



# **Defence Forces Retirement Benefits Act 1948**

**Act No. 31 of 1948 as amended**

This compilation was prepared on 8 July 2011  
taking into account amendments up to Act No. 58 of 2011

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

Prepared by the Office of Legislative Drafting and Publishing,  
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# An Act to provide Retirement Benefits for Members of the Defence Force of the Commonwealth, and for other purposes

## Part I—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Defence Forces Retirement Benefits Act 1948*.

### 2 Commencement [see Note 1]

This Act shall come into operation on a date to be fixed by Proclamation.

### 4 Interpretation

(1) In this Act, unless the contrary intention appears:

**annual pay**, in relation to a member, means the product of his daily rate of pay and 365, less any cents included in that product.

**children** includes children adopted by a member and dependent on him at the time of his death.

**contributor** means a member who is or has been contributing under this Act to the Fund.

**CSC** (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

**daily rate of pay**, in relation to a member, means his maximum daily rate of active pay as ascertained in accordance with the regulations.

**eligible child** means:

- (a) a child under the age of 16 years; or
- (b) a child who:

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- (i) has attained the age of 16 years but has not attained the age of 25 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.

**Finance Minister** means the Minister administering the *Financial Management and Accountability Act 1997*.

**initial engagement** means an engagement as a member which did not commence immediately upon the termination of a prior engagement as a member.

**invalidity benefit** means benefit to which a member is entitled by virtue of subsection 51(1) and includes a deferred benefit that is applicable in respect of a person under Division 3 of Part VIC and is payable by virtue of paragraph 82ZB(2)(a).

**member** means a member of the Defence Force on continuous full time service, but does not include an indigenous inhabitant of Papua New Guinea who, at the time he engaged to serve, or was appointed, as such a member was a resident of Papua New Guinea.

**officer** means:

- (a) in relation to the Navy—a member who is a commissioned officer or subordinate officer, but does not include a petty officer;
- (b) in relation to the Army—a member who is a commissioned officer; and
- (c) in relation to the Air Force—a member who is a commissioned officer;

and includes a cadet enrolled at the Royal Australian Naval College or at the Royal Military College or a member enlisted in the Permanent Air Force as an air cadet.

**period of non-effective service**, in relation to a member, means, subject to subsection 4AA(5), any period of service of the member exceeding 21 consecutive days during which the member was:

- (a) on leave of absence without pay;
- (b) absent without leave;



- (c) awaiting or undergoing trial on a charge in respect of an offence of which he was later convicted; or
- (d) undergoing field punishment, detention or imprisonment.

***Permanent Forces*** means the Permanent Navy, the Regular Army or the Permanent Air Force.

***rank*** means:

- (a) in relation to a member of the Navy:
  - (i) his confirmed rank or, if he is appointed provisionally or on probation, the rank to which he is so appointed; or
  - (ii) if he is provisionally promoted to another rank—that other rank;
- (b) in relation to a member of the Army:
  - (i) his substantive rank in his permanent corps or unit or, if he is appointed provisionally or on probation, the rank to which he is so appointed in his permanent corps or unit; or
  - (ii) if he is provisionally promoted to another rank in his permanent corps or unit—that other rank; and
- (c) in relation to a member of the Air Force:
  - (i) his substantive rank or, if he is appointed provisionally or on probation, the rank to which he is so appointed; or
  - (ii) if he is provisionally promoted to another rank—that other rank.

***Reserve*** means:

- (a) in relation to a member of the Navy—the Naval Reserve; and
- (b) in relation to a member of the Army—the Army Reserve; and
- (c) in relation to a member of the Air Force—the Air Force Reserve.

***retiring age for the rank held***, in relation to a member, means the age for compulsory retirement of a member of the rank, branch and group of the member as prescribed, for the purposes of this Act, by regulations under this Act in force at the date of his retirement.

***retirement***, in the case of a member not being an officer, includes discharge.

***service*** means service as a member.

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***service for pension*** means continuous full time service as a member after attaining the age of 20 years other than:

- (a) in the case of a member other than an officer—service not served under engagement for a definite term; or
- (b) subject to subsection (3), service in respect of which a member is not permitted or required to contribute to the Fund.

***the appointed date*** means the date of commencement of this Act.

***the Authority*** means the Defence Force Retirement and Death Benefits Authority established by section 8 of the *Defence Force Retirement and Death Benefits Act 1973*, as in force before its repeal by item 44 of Schedule 1 to the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011*.

***the Service*** means the Navy, the Army or the Air Force as the case requires.

***the Superannuation Fund*** means the Superannuation Fund established under the *Superannuation Act 1922-1948*.

- (1A) For the purposes of this Act, a person shall be deemed to have served as a member during any period (whether before or after the commencement of this subsection) if he served during that period as a member as defined by this section as in force during that period.
- (2) For the purposes of this Act, but subject to subsection 4AA(4), a member of the Defence Force on continuous full time service shall not be deemed to have ceased to be on continuous full time service during any period when he is:
  - (a) absent with or without leave;
  - (b) awaiting or undergoing trial on any charge; or
  - (c) undergoing punishment, detention or imprisonment;and any such period shall be deemed to be a period of service.
- (2A) Where a member of the Defence Force not on continuous full time service commences continuous full time service, then, for the purposes of this Act:
  - (a) if he is an officer on the day on which he so commences—he shall be deemed to have been appointed as an officer on that

- day for the period for which he is to serve on continuous full time service; and
- (b) if he is a member other than an officer on the day on which he so commences—he shall be deemed to have engaged to serve as a member of the Defence Force on that day for the period for which he is to be on continuous full time service.
- (2B) Where a member of the Defence Force on continuous full time service 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) In subsections 52(6) and (7), paragraph 52(8)(b) and sections 56A and 72, *service for pension* includes service in respect of which, by virtue of section 36, a member is not permitted or required to contribute to the Fund.
- (4) In determining the service for pension of a member for the purposes of a provision of this Act (other than subsections 52(6) and (7), paragraph 52(8)(b) and section 56A), service of the member immediately before a period in respect of which the member was not permitted or required to contribute to the Fund by virtue of section 36 and service of the member immediately after that period shall be deemed to be continuous.
- (5) In this Act, a reference to a Schedule shall be read as a reference to a Schedule to this Act.
- (6) Where, by virtue of an election made by a member in pursuance of the Air Force Regulations within a period of 4 months after the commencement of this subsection, the age for compulsory retirement of the member is an age other than the retiring age for the rank held by him, this Act shall apply to and in relation to the member as if the retiring age for the rank held by him were the age for compulsory retirement of the member.
- (7) For the purposes of this Act, an officer shall be deemed to be serving under a short service commission if his appointment as an officer is for a period specified in the appointment.

**4AA National serviceman on leave of absence without pay in excess of 30 days**

- (1) In this section, *national serviceman* means a member who is a national serviceman or a national service officer for the purposes of the *National Service Act 1951-1968*.
- (2) Where a national serviceman has been absent on leave of absence without pay for a continuous period that exceeds 30 days, he is not permitted, and shall not be required, to contribute to the Fund in respect of such part of the period during which he is so absent as extends beyond 30 days.
- (3) Where a national serviceman dies or is discharged during any period in respect of which, by virtue of subsection (2), he is not permitted or required to contribute to the Fund, pension under this Act, or gratuity under section 52, is not payable to or in respect of him.
- (4) In determining the period of service for pension of a national serviceman for the purposes of this Act, any period in respect of which, by virtue of subsection (2), the national serviceman was not permitted or required to contribute to the Fund shall not be treated as a period of service, but service of the national serviceman immediately before such a period and service of the national serviceman immediately after that period shall be deemed to be continuous.
- (5) In the application of this Act to or in respect of a national serviceman, *period of non-effective service* does not include a period during which the national serviceman is absent on leave of absence without pay.

**4A Categories of members**

- (1) For the purposes of this Act in its operation before 1 October 1972, members are divided into categories according to their respective rates of annual pay, and each member has a category number ascertained in accordance with subsection (2).
- (2) The category number of a member is:
  - (a) if the annual pay of the member is less than the prescribed amount—the number ascertained in accordance with the

formula  $\frac{A}{130}$ , where A is the number of dollars in his annual pay or, if the number of dollars in his annual pay is not a multiple of 130, the next lower number that is such a multiple; and

- (b) in any other case—the number ascertained in accordance with the formula  $\frac{B}{130} + \frac{C}{163}$ , where:

**B** is the number of dollars in the prescribed amount; and

**C** is the number by which the number of dollars in the member's annual pay exceeds the number of dollars in the prescribed amount or, if the number so ascertained is not a multiple of 163, the next lower number that is such a multiple.

- (3) A reference in this Act to a change in the category of a member shall be read as a reference to a change in his category number.
- (3A) Where, after the expiration of a period of 2 years after a member has attained the retiring age for the rank held by him, his category changes, the change in category shall be disregarded for the purposes of this Act.
- (3B) Where the category of a member changes and, as a result of the change, the amount of contribution to be paid fortnightly by him to the Fund would, if he did not make an election under this subsection, become less, he may, by notice in writing given to the Board within 4 months after the change, elect to have that change in category disregarded, and, if he so elects, that change in category shall be disregarded for the purposes of this Act.
- (4) In this section, **the prescribed amount** means such amount, being a multiple of \$130, as is specified in the regulations for the purposes of this section.
- (5) In making a regulation for the purposes of subsection (4), the Governor-General shall have regard to any general variations in the rates of annual pay of members that have occurred.
- (6) A regulation for the purposes of subsection (4) may be expressed to have taken effect from a date earlier than the date on which the regulation is made, being a date not earlier than 6 months before the date on which the regulation is made.
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### **13 Cost of management**

- (1) The cost of the administration of this Act shall be paid out of moneys appropriated from time to time by the Parliament for the purpose.

### **15D Benefits to be paid by Commonwealth after 1 October 1972**

Any instalment of pension or any other benefit that became or becomes payable under this Act on or after 1 October 1972 must be paid by the Commonwealth and the Consolidated Revenue Fund is appropriated accordingly.

### **25 Cessation of membership**

- (1) Subject to subsection (2), a member who retires ceases to be a member, for the purposes of this Act, on the day following the date of his retirement.
- (2) Where a contributor retires and, without a break in the continuity of his service, again becomes a member, he shall, for the purposes of this Act, be deemed not to have ceased to be a member by reason of that retirement.

### **26 Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

## **Part V—Pensions and benefits**

### **Division 1—Grant of pensions and benefits**

#### **38 Pension on retirement after 20 years' service for pension— officers**

- (1) This section applies to an officer who:
  - (a) is a contributor;
  - (b) has completed 20 years' service for pension; and
  - (c) is not entitled to invalidity benefit.
- (2) An officer to whom this section applies is entitled, on his retirement on or after attaining the retiring age for the rank held by him, to pension in accordance with the succeeding provisions of this section.
- (3) Subject to this Act, the rate at which pension is payable under this section to an officer whose age on the date of his retirement is 60 years or more is an amount per annum ascertained by multiplying the amount of \$91 by the number that is his category number on that date.
- (3A) Subject to this Act, the rate at which pension is payable under this section to an officer whose age on the date of his retirement is less than 60 years is the amount per annum that would be the rate applicable to him under subsection (3) if he had attained the age of 60 years on that date multiplied by the factor set out in the third column of the Second Schedule opposite to the age set out in the first column of that Schedule that is his age on that date.
- (4) Where an officer has completed more than 2 years' service after attaining the retiring age for the rank held by him, the pension payable to him under this section shall be the pension that would have been so payable if he had retired upon completing 2 years' service after attaining that retiring age.
- (5) This section does not apply to a person who retires on or after 1 October 1972.

**39 Pension on retirement under special circumstances—officers**

- (1) This section applies to an officer who:
  - (a) is a contributor; and
  - (b) is not entitled on retirement to a pension under section 38 or to invalidity benefit.
  
