

Defence Force Retirement and Death Benefits Act 1973

No. 81 of 1973

AN ACT

To make provision for and in relation to a Scheme for
Retirement and Death Benefits for Members of the
Defence Force.

[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 Retirement and Death Benefits Act 1973*. Short title.

2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent. Commence-
ment.

(2) Sections 3 to 6 (inclusive), and Parts III to IX (inclusive), shall be deemed to have come into operation on 1st October, 1972, and, subject

to this Act, contributions under section 17 of this Act are payable to the Commonwealth, and benefits under this Act are payable by the Commonwealth, on and after that date accordingly.

Interpretation.

3. (1) In this Act, unless the contrary intention appears—

“ additional contribution ” means an additional contribution payable under section 21, 64, 87, 89 or 93;

“ Air Force ” means the Air Force of the Commonwealth;

“ annual rate of pay ”, in relation to a member of the Defence Force on a particular day, means the amount, that, under the regulations, is the annual pay applicable to the member on that day;

“ Authority ” means the Defence Force Retirement and Death Benefits Authority established by section 8;

“ benefit ” means pension benefit, and includes a refund of contributions and a lump sum payment under sub-section 32 (2), a lump sum payment under section 48 and a refund of contributions under section 56;

“ child ”, in relation to a deceased member of the scheme, includes—

(a) a person who is, immediately before the death of the member, a stepchild of the member, an adopted child of the member, a foster child of the member or a ward of the member; and

(b) a person who—

(i) is the ex-nuptial child of the member, or a child or ex-nuptial child of the widow of the member; and

(ii) was wholly or substantially dependent upon the member at the time of his death or (in the case of an ex-nuptial child of the member born after the member's death) would, in the opinion of the Authority, have been so dependent if he had been born before the member's death;

“ child's pension ” means pension payable under Division 2 of Part VI;

“ contributing member ” means a member of the Defence Force who is making, or is required to make, or, but for section 18, would be required to make, contributions under section 17;

“ contributions ” means contributions payable under section 17, and includes any additional contributions or previous contributions;

“ date of commencement of the scheme ” means 1st October, 1972;

“ Defence (Parliamentary Candidates) Act ” means the *Defence (Parliamentary Candidates) Act 1969* or the *Defence (Parliamentary Candidates) Act 1969–1973*;

“dependent female”, in relation to a deceased male member of the scheme, means a woman who—

- (a) for a period immediately preceding his death (being a period that did not commence after the member had attained the age of sixty years) had lived with him as his wife on a permanent and *bona fide* domestic basis, although not legally married to him; and
- (b) was, at the time of his death, wholly or partly dependent on him;

“eligible child” means a person who—

- (a) is the child of a deceased member of the scheme who died while he was a contributing member or of a deceased recipient member; and
- (b) is a person who has not attained the age of sixteen years or—
 - (i) has attained the age of sixteen years but has not attained the age of twenty-five years;
 - (ii) is receiving full-time education at a school, college or university; and
 - (iii) is not ordinarily in employment or engaged in work on his own account;

“eligible member of the Defence Force” means—

- (a) a member of the Defence Force who—
 - (i) is serving on continuous full-time service under an appointment or engagement, or under a re-appointment or re-engagement, for a period of not less than one year; or
 - (ii) is serving on continuous full-time service, being service that is continuous with previous continuous full-time service that was, or included, service under an appointment or engagement, or under a re-appointment or re-engagement, for a period of not less than one year; or
- (b) a member of the Defence Force—
 - (i) to whom paragraph (a) does not apply;
 - (ii) who (otherwise than as a member of that part of the Naval Forces known as the Naval Emergency Reserve Forces, that part of the Naval Forces known as the Citizen Naval Forces, that part of the Military Forces known as the Citizen Military Forces, that part of the Air Force known as the Air Force Emergency Force or that part of the Air Force known as the Citizen Air Force undergoing annual training) is serving on continuous full-time service; and

(iii) who, immediately before commencing to serve, was a recipient member, was a member of the scheme to whom deferred benefits were applicable under section 78, was a person who was in receipt of, or but for a suspension of his pension under section 53A or 53B of the previous Act, would have been in receipt of, a pension under the previous benefits scheme (being a pension to which he became entitled on retirement from the Defence Force) or was a person to whom deferred benefits were applicable under section 82ZB of the previous Act,

but does not include a person to whom section 90 applies and who does not make an election under that section;

“eligible orphan” means an eligible child who is an orphan, and includes an eligible child who is not an orphan but who is in the custody, care and control of, and is wholly or substantially dependent on, a person other than a person to whom widow’s pension is, or was at any time, payable;

“existing contributor” means a person who—

(a) immediately before 1st October, 1972, was making, or was required to make, or, but for sub-section 4AA (2), paragraph 23 (5) (b) or (c), or sub-section 36 (1), of the previous Act, would have been required to make, contributions to the Defence Forces Retirement Benefits Fund under the previous legislation; and

(b) on that date, without having ceased to be on continuous full-time service, became an eligible member of the Defence Force for the purposes of this Act;

“fortnightly rate of pay”, in relation to a member of the Defence Force on a particular day, means an amount ascertained by dividing the annual rate of pay applicable to him on that day by three hundred and sixty-five and multiplying the result by fourteen;

“invalidity benefit” means invalidity benefit under section 26;

“invalidity pay” means invalidity benefit consisting of invalidity pay;

“member of the Defence Force” does not include a person who is a “member” as defined by sub-section 3 (1) of the *Defence Force (Papua New Guinea) Retirement Benefits Act 1973*;

“member of the scheme” means a person who is, or at any time on or after the date of commencement of the scheme, has been, an eligible member of the Defence Force;

“Military Forces” means the Military Forces of the Commonwealth;

“Naval Forces” means the Naval Forces of the Commonwealth;

- “officer” means a member of the Defence Force who is an officer for the purposes of the *Defence Act 1903–1970*;
- “pension benefit” means retirement pay, invalidity pay, widow’s pension or child’s pension;
- “period of effective service”, in relation to a member of the scheme, means—
- (a) any period commencing on or after the date of commencement of the scheme during which he is an eligible member of the Defence Force, less any period included in such a period that—
 - (i) is a period of non-effective service in relation to him; or
 - (ii) is a period that, under section 57 or 58, is to be disregarded as a period of effective service in relation to him; and
 - (b) any period that is deemed to be a period of effective service in relation to him under section 21, sub-section 62 (3) or section 64 or 91;
- “period of non-effective service”, in relation to a member of the scheme, means a period that, under section 6, is deemed to be a period of non-effective service in relation to him;
- “Permanent Forces” means that part of the Naval Forces known as the Permanent Naval Forces, that part of the Permanent Military Forces known as the Australian Regular Army and that part of the Air Force known as the Permanent Air Force;
- “previous Act” means the *Defence Forces Retirement Benefits Act 1948* or that Act as amended and in force from time to time before 1st October, 1972;
- “previous benefits scheme” means the retirement benefits scheme provided for in the previous legislation;
- “previous contributions”, in relation to a person, means contributions made by him under the previous legislation, less any such contributions refunded to him under the previous legislation or (except for the purposes of Part X) under section 86 of this Act;
- “previous legislation” means the previous Act, and includes any other Act relating to retirement benefits for members of the Defence Force that came into operation before 1st October, 1972, and modifies or affects the provisions of the previous Act;
- “rank”, in relation to a member of the Defence Force, means—
- (a) his substantive rank or, if he is appointed provisionally or on probation, the rank to which he is so appointed; or
 - (b) if he is provisionally promoted to another rank—that other rank;
- “recipient member” means a member of the scheme who is entitled to retirement pay or invalidity pay, and includes a member of the

scheme who, but for the suspension of his invalidity pay under sub-section 35 (3), would be entitled to invalidity pay;

“ Reserve ” means—

- (a) in relation to a member of the Naval Forces—the reserve of officers known as the Emergency List of Officers;
- (b) in relation to a member of the Military Forces—the Regular Army Reserve; and
- (c) in relation to a member of the Air Force—the Air Force Reserve.

“ retirement ” means retirement as a member of the Defence Force, and includes discharge from the Defence Force, and “ retire ” has a corresponding meaning;

“ retirement pay ” means retirement pay payable under section 23;

“ service ” means service as a member of the Defence Force;

“ Superannuation Act ” means the *Superannuation Act 1922* as amended and in force from time to time;

“ Superannuation Board ” means the Superannuation Board constituted by the Superannuation Act;

“ Superannuation Fund ” means the Superannuation Fund established under the Superannuation Act;

“ total period of effective service ”, in relation to a member of the scheme, means, subject to sub-sections 62 (4) and (5)—

- (a) in the case of a member in relation to whom there is only one period of effective service—that period; or
- (b) in the case of a member in relation to whom there are two or more periods of effective service—a period equal to the total of those periods;

“ widow ”, in relation to a deceased member of the scheme includes a dependent female of the member, but does not include—

- (a) a person who, immediately before the death of the member, was his wife but was not living with him as his wife and was not wholly or partly dependent on him; or
- (b) in the case of a deceased recipient member—a person who became his wife after his retirement and after he attained the age of sixty years;

“ widow’s pension ” means pension payable under Division 1 of Part VI.

(2) A reference in any provision of this Act to benefit under sub-section 32 (2) shall be read as including a reference to a refund of contributions under that sub-section.

**Retiring age
for rank
held.**

4. For the purposes of this Act, the retiring age for the rank held by a member of the Defence Force at any time is—

- (a) in the case of a member who is a member of the Permanent Forces—the age for compulsory retirement of the member

ascertained in accordance with, or in accordance with regulations under, the *Naval Defence Act 1910–1971*, the *Defence Act 1903–1970* or the *Air Force Act 1923–1965*; or

- (b) in the case of a member who is not a member of the Permanent Forces—the age for compulsory retirement, as ascertained in accordance with paragraph (a), of a member of the same rank and branch who is a member of the Permanent Forces.

5. (1) For the purposes of the definition of “eligible member of the Defence Force” in sub-section 3 (1), a member of the Defence Force serving on continuous full-time service shall not be deemed to have ceased to be on **continuous full-time service during any period** during which he is—

Continuity of service.

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

(2) Where a contributing member ceases to be on continuous full-time service but continues to be a member of the Defence Force 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.

(3) Where a contributing member retires and, without a break in the continuity of his service, again becomes an eligible member of the Defence Force serving on continuous full-time service, he shall, for the purposes of this Act, be deemed not to have ceased to be an eligible member of the Defence Force by reason of that retirement.

6. (1) Where a member of the scheme has, for any period commencing on or after the date of commencement of the scheme, being a period that exceeds twenty-one consecutive days, been—

Non-effective service.

- (a) on leave of absence without pay;
 (b) absent without leave;
 (c) awaiting or undergoing trial on a charge in respect of which he is later convicted; or
 (d) undergoing field punishment, detention or imprisonment,

that period shall be deemed to be a period of non-effective service in relation to him.

(2) Where a member of the scheme has, for any period commencing before the date of commencement of the scheme but ending on or after that date, being a period that exceeds twenty-one consecutive days, been absent without leave, so much of that period as commenced on the date of commencement of the scheme shall be deemed to be a period of non-effective service in relation to him.

PART II—DEFENCE FORCE RETIREMENT AND DEATH BENEFITS AUTHORITY

Definitions.

7. (1) In this Part, unless the contrary intention appears—

“Chairman” means the Chairman of the Authority;

“Deputy Chairman” means the member who is the Deputy Chairman of the Authority, but does not include the deputy member who is the deputy of that member;

“deputy member” means a deputy of a member who is appointed under section 9;

“member” means the Chairman or other member of the Authority;

“President of the Superannuation Board” includes a person who, for the purposes of the Superannuation Act, is from time to time the deputy of the President of the Superannuation Board by virtue of an appointment under section 123 of the Superannuation Act.

Constitution of Authority.

8. (1) There shall be a Defence Force Retirement and Death Benefits Authority, which, subject to the directions of the Minister, shall have the general administration of this Act.

(2) The Authority shall consist of—

(a) the President of the Superannuation Board, who shall be the Chairman of the Authority; and

(b) four other members, who shall be appointed in accordance with this section.

(3) The members referred to in paragraph (2) (b) shall be appointed by the Governor-General and—

(a) one shall be appointed on the nomination of the Minister and shall be the Deputy Chairman of the Authority;

(b) one shall be appointed on the nomination of the Naval Board;

(c) one shall be appointed on the nomination of the Military Board; and

(d) one shall be appointed on the nomination of the Air Board.

(4) A person who has attained the age of sixty-five years shall not be appointed or re-appointed as a member referred to in paragraph (2) (b), and a person shall not be so appointed or re-appointed for a period that extends beyond the date on which he will attain the age of sixty-five years.

(5) Subject to this Act, each member referred to in paragraph (2) (b) holds office until the expiration of such period, not exceeding two years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(6) An act or decision of the Authority is not invalid by reason only of a vacancy or vacancies in the membership of the Authority.

9. (1) Subject to this section, the Governor-General may appoint a person to be the deputy of a member referred to in paragraph 8 (2) (b). **Deputies of members.**

(2) The deputy of the member nominated by the Minister shall be appointed on the nomination of the Minister.

(3) The deputy of the member nominated by the Naval Board shall be appointed on the nomination of the Naval Board.

(4) The deputy of the member nominated by the Military Board shall be appointed on the nomination of the Military Board.

(5) The deputy of the member nominated by the Air Board shall be appointed on the nomination of the Air Board.

(6) A person who has attained the age of sixty-five years shall not be appointed or re-appointed as a deputy member, and a person shall not be so appointed or re-appointed for a period that extends beyond the date on which he will attain the age of sixty-five years.

(7) Subject to this Act, a deputy member holds office until the expiration of such period, not exceeding two years, as is specified in the instrument of his appointment or until the member of whom he is the deputy ceases to hold office, whichever first occurs, but is eligible for re-appointment.

(8) In the absence of a member other than the Chairman from a meeting of the Authority, the deputy of the member may attend the meeting and, while so attending, shall be deemed to be the member of whom he is the deputy.

10. The validity of the appointment of a member or of a deputy member appointed on the nomination of the Minister, the Naval Board, the Military Board or the Air Board, as the case may be, shall not be called in question by reason only of a defect or irregularity in connexion with the nomination. **Irregularities in nomination of members and deputy members.**

11. Where, in the opinion of the Governor-General, it is desirable or necessary to terminate the appointment of a member or of a deputy member, he may terminate the appointment accordingly. **Termination of appointments.**

12. A member (other than the Chairman), or a deputy member, may resign his office by writing under his hand addressed to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General. **Resignation of members.**

13. A member, or a deputy member, shall be paid such allowances, if any, as are payable to him under the regulations. **Allowances.**

14. (1) The Authority shall hold such meetings as are necessary for the performance of its functions. **Meetings of Authority.**

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

(3) At a meeting of the Authority, a quorum is constituted by the Chairman and not less than two other members, or by the Deputy Chairman and not less than two other members.

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

(5) In the absence of the Chairman from a meeting of the Authority, the Deputy Chairman shall preside at the meeting.

(6) Questions arising at a meeting of the Authority shall be determined by a majority of the votes of the members present.

(7) The member presiding at a meeting of the Authority has a deliberative vote, and, in the event of an equality of votes, also has a casting vote.

**Delegation
by
Authority.**

15. (1) The Authority may, by resolution, delegate to a member or to a deputy member, or to any other person, either generally or otherwise as provided in the instrument of delegation, all or any of its powers or functions under this Act, except this power of delegation.

(2) The power or function so delegated shall be exercised and performed by the delegate in accordance with the instrument of delegation.

(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 Authority.

(4) A delegation under this section continues in force notwithstanding a change in the membership of the Authority.

Reports.

16. (1) The Authority shall, at such time and in respect of such periods as the Minister directs, furnish to the Minister reports dealing with the general administration and working of this Act and (except in respect of any period commencing before 1st October, 1972) of the previous Act (other than Part III of that Act).

(2) The Minister shall, as soon as practicable after receiving a report, cause a copy of the report to be laid before each House of the Parliament.

PART III—CONTRIBUTIONS

**Contribu-
tions by
members of
scheme.**

17. (1) Subject to section 18, an eligible member of the Defence Force shall pay to the Commonwealth fortnightly contributions in accordance with this Act.

(2) Subject to sub-section (3), the first fortnightly contribution is payable by an eligible member of the Defence Force—

(a) in the case of a person who is such a member on the date of commencement of the scheme—on the first pay-day next following that date; or

(b) in any other case—on the day on which the person becomes an eligible member of the Defence Force or, if that day is not a pay-day, on the first pay-day next following that day.

(3) Where an eligible member of the Defence Force dies before the day on which, but for his death, his first fortnightly contribution would have been payable, that contribution shall be deemed to have become payable by him on the day on which he became an eligible member of the Defence Force.

18. An eligible member of the Defence Force is not required to pay any fortnightly contribution that, but for this section, would become payable on a day included in a period that is a period of non-effective service in relation to him.

Contributions not to be paid during periods of non-effective service.

19. (1) The amount of each fortnightly contribution to be paid by a contributing member is an amount equal to five and one-half per centum of the fortnightly rate of pay applicable to the member on the day on which the contribution is payable.

Amount of fortnightly contributions.

(2) Where the amount of a fortnightly contribution payable by a contributing member includes a fraction of a cent—

- (a) if the fraction is less than one-half of a cent—the contribution shall be deemed to be reduced by the amount of the fraction; or
- (b) if the fraction is one-half of a cent or more—the contribution shall be deemed to be increased by treating the fraction as one cent.

