) Where a male pensioner is sentenced to imprisonment for any period exceeding one month, the Board may cause the whole or part of his pension to be paid, in such manner and subject to such conditions as the Board directs, during the period of imprisonment, to his wife, or if his wife is dead or divorced, for the benefit of such of his children (including adopted children) as are dependent on him.

Imprisonment of pensioner.

(2) Where a female pensioner is sentenced to imprisonment for any period exceeding one month, the Board may cause the whole or part of her pension, and of any pension payable to her in respect of children, to be paid, in such manner and subject to such conditions as the Board directs, during the period of imprisonment, for the benefit of such of the children of the pensioner, and such of the children of her late husband (including children who were adopted by him and were dependent on him immediately before his death), as are dependent on her.

61. (1) Pensions shall be paid in fortnightly instalments.

Instalments of pension.

(2) In order to ascertain the amount of an instalment of a pension covering a period of a fortnight the annual amount of the pension shall be divided by twenty-six.

(3) The amount of a pension payable in respect of each day shall be one-fourteenth of the amount of a fortnightly instalment.

Payment of benefits otherwise than to pensioner.

62. Where, in the opinion of the Board, payment of pension, refund of contributions or other benefit should be made to a person other than the pensioner or beneficiary, the Board may, subject to this Act, authorize payment accordingly.

PART VI—FORMER MEMBERS WHO AGAIN BECOME CONTRIBUTORS

*Division 1—Former Members who were Pensioners*

Application of Division.

63. (1) This Division applies to a person who, being in receipt of or entitled to a pension (other than a pension under sub-section 41 (5)) that became payable by reason of his having been a member, has again become, and is, a member and a contributor.

(2) For the purposes of this section, a person shall not be deemed to have ceased to be entitled to a pension by reason only that the pension has been suspended under this Act.

Cancellation of previous pension.

64. Where a pensioner (including a pensioner whose pension has been suspended under this Act) becomes a person to whom this Division applies, his pension is cancelled by force of this section.

Benefits payable.

65. (1) The application of Part V to and in relation to a person to whom this Division applies is subject to this section.

(2) For the purpose of determining the pension payable upon the retirement or death of a person to whom this Division applies, the service for pension of that person shall be deemed to be the aggregate of the periods of service for pension served by that person before and after he became a person to whom this Division applies, other than service in respect of which a refund of the amount of his contributions has been paid or is payable to him.

(3) Where—

(a) immediately before he became entitled to a pension, a person to whom this Division applies was an enlisted member and had completed twenty years of service for pension;

(b) on retirement after becoming a person to whom this Division applies, he is an officer but is not entitled to pension under Part V.; and

(c) his failure to be entitled to pension is not attributable to the operation of section 47 or 56,

he is entitled, on retirement (in lieu of any other benefit to which, but for this sub-section, he would be entitled)—

(d) to pension as if, on retirement, he held the rank last held by him before he became an officer; and

(e) to a refund of so much of the amount of his contributions as is equal to the difference between the amount of contributions that were actually paid by him and the amount of contributions that would have been paid by him if, at all times when he was an officer, he had held the rank last held by him before he became an officer.

(4) Where—

- (a) the pension of a person to whom this Division applies became payable by virtue of section 43;
- (b) immediately before he became entitled to that pension, he was an officer and had completed twenty years of service for pension; and
- (c) on retirement after having become a person to whom this Division applies, he is not entitled to pension under Part V, whether by reason of the operation of section 47 or 56 or otherwise,

he is entitled, on retirement (in lieu of any other benefit to which, but for this sub-section, he would be entitled)—

- (d) to the pension to which he would have been entitled immediately before he became a person to whom this Division applies if, immediately before he became such a person, he had been reclassified as Class C under section 43;
- (e) to a refund of the amount of the contributions paid by him after he became a person to whom this Division applies; and
- (f) to any gratuity payable to him in respect of his service after he became such a person.

(5) Where—

- (a) the pension of a person to whom this Division applies became payable by virtue of section 43;
- (b) on retirement after having become a person to whom this Division applies, he is not entitled to pension under Part V, whether by reason of the operation of section 47 or 56 or otherwise; and
- (c) sub-sections (3) and (4) do not apply to him,

he is entitled, on retirement (in lieu of any other benefit to which, but for this sub-section, he would be entitled)—

- (d) to any refund of contributions, and any gratuity, to which he would have been entitled if he had been reclassified as Class C under section 43 immediately before he became a person to whom this Division applies;
- (e) to a refund of the amount of the contributions paid by him after he became such a person; and
- (f) to any gratuity payable to him in respect of his service after he became such a person.