- (2) Where:
  - (a) an officer to whom this section applies:
    - (i) retires on or after attaining the retiring age for the rank held by him; and
    - (ii) had, not later than 2 years after attaining the retiring age for the rank held by him, completed 15 years' service for pension;
  - (b) an officer to whom this section applies:
    - (i) has completed 20 years' service for pension; and
    - (ii) retires before attaining the retiring age for the rank held by him;and the Board is satisfied that the purpose of his retirement is to meet the needs of the Service; or
  - (c) an officer to whom this section applies:
    - (i) has completed a period of service for pension not less than the period specified in the Fourth Schedule in relation to his rank at the date of his retirement; and
    - (ii) retires with the approval of the Service Board before, but within 3 years of, attaining the retiring age for the rank held by him, being a rank the retiring age for which is an age not greater than 55 years;and the Board is satisfied that the purpose of the retirement is to enable him to establish himself in civil employment and approves payment of pension under this section to him;the officer is entitled, on his retirement, to a pension in accordance with the succeeding provisions of this section.
  
- (3) Subject to this Act, the rate at which pension is payable under this section to an officer whose age on the date of his retirement is 60 years or more is an amount per annum ascertained by multiplying the amount of \$91 by the number that is his category number on that date.



- (3A) Subject to this Act, the rate at which pension is payable under this section to an officer whose age on the date of his retirement is less than 60 years is the amount per annum that would be the rate applicable to him under subsection (3) if he had attained the age of 60 years on that date multiplied by the factor set out in the third column of the Second Schedule opposite to the age set out in the first column of that Schedule that is his age on that date.
- (4) In the application of subsections (3) and (3A) to an officer referred to in paragraph (2)(a), the age of that officer at the date of his retirement shall be deemed to be his actual age on that date reduced by:
- (a) a period equal to the difference between 20 years and the number of years of service for pension completed by him; and
  - (b) the number of years of service, if any, completed by him after the expiration of 2 years after he attained the retiring age for the rank held by him.
- (5) This section does not apply to a person who retires on or after 1 October 1972.

#### **41 Pension after 20 years' service for pension—other ranks**

- (1) This section applies to a member, not being an officer, who:
- (a) is a contributor;
  - (b) has completed 20 years' service for pension; and
  - (c) is not entitled to invalidity benefit.
- (2) A member to whom this section applies is entitled to a pension on his retirement after completion of his engagement or, if he has had successive and continuous engagements, after completion of the last of those engagements.
- (3) Subject to this Act, the rate at which pension is payable to a member under this section is an amount per annum ascertained by multiplying the amount of \$91 by the number that is his category number on the date of his retirement and, except where he has completed 40 years' service for pension, multiplying the result by the factor set out in the third column of the Second Schedule opposite to the number of years set out in the second column of

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that Schedule that is the number of years of service for pension completed by him.

- (4) This section does not apply to a person who retires on or after 1 October 1972.

**41A Annual amount of certain pensions to be calculated to nearest dollar**

Where the amount of pension per annum ascertained under section 38, 39 or 41 includes an amount of cents:

- (a) if that last-mentioned amount is less than 50 cents—the amount of pension shall be deemed to be reduced by that last-mentioned amount; and
- (b) in any other case—the amount of pension shall be deemed to be increased by treating the cents as \$1.

**43 Non-completion of engagement**

- (1) Except as otherwise provided in this Act, where a member (not being an officer), who is a contributor, retires before completing the engagement under which he was serving immediately prior to his retirement, he shall be entitled to a refund of the amount of any contributions paid by him under this Act in respect of the period served under the uncompleted engagement and shall also be entitled, as from the date of his retirement, to the pension or benefits (if any) to which he would have been entitled if he had retired immediately before commencing to serve under that engagement:

Provided that a member who has completed 20 years' service for pension prior to attaining the retiring age for his rank and retires with the approval of the Service Board shall not be entitled to a refund under this section, but shall be entitled to the same pension as that to which he would have been entitled if the pension had been granted under section 41 and if the engagement, which was uncompleted at the date of his retirement, had been an engagement for the completed portion thereof and he had retired on the completion of that engagement.

- (2) This section does not apply to a person who retires on or after 1 October 1972.

#### **44 Completion of engagement**

- (1) Subject to this section, a member shall not, for the purposes of sections 41, 42 and 43, be deemed to have completed an engagement unless he has served under the engagement up to the date on which the engagement was due to terminate.
- (2) Where a member, before the completion of his engagement, or, if he has had successive and continuous engagements, before the completion of the last of those engagements:
  - (a) retires with the approval of the Service Board; or
  - (b) is retrenched or is otherwise discharged for reasons other than disciplinary reasons;

he shall, for the purposes of subsection 42(1), be deemed to have completed his engagement or the last of those engagements, as the case may be, but, for the purposes of subsection 42(2), he shall not be deemed to have completed a period of service for pension longer than the period completed by him immediately before his retirement or discharge.

#### **45 Pension increase on officer retiring at age of 61 years or over**

Where:

- (a) a contributor, being an officer, retires on or after the day on which he attains the age of 61 years;
- (b) the retiring age for the rank held by him is 60 years; and
- (c) he is entitled to a pension under section 38, or under subsection 52(1);

the amount of that pension shall be increased by an amount ascertained by multiplying the portion of the pension equivalent to the contributions paid by him to the Fund by:

- (d) if his age on retirement is less than 62 years—6%; or
- (e) in any other case—13%.

#### **50 Service on Reserve**

- (1) Notwithstanding anything contained in this Act, if a person entitled to a pension under this Act is, on retirement, requested by the Service Board to serve on the Reserve maintained by the Service of which the person was a member and the person:
  - (a) does not agree so to serve; or

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- (b) having agreed so to serve, is released at his or her own request from the agreement;  
there shall, subject to subsection (2), be deducted from each fortnightly instalment of the pension (other than an instalment that becomes payable on or after 1 October 1972) an amount of \$4 if the person is a male or \$2 if the person is a female.
- (2) The sum of the deductions made from instalments of the pension of a person under subsection (1) shall not exceed:
  - (a) if the person has not agreed to serve on the Reserve—\$400 if the person is a male or \$200 if the person is a female; or
  - (b) if the person has agreed to serve on the Reserve but is released at his or her own request from the agreement—such amount as the Board determines, being an amount that does not exceed \$400 if the person is a male or \$200 if the person is a female.
- (3) Where, under this section, an amount is deducted from a payment of pension to a person, the amount that, but for this subsection, the Commonwealth would be required to pay to the Fund under this Act in respect of the payment shall be such amount as the Commonwealth would have been required to pay if the deduction had not been made less the amount of the deduction.

**51 Classification in respect of incapacity**

- (1) Subject to subsection (3), where:
    - (a) a member who is a contributor has been retired before attaining the retiring age for the rank held by him;
    - (b) an officer who is a contributor has been granted an extension of service for a period that does not extend beyond the period of 2 years after the attainment by him of the retiring age for the rank held by him and has been retired before the expiration of the period of the extension;
    - (c) a member (not being an officer) who is a contributor has been engaged for a period of service extending beyond the date on which he will attain the retiring age for the rank held by him and has been retired before the expiration of a period of 2 years after that date and before the expiration of the period of the engagement; or
    - (d) the age for compulsory retirement of a member (not being an officer) who is a contributor has been extended and the
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member has been retired before the attainment by him of the extended age and before the expiration of a period of 2 years after the attainment by him of the retiring age for the rank held by him;

on the ground of invalidity or of physical or mental incapacity to perform his duties (not, in the opinion of the Authority, due to wilful action on his part for the purpose of obtaining pension or other benefit), he is entitled to benefit in accordance with sections 52, 52A and 53, but, subject to section 60, is not otherwise entitled to benefit under this Act.

- (2) Where a person (not being a person to whom section 52A applies) is, or is about to become, entitled to benefit by virtue of subsection (1), the Authority shall determine the percentage of total incapacity of the person in relation to civil employment and shall classify the person according to the percentage of incapacity as follows:

Percentage of Incapacity	Class
60 or over .....	A
30 or over but less than 60 .....	B
Less than 30.....	C

- (2A) Where:

- (a) a person (other than a person to whom section 52A applies) who is entitled to benefit by virtue of subsection (1) dies; and
- (b) at the time of his or her death, the Authority has not made a determination in respect of the person under subsection (2);

the Authority must:

- (c) determine what was, immediately before the person's death, his or her percentage of incapacity in relation to civil employment; and
- (d) classify the person under subsection (1) according to that percentage of incapacity, as if the person had not died.

- (2B) Where a deceased member of the scheme is classified under this section, the classification is taken to have had effect at all times on and after his or her retirement.

- (3) Where:

- (a) a member, within 3 months after becoming a contributor, is retired on the ground of invalidity or of physical or mental incapacity to perform his duties; and

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- (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 he became a contributor; and
  - (ii) the condition was not aggravated, or was not materially aggravated, by his service as a member;
- subsection (1) does not apply in relation to him.
- (4) Where a person who has ceased to be a member again becomes a member (other than a person referred to in Part VIA as a *re-instated candidate to whom this Part applies*), subsection (3) applies in relation to him as if he had become a contributor at the time he commenced to make contributions after again becoming a member.
- (5) This section does not apply to a person who retires on or after 1 October 1972.
- (6) Where a member who is a contributor has, before 1 October 1972, been retired otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties but the Chief of Navy, the Chief of Army or the Chief of Air Force or a person authorized in writing by the Chief of Navy, the Chief of Army or the Chief of Air Force, 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.

**52 Rate or amount of invalidity benefit**

- (1) A person who is entitled to invalidity benefit and is classified as Class A under subsection 51(2) is entitled to a pension at a rate of such amount per annum as is ascertained by multiplying the amount of \$91 by the number that is his category number on the date of his retirement.
- (2) A person who is entitled to invalidity benefit, is classified as Class B under subsection 51(2) and was an officer immediately before his retirement is entitled to a pension:

- (a) if, immediately before his retirement, he had completed 20 years' service for pension but had not attained the retiring age for the rank held by him at that time—at the rate at which pension would be payable to an officer of the same category as the category of the person immediately before his retirement who became entitled to a pension under section 38 upon retiring on attaining the retiring age for the rank held by the person immediately before his retirement;
  - (b) if, immediately before his retirement, he had completed 20 years' service for pension and had attained the retiring age for the rank held by him at that time—at the rate at which pension would be payable to him under section 38 if he were not entitled to invalidity benefit; or
  - (c) in any other case—at whichever is the lesser of the following rates:
    - (i) the rate at which pension would be payable to an officer of the same category as the category of the person immediately before his retirement who became entitled to a pension under section 38 upon retiring on attaining the retiring age for the rank held by the person immediately before his retirement; or
    - (ii) a rate equal to one-half of the rate at which pension would be payable to him if he were classified as Class A under subsection 51(2).
- (3) A person who is entitled to invalidity benefit, is classified as Class B under subsection 51(2) and was not an officer immediately before his retirement is entitled to a pension:
- (a) if, immediately before his retirement, he had completed 20 years' service for pension—at the rate at which pension would be payable to him under section 41 if he were not entitled to invalidity benefit; or
  - (b) in any other case—at the rate at which pension would be payable to a member of the same category as the category of the person immediately before his retirement who became entitled to a pension under section 41 upon retiring on completing 20 years' service for pension.
- (4) Where a person to whom paragraph (3)(a) applies retired before completing the engagement under which he was serving on the date of his retirement and before attaining the retiring age for the rank held by him, then, for the purpose of determining the rate at
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which pension is payable to him, his period of service for pension shall be deemed to be the period that would have been his period of service for pension if he had retired upon completing that engagement.