20. (1) Where the annual rate of pay applicable to a contributing member changes and, as a result of the change, the amount of each fortnightly contribution to be paid by him would, if he did not make an election under this sub-section, become less, he may, by notice in writing given to the Authority within a period of ninety days after the change, or within such further period as the Authority, in special circumstances, allows, elect to have that change in his annual rate of pay disregarded, and, if he so elects, the change shall be disregarded for the purposes of this Act.

Amount of contributions on reduction in pay.

(2) Where a contributing member who is entitled to make an election under sub-section (1) does not make that election, he is entitled to a refund, payable by the Commonwealth, of so much of the contributions paid by him under section 17 as is equal to the difference between the amount of the contributions payable by him under that section before the change referred to in sub-section (1) and the amount of the contributions that would have been so payable by him if the amount of each fortnightly contribution so payable by him had not exceeded the amount that is the amount of each fortnightly contribution payable by him after the change, and the amount of any contributions in respect of which he becomes so entitled to a refund shall, for the purposes of this Act, be deemed not to have been paid by him.

Purchase of previous non-contributory service.

21. (1) Subject to this section, where, after 30th September, 1972, an eligible member of the Defence Force has, before becoming an eligible member of the Defence Force—

- (a) served as a member of the Defence Force on continuous full-time service for a period of not less than one year, being a period during which he was not an eligible member of the Defence Force; or
- (b) served as a member of the Defence Force on continuous full-time service for a period of less than one year, being a period during which he was not an eligible member of the Defence Force but which is continuous with a subsequent period during which he is such a member,

he may, by notice in writing given to the Authority within a period of ninety days after the date on which he became an eligible member of the Defence Force, or within such further period as the Authority, in special circumstances allows, elect to have the period during which he served as a member of the Defence Force but during which he was not an eligible member of the Defence Force, or such part of that period as he specifies in the election, taken into account as a period of effective service in relation to him under this Act.

(2) An eligible member of the Defence Force is not entitled to make an election under sub-section (1) in respect of any period which, if he had been a contributing member during the period, would have been a period of non-effective service in relation to him.

(3) Where, under sub-section (1), an eligible member of the Defence Force has elected to have a period of service taken into account as a period of effective service in relation to him under this Act, that period shall be deemed to be a period of effective service in relation to him for the purposes of this Act and he shall pay an additional contribution to the Commonwealth under this section, which shall be—

- (a) if that period is continuous with a period of subsequent service during which he was an eligible member of the Defence Force—
an amount equal to the sum of the contributions that he would have been liable to pay during that period if he had been a contributing member during that period; and
- (b) in any other case—an amount equal to five and one-half per centum of the amount of pay that would have been payable to him in respect of the period to which the election relates if, at all times during that period, his rate of pay had been the annual rate of pay applicable to him under this Act at the time he became an eligible member of the Defence Force.

Deductions of contributions from pay.

22. Contributions payable under this Part by a member of the scheme may be deducted from his pay.

PART IV—RETIREMENT BENEFITS

23. (1) Where a contributing member retires and is not entitled to invalidity benefit and— Entitlement to retirement pay.

(a) on his retirement—

(i) his total period of effective service is not less than twenty years; or

(ii) his total period of effective service is not less than fifteen years and he has attained the retiring age for the rank held by him immediately before his retirement; or

(b) he had previously become entitled to retirement pay, invalidity pay or pension under the previous legislation that was cancelled under section 62 upon his becoming an eligible member of the Defence Force,

he is entitled, on his retirement, to retirement pay at the rate applicable to him in accordance with this section.

(2) Subject to sub-section (3) and to sections 25 and 75, the rate at which retirement pay is payable to a recipient member is an amount per annum that is equal to such percentage of the annual rate of pay applicable to him immediately before his retirement as, having regard to the number of complete years included in his total period of effective service, is ascertained under Schedule 1.

(3) Where—

(a) the total period of effective service of a member of the scheme who is an officer is not less than twenty years; and

(b) he is retired at his own request, or on disciplinary grounds, before attaining the age that, having regard to his rank immediately before his retirement, is his notional retiring age as ascertained under Schedule 2,

the rate at which retirement pay is payable to him is the amount per annum that, but for this sub-section, would be payable under sub-section (2) reduced by three per centum of that amount for each year included in the period equal to the difference between the age of the officer on his birthday last preceding his retirement and his notional retiring age as ascertained under Schedule 2.

(4) For the purposes of sub-section (3), an officer shall be deemed to have been retired at his own request or to have been retired on disciplinary grounds if the Naval Board, the Military Board or the Air Board, as the case requires, states in writing that he was so retired.

(5) Notwithstanding anything in this section, the rate at which retirement pay is payable to a recipient member who is entitled to retirement pay by virtue only of paragraph (1) (b) shall not be less than the rate at which the cancelled retirement pay, the cancelled invalidity pay or the cancelled pension was payable to him immediately before he became an eligible member of the Defence Force.

Retirement
pay commu-
tation.

24. (1) A recipient member may, by notice in writing given to the Authority, within a period of one year after becoming entitled to retirement pay, or within such further period as the Authority, in special circumstances, allows, elect to commute a portion of his retirement pay in accordance with this section.

(2) An election under sub-section (1) shall specify the amount (not being an amount that, or an amount that, together with any amount or amounts specified in any previous election or elections by the member under this section, exceeds four times the amount per annum of the retirement pay to which the recipient member was entitled on retirement) that is to be payable to him, by virtue of the commutation.

(3) Where a recipient member makes an election under this section—

- (a) there shall be paid to him by the Commonwealth an amount equal to the amount specified in the election as the amount that is to be payable to him by virtue of the commutation; and
- (b) the amount per annum of the retirement pay payable to him, on and after the day on which the election takes effect, is the amount per annum that, but for this paragraph, would be payable reduced by an amount calculated by dividing the amount referred to in paragraph (a) by the expectation of life factor that, having regard to the age and sex of the person on the day on which the election takes effect, is applicable to him under Schedule 3.

(4) For the purposes of this section, an election shall be deemed to have been made, and shall take effect, on the day on which the notice of election is received by the Authority.

Rate of
retirement
pay
applicable
to certain
existing con-
tributors.

25. (1) In this section—

“new pension percentage of pay”, in relation to a person to whom this section applies, means the annual rate of his retirement pay (expressed as a percentage of the rate that was his annual rate of pay for the purposes of this Act immediately before his retirement) that is, or, but for an election under this section, would be, payable to him under this Act on his retirement;

“previous pension percentage of pay”, in relation to a person to whom this section applies, means the annual rate of pension (expressed as a percentage of the rate that was his annual rate of pay, for the purposes of the previous Act, on 30th September, 1972) that would have been payable to him under the previous legislation if he had retired on 30th September, 1972, otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties, and—

- (a) being an existing contributor referred to in sub-paragraph (2) (d) (i)—he had, on 30th September, 1972, attained the retiring age for the rank held by him on that date and

completed a number of years of service for pension equal to the number of years of service for pension completed by him on his retirement; or

- (b) being a person referred to in sub-paragraph (2) (d) (ii)—he had, on 30th September, 1972, reached the age that was his age on the date of his retirement;

“retiring age for the rank held” means the retiring age for the rank held as defined by sub-section 4 (1) of the *Defence Forces Retirement Benefits Act 1948–1971*;

“service for pension” means service for pension as defined by sub-section 4 (1) of the *Defence Forces Retirement Benefits Act 1948–1971*.

(2) This section applies to a person who—

- (a) is an existing contributor;
- (b) retires and, on his retirement, is entitled to retirement pay;
- (c) was, on 30th September, 1972, and, immediately before his retirement, an officer; and
- (d) is a person—
 - (i) who, on his retirement, had attained the retiring age for the rank held by him on 30th September, 1972, and had completed not less than fifteen years’ service for pension; or
 - (ii) who, on his retirement, had not attained the retiring age for the rank held by him on 30th September, 1972, but in respect of whom the Authority is satisfied that, but for the enactment of this Act and the *Defence Forces Retirement Benefits Act 1973*, paragraph 39 (2) (b) or (c) of the previous Act would, on his retirement, have applied.

(3) Where the previous pension percentage of pay applicable to a person to whom this section applies is greater than the new pension percentage of pay applicable to him, he may, by notice in writing given to the Authority within a period of ninety days after the date of his retirement, or within such further period as the Authority, in special circumstances, allows, elect that the rate at which retirement pay shall be payable to him shall be an amount per annum that is such percentage of his annual rate of pay for the purposes of this Act immediately before his retirement as is the same as the previous pension percentage of pay applicable to him, and, subject to sub-section (4), the election has effect accordingly.

(4) Where the Authority so determines, an election under sub-section (3) is of no effect unless the person making the election pays to the Commonwealth a contribution under this section of such amount as the Authority determines as being appropriate in the circumstances or arrangements satisfactory to the Authority are made for the payment of that contribution to the Commonwealth.

PART V—INVALIDITY BENEFITS

Invalidity benefit.

26. Subject to sections 27, 28 and 29, where a contributing member is retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he is entitled, on his retirement, to invalidity benefit in accordance with this Part.

Incapacity due to wilful action.

27. Where—

- (a) a contributing member is retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and
- (b) the invalidity or incapacity is, in the opinion of the Authority, due to wilful action on his part for the purpose of obtaining invalidity benefit,

he is not entitled to invalidity benefit.

Pre-existing invalidity or incapacity.

28. (1) Subject to section 95, where—

- (a) a contributing member (not being a contributing member who has become an eligible member of the Defence Force by virtue of an election under section 90) is, within a period of one year after becoming a contributing member, retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and
- (b) the Authority 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 contributing member; and
 - (ii) the condition was not aggravated, or was not materially aggravated, by his service after becoming a contributing member,

he is not entitled to invalidity benefit.

(2) Where—

- (a) a member of the scheme who has retired again becomes an eligible member of the Defence Force otherwise than without a break in the continuity of his service;
- (b) he is not a person who, on again becoming an eligible member of the Defence Force, was entitled to, and made, an election under section 51; and
- (c) after again becoming an eligible member of the Defence Force, he is retired on the ground of invalidity or of physical or mental incapacity to perform his duties,

he shall, for the purposes of sub-section (1), be treated as if he had first become a contributing member at the time when he again became an eligible member of the Defence Force.

29. Where—

- (a) a contributing member has been retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and
- (b) the Authority is satisfied that the invalidity or incapacity was caused, or was substantially contributed to, by an occurrence that happened at a time when he was absent without leave and had been so absent for a period exceeding sixty consecutive days,

Invalidity or incapacity arising during absence without leave exceeding sixty days.

he is not entitled to invalidity benefit.

30. Where a member of the scheme, not being a member of the scheme to whom section 36 applies, is, or is about to become, entitled to invalidity benefit, the Authority shall determine his percentage of incapacity in relation to civil employment and shall classify him according to the percentage of incapacity as follows:—

Classification of incapacity.

<i>Percentage of Incapacity</i>	<i>Class</i>
Sixty per centum or more	A
Thirty per centum or more but less than sixty per centum	B
Less than thirty per centum	C

31. (1) A member of the scheme who is entitled to invalidity benefit and is classified as Class A or Class B under section 30 is entitled to invalidity pay at the rate applicable to him in accordance with this section.

Class A and Class B invalidity pay.

(2) Subject to sub-section (3), the rate at which invalidity pay is payable to a member of the scheme under this section is such amount per annum as is equal to, in the case of a recipient member classified as Class A under section 30, seventy-six and one-half per centum, and, in the case of a recipient member classified as Class B, thirty-eight and one-quarter per centum, of the annual rate of pay applicable to him immediately before his retirement.

(3) Subject to section 33, where but for this sub-section, the rate of invalidity pay payable to a member of the scheme under this section at any time would be less than the rate at which retirement pay would have been payable to him at that time if, at the time when he was retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he had retired on other grounds, the rate of invalidity pay payable to him at that first-mentioned time is the rate at which retirement pay would have been so payable at that time.

32. (1) Subject to section 33, where a member of the scheme who is entitled to invalidity benefit and is classified as Class C under section 30 would, if at the time when he was retired on the ground of invalidity or

Class C invalidity benefit.

of physical or mental incapacity to perform his duties, he had retired on other grounds, have been entitled to retirement pay, he is entitled to invalidity pay at the rate at which retirement pay would have been so payable to him.

(2) Where sub-section (1) does not apply to a member of the scheme who is entitled to invalidity benefit and is classified as Class C under section 30, he is entitled to—

- (a) a refund of his contributions; and
- (b) a lump sum payment of an amount equal to one-half of the amount of the refund.

Rate of
invalidity
pay
applicable to
certain
existing
contributors.

33. (1) In this section—

“ new pension percentage of pay ”—

- (a) in relation to a person to whom this section applies who, on his retirement, is classified as Class B or Class C under section 30—means the annual rate of his invalidity pay (expressed as a percentage of the rate that was his annual rate of pay, for the purposes of this Act, immediately before his retirement) that is, or, but for an election under this section, would be, payable to him under this Act on his retirement; or
- (b) in relation to a person to whom this section applies who, on his retirement, is classified as Class A under section 30 but is subsequently reclassified as Class B—means the rate that would have been the annual rate of his invalidity pay (expressed as a percentage of the rate that was his annual rate of pay, for the purposes of this Act, immediately before his retirement) that would have been payable to him under this Act on his retirement if he had been classified as Class B on his retirement;

“ previous pension percentage of pay ”, in relation to a person to whom this section applies, means the annual rate of pension (expressed as a percentage of the rate that was his annual rate of pay, for the purpose of the previous Act, on 30th September, 1972) that would have been payable to him under the previous legislation if he had retired on 30th September, 1972, otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties, and had, on 30th September, 1972, attained the retiring age for the rank held by him on that date and completed a number of years of service for pension equal to the number of years of service for pension completed by him on his retirement;

“ retiring age for the rank held ” means the retiring age for the rank held as defined by sub-section 4 (1) of the *Defence Forces Retirement Benefits Act 1948–1971*;

“service for pension” means service for pension as defined by sub-section 4 (1) of the *Defence Forces Retirement Benefits Act 1948–1971*.

(2) This section applies to a person who—

(a) is an existing contributor;

(b) is retired and—

(i) on his retirement, is classified as Class B or Class C under section 30 and is entitled to invalidity pay; or

(ii) on his retirement, is classified as Class A but is subsequently reclassified as Class B;

(c) was, on 30th September, 1972, and, immediately before his retirement, an officer; and

(d) on his retirement, had attained the retiring age for the rank held by him on 30th September, 1972, and had completed not less than fifteen years’ service for pension.

(3) Where the previous pension percentage of pay applicable to a person to whom this section applies, being a person who on his retirement, is classified as Class B or Class C under section 30, is greater than the new pension percentage of pay applicable to him, he may, by notice in writing given to the Authority within a period of ninety days after the date of his retirement, or within such further period as the Authority, in special circumstances, allows, elect that the rate at which invalidity pay shall be payable to him shall be an amount per annum that is such percentage of his annual rate of pay for the purposes of this Act immediately before his retirement as is the same as the previous pension percentage of pay applicable to him, and, subject to sub-section (5), the election has effect accordingly.

(4) Where the previous pension percentage of pay applicable to a person to whom this section applies, being a person who, on his retirement is classified as Class A under section 30 but is subsequently reclassified as Class B, is greater than the new pension percentage of pay applicable to him, he may, by notice in writing given to the Authority within a period of ninety days after the date from which the re-classification has effect, or within such further period as the Authority, in special circumstances, allows, elect that the rate at which invalidity pay shall be payable to him shall be an amount per annum that is such percentage of his annual rate of pay for the purposes of this Act immediately before his retirement as is the same as the previous pension percentage of pay applicable to him, and, subject to sub-section (5), the election has effect accordingly.

(5) Where the Authority so determines, an election under sub-section (3) or (4) is of no effect unless the person making the election pays to the Commonwealth a contribution under this section of such amount as the Authority determines as being appropriate in the circumstances or arrangements satisfactory to the Authority are made for the payment of that contribution to the Commonwealth.

Re-classification of percentage of incapacity.

34. (1) The Authority may, from time to time, if it is satisfied that the percentage of incapacity in relation to civil employment of a recipient member in receipt of invalidity pay is such that the classification of the member should be altered, reclassify him accordingly as if he were being classified under section 30.

(2) Where a recipient member is reclassified under this section, the Authority shall specify the date from which the reclassification has effect, and, on and after that date, the recipient member shall, for the purposes of this Part, be deemed to be classified under section 30 accordingly.

(3) Where the Authority reclassifies a recipient member under this section, the date specified by the Authority as the date from which the reclassification has effect shall not be a date earlier than the date on which the Authority reclassifies the member unless—

- (a) the member is reclassified as Class A or, having been classified as Class C, is reclassified as Class B; and
- (b) the Authority is satisfied that special circumstances exist that justify an earlier date being so specified.

(4) If, upon the reclassification of a recipient member as Class C, he would, but for this sub-section, be entitled to benefit in accordance with sub-section 32 (2), he is entitled to that benefit only to the extent that the amount of that benefit exceeds the sum of the payments of invalidity pay received by him.

Power of Authority to require persons to be medically examined, &c.

35. (1) The Authority may, by notice in writing given to a recipient member in receipt of invalidity pay require him—

- (a) to submit himself for medical examination by a legally qualified medical practitioner at a time and place specified in the notice; or
- (b) to furnish in writing to the Authority, within such period as is specified in the notice, such information as is required by the notice with respect to any employment (whether as an employee or on his own account) in which he has been engaged during such period as is specified in the notice.

(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 Authority.