(6) Where—

- (a) the pension of a person to whom this Division applies became payable otherwise than by virtue of section 43;
- (b) on retirement after becoming a person to whom this Division applies, he is not entitled to pension under Part V, whether by reason of the operation of section 47 or 56 or otherwise; and
- (c) sub-section (3) does not apply to him,

he is entitled, on retirement (in lieu of any other benefit to which, but for this sub-section, he would be entitled)—

- (d) to pension corresponding with the pension that was cancelled when he became a person to whom this Division applies; and
- (e) to a refund of the amount of the contributions paid by him after he became such a person.

(7) Where a person is entitled to benefit under sub-section (4), (5) or (6), sections 47 and 56 do not apply in relation to that benefit except gratuity payable by virtue of paragraph (4) (f) or (5) (f) of this section.

(8) Where a person to whom this Division applies dies before retirement and section 51 applies in relation to him, the reference in that section to the contributions paid by a member shall be read as a reference to the contributions paid by the person after he became a person to whom this Division applies.

(9) Where a person to whom this Division applies dies before retirement and, by reason of the operation of section 56, pension would not, but for this sub-section, be payable in respect of him, that section does not apply in relation to him and he shall be deemed, for the purposes of this Act, to have been, on the date on which he died, a pensioner in receipt of the pension that was cancelled when he became a person to whom this Division applies, and the amount of the contributions paid by him after he became such a person shall be paid to his personal representatives, or, failing them, to such persons, if any, as the Board determines.

(10) Where—

- (a) the pension of a person to whom this Division applies became payable by virtue of section 43;
- (b) on retirement after becoming a person to whom this Division applies, he again became entitled to pension by virtue of that section upon being classified as Class A or Class B under that section; and
- (c) he is later reclassified as Class C under section 45 and, upon being so reclassified, ceases to be entitled to a pension,

he is entitled, upon being so reclassified—

- (d) to any refund of contributions, and any gratuity, to which he would have been entitled if he had been so reclassified immediately before he became a person to whom this Division applies; and
- (e) to a refund of the amount of the contributions paid by him after he became a person to whom this Division applies, and to a gratuity calculated in accordance with section 44 by reference to his service after he became such a person, to the extent that the sum of the amount of the refund and the amount of the gratuity exceeds the sum of the payments of pension received by him after his retirement after becoming such a person.

**Pension payable after commutation of previous pension.**

**66.** Where a pension becomes payable to a person to whom this Division applies and who, before he became such a person, commuted a portion of his pension, the pension so payable shall be paid at such rate

as is determined by the Board as being appropriate, having regard to the advice of the actuarial member of the Board and all the circumstances of the case.

67. Nothing in this Division has the effect—

- (a) of entitling a person to pension, at the one time, under more than one provision of this Act; or
- (b) of reducing the rate of pension payable to a person to whom this Division applies below the rate of pension that was payable to him before he became a person to whom this Division applies.

Pensions not to be doubled or reduced by this Division.

*Division 2—Former Members who were not Pensioners*

68. (1) Subject to sub-section (2), where a member—

- (a) has, on retirement—
  - (i) become entitled only to a refund of the amount of his contributions; or
  - (ii) become entitled to benefit under section 41; and
- (b) again becomes a member and a contributor,

Former members who were not pensioners.

he is not entitled to any further benefit in respect of his previous service.

(2) Where—

- (a) a member has, on retirement, become entitled to a refund of the amount of his contributions and to a gratuity under sub-section 44 (4);
- (b) within a period of twelve months after retirement, he again becomes a member and a contributor; and
- (c) before the expiration of a period of twelve months after he again becomes a contributor or before he again ceases to be a member, whichever first occurs, he repays to the Fund the amount of the contributions refunded to him and pays to the Commonwealth an amount equal to the gratuity received by him,

his service before his retirement and his service after he again becomes a contributor shall be deemed to be continuous.

PART VII—MISCELLANEOUS

69. (1) A dispute under this Act shall be determined in the first instance by the Board.

(2) A person aggrieved by a decision of the Board on such a dispute may appeal to the Supreme Court of the Territory constituted by a single judge of the Court, and the Court so constituted may hear and determine the appeal.