- (5) A person who is entitled to invalidity benefit, is classified as Class C under subsection 51(2) and was an officer immediately before his retirement is entitled:
- (a) if, immediately before his retirement, he had completed 20 years' service for pension but had not attained the retiring age for the rank held by him at that time—to a pension at the rate at which pension would be payable to him if, upon retirement, he had become entitled to a pension under section 39 by virtue of paragraph 39(2)(b);
  - (b) if, immediately before his retirement, he had completed 20 years' service for pension and had attained the retiring age for the rank held by him at that time—to a pension at the rate at which pension would be payable to him if he were classified as Class B; or
  - (c) in any other case—in addition to a refund under section 60 of the amount of contributions paid by him under this Act, to a gratuity in accordance with subsections (6) and (7).
- (6) Subject to subsection (7), the gratuity to which a person is entitled under paragraph (5)(c) is an amount calculated at the rate of \$150 if the person is a male, or \$75 if the person is a female, for each year of service for pension completed by the person.
- (7) Where the period of service for pension of a person who was an officer immediately before his retirement includes a period served by the person as a member other than an officer, the gratuity to which the person is entitled under paragraph (5)(c) is the sum of:
- (a) an amount calculated at the rate of \$100 per annum if the person is a male, or \$50 per annum if the person is a female, in respect of the period of service for pension completed by the person as a member other than an officer; and
  - (b) an amount calculated at the rate of \$150 per annum if the person is a male, or \$75 per annum if the person is a female, in respect of the period that is equal to the difference between:
    - (i) the period comprising the years of service for pension completed by the person on retirement; and



- (ii) the period of service for pension completed by the person as a member other than an officer.
- (8) A person who is entitled to invalidity benefit, is classified as Class C under subsection 51(2) and was not an officer immediately before his retirement is entitled:
- (a) if, immediately before his retirement, he had completed 20 years' service for pension—to a pension at the rate at which pension would be payable to a member of the same category as the category of the person immediately before his retirement who became entitled to a pension under section 41 upon retiring on completing a period of service for pension equal to the period of service for pension completed by that person; or
  - (b) in any other case—in addition to a refund under section 60 of the amount of contributions paid by the person under this Act, to a gratuity:
    - (i) if the person is a male—of an amount calculated at the rate of \$100 for each year of service for pension completed by him; or
    - (ii) if the person is a female—of an amount calculated at the rate of \$50 for each year of service for pension completed by her.
- (9) For the purposes of subsections (6) and (7) and subparagraphs (8)(b)(i) and (ii), ***service for pension*** includes service before attaining the age of 20 years under any engagement under which the person has served, but does not include any period of such service under an initial engagement of less than one year.
- (10) Where at any time the Authority is satisfied that the value of any invalidity benefit payable to a person who was an officer immediately before his retirement and was retired on or after attaining the retiring age for the rank held by him is less than the value of any benefit to which he would have been entitled under this Act if he had not been entitled to invalidity benefit, the Authority may vary the invalidity benefit to such extent as it thinks proper in the circumstances, but not so as to reduce its value.

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**52A Invalidity benefit payable to certain contributors under Superannuation Act**

- (1) This section applies to a member who becomes entitled to benefit by virtue of subsection 51(1) of this Act and who, at the time he becomes so entitled, is an employee for the purposes of the *Superannuation Act 1922-1968* whose liability to make contributions to the Superannuation Fund is deferred by virtue of section 35A of that Act or is a person whose entitlement to a pension under that Act is suspended by force of subsection 48C(1) of that Act.
- (2) Notwithstanding anything contained in section 52, the invalidity benefit to which a person to whom this section applies is entitled is, in addition to a refund under section 60 of the amount of contributions paid by him under this Act, the gratuity to which he would have been entitled if:
  - (a) this section had not applied to him; and
  - (b) he had been classified as Class C under subsection 51(2).

**53 Reclassification in respect of incapacity**

- (1) The Authority may, from time to time, if it is satisfied that the percentage of incapacity in relation to civil employment of a pensioner classified under section 51 is such that the classification of the pensioner should be altered, reclassify him in the appropriate classification set out in subsection 51(2) according to the percentage of his incapacity in relation to civil employment.
- (1AA) If, at a time when the Authority is reviewing, but has not yet determined, for the purposes of subsection (1), the percentage of incapacity in relation to civil employment of a pensioner, the pensioner dies:
  - (a) the Authority must determine what was, immediately before the pensioner's death, his or her percentage of incapacity in relation to civil employment; and
  - (b) where the Authority is satisfied, having regard to that percentage of incapacity, that, if the pensioner had not died, the pensioner would be reclassified and given a classification higher than that of the pensioner at the time of his or her death, the Authority must reclassify the pensioner under

subsection (1) according to that percentage of incapacity, as if the pensioner had not died.

(1A) In determining:

- (aa) what is the percentage of incapacity in relation to civil employment of a pensioner; or
- (aab) what was, immediately before his or her death, the percentage of incapacity in relation to civil employment of a pensioner who has died;

the Authority shall have regard to the following matters only:

- (a) the vocational, trade and professional skills, qualifications and experience of the pensioner;
  - (b) the kinds of civil employment which a person with skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;
  - (c) the degree to which any physical or mental impairment of the pensioner, being a prescribed physical or mental impairment, has or had diminished the capacity of the pensioner to undertake the kinds of civil employment referred to in paragraph (b);
  - (d) such other matters (if any) as are prescribed for the purposes of this subsection.
- (1B) In subsection (1A), ***prescribed physical or mental impairment***, in relation to a pensioner or a deceased pensioner, means:
- (a) a physical or mental impairment of the pensioner that was the cause, or one of the causes, of the invalidity or physical or mental incapacity by reason of which the pensioner was retired, whether or not that impairment changed, for better or worse, since that retirement; or
  - (b) any other physical or mental impairment of the pensioner causally connected with a physical or mental impairment referred to in paragraph (a).
- (2) Where a person is reclassified under this section, the Authority shall specify the date from which the reclassification has effect and, on and after that date, the person shall, for the purposes of section 52, be deemed to be classified accordingly.
- (2A) Where a deceased person is reclassified under this section:
- (a) the Authority must specify the day from which the reclassification has effect; and

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- (b) the person is taken, for the purposes of section 52, to have been classified accordingly on and after that day.
- (3) If, upon reclassification as Class C, a person would, but for this subsection, be entitled in accordance with section 52 to invalidity benefit consisting of a refund of contributions and a gratuity, he is entitled to that benefit only to the extent that it exceeds the sum of the payments of pension received by him as invalidity benefit.
- (4) In this section, *pensioner* includes a person who is classified as Class C by reason of his having been reclassified (whether before or after the commencement of this subsection) under subsection (1) of this section, whether or not the person is entitled to a pension.

**53B Power to require invalid pensioners to be medically examined and to furnish information as to employment**

- (1) The Authority may, by notice in writing to a person to whom a pension, being invalidity benefit, is being paid, require that person:
  - (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 the person has been engaged during such period as is specified in the notice.
- (2) A notice under subsection (1) shall set out the effect of subsection (3).
- (3) Where a person fails to comply with a notice given under subsection (1) and the Authority is not satisfied that there was a reasonable excuse for the failure, the Authority may, by notice in writing given to the person, suspend the person's pension with effect from such day as the Authority determines, being a day not earlier than:
  - (a) in a case where the first-mentioned notice required the person to submit to a medical examination on a day specified in the notice—the day next following that day; or

- (b) in a case where the first-mentioned notice required the person to furnish information within a period specified in the notice—the day next following the end of that period.
- (4) A notice to a person under subsection (3) shall set out the effect of subsections (5B), (5D) and (5E).
- (5) Pension is not payable in respect of a period during which a suspension under subsection (3) is in force.
- (5A) Where:
  - (a) the pension of a person is suspended under subsection (3);  
and
  - (b) the Authority, having regard to such matters as it considers relevant, is of the opinion that the suspension should be revoked;the Authority may, by notice in writing given to the person or to the person and a person acting on the person's behalf, as the case may be, revoke the suspension with effect from such day as the Authority determines, being a day not later than the day on which the notice is given.
- (5B) Without limiting subsection (5A), where the pension of a person (in this subsection called the *relevant person*) is suspended under subsection (3), the relevant person, or another person acting on the relevant person's behalf, may, by notice in writing given to the Authority, request the Authority to revoke the suspension, and where such a request is made, the Authority shall, by notice in writing given to the relevant person or to the relevant person and the other person, as the case may be:
  - (a) if the pension has been suspended by virtue of the relevant person's having failed to comply with a notice requiring the relevant person to submit to a medical examination—require the relevant person to submit to a medical examination by a medical practitioner at a time and place specified in the second-mentioned notice; or
  - (b) if the pension has been suspended by virtue of the relevant person's having failed to comply with a notice requiring the relevant person to give information to the Authority (in this paragraph called *the original notice*)—require the relevant person to give in writing to the Authority, within such period as is specified in the second-mentioned notice, such

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information as was required by the original notice to be given.

(5C) A notice given by the Authority under subsection (5B) shall set out the effects of subsections (5D) and (5E).

(5D) Where:

(a) because of a request having been made to revoke the suspension of the pension of a person (in this subsection called the *relevant person*), a notice under subsection (5B) is given to the relevant person or to the relevant person and another person; and

(b) either:

(i) the relevant person complies with the notice; or

(ii) the relevant person fails to comply with the notice but the Authority is satisfied that there was a reasonable excuse for the failure;

the Authority shall, by notice in writing given to the relevant person or to the relevant person and the other person, as the case may be, revoke the suspension with effect from such day as the Authority determines, being a day not later than:

(c) in a case to which subparagraph (b)(i) applies—the day on which the relevant person so complied with the notice; or

(d) in a case to which subparagraph (b)(ii) applies—the day on which the Authority became so satisfied.

(5E) Where:

(a) because of a request having been made to revoke the suspension of the pension of a person (in this subsection called the *relevant person*), a notice under subsection (5B) is given to the relevant person or to the relevant person and another person; and

(b) the relevant person fails to comply with the notice and the Authority is not satisfied that there was a reasonable excuse for the failure;

the Authority shall, by notice in writing given to the relevant person or to the relevant person and the other person, as the case may be, refuse to revoke the suspension.

(6) The cost of any medical examination carried out for the purposes of this section shall be treated as part of the cost of the administration of this Act.

- (6A) The power of the Authority under this section to suspend a pension extends to suspending a pension a portion of which has been cancelled by force of subsection 69(1A).
- (6B) Where a person whose pension has been suspended under this section, dies before the pension again becomes payable, he shall, for the purpose of section 57, be deemed to have been entitled to pension immediately before his death and, for the purposes of that section, the pension 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.
- (7) Where the Authority is required by this section to give a person a notice, the notice shall be taken to have been given to the person if:
- (a) the notice is served on the person personally;
  - (b) the notice is sent to the person by pre-paid post as a letter and the person acknowledges receipt of the letter; or
  - (c) where the Authority has caused all reasonable steps to be taken to ascertain a reliable address of the person, the notice is sent to the person by pre-paid post to:
    - (i) in a case where the Authority is satisfied that at least one reliable address of the person has been ascertained—that address or one of those addresses; or
    - (ii) in any other case—the last address of the person known to the Authority.
- (8) A reference in subsection (7) to a reliable address of a person shall be read as a reference to an address where, if a letter were sent to the person by pre-paid post to the address, the person would probably receive the letter.
- (9) In this section, *invalidity benefit* includes pension payable under section 73.

#### **54 Incapacity due to wilful action**

Where a member is retired on the ground of invalidity or physical or mental incapacity to perform his duties and the invalidity or incapacity is, in the opinion of the Board, due to wilful action on his part for the purpose of obtaining pension, he shall, subject to the regulations, be entitled to a refund of his contributions under

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this Act, and no pension or other benefit under this Act shall be payable to or in respect of the member.

**54A Notional retiring age for certain persons not members of the Permanent Forces**

(1) In this section:

*non-Permanent Forces officer* means an officer who is not a member of the Permanent Forces.

*Permanent Forces officer* means an officer who is a member of the Permanent Forces.

(2) Where:

- (a) a non-Permanent Forces officer retires; and
- (b) the retiring age for the rank held by him on his retirement is greater than it would have been if he had been a Permanent Forces officer on his retirement;

the retiring age for the rank held by him on his retirement shall, for the purposes of:

- (c) subsection 38(2);
- (d) subsection 39(2), other than subparagraph 39(2)(a)(ii);
- (e) subsections 52(2) and (5); and
- (f) if he became a non-Permanent Forces officer after the commencement of this section and he was, immediately before becoming a non-Permanent Forces officer, a Permanent Forces officer—subsection 40(2);

but not for any other purpose of this Act, be deemed to be the age that would have been that retiring age if he had been a Permanent Forces officer on his retirement.