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

(4) Where the Authority suspends a person's invalidity pay under this section by virtue of the person having failed to comply with a notice requiring him to submit himself for medical examination, his invalidity

pay is not payable in respect of the period that commenced on the day on which he was required by the notice to submit himself for examination and ends on the day immediately preceding the day on which he submits himself for medical examination at a time and place approved by the Authority.

(5) Where the Authority suspends a person's invalidity pay under this section by virtue of the person having failed to comply with a notice requiring him to furnish information to the Authority, his invalidity pay is not payable in respect of the period that commenced upon the expiration of the period within which he was required by the notice to furnish the information and ends on the day immediately preceding the day on which he furnishes the information to the Authority.

(6) Where a person whose invalidity pay has been suspended under this section dies before the invalidity pay again becomes payable, he shall, for the purposes of sections 39, 42, 43 and 47, be deemed to have been entitled to invalidity pay immediately before his death and, for the purposes of sections 39, 42 and 43, the invalidity pay shall be deemed to have been payable at the rate at which it would have been payable to him if it had not been suspended.

36. (1) This section applies to a member of the scheme—

- (a) who becomes entitled to invalidity benefit; and
- (b) who, at the time he becomes so entitled—

- (i) is an employee for the purposes of the Superannuation Act whose liability to make contributions to the Superannuation Fund is deferred by virtue of section 35A of the Superannuation Act; or
- (ii) is a person whose entitlement to a pension under that Act is suspended by force of sub-section 48C (1) of that Act.

Invalidity benefit payable to certain contributors under Superannuation Act.

(2) The invalidity benefit to which a member of the scheme to whom this section applies is entitled is benefit under sub-section 32 (2) as if he were a member of the scheme classified as Class C under section 30.

37. Where a contributing member has been retired otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties but, after his retirement, the Naval Board, the Military Board or the Air Board, as the case requires, informs the Authority that, at the time the member was retired, grounds existed on which he could have been retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he may, for the purposes of this Act, be treated as if he had been retired on that ground.

Service Board may inform Authority of grounds of retirement.

PART VI—BENEFITS ON DEATH OF MEMBER OF SCHEME

Division 1—Widows' Pensions

Widow's
pension on
death of
contributing
member.

38. Where a member of the scheme who is a contributing member dies before retirement and is survived by a widow, the widow is entitled to a pension at a rate equal to five-eighths of the rate at which invalidity pay would have been payable to the deceased member if, on the date of his death, he had become entitled to invalidity benefit and had been classified as Class A under section 30.

Widow's
pension on
death of
recipient
member.

39. Where a member of the scheme who is a recipient member dies and is survived by a widow, then, subject to sections 47 and 75, the widow is entitled to a pension at a rate equal to five-eighths of the rate at which retirement pay or invalidity pay was payable to the deceased member immediately before his death or, if the member had commuted a portion of his retirement pay under section 24, at a rate equal to five-eighths of the rate at which retirement pay would have been payable to the member immediately before his death if he had not so commuted a portion of his retirement pay.

Marriage
of widow
after death
of member.

40. (1) Subject to sub-section (2), where the widow of a deceased member of the scheme marries after his death, her entitlement to widow's pension ceases upon the marriage.

(2) Where—

- (a) a widow whose entitlement to widow's pension has ceased by force of sub-section (1); and
- (b) the Authority is, at any time after her entitlement so ceased, satisfied that the widow is in necessitous circumstances,

the Authority may direct that her entitlement to widow's pension shall be restored with effect from such date as the Authority specifies and, upon such a direction being given, the widow again becomes entitled to widow's pension from that date at the rate at which widow's pension would have been payable to her on that date if her entitlement had not ceased, and continues to be so entitled until the Authority otherwise directs.

(3) The date specified by the Authority under sub-section (2) in relation to the restoring of a widow's pension shall not, unless the Authority is satisfied that special circumstances exist that justify an earlier date being so specified, be a date earlier than the date of the direction.

(4) For the purposes of this section, the widow of a deceased member of the scheme shall be deemed to have married after his death if, after his death, she commences to live with another person as the wife of that person on a permanent and *bona fide* domestic basis, although not legally married to him, and is wholly or partly dependent on that person.

41. Where, upon the death of a member of the scheme, he is survived by a person who is his widow but is not a dependent female and also by a person who is his widow by reason of being a dependent female, then, in the application of section 38 or 39 to the widow who is a dependent female, any reference in those sections to the fraction of five-eighths shall be read as a reference to the fraction of three-eighths.

Rate of pension payable to dependent female on death of member of scheme leaving both wife and dependent female.

Division 2—Children's Pensions

42. (1) Pension is payable to an eligible child, not being an eligible orphan, in accordance with this section while he is an eligible child.

Eligible children other than orphans.

(2) Pension under this section is payable to an eligible child, being the child of a contributing member who died before retirement, as follows, pension at the rate of Three hundred and twelve dollars per annum and additional pension at a rate equal to one-sixth of five-eighths of the rate at which invalidity pay would have been payable to the member if, on the date of his death, he had become entitled to invalidity benefit and had been classified as Class A under section 30.

(3) Subject to sections 47 and 75, pension under this section is payable to an eligible child, being the child of a member of the scheme who was a recipient member at the time of his death, as follows, pension at the rate of Three hundred and twelve dollars per annum and additional pension at a rate equal to one-sixth of five-eighths of the rate at which retirement pay or invalidity pay was payable to the member immediately before his death, or, if the member had commuted a portion of his retirement pay under section 24, at a rate equal to one-sixth of five-eighths of the rate at which retirement pay would have been payable to the member immediately before his death if he had not so commuted a portion of his retirement pay.

43. (1) Pension is payable to an eligible orphan in accordance with this section while he is an eligible orphan.

Eligible orphans.

(2) Pension under this section is payable to an eligible orphan, being the child of a contributing member who died before retirement, as follows, pension at the rate of Seven hundred and two dollars per annum and additional pension at a rate equal to one-eighth of five-eighths of the rate at which invalidity pay would have been payable to the member if, on the date of his death, he had become entitled to invalidity benefit and had been classified as Class A under section 30.

(3) Subject to sections 47 and 75, pension under this section is payable to an eligible orphan, being the child of a member of the scheme who was a recipient member at the time of his death, as follows, pension at the rate of Seven hundred and two dollars per annum and additional pension at a rate equal to one-eighth of five-eighths of the rate at which retirement pay or invalidity pay was payable to the member immediately before his death

or, if the member had commuted a portion of his retirement pay under section 24, at a rate equal to one-eighth of five-eighths of the rate at which retirement pay would have been payable to the member immediately before his death if he had not so commuted a portion of his retirement pay.

Division 3—Miscellaneous

Dependent widowers.

44. (1) Where a woman, being a contributing member or a recipient member, dies, leaving a widower who, in the opinion of the Authority, was wholly or substantially dependent upon her immediately before her death, the provisions of this Act apply, subject to sub-section (2), as if she had been a male member of the scheme and as if the widower had been the widow of a male member of the scheme.

(2) Pension is not payable to a widower in pursuance of Division 1 of this Part in respect of any period during which, in the opinion of the Authority, the circumstances of the widower are such that, if those circumstances had existed at the time of the death of his wife, he would not have been wholly or substantially dependent upon her at that time.

Payment of benefits otherwise than to person entitled.

45. (1) Where, in the opinion of the Authority, payment of an instalment, or part of an instalment, of pension benefit, or of an amount of any other benefit, should, by reason of the person who, but for this section, would be entitled to the payment, being a child, or being a person who is insane or undergoing imprisonment or otherwise being under a disability, or for any other reason which the Authority thinks proper, be made to a person other than the person who would be so entitled to the payment, the Authority may authorize the payment to be made to the other person, and payment shall be made to the other person accordingly.

(2) A payment of an instalment of pension benefit payable to a child that, by virtue of sub-section (1), is paid to a person other than the child, shall be applied for the maintenance, education or other benefit of the child.

Superannuation Act.

46. Pension benefit is not payable under this Part in respect of a member of the scheme who dies before retirement and who, at the time of his death, was an employee for the purposes of the Superannuation Act and whose liability to make contributions to the Superannuation Fund was deferred by virtue of section 35A of that Act or was a person whose entitlement to a pension under that Act was suspended by force of sub-section 48c (1) of that Act.

Death of recipient member due to retirement disabilities.

47. Where—

- (a) a recipient member dies and, immediately before his death, he was in receipt of invalidity pay and was classified as Class B or Class C under section 30; and

- (b) the Authority is satisfied that his death was due to the disease or injury that was the cause of his retirement on the ground of invalidity or of physical or mental incapacity to perform his duties,

then, for the purposes of section 39, sub-section 42 (3) and sub-section 43 (3), the rate at which invalidity pay was payable to the member immediately before his death shall be deemed to be the rate at which invalidity pay would have been payable to him if, immediately before his death, he had been classified as Class A under section 30.

48. (1) Where a member of the scheme dies before retirement and, on his death, no pension benefit is payable under this Part, a lump sum payment of an amount equal to one and one-half times the amount of his contributions shall be paid to the personal representatives of the member or, failing them, to such persons, if any, as the Authority determines, and no other benefit under this Act is payable in respect of the member.

Lump sum payment on death of certain members.

(2) Where—

- (a) a member of the scheme who is a recipient member dies and, on his death, no pension benefit is payable under this Part; and
- (b) the aggregate amount of retirement pay or invalidity pay paid or payable to him before his death is less than an amount equal to one and one-half times the amount of his contributions,

a lump sum payment equal to the difference shall be paid to the personal representatives of the member, or failing them, to such persons, if any, as the Authority determines, and no other benefit under this Act is payable in respect of the member.

49. (1) Subject to sub-section (2) and to section 94, where—

- (a) a member of the scheme dies before retirement and, at the time of his death, he was absent without leave and had been so absent for a period that exceeds sixty consecutive days; and
- (b) retirement pay would not, if he had retired at the commencement of the period of absence without leave, have been payable to him,

Death of contributing member after sixty days absence without leave.

benefit is not payable in respect of him under any provision of this Part.

(2) The Authority may direct that sub-section (1) does not apply in relation to a deceased member of the scheme if the Authority is satisfied, within a period of six months after his death, that by reason that a person who, immediately before his death, was wholly or substantially dependent upon him is in necessitous circumstances, such a direction should be given.

PART VII—CANDIDATES AT PARLIAMENTARY ELECTIONS

Definitions.

50. In this Part, unless the contrary intention appears—

“re-instated candidate” means a person who—

- (a) ceased to be an eligible member of the Defence Force by reason of having been transferred to a Reserve, having been discharged from the Defence Force or having had his continuous full-time service terminated under the Defence (Parliamentary Candidates) Act;
- (b) again became an eligible member of the Defence Force; and
- (c) is a person referred to in sub-section 10 (2), sub-section 11 (2), sub-section 12 (2) or sub-section 15 (4) of the Defence (Parliamentary Candidates) Act;

“re-instated candidate to whom this Part applies” means a re-instated candidate who has made an election under section 51.

Election by re-instated candidate.

51. A re-instated candidate may, by notice in writing given to the Authority within a period of thirty days after again becoming an eligible member of the Defence Force or within such further period as the Authority, in special circumstances, allows, elect to be treated as an eligible member of the Defence Force in respect of the period commencing when he ceased to be such an eligible member and ending when he again became such an eligible member.

Effect of election under section 51.

52. (1) A re-instated candidate to whom this Part applies shall, in respect of the period to which the election made by him under section 51 relates, be deemed to have been an eligible member of the Defence Force and, notwithstanding sub-section 10 (2), sub-section 11 (2), sub-section 12 (2) and paragraph 15 (4) (b) of the Defence (Parliamentary Candidates) Act, shall not, for the purposes of this Act, be deemed to have been absent on leave without pay during that period.

(2) For the purpose of calculating the contributions that a re-instated candidate to whom this Part applies is required to pay in respect of the period to which the election made by him under section 51 relates, his annual rate of pay during that period shall be deemed to be the annual rate of pay that would have been applicable to him during that period if he had not ceased to be an eligible member of the Defence Force.

Refund of benefits by re-instated candidates to whom this Part applies.

53. (1) Where a person who is a re-instated candidate to whom this Part applies became entitled to retirement pay upon his ceasing to be an eligible member of the Defence Force, he shall pay to the Commonwealth an amount equal to the aggregate of the payments of retirement pay received by him.

(2) Where a person who is a re-instated candidate to whom this Part applies ceases to be an eligible member of the Defence Force and, upon his so ceasing, a refund of his contributions was paid to him, he shall pay to the Commonwealth an amount equal to that refund.

(3) An election made under section 51 is of no effect unless within a period of seven days after the date on which the election was made, or within such further period as the Authority, in special circumstances, allows, any amount required to be paid to the Commonwealth under sub-section (1) or (2) is so paid or arrangements satisfactory to the Authority are made for the payment to the Commonwealth of that amount.

(4) Where—

- (a) an amount is payable by a person to the Commonwealth under this section;
- (b) the person again ceases to be an eligible member of the Defence Force; and
- (c) at the time he so ceases, the amount, or a part of the amount, has not been paid to the Commonwealth,

there shall be deducted from any payment of benefit payable to or in respect of the person under this Act an amount equal to that amount, or that part of that amount, as the case may be, and, to the extent that that amount or that part of that amount is not so deducted, it may be recovered by the Commonwealth in a court of competent jurisdiction as a debt due and payable to the Commonwealth by the person.

54. (1) For the purposes of this Act, sub-section 10 (2), sub-section 11 (2), sub-section 12 (2) and paragraph 15 (4) (b) of the Defence (Parliamentary Candidates) Act do not apply to or in relation to a re-instated candidate who is not, and does not become, a re-instated candidate to whom this Part applies.

Re-instated candidates to whom this Part does not apply.

(2) A re-instated candidate referred to in sub-section (1) shall, for the purposes of the definition of “ eligible member of the Defence Force ” in sub-section 3 (1), be deemed to be serving on continuous full-time service under an appointment or engagement for a period of not less than one year.

55. (1) In this section, unless the contrary intention appears—

- “ person to whom this section applies ” means a person who ceased to be an eligible member of the Defence Force by reason of having been transferred to a Reserve, having been discharged from the Defence Force or having had his continuous full-time service terminated under the Defence (Parliamentary Candidates) Act;
- “ the declared date ”, in relation to an election, means the date that for the purposes of the Defence (Parliamentary Candidates) Act is the declared date in relation to the election;
- “ the election ”, in relation to a person to whom this section applies, means the election in relation to which he made the application in pursuance of which he was transferred to a Reserve, discharged from the Defence Force or had his continuous full-time service terminated under the Defence (Parliamentary Candidates) Act.

Rights of contributing members who resign to contest elections and are not re-instated.

- (2) Where a person to whom this section applies—
- (a) dies on or before the date that is the declared date in relation to the election; or
 - (b) was a candidate at the election but failed to be elected and dies within a period of ninety days after the date that is the declared date in relation to the election,

then, for the purposes of this Act, he shall be deemed to have continued to have been an eligible member of the Defence Force during the period that commenced upon his ceasing to be an eligible member of the Defence Force and ended on the day on which he dies and his annual rate of pay on the day on which he dies shall be deemed to be the annual rate of pay that would have been applicable to him on that day if he had not ceased to be an eligible member of the Defence Force.

- (3) Where the Authority is satisfied—
- (a) that, if a person to whom this section applies had not ceased to be an eligible member of the Defence Force, he would, at a time (in this sub-section referred to as “ the relevant time ”) within—
 - (i) the period that commenced upon his ceasing to be an eligible member of the Defence Force and ended on the date that is the declared date in relation to the election; or
 - (ii) the period of ninety days after the date that is the declared date in relation to the election,have been retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and
 - (b) that he was prevented from being a candidate at the election by reason of the invalidity or incapacity or was a candidate at the election but failed to be elected,

then, for the purposes of this Act, he shall be deemed to have continued to have been an eligible member of the Defence Force during the period that commenced upon his ceasing to be an eligible member of the Defence Force and ended at the relevant time and his annual rate of pay at the relevant time shall be deemed to be the annual rate of pay that would have been applicable to him at the relevant time if he had not ceased to be an eligible member of the Defence Force, and this Act shall apply to and in relation to him as if he had been retired at the relevant time on the ground referred to in paragraph (a).

(4) Sub-sections (2) and (3) do not apply in relation to a person to whom this section applies who dies, or would have been retired, within the period of ninety days after the date that is the declared date in relation to the election if the Authority is of the opinion that, if he had not died or had not suffered the invalidity or incapacity, as the case may be, he would not have been re-instated in the part of the Defence Force in which he was serving immediately before he ceased to be an eligible member of the Defence Force.

(5) This section does not apply in relation to a person unless, within the period of ninety days after the date that is the declared date in relation to the election or within such further period as the Authority allows—

- (a) there is paid to the Commonwealth an amount equal to the amount, or to the sum of the amounts, of any benefit paid to or in respect of the person by reason of his having ceased to be an eligible member of the Defence Force; and
- (b) there is paid to the Commonwealth the contributions that the person would have been required to pay after he ceased to be an eligible member of the Defence Force if he had not so ceased and his annual rate of pay during that period had been the annual rate of pay that would have been applicable to him during that period if he had not ceased to be an eligible member of the Defence Force.

PART VIII—GENERAL PROVISIONS APPLICABLE TO CONTRIBUTIONS AND BENEFITS

56. (1) Where a contributing member retires and, on his retirement, benefit is not payable to him under any other provision of this Act, he is entitled to a refund of the amount of the contributions paid by him. Refund of contributions.