(3) A decision of the Supreme Court under this section is final and conclusive.

Audit.

70. (1) The Auditor-General shall inspect and audit the accounts and records kept under section 21 and shall forthwith draw the attention of the Minister to any irregularity disclosed by the inspection and audit that is, in the opinion of the Auditor-General, of sufficient importance to justify his so doing.

(2) The Auditor-General may, at his discretion, dispense with all or any part of the detailed inspection and audit of any accounts or records referred to in sub-section (1).

(3) The Auditor-General shall, at least once in each year, report to the Minister the results of the inspection and audit carried out under sub-section (1).

(4) The Auditor-General or an officer authorized by him is entitled at all reasonable times to full and free access to all accounts, records, documents and papers of the Board relating directly or indirectly to the receipt or payment of moneys by the Board or to the acquisition, receipt, custody or disposal of assets by the Board.

(5) The Auditor-General or an officer authorized by him may make copies of, or take extracts from, any such accounts, records, documents or papers.

(6) The Auditor-General or an officer authorized by him may require any person to furnish him with such information in the possession of the person or to which the person has access as the Auditor-General or authorized officer considers necessary for the purposes of the functions of the Auditor-General under this Act, and the person shall comply with the requirement.

(7) A person who contravenes sub-section (6) is guilty of an offence punishable, upon conviction, by a fine not exceeding Two hundred dollars.

Transfer of  
insurance  
policies to  
Board.

71. (1) A contributor whose life is assured may, with the consent of the Board, transfer the policy, if the policy is unencumbered, to the Board or to a person approved by the Board and request the Board to continue the payment of the premiums under the policy.

(2) Where a transfer is made under sub-section (1), the Board shall duly pay the premiums and, on the maturity of the policy, shall pay to the contributor or to his personal representatives, to be administered as part of his estate, any sums received on the policy, less the amounts of the premiums paid by the Board with compound interest on those amounts from the respective dates of payment at such rate as is prescribed.

(3) Where the contributor desires that his policy be re-transferred to him before it matures or he retires, the Board may, on receipt of a request for re-transfer or on the retirement, as the case may be, re-transfer the

policy to the contributor on payment to the Board of the amounts of the premiums paid by the Board with compound interest on those amounts from the respective dates of payment at such rate as is prescribed.

72. Where the annual amount of a pension ascertained under this Act includes an amount of cents—
- (a) if that last-mentioned amount is less than Fifty cents—the amount of the pension shall be deemed to be reduced by that last-mentioned amount; and
  - (b) in any other case—the amount of the pension shall be deemed to be increased by treating the cents as One dollar.

Annual amount of pension to be calculated to nearest dollar.

73. (1) The cost of the administration of this Act shall be paid out of moneys appropriated from time to time by the Parliament for the purpose.
- (2) The moneys received and paid under this section, and the accounts in connexion with those moneys, shall be kept, as part of the Commonwealth Public Account, separately from the moneys and accounts of the Fund.

Cost of administration of this Act.

74. (1) The Board may require a contributor or pensioner to furnish, in a statutory declaration or in such other form as the Board requires, such information as the Board thinks necessary for the purpose of any investigation in connexion with the Fund.
- (2) A contributor or pensioner who, without reasonable excuse (proof of which lies with him), fails to comply with a requirement made under sub-section (1) is guilty of an offence punishable, upon conviction, by a fine not exceeding Twenty dollars.

Board may require information.

75. Subject to section 76, benefits are not capable of being assigned or charged or of passing by operation of law, and any moneys payable out of the Fund on the death of a member are not liable to be applied or made available in payment of his debts or liabilities.

No assignment of benefits.

76. (1) Where a judgment given by a court for the payment of a sum of money has not been fully satisfied by the judgment debtor and the judgment debtor is entitled to benefit, the judgment creditor may serve on the Board, in such manner as is prescribed, a copy of the judgment, certified under the hand of the registrar or other proper officer of the court by which the judgment was given, and a statutory declaration by the judgment creditor stating that the judgment has not been fully satisfied by the judgment debtor and specifying the amount due by the judgment debtor under the judgment.

Attachment of benefits.