(3) Where:

- (a) a member who is not an officer and not a member of the Permanent Forces retires;
- (b) he is entitled to pension under subsection 52(3);
- (c) paragraph (a) of that subsection applies to him; and



- (d) the retiring age for the rank held by him on his retirement is a greater age than it would have been if he had been a member of the Permanent Forces on his retirement;

the retiring age for the rank held by him on his retirement shall, for the purposes of subsection 52(4), but not for any other purpose of this Act, be deemed to be the age that would have been that retiring age if he had been a member of the Permanent Forces on his retirement.

### **55 Pension on death of member**

- (1) Subject to subsection (4), on the death before retirement prior to 1 October 1972 of a married member who is a contributor, pension shall be paid to his widow as follows:
- (a) during her life—a pension at a rate equal to five-eighths of the rate at which pension would have been payable to her husband if, on the date of his death, he had become entitled to invalidity benefit and had been classified as Class A under subsection 51(2); and
  - (b) in respect of each child of the widow who is an eligible child (other than a child born after the death of the member unless the child is also the child of the member), and in respect of each child of the member who is an eligible child—a pension at the rate of \$312 per annum, as indexed in accordance with subsection 84C(2), and an additional pension at a rate equal to one-sixth of the rate at which pension payable under paragraph (a) is payable to the widow.
- (2) Subject to subsection (3), on the death of the widow, there shall be payable in respect of each child of the widow who is an eligible child (other than a child born after the death of the member unless the child is also the child of the member), and in respect of each child of the member who is an eligible child, a pension at the rate \$5,000 per annum, as indexed in accordance with subsection 84C(2), and an additional pension at a rate equal to one-eighth of the rate at which pension payable under paragraph (1)(a) would, but for her death, have been payable to the widow.
- (3) Where the number of children in respect of whom pensions are payable under subsection (2) because of the widow's death is such that the sum of the rates of all the pensions so payable exceeds a rate equal to  $1\frac{3}{5}$  of the rate at which pension payable under

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paragraph (1)(a) would, but for her death, have been payable to her, then, while that position exists, there is payable in respect of each of the children, instead of the pensions described in subsection (2), a pension at the rate calculated by dividing the number of children into the rate exceeded.

- (4) Pension is not payable under this section in respect of a member who, at the time of his death, was an employee for the purposes of the *Superannuation Act 1922-1968* 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 subsection 48C(1) of that Act.

**57 Pension on death of pensioner etc.**

- (1AA) A male person is not to be treated as a male pensioner for the purposes of this section merely because the person, at the time of his death, was receiving associate pension under Part VIA.
- (1) On the death of a male pensioner, pension shall, subject to this section, be paid to his widow as follows:
- (a) during her life—five-eighths of a pension payable to her husband at the time of his death; and
  - (b) in respect of each child of the widow who is an eligible child (other than a child born after the death of the pensioner unless the child is also the child of the pensioner), and in respect of each child of the pensioner who is an eligible child—a pension at the rate of \$312 per annum, as indexed in accordance with subsection 84C(2), and an additional pension at a rate equal to one-sixth of the rate at which pension payable under paragraph (a) is payable to the widow.
- (2) For the purposes of subsection (1), the pension payable to the widow of a male pensioner during her life shall, in any case where:
- (a) the male pensioner had commuted any portion of his pension;
  - (b) the rate of the pension of the male pensioner had been reduced by virtue of subsection 42A(9);

- (c) an amount had been deducted from the last fortnightly instalment of the pension of the male pensioner under section 50;

be calculated upon the rate of pension that would have been payable to the male pensioner at the time of his death if no portion of his pension had been commuted, the rate of his pension had not been reduced or the amount had not been deducted from his pension, as the case may be.

(3) If:

- (a) the male pensioner, at the time of his death, was in receipt of a pension, being invalidity benefit; and
- (b) CSC is satisfied that his death was due to:
  - (i) a physical or mental impairment that was the cause, or one of the causes, of the invalidity or the physical or mental incapacity by reason of which the member was retired; or
  - (ii) a physical or mental impairment causally connected with a physical or mental impairment referred to in subparagraph (i);

pension shall be paid to his widow at the rate or rates at which, under section 55, pension is payable to the widow of a married member who was a contributor and died before retirement.

(3A) If:

- (a) a male person who is entitled to invalidity benefit dies and, at the time of his death, he was classified as Class C under subsection 51(2) as a result of a reclassification under section 53 but was not entitled to a pension; and
- (b) CSC is satisfied that his death was due to:
  - (i) a physical or mental impairment that was the cause, or one of the causes, of the invalidity or the physical or mental incapacity by reason of which the member was retired; or
  - (ii) a physical or mental impairment causally connected with a physical or mental impairment referred to in subparagraph (i);

pension is payable to his widow at the rate or rates at which, under section 55, pension is payable to the widow of a married member who was a contributor and died before retirement.

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- (3B) In spite of subsections (1), (2), (3) and (3A), if, on any of the 7 pay-days immediately following the death of a male pensioner, the rate at which pension would, apart from this subsection, be payable to his widow is less than the rate (in this subsection called the *putative rate*) at which the pension payable to him immediately before his death would be payable to him on that day if he had not died, the widow is entitled to a pension payable at a rate equal to the putative rate.
- (4) Subject to subsection (5), on the death of a widow to whom this section applies, there shall be payable in respect of each child of the widow who is an eligible child (other than a child born after the death of the pensioner unless the child is also the child of the pensioner), and in respect of each child of the male pensioner who is an eligible child, a pension at the rate of \$5,000 per annum, as indexed in accordance with subsection 84C(2), and an additional pension at a rate equal to one-eighth of the rate at which pension payable under paragraph (1)(a), or under subsection (3), as the case may be would, but for her death, have been payable to the widow.
- (5) Where the number of children in respect of whom pensions are payable under subsection (4) because of the widow's death is such that the sum of the rates of all the pensions exceeds a rate equal to  $1\frac{3}{5}$  of the rate at which pension payable under paragraph (1)(a) or subsection (3), as the case requires, would, but for her death, have been payable to her, then, while that position exists, there is payable in respect of each of the children, instead of the pensions described in subsection (4), a pension calculated by dividing the number of children into the rate exceeded.

**57A Set off against widow's pension in certain circumstances**

Where:

- (a) the widow of a deceased male pensioner is entitled to a pension under subsection 57(3A); and
- (b) there is paid into an account with a bank, credit union or building society (in this section called the *financial institution*) an amount purporting to be an instalment of pension payable to the pensioner in respect of a period in respect of which a pension is payable to the widow under subsection 57(3A); and

- (c) the financial institution pays, out of that account, to the widow an amount not exceeding the amount so paid into the account;
- then, in spite of any other law:
- (d) the financial institution is not liable to the Commonwealth, the personal representative of the deceased pensioner or anyone else for any loss incurred because of the payment of that amount to the widow; and
  - (e) an amount equal to the amount so paid by the financial institution to the widow must be set off against any amount of pension payable to her under subsection 57(3A).

### **58 Pensions payable in respect of orphans**

- (1) Subject to subsection (1A), where the wife of a member who is a contributor or of a male pensioner is dead or divorced and the member or pensioner dies leaving children of himself or of his wife who are eligible children and who were dependent upon him at the time of his death, pension payable under this Act in respect of each child shall be a pension at the rate of \$5,000 per annum, as indexed in accordance with subsection 84C(2), and an additional pension at a rate equal to one-eighth of the rate at which pension payable under paragraph 55(1)(a), or pension payable under paragraph 57(1)(a), or under subsection 57(3), as the case may be, would, but for her death or divorce, have been payable to the widow.
- (1A) Where the number of children in respect of whom pensions are payable under subsection (1) because of the death of the member or pensioner is such that the sum of the rates of all the pensions so payable exceeds a rate equal to  $1\frac{3}{5}$  of the rate at which pension payable under paragraph 55(1)(a) or 57(1)(a), or subsection 57(3), as the case requires, would, but for her death or divorce, have been payable to the widow, then, while that position exists, there is payable in respect of each of the children, instead of the pensions described in subsection (1), a pension at the rate calculated by dividing the number of children into the rate exceeded.
- (1B) In the application of subsection (1) in relation to a deceased male pensioner who remarried after he became a pensioner, the reference in that subsection to the wife of a pensioner shall be read as not including a reference to the person who became the wife of the pensioner on that remarriage.

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- (2) Where the present value, as determined by CSC, of a pension or pensions payable, on the death of a member, in pursuance of subsection (1), is less than the contributions made by him, the amount of the difference shall be paid by the Commonwealth to the personal representatives of the member or, failing them, to such persons (if any) as CSC determines.
- (3) A person is not to be treated as a pensioner for the purposes of this section merely because the person, at the time of his or her death, was receiving associate pension under Part VIA.

**58A Basic rate of pensions**

- (1) Where:
  - (a) pension is payable to or in respect of a contributor who ceases to be a member (whether by reason of retirement or death) after the commencement of this section; and
  - (b) the category number of the contributor immediately before he ceases to be a member is less than the prescribed number applicable to him under subsection (2);the rate of the pension shall, notwithstanding anything contained in this Act, be not less than the rate of pension that would have been payable if his category number had, immediately before he ceased to be a member, been the same as the prescribed number so applicable to him.
- (2) For the purposes of this section, the prescribed number applicable to a contributor is:
  - (a) if the contributor is a male—17 or, if another number is specified in the regulations as the number applicable for the purposes of this section to male members who cease to be members on the date on which the contributor ceased to be a member, that other number; or
  - (b) if the contributor is a female—13 or, if another number is specified in the regulations as the number applicable for the purposes of this section to female members who cease to be members on the date on which the contributor ceased to be a member, that other number.

## **60 Refund of contributions**

- (1) Where a contributor retires or otherwise ceases to be a member and he is not entitled to a pension under this Act, he is, subject to the regulations, entitled to a refund of the amount of the contributions paid by him under this Act.
- (2) Where a contributor has, under subsection (1), received a refund of the amount of his contributions, and again becomes a member and a contributor, he shall contribute as provided in section 23, but, unless subsection (3) applies in relation to him, shall not be entitled to claim any further benefit in respect of his previous service.
- (3) Where:
  - (a) a member has, on his retirement, become entitled to invalidity benefit consisting of a refund of the amount of contributions paid by him under this Act or of such a refund together with a gratuity;
  - (b) within a period of 12 months after his retirement, he again becomes a member and a contributor; and
  - (c) before the expiration of a period of 12 months after he again becomes a contributor or before he again ceases to be a member, whichever first occurs, he repays to the Fund the amount of the contributions refunded to him under subsection (1) and pays to the Commonwealth an amount equal to the gratuity, if any, received by him;his service before his retirement and his service after he again becomes a contributor shall be deemed to be continuous.
- (4) This section does not apply to a contributor who retires, or otherwise ceases to be a member, on or after 1 October 1972.

## **62 Children's pensions**

Notwithstanding anything contained in this Act, other than in section 63, pension in respect of a child is payable to the child.

## **63 Payment of pensions etc. otherwise than to person entitled**

- (1) Where, in the opinion of CSC, payment of pension or other benefit under this Act 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

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being under a disability, or for any other reason which CSC thinks proper, be made to a person other than the person who would be so entitled to the payment, CSC may authorize payment to the other person, and payment shall be made to the other person accordingly.