(2) Where a contributing member dies before retirement and, by virtue of section 49, benefit is not payable in respect of him under Part VI, a refund of the amount of the contributions paid by him shall be paid to his personal representatives or, failing them, to such persons, if any, as the Authority determines.

57. (1) Where an officer who is a contributing member—

- (a) is serving under a short service commission;
- (b) is entitled on the termination of that commission to be paid a gratuity; and
- (c) is to be appointed to a permanent commission or to a further short service commission,

he may elect, by notice in writing given to the Authority before the date of his appointment to the permanent commission or to the further short service commission, or within such period after that date as the Authority, in special circumstances, allows, not to be paid the gratuity and, if he so elects, the gratuity shall not be so paid.

Election by officer on short service commission who continues to serve in respect of period of service under short service commission.

(2) If an officer referred to in sub-section (1) does not make an election under that sub-section—

- (a) he is entitled to a refund, payable by the Commonwealth, of the amount of the contributions paid by him under section 17 in respect of his period of service under that short service commission; and
- (b) any period of service served by him under that short service commission that is a period of effective service in relation to him for the purposes of this Act shall be disregarded as such a period.

Certain previous periods of effective service to be disregarded.

58. Where—

- (a) a contributing member retires;
- (b) he is entitled, on his retirement, to benefit under sub-section 32 (2) or section 56 or, subsequent to his retirement, a transfer value in respect of him becomes payable under section 77; and
- (c) he again becomes an eligible member of the Defence Force, then, subject to sections 62, 63 and 64, upon his again becoming such an eligible member, any period before he so retired that was a period of effective service in relation to him shall be disregarded as such a period.

Instalments of pension benefits.

59. (1) Pension benefit shall be paid in fortnightly instalments.

(2) The amount of a fortnightly instalment of pension benefit shall be an amount ascertained by dividing the amount per annum of the pension benefit by three hundred and sixty-five and multiplying the result by fourteen.

(3) Where the amount of a fortnightly instalment of pension benefit includes a fraction of a cent—

- (a) if the fraction is less than one-half of a cent—the amount of the instalment shall be deemed to be reduced by the amount of the fraction; or
- (b) if the fraction is one-half of a cent or more—the amount of the instalment shall be deemed to be increased by treating the fraction as one cent.

(4) The amount of pension benefit payable in respect of a day is one-fourteenth of the amount of a fortnightly instalment of the pension benefit.

Prescribed basic annual rate of pay.

60. Where—

- (a) a member of the scheme who is a contributing member dies or retires; and
 - (b) the annual rate of pay applicable to him immediately before his death or retirement was an amount per annum that is less than the amount per annum that, at the time of his death or retirement, was, under the regulations, the prescribed basic annual rate of pay applicable to him for the purposes of this section,
- then, for the purposes of Parts IV, V and VI, the annual rate of pay applicable to him immediately before his death or retirement shall be deemed to be that prescribed basic annual rate of pay.

Payment of refund of contributions or of lump sum payment to Superannuation Fund in discharge of liability to that Fund.

61. Where—

- (a) the liability of a person to make contributions to the Superannuation Fund has been deferred by virtue of section 35A of the Superannuation Act;
- (b) by reason of the retirement or death of the person, the amount of the deferred contributions has become payable to the Superannuation Fund;

- (c) the whole or any part of the amount so payable has not been paid to that Fund; and
- (d) benefit has become payable to or in respect of the person under sub-section 32 (2) or section 48 or 56,

the amount of the benefit so payable shall, to the extent that it does not exceed the amount of the deferred contributions payable to the Superannuation Fund, be paid to the Superannuation Fund and, upon being so paid, the amount of the deferred contributions payable to that Fund shall, to the extent of that payment, be deemed to have been paid accordingly.

62. (1) Where a member of the scheme who is a recipient member again becomes an eligible member of the Defence Force, his retirement pay or invalidity pay, as the case may be, is, by force of this sub-section, cancelled.

Recipient member who becomes an eligible member.

(2) Where a person who is in receipt of a pension, or (by virtue of sub-section 69 (1) (a) of the previous Act) a part of a pension, under the previous legislation, or who would, but for a suspension of pension under section 53B of the previous Act, be in receipt of a pension or a part of a pension under the previous legislation, being a pension to which he became entitled by reason of his service in the Defence Force, becomes an eligible member of the Defence Force, that pension is, by force of this sub-section, cancelled.

(3) Upon the death or retirement of a person to whom sub-section (1) or (2) applies, any period that was a period of service for pension in relation to him under the previous Act and any period that, under regulations made for the purposes of this section, is to be treated as a notional period of service under the previous Act in relation to him, shall, for the purposes of this Act, be deemed to be a period of effective service in relation to him.

(4) Where a person to whom sub-section (1) applies commuted a portion of his retirement pay in accordance with section 24 of this Act or a person to whom sub-section (2) applies commuted a portion of a pension payable to him under the previous legislation in accordance with section 74 of the previous Act—

- (a) he shall, in respect of each day included in the period commencing at the time when his retirement pay or pension is cancelled under this section and ending at the time when he ceases to be an eligible member of the Defence Force, pay to the Commonwealth an amount equal to one three hundred and sixty-fifth of the amount by which the amount per annum of the rate of his retirement pay or his pension was, by virtue of the commutation, reduced; and
- (b) the period that, but for this sub-section, would be the total period of effective service applicable to him shall be reduced by such period as the Authority considers appropriate in the circumstances.

- (5) Where a person to whom sub-section (2) applies is a person—
- (a) who has made an election under section 61A or 61B of the *Defence Forces Retirement Benefits Act 1963–1968*;
 - (b) the rate of whose pension under the previous legislation was reduced under section 58 or 79A, or under an agreement entered into in pursuance of section 78 or 79, of the *Defence Forces Retirement Benefits Act 1959* or of that Act as amended, under section 41, 44, 45, 46 or 47 of the *Defence Forces Retirement Benefits Act 1962* or of that Act as amended or under section 51, 54, 55, 56 or 57 of the *Defence Forces Retirement Benefits Act 1963* or of that Act as amended;
 - (c) the rate of whose pension under the previous legislation was, by virtue of the operation of section 77 or 78 of the *Defence Forces Retirement Benefits Act 1948–1958*, less than it would otherwise have been;
 - (d) who became entitled to pension under the previous legislation on retirement after the commencement of the *Defence Forces Retirement Benefits Act 1959* and, immediately before his retirement, was not a contributor for maximum additional basic pension for the purposes of Part III of that Act;
 - (e) who became entitled to pension under the previous legislation on retirement after the commencement of the *Defence Forces Retirement Benefits Act 1962* and, immediately before his retirement, was not a contributor for maximum additional basic pension for the purposes of Part IV of that Act;
 - (f) who became entitled to pension under the previous legislation on retirement after the commencement of the *Defence Forces Retirement Benefits Act 1963* and, immediately before his retirement, was not a contributor for maximum additional basic pension for the purposes of Part IV of that Act; or
 - (g) who is a person to whom the *Defence Forces Special Retirement Benefits Act 1960* applies,

the period that, but for this sub-section, would be his total period of effective service shall be reduced, or, if paragraph (4) (b) applies in relation to him, further reduced, by such period as the Authority considers appropriate in the circumstances.

(6) For the purposes of this Act, upon the death or retirement of a person to whom sub-section (1) or (2) applies, his annual rate of pay immediately before his death or retirement shall be deemed to be whichever is the greater of the annual rate of pay applicable to him immediately before his death or retirement or the annual rate of pay that was applicable to him when he first became a recipient member or became a pensioner under the previous legislation.

- (7) In the application of sub-section (6)—
- (a) to a person to whom sub-section (1) applies who was a recipient member in receipt of retirement pay that, by virtue of an election

under section 76 of this Act, constituted a deferred benefit under Part IX of this Act; or

- (b) to a person to whom sub-section (2) applies who was in receipt of pension that, by virtue of an election under section 82z of the previous Act, constituted a deferred benefit under Part VIC of the previous Act,

he shall be deemed to have first become a recipient member, or to have become a pensioner under the previous legislation, as the case may be, at the time when, before he made the election, he had ceased to be an eligible member of the Defence Force or ceased to be a member for the purposes of the previous Act.

(8) Where, by reason of the failure of a person to whom sub-section (1) or (2) applies to notify the Authority that he has become an eligible member of the Defence Force, or for any other reason, an amount of retirement pay or invalidity pay, or of pension under the previous legislation, has been paid after it has been cancelled under this section, the amount shall be repaid to the Commonwealth.

63. (1) Where—

- (a) a member of the scheme who is a contributing member retires;
 (b) upon his retirement, he receives, or is entitled to receive, a refund of contributions under section 56;
 (c) he again becomes an eligible member of the Defence Force within a period of ninety days after his retirement; and
 (d) he elects, by notice in writing given to the Authority, within a period of ninety days after he again becomes an eligible member of the Defence Force, or within such further period as the Authority, in special circumstances, allows, to have his retirement disregarded,

Non-recipient retired member who again becomes an eligible member within ninety days.

this Act applies to and in relation to him as if he had not retired and as if he had, during the period during which he was not a member, been on leave of absence without pay.

(2) An election by a person under sub-section (1) is of no effect unless, within a period of seven days after the date on which the election was made, or, within such further period as the Authority, in special circumstances, allows, the contributions refunded to him are repaid by him to the Commonwealth or arrangements satisfactory to the Authority are made for them to be repaid to the Commonwealth.

64. (1) Where—

- (a) a member of the scheme who is a contributing member retires;
 (b) on his retirement, he receives, or is entitled to receive, a refund of contributions under section 56; and
 (c) he again becomes an eligible member of the Defence Force but does not so become an eligible member within a period of ninety days after his retirement,

Non-recipient retired member who again becomes an eligible member after ninety days.

he may, by notice in writing given to the Authority within a period of ninety days after he again becomes an eligible member, or within such

further period as the Authority, in special circumstances, allows, elect to have the whole or a specified part of any period which, before he again became an eligible member of the Defence Force, was a period of effective service taken into account as a period of qualifying service under this Act.

(2) Where a member of the scheme makes an election under sub-section (1)—

- (a) he shall pay an additional contribution to the Commonwealth under this section of an amount equal to five and one-half per centum of the amount of pay that would have been payable to him in respect of the period to which the election relates if the annual rate of pay applicable to him in respect of that period had been the annual rate of pay applicable to him at the time when he again became an eligible member of the Defence Force; and
- (b) upon his death or retirement, the period to which the election relates shall, for the purposes of this Act, be deemed to be a period of effective service in relation to him.

Application of sections 63 and 64 to benefit under sub-section 32 (2).

65. A reference in section 63 or 64 to a refund of contributions under section 56 shall be read as including a reference to benefit paid to a member of the scheme under sub-section 32 (2) to the extent that that benefit consists of a refund of contributions.

PART IX—PRESERVATION OF RIGHTS OF CERTAIN MEMBERS OF THE SCHEME

Division 1—Preliminary

Inter-pretation.

66. (1) In this Part, unless the contrary intention appears—

- “ employment ” means employment by the terms of which persons employed in that employment are required to give the whole of their time to the duties of their employment;
- “ life policy ” means a life policy as defined by sub-section 4 (1) of the *Life Insurance Act 1945* or of that Act as amended and in force from time to time;
- “ rules ”, in relation to a superannuation scheme, means the rules governing the operation of the scheme, whether contained in a law or in a trust deed or other instrument.

(2) For the purposes of this Part, the membership by a person of a House of the Parliament of the Commonwealth or of a State shall be treated as if it were employment of the person by the Commonwealth or by that State, as the case may be.

(3) A reference in this Part to a superannuation scheme shall be read as a reference to a superannuation or retirement scheme, however established, and, unless the contrary intention appears, shall be read as including a reference to the previous benefits scheme or to the benefits scheme constituted by the provisions of this Act.

(4) For the purposes of this Part, a benefit payable to or in respect of a member under a superannuation scheme shall not be taken to have been based partly on contributions under the scheme by the employer by reason only that the benefit included interest upon contributions made under the scheme by the member.

(5) A person in respect of whom benefits are applicable under a superannuation scheme by reason of his being employed in any employment, whether or not he has made contributions under the scheme, shall be deemed to be a member of the superannuation scheme.

67. Where, in pursuance of this Part, the Authority has power to make a determination in relation to a matter, the power shall be construed as including a power, exercisable in the like manner and subject to the like conditions (if any), to vary a determination so made.

Variation of determinations by Authority.

Division 2—Contributing Members Who Have Preserved Rights from Previous Employment

68. (1) In this Division—

- (a) a reference, in relation to a contributing member, to a transfer value payable to or in respect of the member under a superannuation scheme applicable in relation to any employment in which he was employed at any time before the date on which he became an eligible member of the Defence Force is a reference to a benefit by way of a lump sum payable to or in respect of the member under that scheme upon the termination of the employment otherwise than on the ground of invalidity or of physical or mental incapacity to perform the duties of the employment, being a benefit that was based wholly upon contributions under that scheme by the employer or was based partly upon such contributions and partly upon contributions under the scheme by the member; and
- (b) a reference to the amount of a transfer value to which paragraph (a) applies does not include a reference to any part of the lump sum that was based upon contributions by the member that were of a similar nature to contributions under the Superannuation Act for reserve units of pension.

Transfer value payable in respect of previous employment.

(2) If, after a transfer value became payable to or in respect of a person under a superannuation scheme, an amount equal to the whole or

any part of that transfer value was paid to a person administering another superannuation scheme (not being the benefits scheme constituted by the provisions of this Act)—

- (a) where the whole of the transfer value was so paid—that transfer value shall be disregarded for the purposes of this Division; or
- (b) where part of the transfer value was so paid—the amount of that transfer value shall be deemed, for the purposes of this Division, to be reduced by the amount so paid.

(3) Subject to sub-section (4), a transfer value shall be deemed, for the purposes of this Division, to have become payable in respect of a person under a superannuation scheme upon the termination of any employment if, upon the termination of that employment, he had the legal title to a life policy, or was entitled to have the legal title to such a policy assigned to him, being a policy the premiums for which were, while he was employed in that employment, paid in whole or in part by his employer, and, in that case, the surrender value of the policy as at the date of the termination of the employment shall be taken to be the amount of the transfer value.

(4) Where a transfer value is, by virtue of sub-section (3), to be deemed, for the purposes of this Division, to have become payable in respect of a person upon the termination of any employment by reason that, upon the termination of that employment, he had the legal title to a life policy, or was entitled to have the legal title to a life policy assigned to him, a transfer value shall not be deemed, for those purposes, to have become payable in respect of the person upon the termination of any previous employment by reason that, upon the termination of that previous employment, he had the legal title to that policy, or was entitled to have the legal title to that policy assigned to him.

**Members
who pay
transfer
values to
Common-
wealth.**

69. (1) Where a person who becomes a contributing member has, at any time before becoming a member, been in employment within or outside Australia upon the termination of which a transfer value became payable to or in respect of him on or after 25th May, 1971, under a superannuation scheme applicable in relation to that employment, and—

- (a) the member, by notice in writing given to the Authority within a period of ninety days after the date on which he becomes a contributing member, or within such further period as the Authority, in special circumstances, allows, elects to pay to the Commonwealth an amount equal to the amount of that transfer value or, if two or more transfer values became payable, the sum of the amounts of those transfer values; and
- (b) that amount is, before the expiration of that period of ninety days or that further period, as the case may be, paid to the Commonwealth,

the succeeding provisions of this section have effect.

(2) So much of the amount paid to the Commonwealth as is equal to the employee component of the transfer value, or to the sum of the employee components of the transfer values, as the case may be, shall, to the extent to which it was payable to the member upon the termination of the employment in respect of which the transfer value or any of the transfer values became payable irrespective of whether he engaged in further employment, be deemed, for the purposes of this Act, to be contributions paid to the Commonwealth by the member under section 17.

(3) The total period of effective service of a contributing member referred to in sub-section (1) of this section, or of a contributing member in respect of whom a transfer value was paid to the Board under section 82r of the previous Act, shall be deemed to be increased by such period as is determined by the Authority, having regard to such matters as are prescribed for the purposes of this section, as being appropriate.

(4) If—

- (a) under the superannuation scheme applicable in relation to any previous employment of the person, the whole or any part of the employer component of a transfer value was payable to the contributing member upon the termination of that employment irrespective of whether he engaged in further employment; and
- (b) the contributing member ceases to be an eligible member of the Defence Force and benefit is payable to him under sub-section 32 (2) or under section 48 or 56,

so much of the amount paid to the Commonwealth under sub-section (1) as is equal to the employer component of the transfer value or to that part of that employer component, as the case may be, is payable to or in respect of him.

(5) For the purposes of this section—

- (a) the employee component of a transfer value payable to or in respect of a person is the part (if any) of that transfer value that was based upon contributions made by the person; and
- (b) the employer component of a transfer value payable to or in respect of a person is the part of that transfer value that was based upon contributions by an employer or employers of the person.

Division 3—Preservation of Rights of Contributing Members Ceasing to be Eligible Members of the Defence Force

70. (1) For the purposes of this Division, the prescribed period in relation to a person who has ceased to be an eligible member of the Defence Force is— Inter-pretation.