- (2) Where a copy of a judgment and a statutory declaration are served on the Board in accordance with sub-section (1), the Board shall, as soon as practicable, by notice in writing given to the judgment debtor,

inform him of the service of those documents and require him, within such period as is specified in the notice and in such manner as is so specified, to notify the Board whether the amount specified in the declaration is still due under the judgment and, if no amount or a lesser amount is due under the judgment, to furnish to the Board, in such manner as is specified in the notice, evidence in support of that fact.

(3) A person to whom a notice is given under sub-section (2) shall comply with the requirements contained in the notice.

Penalty: Forty dollars.

(4) If, at the expiration of the period specified in the notice, the Board is satisfied that an amount is due under the judgment, the Board may, in its discretion, deduct from the benefit, and pay to the judgment creditor, such sums as do not exceed that amount.

(5) A deduction shall not be made from—

- (a) an instalment of pension payable in respect of a child; or
- (b) an instalment of any other pension if the deduction will reduce the amount of the instalment payable to less than one-half of the amount that would, but for this section, be payable.

(6) If, after a copy of a judgment given against a pensioner or beneficiary, being a judgment in respect of which the Board is satisfied that an amount is due, has been served in accordance with sub-section (1), a copy of another judgment given (whether before or after the first-mentioned judgment) against the same pensioner or beneficiary in favour of the person in whose favour the first-mentioned judgment was given or in favour of another person is served in accordance with that sub-section, the Board shall not make a payment in accordance with this section to the judgment creditor under the other judgment in respect of the amount due under that judgment until the amount due under the first-mentioned judgment has been paid.

(7) A payment made to a judgment creditor in accordance with this section shall, as between the Board and the pensioner or beneficiary, be deemed to be a payment from the Fund to the pensioner or beneficiary.

(8) A judgment creditor who serves a copy of a judgment on the Board under sub-section (1) shall notify the Board, in such manner as is prescribed, immediately the judgment debt is satisfied.

Penalty: One hundred dollars or imprisonment for three months.

(9) If the amounts paid in accordance with this section to a judgment creditor in respect of a judgment exceed, in the aggregate, the amount due under the judgment, the excess is repayable by the judgment creditor to the judgment debtor and, in default of payment, may be recovered by the judgment debtor from the judgment creditor in a court of competent jurisdiction.

77. The Board may recover contributions under this Act in a court of competent jurisdiction. Recovery of contributions.

78. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this Act are required or permitted to be prescribed, or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and, in particular— Regulations.

- (a) prescribing the manner in which the accounts of the Fund shall be kept; and
- (b) prescribing penalties for offences against the regulations, but so that no prescribed penalty shall exceed a fine of One hundred dollars.

(2) Where regulations for the purposes of the definition of “daily rate of pay” in sub-section 3 (1) are in force in relation to members included within a class of members and the pay or living out allowance applicable to that class of members is increased or reduced, regulations made for the purposes of that definition after the date on and from which the increase or reduction took effect may be expressed to have taken effect on and from that date.

SCHEDULE 1 Sub-paragraph 40 (1) (b) (ii)

PERIODS OF SERVICE QUALIFYING CERTAIN OFFICERS FOR PENSIONS

Rank	Years of service for pension
<i>Naval Forces—</i>	
Captain .. .. .	} 24
Commander .. .. .	
Lieutenant-Commander .. .. .	} 22
Lieutenant .. .. .	
<i>Military Forces—</i>	
Brigadier .. .. .	} 24
Colonel .. .. .	
Lieutenant-Colonel .. .. .	} 22
Major .. .. .	
Captain .. .. .	
Lieutenant .. .. .	
Second Lieutenant .. .. .	

SCHEDULE 2 Sections 40 and 44  
PENSION FACTORS

Age (years)	Factor
36 .. .. .	.41
37 .. .. .	.42
38 .. .. .	.43
39 .. .. .	.44
40 .. .. .	.45
41 .. .. .	.46
42 .. .. .	.47
43 .. .. .	.48
44 .. .. .	.50
45 .. .. .	.52
46 .. .. .	.54
47 .. .. .	.56
48 .. .. .	.58
49 .. .. .	.60
50 .. .. .	.62

SCHEDULE 3 Sub-section 41(4)  
GRATUITIES ON RETIREMENT OF ENLISTED MEMBERS NOT ENTITLED TO PENSION

Years of service for pension	Gratuity
	\$
8 .. .. .	160
9 .. .. .	240
10 .. .. .	320
11 .. .. .	400
12 .. .. .	480
More than 12 .. .. .	480 plus \$40 for each year in excess of 12