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

**64 Special grant of pension**

- (1) If, at any time after the date of commencement of this section (in this section referred to as the *commencing date*), a pension is not payable under section 57 of this Act to a person to whom a pension benefit would be payable at that time under Division 1 of Part VI of the *Defence Force Retirement and Death Benefits Act 1973*, were that Act, as amended and in force on the commencing date, to have been in force before a deceased pensioner (including a pensioner who died before the commencing date) ceased to be a member and were the deceased pensioner to have been, at the time of his death, a recipient member under that Act as so amended and in force, the Authority may grant, from such date as it specifies, a pension to the person at such rate and on such conditions as the Authority, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, determines.
- (2) If at any time after the commencing date, a pension is not payable under section 55 or section 57 of this Act in respect of a person to whom a pension benefit would be payable at that time under section 42 of the *Defence Force Retirement and Death Benefits Act 1973*, were that Act, as amended and in force on the commencing date, to have been in force before the death of a deceased contributor or the retirement of a deceased pensioner (including a pensioner who died before the commencing date) and were the deceased contributor to have been, at the time of his death, a contributing member, or the deceased pensioner to have been, at the time of his retirement, a recipient member, under that Act as so amended and in force, the Authority may grant, from such date as it specifies, a pension to the person at such rate and on such conditions as the Authority, having regard to such matters (if any) as are prescribed, and such matters as it considers relevant, determines.



- (3) If, at any time after the commencing date, a pension is not payable under section 55, 57 or 58 of this Act in respect of a person to whom a pension benefit would be payable at that time under section 43 of the *Defence Force Retirement and Death Benefits Act 1973*, were that Act, as amended and in force on the commencing date, to have been in force before the death of a deceased contributor or the retirement of a deceased pensioner (including a pensioner who died before the commencing date) and were the deceased contributor to have been, at the time of his death, a contributing member, or the deceased pensioner to have been, at the time of his retirement, a recipient member, under that Act as so amended and in force, the Authority may grant, from such date as it specifies, a pension to the person at such rate and on such conditions as the Authority, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, determines.
- (4) A date specified by the Authority under subsection (1), (2) or (3) in relation to the granting of an entitlement to 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 upon which the grant is made, and shall not, in any event, be a date earlier than the commencing date.
- (5) A determination by the Authority for the purpose of subsection (1), (2) or (3) shall be in writing.
- (6) Where, at any time before the commencing date, a pension has been paid to a person under section 57 as the widow of a deceased pensioner, the Authority shall not, under subsection (1) of this section, grant a pension to any other person in respect of that deceased pensioner.
- (7) The Authority shall not, under subsection (1), grant a pension to a person unless the Authority, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, is satisfied that the person is in necessitous circumstances or that the grant of the pension is otherwise warranted.
- (8) The Authority shall not, under subsection (1), grant a pension to a female person in relation to a deceased male pensioner from a specified date at a rate that exceeds the rate at which pension would have been payable from that specified date to the person

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under this Act had the person been, for the purposes of this Act as amended and in force at the date of death of the deceased pensioner, the widow of the deceased pensioner.

- (9) The Authority shall not, under subsection (1), grant a pension to a male person in relation to a deceased female pensioner from a specified date at a rate that exceeds the rate at which a pension would have been payable from that specified date to the person under this Act had the deceased pensioner been a male pensioner and had the person been, for the purposes of this Act as amended and in force at the date of death of the deceased pensioner, the widow of the deceased pensioner.
- (10) The Authority shall not, under subsection (2), grant a pension to a person in relation to a deceased contributor or a deceased pensioner from a specified date at a rate that exceeds the rate at which pension would have been payable from that specified date in respect of that person under this Act had the person been, for the purposes of this Act as amended and in force at, and at all times after, the date of death of the deceased contributor or the deceased pensioner, the child of the deceased contributor or the deceased pensioner and an eligible child.
- (11) The Authority shall not, under subsection (3), grant a pension to a person in relation to a deceased contributor or a deceased pensioner from a specified date at a rate that exceeds the rate at which pension would have been payable from that specified date in respect of that person under this Act, had the person been, for the purposes of this Act as amended and in force at, and at all times after, the date of death of the deceased contributor or the deceased pensioner, the child of the deceased contributor or the deceased pensioner and an eligible child and had the person become, at the time when he would, in the circumstances set out in subsection (3) have first become entitled, as an eligible orphan, to pension benefit in section 43 of the *Defence Force Retirement and Death Benefits Act 1973*, entitled to pension under subsection 55(2), 57(4) or 58(1) of this Act.
- (12) Where a pensioner dies on or after the commencing date and a pension is paid to a person, under section 57, as a widow of the pensioner, then, during the period that the pension continues to be paid, for the purpose of calculating the maximum rate of pension payable under subsection (1) to another person but not for the

purpose of calculating the maximum rate of pension payable under subsection (2) or (3) to another person, this Act has effect as if the reference in paragraph 57(1)(a) to five-eighths were a reference to three-eighths.

- (13) The grant by the Authority, under this section, of a pension to a person does not effect the entitlement of any other person under this Act to a pension that is payable otherwise than by virtue of a grant of a pension under this section or the rate of such a pension.

**64AA Special grant of pension where spouse pension would be payable**

- (1) If, at any time after the day on which Schedule 3 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commenced (the **start day**):
- (a) a pension is not payable to a person under section 57 or 64 of this Act; and
  - (b) a pension benefit:
    - (i) is not payable to the person under Division 1 of Part VI of the *Defence Force Retirement and Death Benefits Act 1973*, as in force on the start day; but
    - (ii) would have been payable to the person under that Division if a deceased pensioner had been, at the time of his or her death, a recipient member under that Act;
- CSC may grant, from a specified date, a pension to the person at a rate and on conditions that CSC determines in writing, having regard to any matters prescribed and any other matters it considers relevant.
- (2) CSC must not grant a pension to the person unless CSC, having regard to any matters prescribed and any other matters it considers relevant, is satisfied that:
- (a) the person is in necessitous circumstances; or
  - (b) the grant of the pension is otherwise warranted.
- (3) The specified date from which the pension is granted:
- (a) must not be earlier than the start day; and
  - (b) unless CSC is satisfied that special circumstances exist that justify an earlier date being specified, must not be earlier than the date the grant is made.

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- (4) The rate of the pension must not exceed the rate at which pension would have been payable under this Act to the person from the specified date had the person been, at the date of death of the deceased pensioner, the widow of the deceased pensioner for the purposes of this Act.
- (5) If:
- (a) a pension is paid to a person under section 57 of this Act as a widow of a pensioner; and
  - (b) CSC grants a pension under this section to another person in respect of the pensioner;
- then, for the purpose of calculating the rate of pension payable to the other person under this section, this Act has effect as if the reference in paragraph 57(1)(a) to five-eighths were a reference to three-eighths.
- (6) A determination made under subsection (1) is not a legislative instrument.
- (7) The grant of a pension to a person under this section does not affect any other person's entitlement to a pension, or the rate of that pension, under another section of this Act.

**64AB Special grant of pension where child's pension would be payable to eligible child**

- (1) If, at any time after the day on which Schedule 3 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commenced (the **start day**):
- (a) a pension is not payable in respect of a person under section 55, 57 or 64 of this Act; and
  - (b) a pension benefit:
    - (i) is not payable to the person under section 42 of the *Defence Force Retirement and Death Benefits Act 1973*, as in force on the start day; but
    - (ii) would have been payable to the person under that section if a deceased pensioner had been, at the time of his or her death, a recipient member under that Act;
- CSC may grant, from a specified date, a pension to the person at a rate and on conditions that CSC determines in writing, having regard to any matters prescribed and any other matters it considers relevant.

- (2) The specified date from which the pension is granted:
  - (a) must not be earlier than the start day; and
  - (b) unless CSC is satisfied that special circumstances exist that justify an earlier date being specified, must not be earlier than the date the grant is made.
- (3) The rate of the pension must not exceed the rate at which pension would have been payable under this Act to the person from the specified date had the person been, at the date of death of the deceased pensioner and at all times after that:
  - (a) the child of the deceased pensioner for the purposes of this Act; and
  - (b) an eligible child for the purposes of this Act.
- (4) A determination made under subsection (1) is not a legislative instrument.
- (5) The grant of a pension to a person under this section does not affect any other person's entitlement to a pension, or the rate of that pension, under another section of this Act.

**64AC Special grant of pension where child's pension would be payable to eligible orphan**

- (1) If, at any time after the day on which Schedule 3 to the *Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008* commenced (the **start day**):
  - (a) a pension is not payable in respect of a person under section 55, 57, 58 or 64 of this Act; and
  - (b) a pension benefit:
    - (i) is not payable to the person under section 43 of the *Defence Force Retirement and Death Benefits Act 1973*, as in force on the start day (the **amended Act**); but
    - (ii) would have been payable to the person under that section if a deceased pensioner had been, at the time of his or her death, a recipient member under that Act;CSC may grant, from a specified date, a pension to the person at a rate and on conditions that CSC determines in writing, having regard to any matters prescribed and any other matters it considers relevant.

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- (2) The specified date from which the pension is granted:
  - (a) must not be earlier than the start day; and
  - (b) unless CSC is satisfied that special circumstances exist that justify an earlier date being specified, must not be earlier than the date the grant is made.
- (3) The rate of the pension must not exceed the rate at which pension would have been payable under this Act to the person from the specified date:
  - (a) had the person been, at the date of death of the deceased pensioner and at all times after that:
    - (i) the child of the deceased pensioner for the purposes of this Act; and
    - (ii) an eligible child for the purposes of this Act; and
  - (b) had the person become entitled to a pension under subsection 55(2), 57(4) or 58(1) of this Act at the time when he or she would have first become entitled, in the circumstances set out in subsection (1), to pension benefit under section 43 of the amended Act.
- (4) A determination made under subsection (1) is not a legislative instrument.
- (5) The grant of a pension to a person under this section does not affect any other person's entitlement to a pension, or the rate of that pension, under another section of this Act.

**64A Restoration of pensions for remarried widows and widowers**

- (1) A widow or widower whose entitlement to a pension under subsection 55(1) or 57(1) has ceased on his or her remarriage may apply to CSC for:
  - (a) restoration of the pension; or
  - (b) restoration of the full rate of the pension.
- (2) If CSC is satisfied that the widow or widower's entitlement to a pension ceased on his or her remarriage, CSC must, in writing, grant the pension at the rate at which the pension would have been payable to the widow or widower if the pension had not ceased.
- (3) The pension is payable to the widow or widower at that rate from the day on which CSC receives the application.

- (4) If CSC grants a person a pension under this section at a particular rate, the grant at that rate does not effect:
- (a) any other person's entitlement under this Act to any other pension; or
  - (b) the rate of such a pension.

### **65 General provisions as to pensions**

- (1) Except where otherwise provided in this Act, a pension shall be payable during the life of the person entitled thereto.
- (2) Pension in respect of a child shall be payable only while the child is an eligible child.
- (4) Where a male pensioner marries after his retirement, pension shall not, upon the death of the pensioner, be payable to the widow or in respect of any child of the marriage.
- (5) Where:
- (a) a male pensioner again becomes a member and Part VIB does not apply to him or Part VIB applies to him but he is a person to or in relation to whom subsection 82G(5), (7) or (10) applies—the reference in subsection (4) to the retirement of a pensioner shall be read as a reference to his retirement before he again became a member; and
  - (b) a male pensioner again becomes a member but paragraph (a) does not apply in relation to him—the reference in subsection (4) to the retirement of a pensioner shall be read as a reference to his retirement after he again became a member.

### **66 Instalments of pension**

- (1) Pensions shall be paid in fortnightly instalments.
- (2) In order to ascertain the amount of an instalment of a pension covering a period of a fortnight the annual pension shall be divided by 26.
- (3) The amount of a pension payable in respect of each day shall be one-fourteenth of the amount of a fortnightly instalment.

### **68 Deduction of unpaid contributions from benefits**

- (1) There shall be deducted from any payment of pension or other benefit payable to or in respect of a person under this Act the amount of any contribution which that person is liable to pay, but has not paid, to the Fund.
- (2) Where a person ceases to be a member within a period of less than one fortnight after he became a contributor and has not commenced to make contributions to the Fund, he shall, for the purposes of subsection (1), be deemed to be liable to pay to the Fund one fortnightly contribution.