- (a) in the case of a person other than a person in relation to whom paragraph (b) applies—the period of ninety days immediately after he ceased to be an eligible member of the Defence Force; or

- (b) in the case of a person who ceased to be an eligible member of the Defence Force by reason of his having been transferred to a Reserve or discharged from the Defence Force, or having had his continuous full-time service terminated, under the Defence (Parliamentary Candidates) Act for the purpose of enabling him to become a candidate for election as a member of a House of the Parliament of the Commonwealth or of a State and was a candidate at the election—
- (i) if he is elected—the period commencing immediately after he ceased to be an eligible member and ending on the date on which he becomes a member of that House; or
 - (ii) if he is not elected—the period of ninety days immediately after the date that is the declared date in relation to the election under the Defence (Parliamentary Candidates) Act.
- (2) For the purposes of this Division but subject to sub-section (3)—
- (a) a period in respect of which invalidity pay was payable to a person under this Act and immediately before the commencement of which he was a contributing member, or a period in respect of which a pension, being invalidity benefit, was payable to a person under the previous Act and immediately before the commencement of which he was a contributor under that Act, shall be treated as if it had been a period during which he was a contributing member or a contributor, as the case may be;
 - (b) a period in respect of which invalidity pay was payable to a person under this Act and immediately before the commencement of which he was employed in public employment, or a period in respect of which a pension, being invalidity benefit, was payable to a person under the previous Act and immediately before the commencement of which he was employed in public employment, shall be treated as if it had been a period during which he was employed in public employment; and
 - (c) a period in respect of which a pension was payable to a person under a superannuation scheme applicable in respect of any employment of the person (other than the previous benefits scheme or the benefits scheme constituted by the provisions of this Act) by reason of his invalidity or of his physical or mental incapacity to perform the duties of that employment and immediately before the commencement of which he was employed in that employment shall be treated as if it had been a period in which he was employed in that employment.
- (3) Where invalidity pay was not payable to a person under this Act during any period by reason only of section 35, or a pension, being invalidity benefit, was not payable to a person under the previous Act during any period by reason only of section 53A or section 53B of the

previous Act, that period shall be treated for the purposes of this Division as if it had been a period during which that invalidity pay or pension, as the case may be, was payable but—

- (a) if the person was, immediately before the invalidity pay or the pension, as the case may be, became payable, a contributing member for the purposes of this Act or a contributor under the previous Act—shall not, in the calculation of the period during which he was employed in eligible employment, be treated as if it had been a period of effective service in relation to him under this Act; or
- (b) if the person was, immediately before the invalidity pay or the pension, as the case may be, became payable, employed in public employment—shall not, in the calculation of the period during which he was employed in public employment, be treated as if it had been a period during which he was employed in public employment.

71. (1) For the purposes of the application of this Division in relation to a person who has ceased to be an eligible member of the Defence Force, the following periods of employment of the person are periods of eligible employment:—

- (a) a period of employment during which the person was a member of the Defence Force and which is a period of effective service in relation to him under this Act;
- (b) subject to sub-sections (2) and (3), a period of employment of the person by the Commonwealth, by the Administration of a Territory of the Commonwealth, by a body corporate established for a public purpose by a law of the Commonwealth or of a Territory of the Commonwealth or by a company that is established under the law of a State or Territory of the Commonwealth and in which the Commonwealth has a controlling interest;
- (c) subject to sub-section (4), a period of employment (whether within or outside Australia) of the person during which he was a member of a superannuation scheme under which, upon the termination of that employment—
 - (i) a lump sum that was based, or included an amount that was based, wholly upon contributions by the employer under the scheme or partly upon such contributions and partly upon contributions under the scheme by the person was paid to or in respect of the person;
 - (ii) a pension that was based, or included an amount that was based, wholly upon contributions by the employer under the scheme or partly upon such contributions and partly upon contributions under the scheme by the person became payable to the person; or
 - (iii) benefits, whether by way of a lump sum or of a pension, that were payable at a future time and were based, or

**Eligible
employment.**

included an amount or amounts based, wholly upon contributions by the employer under the scheme or partly upon such contributions and partly upon contributions under the scheme by the person became applicable in respect of the person; and

- (d) subject to sub-section (5), a period of employment of the person during which he was a contributor to a State Fund within the meaning of Part VII of the Superannuation Act or a contributor to a Public Service Superannuation Fund within the meaning of Part VIII of that Act.

(2) Paragraph (1) (b) does not apply in relation to a period of employment of a person that terminated before 25th May, 1971, unless, before the expiration of a period of ninety days after the termination of that employment, the person became employed in other employment that is eligible employment.

(3) Paragraph (1) (b) does not apply in relation to a period of employment of a person that terminated after 25th May, 1971, unless—

- (a) a lump sum that was based, or included an amount based, wholly upon contributions by his employer under a superannuation scheme applicable in relation to that employment or partly upon such contributions and partly upon contributions under the scheme by the person was paid to the Defence Forces Retirement Benefits Board in accordance with sub-section 82R (1) of the previous Act or was paid to the Commonwealth under paragraph 69 (1) (b) of this Act;
- (b) a pension that was based, or included an amount based, wholly upon contributions by his employer under a superannuation scheme applicable in relation to that employment or partly upon such contributions and partly upon contributions under the scheme by the person became payable to him;
- (c) benefits, whether by way of a lump sum or of a pension, that were payable at a future time and were based, or included an amount or amounts based, wholly upon contributions by his employer under a superannuation scheme applicable in relation to that employment or partly upon such contributions and partly upon contributions under the scheme by the person became applicable in respect of him; or
- (d) before the expiration of a period of ninety days after the termination of that employment he became employed in other employment that was eligible employment and—
 - (i) a lump sum of a kind referred to in paragraph (a) did not become payable to or in respect of him in relation to the first-mentioned employment and he was not entitled to make an election or choice, exercise an option or do any other act or thing as a result of which such a lump sum would have become so payable;

- (ii) a pension of a kind referred to in paragraph (b) did not become payable to or in respect of him in relation to the first-mentioned employment and he was not entitled to make an election or choice, exercise an option or do any other act or thing as a result of which such a pension would have become so payable; and
- (iii) benefits of a kind referred to in paragraph (c) did not become applicable in respect of him in relation to the first-mentioned employment and he was not entitled to make an election or choice, exercise an option or do any other act or thing as a result of which any such benefits would have become so applicable.

(4) Paragraph (1) (c) does not apply in relation to a period of employment of a person by reason of the operation of sub-paragraph (1) (c) (i) unless an amount equal to the lump sum referred to in that sub-paragraph, or an amount that included an amount based upon that lump sum, was paid to the Defence Forces Retirement Benefits Board in accordance with sub-section 82R (1) of the previous Act or was paid to the Commonwealth under paragraph 69 (1) (b) of this Act.

(5) Paragraph (1) (d) does not apply in relation to a period of employment of a person unless—

- (a) an amount equal to the amount refunded to the person from the Fund referred to in that paragraph was paid to the Superannuation Board in accordance with Part VII or Part VIII of the Superannuation Act; and
- (b) a period of employment during which the person was a contributor to the Superannuation Fund that immediately followed the period of the first-mentioned employment was a period of eligible employment.

(6) A reference in paragraph (1) (b), (c) or (d) to a period of employment of a person does not include a reference to a period of employment in relation to which a paragraph of sub-section (1) that precedes that paragraph applies.

72. (1) The Treasurer may, by instrument under his hand published in the *Gazette*, declare employment, whether within or outside Australia, by a person, or by persons included in a class of persons, specified in the instrument to be public employment for the purposes of this Division. **Public employment.**

(2) A declaration under sub-section (1) shall come into force on the day on which the instrument of declaration is published in the *Gazette* or, if an earlier day (not being earlier than 1st October, 1972) is specified in the instrument as the day on which the declaration is to be deemed to have come into force, shall be deemed to have come into force on that earlier day.

(3) A person shall be taken, for the purposes of this Division, to have been employed in public employment at a particular time if, and only if, the employer by whom he was employed at that time was a person, or was a person included in a class of persons, specified in a declaration by the Treasurer under this section that was, or is to be deemed to have been, in force at that time.

(4) Where any public employment in which a person is employed terminates and, within a period of ninety days after the date of the termination, he again becomes employed in public employment, he shall, for the purposes of this Division, be deemed not to have ceased, by reason of the termination, to be employed in public employment but, in ascertaining the period in which he has been employed in public employment, any period between the termination of a period in which he was employed in public employment and the commencement of a further period in which he was employed in public employment shall not be treated as itself being a period in which he was employed in public employment.

**Eligible
super-
annuation
schemes.**

73. (1) The Treasurer may, by instrument under his hand published in the *Gazette*, declare a superannuation scheme specified in the instrument to be an eligible superannuation scheme for the purposes of this Division.

(2) A declaration under sub-section (1) shall come into force on the day on which the instrument of declaration is published in the *Gazette* or, if an earlier day (not being earlier than 1st October, 1972) is specified in the instrument as the day on which the declaration is to be deemed to have come into force, shall be deemed to have come into force on that earlier day.

(3) A person shall be taken, for the purposes of this Division, to have been a member of an eligible superannuation scheme at a particular time if, and only if, he was at that time a member of a superannuation scheme in respect of which a declaration by the Treasurer under this section was, or is to be deemed to have been, in force at that time.

**Transfer
value.**

74. A reference in this Division to a transfer value payable in accordance with this Division to or in respect of a person who has ceased to be an eligible member of the Defence Force is a reference to such amount as is determined by the Authority, having regard to such matters as are prescribed for the purposes of this section, to be the value of the rights of the person under this Act as at the time immediately before he ceased to be such a member.

**Deferred
benefits.**

75. (1) The deferred benefits applicable under this Division to or in respect of a person who is a member of the scheme shall, subject to this Division, be benefits of the same nature, and payable in the same circumstances, on the same conditions and, upon his death, to the same persons (if any), as the benefits that would have been payable to or in respect of

the person under this Act if he had not retired from the Defence Force and had not made the election by virtue of which the deferred benefits became applicable to or in respect of him and—

- (a) if paragraph 78 (2) (a) applies to him—
 - (i) he had retired from the Defence Force on whichever date specified in sub-paragraph (i) or (ii) of that paragraph is applicable to him; and
 - (ii) in a case where his total period of effective service is less than twenty years—his total period of such service were twenty years;
- (b) if paragraph 78 (2) (b) applies in relation to him—he had, immediately before his death become entitled, by virtue of this sub-section, to retirement pay under section 23;
- (c) if paragraph 78 (2) (c) applies to him—he had retired from the Defence Force on whichever date specified in that paragraph is applicable to him;
- (d) if paragraph 78 (2) (d) applies to him—he had retired from the Defence Force on the date specified in that paragraph;
- (e) if paragraph 78 (2) (e) applies to him and his total period of effective service is less than fifteen years—his total period of such service were fifteen years; and
- (f) if paragraph 78 (2) (e) applies to him and he had not attained the age of sixty years before he ceased to be an eligible member of the Defence Force—he had retired from the Defence Force on the date on which he attained that age.

(2) Subject to sub-section 78 (3), no period after the actual retirement of a member of the scheme from the Defence Force shall, by virtue of the operation of sub-section (1), be treated as a period of effective service in relation to him for the purposes of this Act.

(3) Where, by virtue of the operation of sub-section (1), a person becomes entitled to retirement pay under section 23, the rate at which that retirement pay is payable to the person is, in lieu of the rate provided for in that section, an amount per annum equal to one and three-quarters per centum of the product of the number of complete years included in his total period of effective service and the amount of the annual rate of pay applicable to him immediately before his actual retirement.

(4) Where—

- (a) by virtue of sub-section (1), a person becomes entitled to retirement pay under section 23;
- (b) he is a person to whom paragraph 78 (2) (d) applies;
- (c) he was, immediately before his actual retirement, an officer; and

- (d) at the time he becomes entitled to retirement pay, he had not attained the age that, having regard to his rank immediately before his actual retirement, is his notional retiring age as ascertained under Schedule 2,

the rate at which retirement pay is payable to him is the amount per annum that, but for this sub-section, would be payable under sub-section (3) of this section, reduced by three per centum of that amount for each year included in the period equal to the difference between his age on his birthday last preceding the time when he becomes entitled to retirement pay and his notional retiring age as ascertained under Schedule 2.

(5) Where, upon the death of a person to whom paragraph 78 (2) (b) applies, a person becomes entitled, by virtue of sub-section (1) of this section, to widow's pension under section 39 or to child's pension under sub-section 42 (3) or sub-section 43 (3), then, for the purposes of section 39, sub-section 42 (3) or sub-section 43 (3), as the case may be, the person in relation to whom paragraph 78 (2) (b) applies shall be deemed to have been in receipt of retirement pay immediately before his death at such rate as would have been payable to him if he were a person to whom paragraph 78 (2) (a) applies.

(6) A reference in this section to the actual retirement of a person from the Defence Force, being a person who has made an election under section 76, shall be read as a reference to the retirement by virtue of which, upon his ceasing to be an eligible member of the Defence Force, he made the election.

Election that
Division
apply.

76. (1) Subject to this section, where, a person, being a contributing member, ceases to be an eligible member of the Defence Force and is not entitled to a pension benefit, or is not a person to whom section 36 applies, he may by notice in writing given to the Authority within a period of twenty-one days after the date on which he ceases to be such a member, elect that this Division shall apply in relation to him.

(2) The Authority may, if it is satisfied that there are special circumstances that justify it in so doing, extend the period for the making of an election under sub-section (1).

(3) If a person makes an election for the purposes of this section within a period of thirty days before he ceases to be an eligible member of the Defence Force, the election has effect as if it had been made on the day after he ceased to be a member.

(4) Subject to sub-section (5), an election under this section (except where the election is made by virtue of sub-section 128 (2)) is of no effect unless the person who made the election gives notice in writing to the Authority within a period of twenty-one days, or within such further period as the Authority, in special circumstances, allows, after the expiration of the period that is the prescribed period in relation to him—

- (a) stating whether he was employed at the expiration of that prescribed period and, if so, the name and address of his employer; and

- (b) stating whether he was at the expiration of that prescribed period a member of a superannuation scheme applicable in relation to that employment and, if so, specifying the scheme concerned.

(5) Sub-section (4) does not apply if the person who made the election dies before the expiration of the period for the giving of a notice by him under that sub-section and without having given such a notice.

(6) This section does not apply in relation to a person to whom section 35A of the Superannuation Act applied immediately before he ceased to be an eligible member of the Defence Force and who, at the time when he ceased to be such a member, had not ceased to be a contributor to the Superannuation Fund.

(7) This section does not apply in relation to a contributing member who—

- (a) ceases to be an eligible member of the Defence Force by reason of his having been retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and
- (b) is not entitled to invalidity benefit by reason of the operation of section 27 or 29.

77. (1) Subject to this Division, where—

- (a) a person makes an election under section 76; and
- (b) within the period that is the prescribed period in relation to him, he—
- (i) becomes employed in public employment; and
- (ii) becomes a member of an eligible superannuation scheme that is applicable in relation to persons employed in that employment,

Circumstances in which transfer value payable.

a transfer value in respect of the person is payable to the person administering that scheme.

(2) This section does not apply in relation to a person unless the person administering the superannuation scheme agrees to accept the transfer value and, under the rules of the scheme, the first-mentioned person will become entitled to retirement benefits under the scheme based upon the transfer value.

78. (1) Where a person makes an election under section 76 and—

- (a) he becomes employed in public employment within the period that is the prescribed period in relation to him but a transfer value is not payable in respect of him under section 77; or
- (b) he does not become employed in public employment within that period but at the time when he ceased to be an eligible member of the Defence Force he had completed twenty years' eligible employment or had attained the age of sixty years,

Circumstances in which person entitled to deferred benefits.

deferred benefits are, subject to this Division, applicable in respect of the person.

(2) Deferred benefits that are applicable in respect of a person are payable as from the day immediately following the earliest of the following dates:—

- (a) where the Authority is satisfied that the person has, by reason of invalidity or of physical or mental incapacity, become incapable (otherwise than temporarily), at a time when he was employed in public employment or after he had completed twenty years' eligible employment, of performing duties of a kind suitable to be performed by him having regard to the duties performed by him in the employment in which he was employed immediately before he ceased to be an eligible member of the Defence Force and the duties performed by him in employment (if any) in which he was employed after he ceased to be such a member—
 - (i) if, at the date that the Authority is satisfied was the date on which he became so incapable, he was not employed in public employment—that date; or
 - (ii) if, at that date, he was employed in public employment—the date on which that public employment terminates;
- (b) if, at the date of his death, he was employed in public employment or had completed twenty years' eligible employment—that date;
- (c) the date on which he attains the age that was the retiring age for the rank held by him immediately before he ceased to be an eligible member of the Defence Force or the date on which his total period of effective service amounts to fifteen years, whichever is the later;
- (d) the date on which his total period of effective service amounts to twenty years; and
- (e) the date on which he attains the age of sixty years or, if he attained that age before he ceased to be an eligible member of the Defence Force, the date on which he ceased to be such a member.

(3) For the purposes of sub-section (2), the total period of effective service of a person shall be deemed to be the aggregate of—

- (a) his total period of effective service as defined in section 3;
- (b) any period of public employment in which the person was employed after he ceased to be an eligible member of the Defence Force; and
- (c) any period occurring after the person has completed twenty years' eligible employment.

(4) For the purposes of sub-sections (2) and (3), a period of public employment in which a person became employed after he ceased to be an eligible member of the Defence Force shall be deemed to be a period of eligible employment of the person.

(5) Deferred benefits are not payable unless—

- (a) an application in writing has been made to the Authority requesting payment of the benefits; and
- (b) the applicant has furnished to the Authority any information that is necessary to enable the Authority to determine whether the benefits are payable.

(6) Subject to sub-sections (7) and (8), where a person in relation to whom paragraph (1) (a) applies and who, at the time when he ceased to be an eligible member of the Defence Force, had not completed twenty years' eligible employment ceases to be employed in public employment and the deferred benefits applicable in respect of him have not become payable under sub-section (2), then, those deferred benefits cease to be applicable in respect of him but this Act has effect in relation to him as if the election by him under section 76 had not been made.