### **69 Re-engagement etc. of pensioners**

- (1A) Where:
  - (a) a pensioner, other than a pensioner under section 55 or 57, again becomes a member;
  - (b) he is not a person to whom Part VIB applies; and
  - (c) his pension is not suspended under section 53A or 53B;so much of his pension as is equivalent to the amount that, but for this subsection, would be payable by the Commonwealth to the Fund in respect of the pension is, by force of this subsection, cancelled until he ceases to be a member or becomes a person to whom Part VIB applies, whichever first occurs.
- (1B) A pensioner who has commuted a portion of his pension under section 74 shall pay to the Fund in respect of any period during which a part of his pension is cancelled under subsection (1A) an amount equal to the amount which, if he had not commuted that portion of the pension and that part of the pension had not been so cancelled, would have been payable by the Commonwealth to the Fund during that period in respect of that portion of the pension so commuted, and, upon payment of that amount to the Fund, there shall be paid from the Fund to the Commonwealth an amount equal to that amount.
- (2) In the application of section 57 to the widow of a pensioner, any cancellation of a part of his pension under subsection (1A) of this section shall be disregarded.
- (3) Where a pensioner (including a pensioner whose pension has been suspended under section 53A or 53B) becomes a person to whom



Part VIB applies, his pension is, by force of this subsection, cancelled.

- (3A) A pensioner who has commuted a portion of his pension under section 74 and whose pension is cancelled by force of subsection (3) shall pay to the Fund, in respect of the period during which he is a person to whom Part VIB applies, an amount equal to the difference between the amount that would have been payable to him as pension during that period if his pension had not been so cancelled and he had not become entitled to any increase in the rate of his pension before or during that period, and the amount that would have been so payable to him as pension during that period if he had not commuted that portion of his pension, and, upon payment of that amount to the Fund, there shall be paid from the Fund to the Commonwealth an amount equal to the amount that, if he had not commuted that portion of his pension and his pension had not been so cancelled, would have been payable by the Commonwealth to the Fund during that period in respect of that portion of his pension.
- (4) Where a person in receipt of a pension under section 55 or 57 is a contributor under this Act, she is, on retirement on pension, entitled to receive:
- (a) the proportions of both pensions that are based upon the contributions paid by her and by her husband; and
  - (b) the proportion payable by the Commonwealth:
    - (i) of whichever of the pensions secures to her the greater payment from the Commonwealth; or
    - (ii) if the payments from the Commonwealth are equal—of one only of those pensions.
- (5) Where a person in receipt of a pension under section 55 or 57 is a contributor under the provisions of the *Superannuation Act 1922-1959*, she is, on retirement on pension under that Act, entitled to receive, in addition to that last-mentioned pension:
- (a) the proportion of the pension under section 55 or 57 of this Act that is based upon the contributions paid by her husband; and
  - (b) the amount (if any) by which the proportion of the pension payable by the Commonwealth under this Act exceeds the proportion of the pension payable by the Commonwealth under the *Superannuation Act 1922-1959*.

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- (7) A person who is a pensioner (other than a pensioner under section 55 or 57) is guilty of an offence if:
- (a) the person again becomes a member for the purposes of this Act; and
  - (b) the person does not, within 14 days after again becoming such a member, notify the board in the prescribed manner.

Maximum penalty: \$40.

- (8) Where, by reason of the failure of a pensioner to notify the Board as required by subsection (7), the Board has paid to a pensioner an amount which, under the provisions of this section, should not have been paid, the Board may:
- (a) deduct the amount so paid from future payments of pension by such instalments as the Board thinks fit; or
  - (b) recover the amount so paid by action in a court having civil jurisdiction to the extent of that amount.
- (9) Where, by reason of the operation of subsection (1A), a payment of pension is reduced, no amount is payable by the Commonwealth to the Fund in respect of that payment of pension.
- (10) In subsections (4) and (5), a reference to a pension does not include a reference to a pension payable in respect of a child.
- (11) Subsection (1A) of this section does not apply to a pensioner who again becomes a member on or after 1 October 1972, subsection (5) of this section does not apply to a person whose retirement on pension under the *Superannuation Act 1922-1959*, or that Act as amended and in force from time to time, occurred on or after 1 October 1972, and subsection (7) of this section does not apply to a pensioner who again becomes a member on or after that date.

## **71 Absence or desertion**

Pension or gratuity shall not be payable under this Act to, or in respect of, any member who absents himself without leave for more than 21 days or becomes a deserter and who, during the period of absence or desertion, becomes incapacitated or dies.

## **72 Reduction of gratuity by reason of non-effective service**

Where:

- (a) a person is entitled to a gratuity under this Act; and
- (b) the period of service for pension of that person includes a period of non-effective service;

the amount of the gratuity that would, but for this section, be payable to the person shall be reduced by an amount that bears to that first-mentioned amount the same proportion as the period of non-effective service bears to the period of service for pension.

## **73 Special invalidity benefit to members under 18 years of age**

- (1) Where a member who, by reason only of subsection 23(2), is not contributing to the Fund is retired prior to attaining the age of 18 years on the ground of invalidity or of physical or mental incapacity to perform his duties (not, in the opinion of the Authority due to wilful action on his part for the purpose of obtaining pension under this section), the Authority shall determine the percentage of total incapacity of the member in relation to civil employment and shall classify the member according to the percentage of incapacity as follows:

Percentage of Incapacity	Class
60 or over .....	A
30 or over but less than 60 .....	B
Less than 30.....	C

- (1A) If, before the Authority has determined, for the purposes of subsection (1) the percentage of incapacity in relation to civil employment of a person, the person dies, the Authority must:
  - (a) determine what was, immediately before the person's death, his or her percentage of incapacity in relation to civil employment; and
  - (b) classify the person under subsection (1) according to that percentage of incapacity, as if the person had not died.
- (1B) Where a deceased person is classified under this section, the classification is taken to have had effect at all times on and after his or her retirement.
- (2) A person who is classified as Class A under subsection (1) is entitled, on retirement, to a pension at the rate of \$1,105 per

annum, a person who is classified as Class B under the last preceding subsection is entitled, on retirement, to a pension at the rate of \$552.50 per annum and a person who is classified as Class C under the last preceding subsection is not entitled to any benefit.

- (3) The Authority may, from time to time, if it is satisfied that the percentage of incapacity in relation to civil employment of a pensioner classified under subsection (1) is such that the classification of the pensioner should be altered, reclassify him in the appropriate classification set out in subsection (1) according to the percentage of his incapacity in relation to civil employment.
- (3AA) If, at a time when the Authority is reviewing, but has not yet determined, for the purposes of subsection (3), the percentage of incapacity in relation to civil employment of a pensioner, the pensioner dies:
- (a) the Authority must determine what was, immediately before the pensioner's death, his or her percentage of incapacity in relation to civil employment; and
  - (b) where the Authority is satisfied, having regard to that percentage of incapacity, that, if the pensioner had not died, the pensioner would be reclassified and given a classification higher than that of the pensioner at the time of his or her death, the Authority must reclassify the pensioner under subsection (1) according to that percentage of incapacity, as if the pensioner had not died.
- (3A) In determining:
- (aa) for the purposes of subsection (3), what is the percentage of incapacity in relation to civil employment of a pensioner; or
  - (aab) for the purposes of subsection (3AA), what was, immediately before his or her death, the percentage of incapacity in relation to civil employment of a pensioner who has died;
- the Authority shall have regard to the following matters only:
- (a) the vocational, trade and professional skills, qualifications and experience of the pensioner;
  - (b) the kinds of civil employment which a person with skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;
  - (c) the degree to which any physical or mental impairment of the pensioner, being a prescribed physical or mental impairment, has or had diminished the capacity of the pensioner to

undertake the kinds of civil employment referred to in paragraph (b);

- (d) such other matters (if any) as are prescribed for the purposes of this subsection.
- (3B) In subsection (3A), ***prescribed physical or mental impairment***, in relation to a pensioner or a deceased pensioner, means:
- (a) a physical or mental impairment of the pensioner that was the cause, or one of the causes, of the invalidity or physical or mental incapacity by reason of which the pensioner was retired, whether or not that impairment changed, for better or worse, since that retirement; or
  - (b) any other physical or mental impairment of the pensioner causally connected with a physical or mental impairment referred to in paragraph (a).
- (4) Where a person is reclassified under subsection (3), the Authority shall specify the date from which the reclassification has effect, and, on and after that date, the person shall, for the purposes of subsection (2), be deemed to be classified accordingly.
- (4A) Where a deceased person is reclassified under subsection (3AA):
- (a) the Authority must specify the day from which the reclassification has effect; and
  - (b) the person is taken, for the purposes of subsection (2), to have been classified accordingly on and after that day.
- (5) In respect of each payment of pension (being a payment that became payable before 1 October 1972) paid under this section, the Commonwealth shall pay to the Fund an amount equal to that payment.
- (6) This section does not apply to or in relation to any member who retires on or after the date fixed under subsection 2(2) of the *Defence Forces Retirement Benefits Act (No. 3) 1968*.

## **Division 2—Commutation of pension**

### **74 Commutation of pension**

- (1) Subject to the regulations, a pensioner who has not attained the age of 57 years may apply to the Authority for the commutation of a portion of his pension, being a portion that does not exceed one-third of the pension.
- (2) When an application is made to the Authority under this section, the Authority may, at its discretion, grant or refuse the application, or grant the application subject to such terms and conditions as the Authority thinks fit.

## **Part VIA—Family law superannuation splitting**

### **Division 1—Preliminary**

#### **80A Definitions**

In this Part, unless the contrary intention appears:

***associate pension*** means associate pension under section 80B.

***base amount*** means:

- (a) for a splitting agreement—the base amount specified in, or calculated under, the agreement; or
- (b) for a splitting order—the amount allocated under subsection 90MT(4) of the *Family Law Act 1975*.

***family law value*** means the amount determined in accordance with regulations under the *Family Law Act 1975* that apply for the purposes of paragraph 90MT(2)(a) of the *Family Law Act 1975*. In applying those regulations, the relevant date is taken to be the date on which the operative time occurs.

Note: This amount is determined by applying those regulations, whether or not an order has been made under subsection 90MT(1) of the *Family Law Act 1975*.

***member spouse*** has the same meaning as in Part VIII B of the *Family Law Act 1975*.

***non-member spouse*** has the same meaning as in Part VIII B of the *Family Law Act 1975*.

***non-standard pension*** means pension under this Act other than standard pension.

***operative time***, in relation to a splitting agreement or splitting order, means the time that is the operative time for the purposes of Part VIII B of the *Family Law Act 1975* in relation to a payment split under the agreement or order.

***Orders*** means Orders under section 80E.

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**original interest** means a superannuation interest to which section 80B applies.

**payment split** has the same meaning as in Part VIII B of the *Family Law Act 1975*.

**scheme value** means the amount determined under the Orders.

**splitting agreement** means:

- (a) a superannuation agreement (within the meaning of Part VIII B of the *Family Law Act 1975*); or
- (b) a flag lifting agreement (within the meaning of Part VIII B of the *Family Law Act 1975*) that provides for a payment split.

**splitting order** has the same meaning as in Part VIII B of the *Family Law Act 1975*.

**splitting percentage** means:

- (a) for a splitting agreement—the percentage specified in the agreement under subparagraph 90MJ(1)(c)(iii) of the *Family Law Act 1975*; or
- (b) for a splitting order—the percentage specified in the order under subparagraph 90MT(1)(b)(i) of the *Family Law Act 1975*.

**standard pension** means any of the following:

- (a) pension under section 38, 39, 41 or 43;
- (b) invalidity benefit;
- (c) pension under section 55 or 57;
- (d) associate pension.

**superannuation interest** has the same meaning as in Part VIII B of the *Family Law Act 1975*.

**transfer amount** means:

- (a) if a splitting percentage applies—the amount calculated by multiplying the splitting percentage by the greater of:
  - (i) the family law value; and
  - (ii) the scheme value; or
- (b) if a base amount applies and the scheme value is not more than the family law value—the base amount; or



- (c) if a base amount applies and the scheme value is more than the family law value—the amount calculated using the formula:

$$\text{Scheme value} \times \frac{\text{Whole dollars in base amount}}{\text{Whole dollars in family law value}}$$

## Division 2—Benefits for non-member spouse

### 80B Associate pension for non-member spouse

- (1) This section applies to a superannuation interest under this Act (the *original interest*) if:
  - (a) CSC receives a splitting agreement or splitting order in respect of the original interest; and
  - (b) the original interest is not an entitlement to pension under paragraph 57(1)(b), subsection 57(4) or (5) or section 58; and
  - (c) the member spouse and the non-member spouse are both alive at the operative time; and
  - (d) if a base amount applies—the base amount at the operative time is not more than the family law value or the scheme value.
- (2) The non-member spouse is entitled to associate pension from the operative time, at the rate calculated under the Orders by reference to the transfer amount.

### 80C Commutation of small associate pension

- (1) If the annual rate of associate pension to which the non-member spouse becomes entitled is less than the amount determined under the Orders, then the non-member spouse may elect to commute the pension.
- (2) The election must be made in writing to CSC not later than 3 months after the non-member spouse becomes entitled to the pension.
- (3) If the non-member spouse makes the election, then the non-member spouse is entitled instead to a lump sum equal to the transfer amount.

## **Division 3—Reduction of benefits for member spouse**

### **80D Reduction of standard pension**

- (1) The annual rate of standard pension that is payable at the operative time in respect of the original interest is reduced to the amount calculated under the Orders.
- (2) A reduction under this section is to be disregarded in calculating the amount of any non-standard pension that later becomes payable.

Note: For example, the reduction will be disregarded in calculating the amount of pension under paragraph 57(1)(b) payable in respect of a child of the member spouse after the member spouse's death.

## **Division 4—Miscellaneous**

### **80E Ministerial Orders**

The Minister may, by legislative instrument, make Orders prescribing matters required or permitted by this Part to be prescribed.

## **Part VIB—Application of this Act to pensioners who again become contributors**

### **82E Application of Part**

- (1) This Part applies to a person who, being in receipt of or entitled to a pension under this Act that became payable by reason of his having been a member other than a pension being a deferred benefit applicable under Division 3 of Part VIC, has become liable under section 23 to make contributions to the Fund upon again becoming, or after having again become, a member and has not again ceased to be a member.
- (2) In determining, for the purposes of subsection (1), whether a person who again becomes a member is required by section 23 to contribute to the Fund, any reference in subsection 23(3) or (4) to engagement, re-engagement, appointment or re-appointment shall be read as not including a reference to an engagement, re-engagement, appointment or re-appointment of the person before he again became a member.
- (3) For the purposes of this section, a person shall not be deemed to have ceased to be entitled to a pension by reason only that the pension has been suspended under this Act.

### **82F Contributions**

- (1) The application of Part IV to and in relation to a person to whom this Part applies is subject to this section.
- (3) For the purpose of determining the amount of contribution payable by a person to whom this Part applies, the age at which he became a person to whom this Part applies shall be deemed to be the age at which he became a contributor prior to becoming entitled to a pension.
- (4) Where the new category number of a person to whom this Part applies is a lower number than his previous category number, he may, by notice in writing given to the Board within 4 months after he became a person to whom this Part applies, elect to be treated as

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if his new category number were the same as his previous category number, and, if he so elects, his category number shall, upon his becoming a person to whom this Part applies and until the category number applicable to him under section 4A is a number higher than his previous category number, be deemed, for the purposes of this Act, to be a number the same as his previous category number.

- (5) In subsection (4):

*new category number*, in relation to a person to whom this Part applies, means the category number of the person at the time when he became a person to whom this Part applies.

*previous category number*, in relation to a person to whom this Part applies, means the category number of the person immediately before he became a pensioner or, if that category number would, if this Act, and the Defence Forces Retirement Benefits Regulations, as in force at the time when he became a person to whom this Part applies, had been in force immediately before he became a pensioner, have been a different number, that different number.

- (6) The reference in the definition of *previous category number* in subsection (5) to the category number of a person immediately before he became a pensioner shall, in the case of a person who became a pensioner before 14 December 1959, be read as a reference to the number of units for which the person was last contributing to the Fund before he became a pensioner.
- (7) Nothing in Part III of the *Defence Forces Retirement Benefits Act 1959-1966*, Part IV of the *Defence Forces Retirement Benefits Act 1962-1963* or Part IV of the *Defence Forces Retirement Benefits Act 1963-1965* shall be construed as affecting the amount of contributions payable by a person to whom this Part applies.

**82G Pension or benefit payable**

- (1) The application of Part V to and in relation to a person to whom this Part applies is subject to this section.
- (2) For the purpose of determining the pension payable upon the retirement of a person to whom this Part applies, the service for pension of that person shall be deemed to be the aggregate of the periods of service for pension served by that person prior to and after he became a person to whom this Part applies, other than

service in respect of which a refund of contributions has been paid or is payable to him.

(3) Where a person to whom this Part applies is, upon retirement, an officer but not a member of the Permanent Forces, his age on retirement shall, for the purposes of subsections 38(3) and (3A) and subsections 39(3), (3A) and (4), but not for any other purpose of this Act, be deemed to be his actual age on retirement reduced by a period equal to the period commencing on the date when he first became entitled to pension under this Act and ending on the date immediately preceding the date on which he became a person to whom this Part applies.

(4) Where:

- (a) immediately before he became entitled to a pension, a person to whom this Part applies was a member other than an officer and had completed 20 years' service for pension;
- (b) on retirement after becoming a person to whom this Part applies, he is an officer but is not entitled to pension under Part V; and
- (c) his failure to be entitled to pension is not attributable to the operation of section 54 or 71;

he is entitled, on retirement (in lieu of any other benefit to which, but for this subsection, he would be entitled):

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

(5) Where:

- (a) the pension of a person to whom this Part applies became payable by virtue of section 51;
- (b) immediately before he became entitled to that pension, he was an officer and had completed 20 years' service for pension; and

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- (c) on retirement after having become a person to whom this Part applies, he is not entitled to pension under Part V, whether by reason of the operation of section 54 or 71, or otherwise;  
he is entitled, on retirement (in lieu of any other benefit to which, but for this subsection, he would be entitled):
  - (d) to the pension to which he would have been entitled immediately before he became a person to whom this Part applies if, immediately before he became such a person, he had been reclassified as Class C under section 53;
  - (e) to a refund of the amount of the contributions paid by him to the Fund after he became a person to whom this Part applies; and
  - (f) to any gratuity payable to him under this Act in respect of his service after he became a person to whom this Part applies.
- (6) Where:
  - (a) the pension of a person to whom this Part applies became payable by virtue of section 51;
  - (b) on retirement after having become a person to whom this Part applies, he is not entitled to pension under Part V, whether by reason of the operation of section 54 or 71, or otherwise; and
  - (c) subsection (4) or (5) does not apply to him;  
he is entitled, on retirement (in lieu of any other benefit to which, but for this subsection, he would be entitled):
    - (d) to any refund of contributions and gratuity to which he would have been entitled if he had been reclassified as Class C under section 53 immediately before he became a person to whom this Part applies;
    - (e) to a refund of the amount of the contributions paid by him to the Fund after he became a person to whom this Part applies; and
    - (f) to any gratuity payable to him under this Act in respect of his service after he became a person to whom this Part applies.
- (7) Where:
  - (a) the pension of a person to whom this Part applies became payable otherwise than by virtue of section 51;
  - (b) on retirement after becoming a person to whom this Part applies, he is not entitled to pension under Part V, whether by reason of the operation of section 54 or 71, or otherwise; and



- (c) subsection (4) does not apply to him;  
he is entitled, on retirement (in lieu of any other benefit to which, but for this subsection, he would be entitled):
  - (d) to pension corresponding with the pension that was cancelled when he became a person to whom this Part applies; and
  - (e) to a refund of the amount of the contributions paid by him to the Fund after he became such a person.
- (8) Where a person is entitled to benefit under subsection (5), (6) or (7) of this section, sections 54 and 71 do not apply in relation to that benefit except gratuity payable by virtue of paragraph (5)(f) or (6)(f) of this section.
- (9) Where a person to whom this Part applies dies before retirement and section 59 applies in relation to him, the reference in that section to the contributions paid by a member shall be read as a reference to the contributions paid by the person after he became a person to whom this Part applies.
- (10) Where a person to whom this Part applies dies before retirement and, by reason of the operation of section 71, pension would not, but for this subsection, be payable in respect of him, that section does not apply in relation to him and he shall be deemed, for the purposes of this Act, to have been a pensioner on the date on which he died in receipt of the pension that was cancelled when he became a person to whom this Part applies, and the amount of the contributions paid by him under this Act after he became such a person shall be paid to his personal representatives, or failing them, to such persons, if any, as the Board determines.
- (11) Where:
  - (a) the pension of a person to whom this Part applies became payable by virtue of section 51;
  - (b) on retirement after becoming a person to whom this Part applies, he again became entitled to pension by virtue of section 51 upon being classified as Class A or Class B under that section; and
  - (c) he is later reclassified as Class C under section 53 and, upon being so reclassified, ceases to be entitled to a pension;he is entitled, upon being so reclassified:

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- (d) to any refund of contributions and gratuity to which he would have been entitled if he had been so reclassified immediately before he became a person to whom this Part applies; and
- (e) to a refund of the amount of the contributions paid by him under this Act after he became a person to whom this Part applies, and to a gratuity calculated in accordance with section 52 by reference to his service after he became a person to whom this Part applies, to the extent that the sum of the amount of the refund and the amount of the gratuity exceeds the sum of the payments of pension received by him after his retirement after becoming a person to whom this Part applies.

**82GA Pension rates in special cases**

- (1) Paragraph (2)(a) applies in relation to a person to whom this Part applies who retires, or dies before retirement, and:
  - (a) whose new category number is a lower number than his previous category number;
  - (b) who, before he first became entitled to pension, made an election under section 61A or 61B of the *Defence Forces Retirement Benefits Act 1963-1965*;
  - (c) the rate of whose pension on his first retirement was reduced:
    - (i) under section 58 or 79A, or under an agreement entered into under section 78 or 79, of the *Defence Forces Retirement Benefits Act 1959* or that Act as amended and in force from time to time;
    - (ii) under section 41, 44, 45, 46 or 47 of the *Defence Forces Retirement Benefits Act 1962* or that Act as amended and in force from time to time; or
    - (iii) under section 51, 54, 55, 56 or 57 of the *Defence Forces Retirement Benefits Act 1963* or that Act as amended and in force from time to time;
  - (d) who first retired after the commencement of the *Defence Forces Retirement Benefits Act 1959* and, immediately before that retirement, was not a contributor for maximum additional basic pension for the purposes of Part III of that Act;
  - (e) who first retired after the commencement of the *Defence Forces Retirement Benefits Act 1962* and, immediately before that retirement, was not a contributor for maximum

additional basic pension for the purposes of Part IV of that Act;

- (f) who first retired after the commencement of the *Defence Forces Retirement Benefits Act 1963* and, immediately before that retirement, was not a contributor for maximum additional basic pension for the purposes of Part IV of that Act;
- (g) who is or was a person to whom the *Defence Forces Special Retirement Benefits Act 1960* applies or applied; or
- (h) the rate of whose pension is, by virtue of the operation of section 77 or 78 of the *Defence Forces Retirement Benefits Act 1948* or that Act as amended and in force from time to time, less than it would otherwise be.

(2) Where:

- (a) pension becomes payable to or in respect of a person in relation to whom this paragraph applies;
- (b) pension becomes payable to a person to whom this Part applies and who, before he became such a person, commuted a portion of his pension under section 74 of this Act; or
- (c) pension becomes payable in respect of a person to whom this Part applies and who made an election under subsection 47(6) of the *Defence Forces Retirement Benefits Act 1959*, being an election that has not been revoked;

that pension shall be paid at such rate as is determined by the Board as being appropriate having regard to all the circumstances of the case.

(3) In subsection (1):

***new category number***, in relation to a person in relation to whom this section applies, means the category number of the person immediately before his retirement or death.

***previous category number***, in relation to a person in relation to whom this section applies, means the category number of the person immediately before he first became a pensioner or, if that category number would, if this Act, and the Defence Forces Retirement Benefits Regulations, as in force immediately before his retirement or death, had been in force immediately before he first became a pensioner, have been a different number, that different number.