(7) If a deferred benefit by way of a pension benefit has previously become payable to a person referred to in sub-section (6) by reason of paragraph (2) (a), any amount that, but for this sub-section, would be payable to the person by reason of sub-section (6) is payable only to the extent to which it exceeds the sum of the amounts previously paid to him.

(8) Sub-section (6) does not apply in relation to a person if the sum of the periods of eligible employment in which the person has been employed and the period of public employment in which he was employed after he ceased to be an eligible member of the Defence Force is not less than twenty years.

79. (1) Subject to sub-section 78 (6), where either of sections 77 or 78 applies in relation to a person, any benefit that, but for this Division, would be payable to or in respect of him by reason of his having ceased to be an eligible member of the Defence Force is not payable except where that benefit is payable by virtue of the operation of this Division.

Person who is entitled to rights under this Division not entitled to other retirement benefits.

(2) Where—

- (a) a payment of benefit has been made under sub-section 32 (2) or section 56 to a person who has ceased to be an eligible member of the Defence Force; and
- (b) after the payment was made, the person makes an election under section 76,

the election does not have any effect unless an amount equal to the amount of the payment is paid to the Commonwealth within seven days after the date of the election or within such further period as the Authority, in special circumstances, allows.

Certain former contributing members not entitled to benefits under this Division.

80. (1) Where a person (other than a person who, at the time when he ceased to be an eligible member of the Defence Force, had completed twenty years' eligible employment) who has made an election under section 76 is not employed in public employment at the expiration of the period that is the prescribed period in relation to him, then, unless—

- (a) the sum of the periods of eligible employment in which he has been employed and the period of public employment (if any) in which he was employed during that prescribed period was not less than twenty years;
- (b) he died or attained the age of sixty years within that prescribed period at a time when he was employed in public employment;
- (c) within that prescribed period he attained, at a time when he was employed in public employment, the age that was the retiring age for the rank held by him immediately before he ceased to be an eligible member of the Defence Force or, having attained that age, his total period of effective service, within the meaning of sub-section 78 (3), is not less than fifteen years;
- (d) he attained the age of sixty years before he ceased to be an eligible member of the Defence Force; or
- (e) the Authority is satisfied that—
 - (i) he ceased within that prescribed period, by reason of invalidity or of physical or mental incapacity, to be employed in public employment; and
 - (ii) that invalidity or incapacity rendered him incapable (otherwise than temporarily) of performing duties that are of a kind suitable to be performed by him having regard to the duties performed by him in employment (if any) in which he was employed immediately before he ceased to be an eligible member of the Defence Force and the duties performed by him in employment in which he was employed after he ceased to be such a member,

this Act has effect as if the election had not been made.

(2) Where—

- (a) a person who ceases to be an eligible member of the Defence Force is, at the expiration of the period that is the prescribed period in relation to him, employed in public employment in respect of which a superannuation scheme (other than an eligible superannuation scheme) is applicable and is, at the expiration of that period, a member of that scheme;
- (b) the person has made an election under section 76; and
- (c) if a payment of benefit were made to him under sub-section 32 (2) or section 56, he would, under the rules of the superannuation scheme applicable in respect of that employment, be entitled to pay the amount of the payment of benefit or a part of that amount

to the person administering that scheme in exchange for benefits under that scheme, being benefits that the Authority is satisfied are appropriate in the circumstances,
 this Act has effect as if the election had not been made.

81. Where a person who has made an election under section 76 is, for the purposes of Part VII, a re-instated candidate to whom that Part applies or is, by virtue of section 55, to be deemed to have continued to have been an eligible member of the Defence Force, this Act has effect as if the election had not been made.

Member who resigned to contest an election.

82. (1) Where deferred benefit is payable to a person by reason that the Authority is satisfied as to the matters referred to in paragraph 78 (2) (a)—

Provisions applicable to certain recipient members restored to health.

- (a) section 34 does not apply in relation to him but sub-section (2) of this section has effect in relation to him;
- (b) section 35 applies in relation to him as if he were a recipient member in receipt of invalidity pay; and
- (c) if, in the application of section 35 in relation to him, any retirement pay payable to him is suspended under that section—
 - (i) the deferred benefit does not cease to be applicable in relation to him by reason only of the suspension; and
 - (ii) the suspension ceases to have effect if the deferred benefit becomes payable under paragraph 78 (2) (b), (c) or (d).

(2) If the Authority is satisfied that the health of the person has become so restored as to enable him to perform duties of a kind suitable to be performed by him, having regard to the duties performed by him immediately before he ceased to be an eligible member of the Defence Force and the duties performed by him in employment (if any) in which he was employed after he ceased to be such a member, the Authority may cancel his retirement pay but the deferred benefit does not cease to be applicable in relation to him by reason only of the cancellation.

(3) The retirement pay payable to a person shall not be cancelled under sub-section (2) at a time when the retirement pay would have become payable, apart from the operation of paragraph 78 (2) (a).

83. If a person to whom deferred benefits are applicable again becomes an eligible member of the Defence Force before the deferred benefits become payable by virtue of sub-section 78 (2), the deferred benefits cease to be applicable in respect of him.

Person entitled to deferred benefits again becoming a member before benefits payable.

Division 4—Miscellaneous

Special provisions affecting former members of certain superannuation schemes.

84. (1) Where—

- (a) a person who becomes a contributing member was, at any time, a member of—
 - (i) a superannuation scheme conducted in accordance with the system established in the United Kingdom of Great Britain and Northern Ireland and known as the Federated Superannuation System for Universities; or
 - (ii) a superannuation scheme that was, or is to be deemed to have been, an approved superannuation scheme for the purposes of this section at the time when he became a contributing member;
- (b) by virtue of sub-section 68 (3) a transfer value is to be deemed, for the purposes of Division 2 of this Part to have become payable in respect of him under that superannuation scheme by reason of his having the legal title to a life policy or life policies of a kind referred to in that sub-section or by reason of his being entitled to have the legal title to such a policy or policies assigned to him; and
- (c) he has elected in accordance with paragraph 69 (1) (a) to pay to the Commonwealth an amount equal to the amount of that transfer value,

the succeeding provisions of this section have effect.

(2) The person may, within the period within which he was entitled to make an election under paragraph 69 (1) (a), elect that this section shall have effect in relation to him and, where an election is so made, section 69 has effect as if the amount referred to in paragraph (1) (b) of that section, or, if part only of that amount relates to the transfer value referred to in sub-section (1) of this section, that part of that amount, had been paid to the Commonwealth in accordance with paragraph 69 (1) (b).

(3) An election under sub-section (2) does not have effect unless the person causes to be assigned to the Commonwealth, within the period referred to in that sub-section, the life policy or life policies referred to in paragraph (1) (b) free from any mortgages, charges or other encumbrances.

(4) If—

- (a) the annual rate of pay of the person upon his becoming an eligible member of the Defence Force was greater than the annual remuneration that was payable to him in respect of the last employment in which he was employed and to which a superannuation scheme referred to in sub-section (1) related; or
- (b) after the person became such a member his annual rate of pay is increased,

the Authority, on behalf of the Commonwealth shall, so far as is practicable, arrange for the amount or amounts of any life policy or life policies assigned to the Commonwealth by the person to be increased by the amount or amounts by which the life policy or life policies would have been increased under that scheme, or for the issue of such additional life policy or life policies in relation to the person as would have been issued under that scheme, if he had remained a member of that scheme and had been in receipt of an annual remuneration equal to that annual rate of pay or that increased annual rate of pay, as the case may be.

(5) So much of any premium payable in respect of any life policy assigned to the Commonwealth in accordance with sub-section (3) or issued in accordance with sub-section (4) as relates to a period during which the person is an eligible member of the Defence Force shall be paid by the Commonwealth out of the Consolidated Revenue Fund, which is appropriated accordingly.

(6) Where the amount of the fortnightly contributions payable by the person to the Commonwealth at any time is less than the amount that is the prescribed amount in relation to him at that time, he is liable to pay to the Commonwealth an amount equal to the difference.

(7) Where the person (in this sub-section referred to as “the former contributor”) makes an election under sub-section 76 (1) and, within the period that is the prescribed period in relation to him for the purposes of Division 3, he becomes employed in employment in respect of which a superannuation scheme referred to in paragraph (1) (a) is applicable and becomes a member of that scheme, then—

- (a) subject to paragraph (c), Division 3 has effect in relation to him as if that employment were public employment and that superannuation scheme were an eligible superannuation scheme;
- (b) the Commonwealth shall assign to the person administering that superannuation scheme the life policies assigned by the former contributor to the Commonwealth in accordance with sub-section (3) or issued in relation to the former contributor in accordance with sub-section (4);
- (c) the assignment of those life policies in accordance with paragraph (b) shall be deemed to constitute the payment of a transfer value in respect of the former contributor in accordance with section 77 to the person administering that scheme; and
- (d) the Commonwealth shall, if the amount of any fortnightly contribution paid by the former contributor under this Act to the Commonwealth exceeded the amount that was the prescribed amount in relation to him at the time of the payment, pay to him an amount equal to the amount of the excess.

(8) If the life policy or life policies assigned by the person to the Commonwealth in accordance with sub-section (3) or issued in relation to him in accordance with sub-section (4) becomes or become payable at or before the time when he ceases to be an eligible member of the Defence Force, the Commonwealth shall pay to the person or, if he is dead, to his personal representatives—

- (a) an amount equal to so much of any premiums paid by the person in respect of the policy or policies as related to, or to any part of, the period that commenced on the date on which the transfer value referred to in paragraph (1) (b) is to be deemed for the purposes of Division 2 to have become payable in respect of him and ended on the date on which he became a contributing member; and
- (b) an amount equal to the sum of any amounts paid by the person to the Commonwealth under sub-section (6).

(9) Where the person ceases to be a contributing member and neither sub-section (7) or sub-section (8) applies in relation to him, then, if the election made by him under sub-section (2) has not been revoked in accordance with sub-section (10)—

- (a) the Authority on behalf of the Commonwealth shall arrange for the surrender of the life policy or life policies assigned by him to the Commonwealth in accordance with sub-section (3) or issued in relation to him in accordance with sub-section (4); and
- (b) the Commonwealth shall pay to the person—
 - (i) in the case of a policy or policies assigned by the person to the Commonwealth in accordance with sub-section (3) an amount equal to so much of any premiums paid by the person in respect of the policy or policies as related to, or to any part of, the period that commenced on the date on which the transfer value referred to in paragraph (1) (b) is to be deemed for the purposes of Division 2 to have become payable in respect of him and ended on the date on which he became a contributing member; and
 - (ii) an amount equal to the sum of any amounts paid by him to the Commonwealth under sub-section (6).

(10) A person who has made an election under sub-section (2) may, if—

- (a) he has not ceased to be a contributing member; and
- (b) the life policy or life policies assigned by him to the Commonwealth in accordance with sub-section (3) or issued in relation to him in accordance with sub-section (4) has not or have not become payable,

by notice in writing to the Authority revoke the election and, in that case, paragraphs (9) (a) and (b) have effect in relation to him.

(11) The Treasurer may, by instrument under his hand published in the *Gazette*, declare a superannuation scheme, being a scheme under which benefits are provided for by means of life policies, to be an approved superannuation scheme for the purposes of this section.

(12) A declaration under sub-section (11) shall come into force on the day on which the instrument of declaration is published in the *Gazette* or, if an earlier day (not being earlier than 1st October, 1972) is specified in the instrument as the day on which the declaration is to be deemed to have come into force, shall be deemed to have come into force on that earlier day.

(13) A superannuation scheme shall be taken, for the purposes of this section, to have been an approved superannuation scheme at a particular time if a declaration by the Treasurer under sub-section (11) in respect of that scheme was, or is to be deemed to have been, in force at that time.

(14) In this section, “ the prescribed amount ”, in relation to a person in relation to any time, is an amount ascertained in accordance with the

formula $\frac{ab}{26c}$, where—

- a* is the amount of the annual premium, or the sum of the amounts of the annual premiums, applicable at that time under the life policy or life policies assigned by him to the Commonwealth in accordance with sub-section (3) or issued in relation to him in accordance with sub-section (4);
- b* is a number equal to the number of whole dollars included in the amount, or sum of the amounts, payable by him under the superannuation scheme referred to in sub-section (4) immediately before he ceased to be a member of that scheme in respect of the annual premium or the annual premiums under the life policy or life policies assigned by him to the Commonwealth in accordance with sub-section (3);
- c* is a number equal to the number of whole dollars included in the amount of the annual premium, or the sum of the amounts of the annual premiums, applicable under the life policy or life policies assigned by him to the Commonwealth in accordance with sub-section (3) immediately before he ceased to be a member of the superannuation scheme referred to in sub-section (4).

PART X—CONTRIBUTORS UNDER PREVIOUS BENEFITS SCHEME, ETC.

85. (1) In this Part, unless the contrary intention appears—

“ Board ” means the Defence Forces Retirement Benefits Board;

“ Fund ” means the Defence Forces Retirement Benefits Fund;

Inter-
pretation.

“ period of previous contributory qualifying service ”, in relation to an existing contributor, means a period equal to the sum of—

- (a) any periods of service before 1st October, 1972, that, in relation to him, are periods of service for pension under the previous legislation, other than such a period that, under regulations made for the purposes of this definition, is not to be taken into account for the purposes of this paragraph; and
- (b) any other periods of service before 1st October, 1972, that would have been periods of effective service applicable to him under this Act if this Act had come into operation on the day on which he first became a member of the Defence Force serving on continuous full-time service, other than such a period that, under regulations made for the purposes of this definition, is not to be taken into account for the purposes of this paragraph;

“ period of previous non-contributory qualifying service ”, in relation to a member of the scheme, means a period that the member has, under section 89 or 93, elected to have taken into account as a period of qualifying service for the purposes of this Act;

“ post-1959 contributor ” means an existing contributor who is not a pre-1959 contributor;

“ pre-1959 contributor ” means a person who is an existing contributor for the purposes of this Act and who was also an existing contributor as defined by sub-section 38 (1) of the *Defence Forces Retirement Benefits Act 1959*, but does not include a person in relation to whom regulation 5 or regulation 7 of the Defence Forces Retirement Benefits (Existing Contributors) Regulations, or regulation 6 of the Defence Forces Retirement Benefits (Prescribed Contributors) Regulations, apply or have applied,

“ transitional period ” means the period commencing on the date of commencement of the scheme, and ending immediately before the day on which this Act receives the Royal Assent.

(2) For the purposes of this Part, the aggregate pay of an existing contributor, in respect of, or in respect of a part of, his period of previous contributory qualifying service, is such amount as is ascertained by the Authority, in accordance with the regulations, as the amount that, for the purposes of this Part, is to be treated as the amount of aggregate pay received by him in respect of that period or of that part of that period, as the case may be.

Refund of
previous con-
tributions.

86. (1) Where the amount of previous contributions of an existing contributor exceeds an amount equal to five and one-half per centum of the amount of his aggregate pay in respect of his period of previous

contributory qualifying service, he is entitled to a refund of so much of the previous contributions as is equal to the amount of the excess.

(2) The amount of any refund to which a person is entitled under sub-section (1) shall be paid by the Commonwealth.

87. (1) This section applies to an existing contributor—

- (a) who is a pre-1959 contributor;
- (b) the amount of whose previous contributions is less than five and one-half per centum of the amount of his aggregate pay in respect of his period of previous contributory qualifying service; and
- (c) who (not being an existing contributor to whom, immediately before 1st October, 1972, Part VIb of the previous Act applied) was not, immediately before that date, or who (being an existing contributor to whom, immediately before that date, Part VIb of the previous Act applied) was not, immediately before his retirement prior to his becoming a person to whom that Part applied—
 - (i) a contributor for maximum additional basic pension for the purposes of Part III of the *Defence Forces Retirement Benefits Act 1959–1968*;
 - (ii) a contributor for maximum additional basic pension for the purposes of Part IV of the *Defence Forces Retirement Benefits Act 1962–1963*; or
 - (iii) a contributor for maximum additional basic pension for the purposes of Part IV of the *Defence Forces Retirement Benefits Act 1963–1968*,

Additional contribution by certain pre-1959 contributors.

or who, whether or not he was a contributor of a kind referred to in sub-paragraph (i), (ii) or (iii), made an election not to increase his contributions under section 61A or 61B of the *Defence Forces Retirement Benefits Act 1963–1968*, or of that Act as amended and in force from time to time.

(2) In sub-section (3), a reference to the period of reduced contributions of a contributor to whom this section applies shall be read as a reference to that part of his period of previous contributory qualifying service as occurred after the time that is the time from which, by reason of his being an existing contributor of the kind referred to in paragraph (1) (c), he commenced to make contributions to the Fund at a rate less than the rate that would otherwise have applied to him.

(3) Where an amount equal to five and one-half per centum of the amount of aggregate pay of an existing contributor to whom this section applies in respect of his period of reduced contributions exceeds the

amount of his previous contributions made in respect of that period, he shall pay an additional contribution to the Commonwealth under this section of such amount, not exceeding the amount of the excess, as the Authority determines as being appropriate in the circumstances.

Contribution equal to deferred contributions under previous Act.

88. (1) Where—

- (a) under an agreement entered into under section 78 or section 79 of the *Defence Forces Retirement Benefits Act 1959*, or of that Act as amended and in force from time to time; or
- (b) under section 79A of that Act, or of that Act as amended and in force from time to time, or under section 44, 45, 46 or 47 of the *Defence Forces Retirement Benefits Act 1962*, or of that Act as amended and in force from time to time or under section 54, 55, 56 or 57 of the *Defence Forces Retirement Benefits Act 1963*, or of that Act as amended and in force from time to time,

payment of any contributions or contribution, or of part thereof, payable by a pre-1959 contributor has been deferred, there is payable to the Commonwealth by him a contribution under this Act equal to the amount of the deferred contributions or contribution, or the part thereof, and compound interest at the rate of five per centum per annum upon that amount, and he is not otherwise liable to make any payment in respect of the deferred contribution or contributions.

(2) For the purposes of this Act, a contribution paid under this section, other than such part of that contribution as consists of interest, shall, for the purposes of this Act, be deemed to be a contribution made under the previous legislation.

Purchase of previous non-contributory service.

89. (1) Subject to this section, where an eligible member of the Defence Force, not being an existing contributor, had, before 1st October, 1972, served as a member of the Defence Force on continuous full-time service for a period of not less than one year, he may, by notice in writing given to the Authority within a period of ninety days after the date upon which this Act receives the Royal Assent or of the date on which he first became an eligible member of the Defence Force, whichever last occurs, or within such further period as the Authority, in special circumstances, allows, elect to have that period of service, or such part of that period as he specifies in the election, taken into account as qualifying service under this Act.

(2) Subject to this section, where an eligible member of the Defence Force, being an existing contributor, had, before 1st October, 1972—

- (a) served as a member of the Defence Force on continuous full-time service for a period of not less than one year, being a period that is not, or is not included in, a period of previous contributory qualifying service of the member; or

- (b) served as a member of the Defence Force on continuous full-time service for a period of less than one year, being a period that is not, or is not included in, a period of previous contributory qualifying service of the member but which is continuous with such a period,

he may, by notice in writing given to the Authority, within a period of ninety days after the day on which this Act receives the Royal Assent, or within such further period as the Authority, in special circumstances, allows, elect to have the period during which he so served, or such part of that period as he specifies in the election, taken into account as qualifying service under this Act.

(3) An eligible member of the Defence Force is not entitled to make an election under sub-section (1) or (2) in respect of any period which, if this Act had come into operation on the day on which he first became a member of the Defence Force, would have been a period of non-effective service in relation to him.

(4) Where, under sub-section (1) or sub-section (2), an eligible member of the Defence Force has elected to have a period of service before 1st October, 1972, taken into account as qualifying service under this Act, he shall pay an additional contribution to the Commonwealth under this section, which shall be—

- (a) if he is an existing contributor and he has served continuously as a member of the Defence Force from the commencement of the period to which the election relates until 1st October, 1972, and became a contributor under the previous Act upon the termination of the period to which the election relates—an amount equal to five and one-half per centum of the amount of pay that the Authority determines would have been the pay received by him in respect of the period to which the election relates if, from time to time during that period, his rate of pay had been the maximum rate of pay payable to persons of the rank, branch and group that was from time to time applicable to him during that period, or such other rate of pay as the Authority determines as being appropriate in the circumstances; and
- (b) in any other case—an amount equal to five and one-half per centum of the amount of pay that would have been payable to him in respect of the period to which the election relates if, at all times during that period, his annual rate of pay had been the annual rate of pay applicable to him at the time when he became an eligible member of the Defence Force or such other annual rate of pay as the Authority approves in the circumstances.

(5) A person is not entitled to make an election under this section in respect of any period in respect of which he is entitled to make an election under section 93.

(6) An election under sub-section (1) or (2) is of no effect unless, at the time when the election is made, or, within such period after that time as the Authority, in special circumstances, allows, there is refunded to the Commonwealth, or arrangements satisfactory to the Authority are made for there to be refunded to the Commonwealth, any payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty, or deferred pay) paid to the person under the previous legislation, or under legislation relating to conditions of service of members of the Defence Force, in respect of the period to which the election relates.

(7) In this section, “eligible member of the Defence Force” includes a person who, at any time during the transitional period, was an eligible member of the Defence Force.

Elections to become contributors by certain members.

90. (1) This section applies—

- (a) to a person who, under section 78 of the *Defence Forces Retirement Benefits Act 1948*, elected not to become a contributor under that Act and who, immediately before 1st October, 1972, was a member of the Defence Force on continuous full-time service (being service that is continuous with his service at the time he became entitled to make the election) but who was not a contributor under the previous Act;
- (b) to a person who, under section 80 of the *Defence Forces Retirement Benefits Act 1948*, or of that Act as amended and in force at any time before the commencement of the *Defence Forces Retirement Benefits Act 1959*, elected not to become a contributor under that Act, or that Act as amended, and who, immediately before 1st October, 1972, was a member of the Defence Force on continuous full-time service (being service that is continuous with his service at the time he became entitled to make the election) but was not a contributor under the previous Act;
- (c) to a person who, under section 82c of the *Defence Forces Retirement Benefits Act 1948–1950*, elected not to become a contributor under that Act and who, immediately before 1st October, 1972, was a member of the Defence Force on continuous full-time service (being service that is continuous with her service at the time she became entitled to make the election) but was not a contributor under the previous Act;
- (d) to a person who, under sub-section 83 (6) of the *Defence Forces Retirement Benefits Act 1959*, or of that Act as amended and in force from time to time, elected not to be a contributor under the *Defence Forces Retirement Benefits Act 1948–1959* and who, immediately before 1st October, 1972, was a member of the Defence Force on continuous full-time service (being service that is continuous with her service at the time she became entitled to make the election) but was not a contributor under the previous Act.

(2) A person to whom this section applies and who, but for this sub-section, would, on 1st October, 1972, be an eligible member of the Defence Force, shall be deemed not to be an eligible member of the Defence Force in respect of any period commencing on that date unless, by notice in writing given to the Authority within a period of ninety days after the day on which this Act receives the Royal Assent, or within such further period as the Authority, in special circumstances, allows, the person elects to be treated as an eligible member of the Defence Force.

91. (1) A period that is a period of previous contributory qualifying service in relation to an existing contributor, or a period that is a period of previous non-contributory qualifying service in relation to a member of the scheme, shall, for the purposes of this Act, be deemed to be a period of effective service in relation to him.

Certain periods of previous service to be deemed to be periods of effective service.

(2) Where deferred benefits are applicable in respect of a person under section 82ZB of the previous Act but, before those benefits become payable, he became or becomes an eligible member of the Defence Force and those benefits cease to be applicable to him by virtue of section 82ZG of the previous Act, such period as the Authority determines in relation to his service before 1st October, 1972, shall be deemed to be a period of effective service in relation to him.

92. (1) Where—

(a) by virtue of an election made by an existing contributor under sub-section 4A (3B) of the previous Act, his category number for the purposes of that Act was, immediately before 1st October, 1972, a number higher than the number that it would otherwise have been; and

(b) the amount per annum that, but for this section, would be the annual rate of pay applicable to him under this Act on 1st October, 1972, is less than the annual pay (in this section referred to as “his previous notional pay”) by reference to which the category number applicable to him immediately before that date was ascertained,

Application of Act in respect of elections under sub-section 4A (3B) of previous Act.

his annual rate of pay on 1st October, 1972, shall, for the purposes of this Act, be deemed to have been the rate of his previous notional pay and shall continue to be deemed to be that rate until his annual rate of pay as ascertained in accordance with the definition of “annual rate of pay” in sub-section 3 (1) becomes greater than the rate of his previous notional pay.

(2) Where, during the transitional period, an existing contributor made on election in accordance with sub-section 4A (3B) of the previous Act by reason of a change in his category, that election shall, for the purposes of this Act, be deemed to have been an election made under

sub-section 20 (1) of this Act to have the change in his annual rate of pay that occurred at the time of the change in category disregarded for the purposes of this Act.

(3) Where—

- (a) an existing contributor who becomes entitled to make an election under sub-section 20 (1) of this Act in relation to a change in his annual rate of pay does not make an election; and
- (b) his category number for the purposes of the previous Act immediately before 1st October, 1972, was a number greater than the number that would have been his category number at the time of the change in his annual rate of pay if the provisions of the previous Act relating to contributions had continued to apply to him,

he is entitled, in addition to a refund of contributions under sub-section 20 (2) of this Act to a refund, payable by the Commonwealth, of such part of his previous contributions as the Authority, having regard to the provisions of sub-section 4A (3B) and section 35 of the previous Act, determines as being appropriate in the circumstances, and the amount of any previous contributions in respect of which he becomes so entitled to a refund shall, for the purposes of this Act, be deemed not to have been paid by him.

**Election
by member
of scheme
to whom
sub-section
69 (1A)
of previous
Act applies.**

93. (1) This section applies to a member of the scheme, not being an existing contributor, who—

- (a) immediately before 1st October, 1972, was a member of the Defence Force on continuous full-time service and was in receipt of a pension under the previous legislation a part of which had been cancelled under sub-section 69 (1A) of the previous Act; and
- (b) on 1st October, 1972, without having ceased to be on continuous full-time service, became an eligible member of the Defence Force for the purposes of this Act.

(2) A member of the scheme to whom this section applies may, by notice in writing given to the Authority within a period of ninety days after the day on which this Act receives the Royal Assent, or within such further period as the Authority, in special circumstances, allows, elect to have the period, or a specified part of the period, during which a part of his pension under the previous legislation was cancelled by force of sub-section 69 (1A) of the previous Act taken into account as qualifying service under this Act.

(3) Where a member of the scheme has elected under sub-section (2) to have a period taken into account as qualifying service under this Act, he shall pay an additional contribution to the Commonwealth under this section of an amount equal to five and one-half per centum of the amount of pay that the Authority determines would have been the pay received by him in respect of that period if, from time to time during that period, his

rate of pay had been the maximum rate of pay payable to persons of the rank, branch and group that was from time to time applicable to him during that period.

(4) A member of the scheme who is required to pay an additional contribution to the Commonwealth under sub-section (3) shall also pay to the Commonwealth an amount equal to the amount of pension paid to him under the previous Act in respect of the period to which the election made by him under sub-section (2) relates.

94. In the application of section 49 in relation to a member of the scheme who died during the transitional period, the reference in sub-section (2) of that section to the period of six months after the death of a person shall be read as a reference to that period or the period of ninety days after this Act receives the Royal Assent, whichever last expires.

Death of contributing member after 60 days absence without leave.

95. (1) Where a contributing member who became a member of the scheme during the transitional period, or an existing contributor, has been, during the transitional period, or is, after the transitional period, retired on the ground of invalidity or of physical or mental incapacity to perform his duties, then, in the application to him of sub-section 28 (1), the reference in that sub-section to a period of one year after a contributing member became a contributing member shall be read as a reference to the period of ninety days after the person became a contributing member or, if he was an existing contributor, to the period of ninety days after he became a contributor under the previous Act.

Pre-existing invalidity or incapacity.

(2) Where the Board was, during the transitional period, satisfied with respect to a member of the Defence Force who, within a period of ninety days after becoming a contributing member, or, if he was an existing contributor, within a period of ninety days after becoming a contributor for the purposes of the previous Act, was retired on the ground of invalidity or of physical or mental incapacity to perform his duties, that—

- (a) the invalidity or incapacity was caused, or was substantially contributed to, by a physical or mental condition that existed at the time he became a contributing member or a contributor, as the case may be; and
- (b) the condition was not aggravated, or was not materially aggravated, by his service as a member of the Defence Force,

he is not entitled, and shall be deemed not to have become entitled, to invalidity benefit under this Act.

96. Where, during the transitional period, a contributing member (whether an existing contributor or not) retired and, on his retirement, became entitled to invalidity benefit under Part V, any classification of the person during the transitional period by the Board purporting to be under section 51 of the previous Act shall, for the purposes of this Act, be deemed

Invalidity classification.

to be a classification of the incapacity of the person by the Authority under section 30 of this Act, and any reclassification of the incapacity of a person during the transitional period by the Board purporting to be under section 53 of the previous Act shall, for the purposes of this Act, be deemed to be a reclassification of the person made by the Authority under section 34 of this Act.

Medical examination of member of scheme entitled to invalidity pay.

97. Where, under section 53B of the previous Act, the Board, at any time during the transitional period, suspended a pension that, at that time, was payable to a member of the scheme, by reason that the person failed to comply with a notice given to him under section 53B of the previous Act, the suspension has effect, and shall be deemed to have had effect, for the purposes of this Act as if any invalidity pay to which the person is entitled under this Act had been suspended at that time by the Authority under section 35 of this Act, and the notice given by the Board shall, for the purposes of section 35 of this Act, be deemed to have been a notice given by the Authority under that section.

Incapacity due to wilful action.

98. Where, during the transitional period, a contributing member (whether an existing contributor or not) retired on the ground of invalidity or of physical or mental incapacity to perform his duties and the invalidity or incapacity was, in the opinion of the Board, due to wilful action on his part for the purpose of obtaining pension under the previous Act, he is not entitled to invalidity benefit, and shall be deemed not to have become entitled to invalidity benefit, under this Act.

PART XI—REVIEWS AND APPEALS

Division 1—Preliminary

Interpretation.

99. (1) In this Part—

“Administrative Review Tribunal” means an Administrative Review Tribunal established under section 106;

“Invalidity Classification Review Tribunal” means an Invalidity Classification Review Tribunal appointed under section 102;

“Review Tribunal” means an Invalidity Classification Review Tribunal or an Administrative Review Tribunal.

(2) In this Part, unless the contrary intention appears—

(a) a reference to a person in respect of whom a decision of the Authority is made shall be read as including a reference to a person whose rights are affected by the decision; and

(b) a reference to a decision of the Authority shall be read as including a reference to a decision of the Authority under the *Defence Forces Retirement Benefits Act 1948–1973* and a reference to a decision of the Authority made under section 30 or 34 of this

Act shall be read as including a reference to a decision of the Authority made under section 51 or 53 of the *Defence Forces Retirement Benefits Act 1948–1973*.

100. (1) A person affected by a decision of the Authority who is dissatisfied with the decision may, by notice in writing given to the Authority within a period of thirty days after the date of the decision or the date on which the decision first comes to his notice (whichever is the later date), or within such further period as the Authority allows, request the Authority to reconsider the decision.

Request for reconsideration of decision by Authority.

(2) There shall be set out in the request the grounds on which the request is made.

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

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

101. (1) If—

- (a) upon receipt of a notice informing him of the result of the reconsideration by the Authority of its decision, the person who made the request is not satisfied with the result of that reconsideration; or
- (b) within a period of ninety days after making the request, the person who made the request has not received notice of the result of the reconsideration by the Authority of its decision,

Request for review by Review Tribunal.

he may, by notice in writing given to the Authority within a period of thirty days after receiving the notice or upon the expiration of that period of ninety days, as the case may be, request the Authority—

- (c) in the case of a decision of the Authority made under section 30 or 34—to refer the decision to an Invalidation Classification Review Tribunal for review; or
- (d) in any other case—to refer the decision to an Administrative Review Tribunal for review.

(2) There shall be set out in a request under this section the grounds on which it is made.

Division 2—Invalidity Classification Review Tribunals

102. (1) Upon receipt by the Authority of a request under section 101 for the review by an Invalidation Classification Review Tribunal of a decision of the Authority made under section 30 or 34, the Chairman of the Authority shall inform the Minister that the Authority has received the request and the Minister shall, in accordance with this section, appoint an Invalidation Classification Review Tribunal to review the decision.

Appointment of Invalidation Classification Review Tribunal.

(2) An Invalidity Classification Review Tribunal shall consist of—

- (a) a Chairman, who shall be a barrister, a solicitor, a barrister and solicitor or a legal practitioner of the High Court or of the Supreme Court of a State or Territory of the Commonwealth; and
- (b) two other members, each of whom shall be a duly qualified medical practitioner.

(3) A person is not disqualified from being appointed as a member of an Invalidity Classification Review Tribunal by reason only that he has also been appointed as a member of another Invalidity Classification Review Tribunal.

(4) A person who is an eligible member of the Defence Force shall not be appointed as a member of an Invalidity Classification Review Tribunal.

Fees and allowances.

103. A member, including the Chairman, of an Invalidity Classification Review Tribunal shall be paid such fees and allowances as are prescribed.

Records, &c., to be forwarded to Invalidity Classification Review Tribunal.

104. Upon the appointment of an Invalidity Classification Review Tribunal to review a decision of the Authority, the Chairman of the Authority shall forward to the Chairman of the Tribunal the request received by the Authority for the review of the decision, together with all the records and other papers relevant to the decision and to the reconsideration by the Authority of the decision.

Division 3—Administrative Review Tribunals

Definitions.

105. In this Division, unless the contrary intention appears—

- “ Chairman ” means the Chairman of the Tribunal;
- “ member of the Tribunal ” includes the Chairman of the Tribunal;
- “ Tribunal ” means an Administrative Review Tribunal.

Establishment of Administrative Review Tribunals.

106. (1) The Governor-General may establish one or more Administrative Review Tribunals for the purposes of this Act.

(2) A Tribunal shall consist of a Chairman and two other members, who shall be appointed in accordance with this section.

(3) The members of a Tribunal shall be appointed by the Governor-General.

(4) The Chairman shall be a barrister, a solicitor, a barrister and solicitor or a legal practitioner of the High Court or of the Supreme Court of a State or Territory of the Commonwealth.

(5) One member of the Tribunal, other than the Chairman, shall be a person who is a former member of the Defence Force and was a contributor under the previous Act or a contributing member under this Act, and shall be selected for appointment from persons nominated for that

purpose by an organization or organizations representing, throughout Australia, former members, or a class of former members, of the Defence Force.

(6) A person who is an eligible member of the Defence Force shall not be appointed as a member of a Tribunal.

(7) Subject to this Act, a member of a Tribunal holds office until the expiration of such period, not exceeding five years, as is specified in the instrument of his appointment, but, subject to this Act, is eligible for re-appointment.

(8) A member of a Tribunal ceases to hold office if he becomes an eligible member of the Defence Force for the purposes of this Act.

(9) A person is not disqualified from being appointed as a member of a Tribunal by reason only that he is also a member of another Tribunal.

(10) The validity of the appointment of the member of the Tribunal to whom sub-section (5) applies shall not be called in question by reason only of a defect or irregularity in connexion with his nomination for appointment.

107. A member of a Tribunal shall be paid such fees and allowances as are prescribed. Allowances.

108. The Governor-General may terminate the appointment of a member of a Tribunal for inefficiency, misbehaviour or physical or mental incapacity. Termination of appointment.

109. A member of a Tribunal may resign his office by writing under his hand addressed to the Governor-General, but the resignation does not have effect until it is accepted by the Governor-General. Resignation.

110. Upon receipt by the Authority of a request under section 101 for the review by an Administrative Review Tribunal of a decision of the Authority, the Chairman of the Authority shall forward the request to the Chairman of an Administrative Review Tribunal, together with all the records and other papers relevant to the decision and to the reconsideration by the Authority of the decision. Records, &c., to be forwarded to Tribunal.

Division 4—Proceedings before Review Tribunals

111. (1) Where the Chairman of a Review Tribunal receives from the Chairman of the Authority a request for a review of a decision of the Authority by a Review Tribunal, he shall arrange for the decision to be reviewed by the Tribunal of which he is the Chairman. Review of decisions of Authority.

(2) For the purpose of reviewing the decision, a Review Tribunal has all the powers and functions of the Authority in making decisions under this Act or, if the case so requires, under the *Defence Forces Retirement Benefits Act 1948–1973*.

Parties to proceedings before Tribunals.

112. A reference in this Division or in Division 5 to a party to proceedings before a Review Tribunal shall be read as a reference to the person who requested the review by a Review Tribunal of the relevant decision of the Authority, to the Commonwealth, and to any other person who satisfies the Tribunal that he should be a party to the proceedings by reason that his rights may be affected by the proceedings.

Powers of Review Tribunal with respect to decision under review.

113. (1) A Review Tribunal that reviews a decision of the Authority shall, after due consideration of the matter, give a decision in writing—

- (a) affirming the decision;
- (b) varying the decision; or
- (c) setting aside the decision and—
 - (i) making a decision in substitution for the decision so set aside; or
 - (ii) remitting the decision for reconsideration by the Authority in accordance with the directions of the Tribunal.

(2) A Review Tribunal shall give reasons in writing for its decision and its reasons shall include its findings on material questions of fact.

(3) A decision of the Authority as varied by a Review Tribunal or a decision made by a Review Tribunal in substitution for a decision of the Authority shall, for the purposes of this Act, other than this Part, be deemed to be a decision of the Authority, and shall, unless the Review Tribunal otherwise directs, have effect, or be deemed to have had effect, on and from the date on which the decision of the Authority under review had effect.

(4) Subject to the Constitution, a decision of a Review Tribunal is final except so far as an appeal may be brought to the Commonwealth Industrial Court in accordance with Division 5 or an appeal may be brought to the High Court from a judgment or order of the Commonwealth Industrial Court given or made under that Division.

Procedure of Review Tribunals to be informal, &c.

114. In proceedings before a Review Tribunal—

- (a) the procedure of the Tribunal is, subject to this Act and to the regulations, within the discretion of the Tribunal;
- (b) the proceedings shall be conducted with as little formality and technicality and with as much expedition as the requirements of this Act, or of the *Defence Forces Retirement Benefits Act 1948–1973*, and a proper consideration of the matters and questions before the Tribunal, permit; and
- (c) the Tribunal is not bound by rules of evidence.

Proceedings to be in public except in special circumstances.

115. (1) Subject to sub-section (2), proceedings before a Review Tribunal shall be in public.

(2) A Review Tribunal may, if it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter, or for any other reason, direct that proceedings or a part of any proceedings before

the Tribunal shall take place in private and may give directions as to the persons who may be present during the whole or any part of the proceedings.

116. In proceedings before a Review Tribunal, a party may appear in person or may be represented by another person other than a legal practitioner.

Representa-
tion
before a
Review
Tribunal.

117. (1) A Review Tribunal may—

- (a) take evidence on oath or affirmation and, for that purpose, administer the oath or affirmation;
- (b) proceed in the absence of a party who has had reasonable notice of the proceedings;
- (c) adjourn the proceedings from time to time;
- (d) summon a person to appear before it to give evidence and to produce such documents and articles (if any) as are referred to in the summons; and
- (e) subject to this Act and the regulations, give all such directions and do all such things as are necessary or convenient for the purposes of the review of the decision referred to it.

Evidence
before
Review
Tribunal,
&c.

118. The costs incurred in relation to proceedings before a Review Tribunal by a party to the proceedings shall—

- (a) if the party is the Commonwealth—be borne by the Commonwealth; or
- (b) in the case of any other party—be borne by the Commonwealth unless the Tribunal is of the opinion that the costs, or a part of the costs, were unnecessarily incurred by the party and directs that the costs, or that part of the costs, be borne by the party.

Costs of
proceedings
before
Review
Tribunal.

119. (1) A member of the Review Tribunal has, in the performance of the duties of his office, the same protection and immunity as a Justice of the High Court.

Protection
of members
of
Tribunals,
representa-
tives and
witnesses.

(2) A person appearing before a Review Tribunal on behalf of a party has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

(3) Subject to this Act, a person appearing before a Review Tribunal as a witness has the same protection, and is, in addition to the penalties provided by this Act, subject to the same liabilities, as a witness in proceedings in the High Court.

120. (1) A person who has been summoned to appear as a witness before a Review Tribunal shall not, without lawful excuse, fail to appear in obedience to the summons.

Dis-
obedience to
summons,
&c.

(2) A person who has been summoned to produce a document or article to a Review Tribunal shall not, without lawful excuse, fail to produce the document or article.

(3) A person who appears (whether summoned to appear or not) as a witness before a Review Tribunal shall not, without lawful excuse—

- (a) refuse or fail to make an oath or affirmation;
- (b) refuse or fail to answer a question that he is required by the Tribunal to answer; or
- (c) refuse or fail to produce a document or article that he is required by the Tribunal to produce.

Penalty: One hundred dollars or imprisonment for fourteen days.

Fees for witnesses.

121. Where a person is summoned to appear as a witness before a Review Tribunal, the person is entitled to be paid the prescribed fee—

- (a) in a case where the witness was summoned at the request of a party other than the Commonwealth—by that party; or
- (b) in any other case—by the Commonwealth.

Offences in relation to Review Tribunal.

122. A person shall not—

- (a) insult or disturb a Review Tribunal in the exercise of its powers or functions;
- (b) interrupt the proceedings of a Review Tribunal;
- (c) use insulting language towards a member of a Review Tribunal;
- (d) create a disturbance or take part in creating or continuing a disturbance in or near a place where a Review Tribunal is sitting;
- (e) contravene or fail to comply with a direction of a Review Tribunal given under sub-section 115 (2); or
- (f) do any other act or thing that would, if a Review Tribunal were a court of record, constitute a contempt of that court.

Penalty: One hundred dollars or imprisonment for fourteen days.

Division 5—Appeals to Commonwealth Industrial Court

Appeals.

123. (1) A party to proceedings before a Review Tribunal may, in such manner and within such time as is prescribed, appeal, on a question of law only, to the Commonwealth Industrial Court from any decision of the Tribunal.

(2) The Commonwealth Industrial Court has jurisdiction to hear and determine an appeal instituted in that Court in accordance with sub-section (1).

(3) The Commonwealth Industrial Court shall hear and determine the appeal and give such judgment, or make such order, as, in all the circumstances, it thinks fit, and, in particular—

- (a) may affirm, vary or set aside the decision of the Review Tribunal; or
- (b) may remit the decision to the Review Tribunal for further review (either with or without the hearing of further evidence) in accordance with the directions of the Court.

124. (1) Subject to sub-section (2), the jurisdiction of the Commonwealth Industrial Court with respect to appeals under this Division shall be exercised by a single judge.

Exercise of jurisdiction of Commonwealth Industrial Court.

(2) The Chief Judge of the Commonwealth Industrial Court may, if in his opinion an appeal under this Division involves the determination of a question of law of sufficient importance, direct that, for the purpose of that appeal, the Court shall be constituted by three judges.

PART XII—MISCELLANEOUS

125. (1) Any payment of benefit under this Act shall be paid by the Commonwealth.

Payments by the Commonwealth.

(2) The costs of and incidental to a medical examination carried out for the purposes of section 35 shall be paid by the Commonwealth.

(3) All payments by the Commonwealth under this Act shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

126. (1) An amount payable to the Commonwealth under this Act, including an amount of unpaid contributions, may be paid to the Commonwealth in a lump sum or in such instalments and at such times as the Authority approves.

Recovery of amounts payable to Commonwealth.

(2) Where the amount of any contributions payable by a person to the Commonwealth has not been paid and benefit is payable to or in respect of the person, the amount of the unpaid contributions may be deducted from any payment or payments of that benefit.

(3) An amount payable to the Commonwealth under this Act may be recovered by the Commonwealth in a court of competent jurisdiction as a debt due and payable to the Commonwealth.

127. Where a recipient member, a person in receipt of a pension under the previous legislation, other than under section 55 or 57 of the previous Act, or a person to whom deferred benefit is applicable under section 78 of this Act or under section 82ZB of the previous Act becomes an eligible member of the Defence Force, he shall, within a period of fourteen days after becoming such a member, by notice in writing given to the Authority, inform the Authority that he has become such a member.

Recipient member, &c., to inform Authority if he becomes eligible member.

Penalty: One hundred dollars.

Extension
of periods
of elections.

128. (1) Where any period within which a person is entitled to make an election under this Act has expired before the day on which this Act receives the Royal Assent, the election may be made within such further period after that day as the Authority allows.

(2) Subject to sub-section (3), where a person who is entitled to make an election under a provision of this Act—

- (a) is, by reason of a physical or mental incapacity, unable to make that election; or
- (b) dies before the expiration of the period within which the election may be made or, if a further period has been allowed, before the expiration of that further period, without his having made the election,

the Authority may, if it thinks it proper to do so, allow such other person as the Authority thinks appropriate to make the election within such period as the Authority allows, and, where the election is made by that other person, the election shall, for the purposes of this Act, be deemed to have been made by the first-mentioned person, and has effect accordingly.

(3) Notwithstanding sub-section (2), the Authority shall not, after the death of a recipient member, allow another person to make an election under section 24 to commute a portion of the member's retirement pay.

Assignment
of pensions.

129. Subject to section 130, no pension benefit or other benefit under this Act is capable of being assigned or charged or of passing by operation of law, and any moneys payable by the Commonwealth on the death of a contributing member are not liable to be applied or made available in payment of his debts or liabilities.

Attachment
of benefits.

130. (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 a benefit under this Act, the judgment creditor may serve on the Authority 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.

(2) Where a copy of a judgment and a statutory declaration are served on the Authority in accordance with sub-section (1), the Authority 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 Authority 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 Authority, 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 the last preceding sub-section 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 Authority is satisfied that an amount is due under the judgment, the Authority may, in its discretion, authorize the deduction from the benefit, and the payment to the judgment creditor, of such sums as do not exceed that amount, and those deductions and those payments shall be made accordingly.

(5) A deduction shall not be authorized from—

- (a) an instalment of child's pension; or
- (b) an instalment of any other pension benefit 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 any person entitled to a benefit under this Act, being a judgment in respect of which the Authority 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 person 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, a payment shall not be made in pursuance of 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 pursuance of this section shall, as between the Commonwealth and the person entitled to benefit under this Act, be deemed to be a payment by the Commonwealth to the person entitled to benefit.

(8) A judgment creditor who serves a copy of a judgment on the Authority under sub-section (1) shall notify the Authority immediately the judgment debt is satisfied.

Penalty: One hundred dollars or imprisonment for fourteen days.

(9) If the amounts paid in pursuance of 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 any court of competent jurisdiction.

Regulations.

131. (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—

- (a) for prescribing the practice and procedure of Review Tribunals established under Part XI;
- (b) for prescribing the manner in which notices under this Act may be given; and
- (c) for prescribing penalties, not exceeding a fine of Two hundred dollars, for offences against the regulations.

(2) Where the pay of a class of members of the Defence Force is increased or reduced, regulations for the purpose of the definition of “annual rate of pay” in section 3 in relation to members of the Defence Force included in that class made after the date on and from which the increase or reduction took effect may be expressed to have taken effect from and including that date.

(3) Regulations made within a period of six months after the day on which this Act receives the Royal Assent may be expressed to have taken effect from and including the date of commencement of the scheme.

SCHEDULE 1

Section 23

RETIREMENT PAY EXPRESSED AS A PERCENTAGE OF ANNUAL RATE OF PAY

Number of Complete Years Included in Total Period of Effective Service										Percentage of Annual Rate of Pay
15	..	..	..	..	..	..	..	..	..	30.00%
16	..	..	..	..	..	..	..	..	..	31.00%
17	..	..	..	..	..	..	..	..	..	32.00%
18	..	..	..	..	..	..	..	..	..	33.00%
19	..	..	..	..	..	..	..	..	..	34.00%
20	..	..	..	..	..	..	..	..	..	35.00%
21	..	..	..	..	..	..	..	..	..	36.50%
22	..	..	..	..	..	..	..	..	..	38.00%
23	..	..	..	..	..	..	..	..	..	39.50%
24	..	..	..	..	..	..	..	..	..	41.00%
25	..	..	..	..	..	..	..	..	..	42.50%
26	..	..	..	..	..	..	..	..	..	44.00%
27	..	..	..	..	..	..	..	..	..	45.75%
28	..	..	..	..	..	..	..	..	..	47.50%
29	..	..	..	..	..	..	..	..	..	49.25%
30	..	..	..	..	..	..	..	..	..	51.25%
31	..	..	..	..	..	..	..	..	..	53.25%
32	..	..	..	..	..	..	..	..	..	55.50%
33	..	..	..	..	..	..	..	..	..	57.75%
34	..	..	..	..	..	..	..	..	..	60.25%
35	..	..	..	..	..	..	..	..	..	62.75%
36	..	..	..	..	..	..	..	..	..	65.25%
37	..	..	..	..	..	..	..	..	..	67.75%
38	..	..	..	..	..	..	..	..	..	70.50%
39	..	..	..	..	..	..	..	..	..	73.50%
40 or more	..	..	..	..	..	..	..	..	..	76.50%

SCHEDULE 2

Sections 23 and 75

NOTIONAL RETIRING AGE FOR CERTAIN OFFICERS RETIRING AT OWN REQUEST OR ON DISCIPLINARY GROUNDS, OR ENTITLED TO DEFERRED BENEFIT RETIREMENT PAY

			Rank			Notional Retiring Age—Years		
Naval Forces			Military Forces		Air Force			
Admiral	General	..	..	Air Chief Marshal	..	55
Vice-Admiral			Lieutenant-General			Air Marshal		
Rear-Admiral	Major-General	..	..	Air Vice-Marshal	..	52
Captain	Brigadier	..	..	Air Commodore	..	50
			Colonel			Group Captain		
						Group Officer		
Commander	Lieutenant-Colonel	..	..	Wing Commander	..	45
Chief Officer (WRANS)						Wing Officer		
Matron (RANNS)								
Superintendent (Naval Police)								
Lower rank	Lower rank	..	..	Lower rank	..	42

SCHEDULE 3

Section 24

COMMUTATION OF RETIREMENT PAY—EXPECTATION OF LIFE FACTOR

Age (in years) on Date of Effect of Election								Factor	
								Male	Female
30	..	..	..	..	..	..	..	41.12	46.49
31	..	..	..	..	..	..	..	40.18	45.53
32	..	..	..	..	..	..	..	39.25	44.57
33	..	..	..	..	..	..	..	38.31	43.61
34	..	..	..	..	..	..	..	37.38	42.65
35	..	..	..	..	..	..	..	36.45	41.70
36	..	..	..	..	..	..	..	35.51	40.75
37	..	..	..	..	..	..	..	34.59	39.81
38	..	..	..	..	..	..	..	33.67	38.86
39	..	..	..	..	..	..	..	32.75	37.92
40	..	..	..	..	..	..	..	31.84	36.99
41	..	..	..	..	..	..	..	30.93	36.06
42	..	..	..	..	..	..	..	30.03	35.13
43	..	..	..	..	..	..	..	29.14	34.21
44	..	..	..	..	..	..	..	28.25	33.29
45	..	..	..	..	..	..	..	27.38	32.38
46	..	..	..	..	..	..	..	26.51	31.48
47	..	..	..	..	..	..	..	25.65	30.58
48	..	..	..	..	..	..	..	24.80	29.69
49	..	..	..	..	..	..	..	23.96	28.80
50	..	..	..	..	..	..	..	23.13	27.92
51	..	..	..	..	..	..	..	22.31	27.05
52	..	..	..	..	..	..	..	21.51	26.18
53	..	..	..	..	..	..	..	20.72	25.32
54	..	..	..	..	..	..	..	19.94	24.47
55	..	..	..	..	..	..	..	19.18	23.63
56	..	..	..	..	..	..	..	18.43	22.79
57	..	..	..	..	..	..	..	17.70	21.96
58	..	..	..	..	..	..	..	16.99	21.13
59	..	..	..	..	..	..	..	16.29	20.32
60	..	..	..	..	..	..	..	15.60	19.51