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- (4) The reference in the definition of *previous category number* in subsection (3) to the category number of a person immediately before he first became a pensioner shall, in the case of a person who became a pensioner before 14 December 1959, be read as a reference to the number of units for which the person was last contributing to the Fund before he became a pensioner.

**82H Persons not entitled to double pension and pensions not to be reduced**

Nothing in this Part has the effect:

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

## **Part VIC—Preservation of rights of certain members and former members**

### **Division 1—Preliminary**

#### **82J Interpretation**

- (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* has the same meaning as in the *Life Insurance Act 1995*.

*member*, in relation to a superannuation scheme applying in relation to any employment, includes any person employed in that employment in respect of whom benefits are applicable under the scheme by reason of his being so employed, whether or not he has made contributions under the scheme.

*owner of a life policy* has the same meaning as in the *Life Insurance Act 1995*.

*the 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 retirement scheme constituted by the provision of this Act and the other Acts relating to retirement benefits for members of the Defence Force.
- (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 members.

**82K Determinations by the Board**

- (2) Where, in pursuance of this Part, the Board or 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.

## **Division 2—Contributors who have preserved rights from previous employment**

### **82L Transfer value payable in respect of previous employment**

- (1) In this Division:
- (a) a reference, in relation to a 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 a member is a reference:
    - (i) in the case of the superannuation scheme constituted by the provisions of this Act and the other Acts relating to retirement benefits for members of the Defence Force—to a transfer value payable in respect of the member under Division 3 of this Part or to a refund of contributions and a gratuity payable to the member; and
    - (ii) in the case of any other superannuation scheme—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 subparagraph (a)(ii) 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 1922-1971* for reserve units of pension.
- (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 superannuation scheme constituted by the provisions of this Act and of the other

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Acts relating to retirement benefits for members of the Defence Force):

- (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 subsection (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, the person was the owner of a life policy, or was entitled to have the rights of the owner of a life policy assigned to him or her, being a policy the premiums for which were, while the person was employed in that employment, paid in whole or in part by the person's 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 subsection (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, the person was the owner of a life policy, or was entitled to have the rights of the owner of a life policy assigned to him or her, 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, the person was the owner of that policy, or was entitled to have the rights of the owner of that policy assigned to him or her.

**82M Pension payable in respect of previous employment**

In this Division:

- (a) a reference, in relation to a member, to a prescribed pension payable to 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 a member is a reference to a pension payable to the member



under such a scheme (other than the scheme constituted by the provisions of this Act and the other Acts relating to retirement benefits for members of the Defence Force) that was based wholly upon contributions under the scheme by the employer or was based partly upon such contributions and partly upon contributions by the member but does not include a reference to a pension the payment of which was deferred; and

- (b) where a pension referred to in paragraph (a) was commuted, in whole or in part, for a lump sum after the pension became payable and before the date on which the person to whom the pension was payable became a member, the pension shall, for the purposes of this Division, be treated as not having been so commuted.

### **82N Deferred benefits applicable in respect of previous employment**

In this Division, a reference, in relation to a member, to deferred benefits applicable 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 a member is a reference:

- (a) in the case of the superannuation scheme constituted by the provisions of this Act and the other Acts relating to retirement benefits for members of the Defence Force—to deferred benefits applicable in respect of the member under Division 3 of this Part; and
- (b) in the case of any other superannuation scheme—to benefits, whether by way of a lump sum or of a pension, applicable in respect of the member under the scheme but not immediately payable, being benefits based wholly upon contributions under the scheme by the employer or based partly upon such contributions and partly upon contributions under the scheme by the member.

### **82P Declaration by member who has previously been in employment**

- (1) Where a person who has attained the age of 21 years becomes a member and an officer, or a person who, having become a member other than an officer after having attained that age, becomes an officer, he shall, before the expiration of one month after the date on which he became a member and an officer, or became an

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officer, as the case may be, or before such later time as the Board in special circumstances allows, furnish to the Board a declaration in writing in accordance with a form made available by the Board:

- (a) stating whether he has previously been in employment within or outside Australia; and
- (b) if he has so previously been in employment, stating whether, upon the termination of that employment:
  - (i) a transfer value became payable to or in respect of him on or after the date of commencement of this section under a superannuation scheme applicable in relation to that employment;
  - (ii) a transfer value would have become so payable on or after that date but for an election or choice made, option exercised or other act or thing done by him, or he was entitled to make an election or choice, exercise an option or do any other act or thing as a result of which a transfer value would have become so payable on or after that date but he did not make the election or choice, exercise the option or do the other act or thing;
  - (iii) a prescribed pension became payable to him under such a scheme;
  - (iv) a prescribed pension would have become so payable on or after the date of commencement of this section but for an election or choice made, option exercised or other act or thing done by him, or he was entitled to make an election or choice, exercise an option or do any other act or thing as a result of which a prescribed pension would have become so payable on or after that date but he did not make the election or choice, exercise the option or do the other act or thing;
  - (v) any deferred benefits became applicable in respect of him on or after the date of commencement of this section under such a scheme;
  - (vi) any deferred benefits would have become so applicable on or after that date but for an election or choice made, option exercised or other act or thing done by him, or he was entitled to make an election or choice, exercise an option or do any other act or thing as a result of which any deferred benefits would have become so applicable on or after that date but he did not make the election or

choice, exercise the option or do the other act or thing;  
or

- (vii) in the case of a person who has been an employee within the meaning of the *Superannuation Act 1922-1971* and, immediately before he became such an employee, was a contributor to a Public Service Superannuation Fund within the meaning of Part VIII of that Act—a refund of the whole or any part of any contributions made by him to that Fund became payable;

and, if so, setting out particulars of the transfer value, prescribed pension, deferred benefits or refund that became, or would have become, payable.

- (2) A person to whom subsection (1) applies shall furnish to the Board, within the period referred to in that subsection, an authority in writing authorizing the Board to obtain information in relation to any transfer value, prescribed pension, deferred benefits or refund referred to in that subsection from his previous employer or from any person administering the superannuation scheme applicable in relation to his previous employment.
- (3) Subsection (1) does not apply to a person who becomes a member and an officer, or becomes an officer, as the case may be, on or after 1 October 1972.

### **82Q Members with superannuation rights from previous employment**

- (1) Where a person who becomes a member and a contributor, or being a member becomes a contributor, after the commencement of this section has, at any time before becoming a member, been in employment within or outside Australia upon the termination of which:
- (a) a transfer value became payable to or in respect of him on or after the date of commencement of this section under a superannuation scheme applicable in relation to that employment;
- (b) a transfer value would have become so payable on or after that date but for an election or choice made, option exercised or other act or thing done by him, or he was entitled to make an election or choice, exercise an option or do any other act

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or thing as a result of which a transfer value would have become so payable on or after that date but he did not make the election or choice, exercise the option or do the other act or thing;

- (c) a prescribed pension became payable to him under such a scheme;
- (d) a prescribed pension would have become so payable on or after the date of commencement of this section but for an election or choice made, option exercised or other act or thing done by him, or he was entitled to make an election or choice, exercise an option or do any other act or thing as a result of which a prescribed pension would have become so payable on or after that date but he did not make the election or choice, exercise the option or do the other act or thing;
- (e) any deferred benefits became applicable in respect of him on or after the date of commencement of this section under such a scheme; or
- (f) any deferred benefits would have become so applicable on or after that date but for an election or choice made, option exercised or other act or thing done by him, or he was entitled to make an election or choice, exercise an option or do any other act or thing as a result of which any deferred benefits would have become so applicable on or after that date but he did not make the election or choice, exercise the option or do the other act or thing;

sections 82R and 82S have effect.

- (2) Paragraph (1)(b) shall not be taken to apply in relation to a person by reason of the doing of, or the failure to do, any act or thing if, as a result of the doing of the act or thing or as a result of the failure, paragraph (1)(c) or (e) applies in relation to him.
- (3) Paragraph (1)(d) shall not be taken to apply in relation to a person by reason of the doing of, or the failure to do, any act or thing if, as a result of the doing of the act or thing or as a result of the failure, paragraph (1)(a) or (e) applies in relation to him.
- (4) Paragraph (1)(f) shall not be taken to apply in relation to a person by reason of the doing of, or the failure to do, any act or thing if, as a result of the doing of the act or thing or as a result of the failure, paragraph (1)(a) or (c) applies in relation to him.

- (5) Subsection (1) does not apply to a person who becomes a member and a contributor, or becomes a contributor, as the case may be, on or after 1 October 1972.

### **82R Rights of members who elect to pay transfer value to Board**

- (1) If:
- (a) a transfer value or transfer values became payable to or in respect of the member in accordance with paragraph 82Q(1)(a);
  - (b) the member elected not later than 3 months after the date on which he became a contributor to pay to the Board an amount equal to the amount of that transfer value or, if 2 or more transfer values became payable, to the sum of the amounts of those transfer values; and
  - (c) that amount has, before the expiration of that period of 3 months, been paid to the Board;
- the succeeding provisions of this section have effect.
- (2) The Board 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 and the payment of an amount to the Board under subsection (1).
- (3) So much of the amount paid to the Board 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 be paid by the Board to the Fund and, when so paid, 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 made to the Fund by the member.
- (4) The Board shall pay to the Commonwealth so much of the amount paid to the Board as is equal to the employer component of the transfer value or to the sum of the employer components of the transfer values, as the case may be.
- (5) For the purposes of the application of section 30 in relation to the member, a reference in that section to the date as from which he was required to contribute to the Fund shall be taken to be a

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reference to the date that is earlier than the actual date from which he was so required to contribute by such period as is determined by the Board.

- (6) In furnishing advice to the Board in relation to the determination by the Board, for the purposes of subsection (5), of a period in relation to the member, the Commonwealth Actuary shall have regard to actuarial principles and practice and shall take into account all relevant matters, including:
- (a) the date on which the member became a contributor;
  - (b) the amount paid to the Board;
  - (c) the amounts respectively paid to the Fund and to the Commonwealth under subsections (3) and (4);
  - (d) the age of the member at the date on which he became a contributor;
  - (e) the respective rates of mortality, invalidity and withdrawal from the Fund that are assumed, for the purposes of the advice, to apply in relation to the class of contributors in which the member is included; and
  - (f) the rates of interest that it is assumed, for the purposes of the advice, will be earned by the assets of the Fund.
- (7) If the member became a member after having attained the age of 20 years, the period of his service for pension shall, for the purposes of pension under this Act, be deemed to be increased by a period equal to:
- (a) the period determined by the Board in accordance with subsection (5); or
  - (b) the period that commenced on the day on which he attained the age of 20 years and ended on the day immediately before he became a member;
- whichever is the shorter period.
- (8) 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 member upon the termination of that employment irrespective of whether he engaged in further employment; and

- (b) the member ceases to be a member and a refund of the contributions paid by him to the Fund, with or without any additional amount, is payable to or in respect of him; so much of the amount paid to the Commonwealth under subsection (4) 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 out of the Fund.
- (9) Where an amount is payable out of the Fund under subsection (8), the Commonwealth shall pay an amount equal to that amount to the Fund.
- (10) 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.
- (11) Upon the transfer of the moneys of the Fund, by virtue of section 21A, to the Commonwealth, this section has effect as if:
- (a) the requirement in subsection (3) of this section that an amount be paid to the Fund were a requirement that that amount be paid to the Commonwealth and not to the Fund; and
  - (b) subsection (6) of this section were amended:
    - (i) by omitting from paragraph (c) “to the Fund and to the Commonwealth”;
    - (ii) by omitting from paragraph (e) “withdrawal from the Fund” and substituting “resignation upon which no benefit other than a refund of contributions is payable”;
    - and
    - (iii) by omitting from paragraph (f) “will be earned by the assets of the Fund” and substituting “would have been earned by the assets of the Fund if the moneys of the Fund had not been transferred to the Commonwealth and had included any amounts paid to the Commonwealth in pursuance of paragraph (a) of this subsection”.

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- (12) In this section, a reference to the Board shall be read as including a reference to the Authority.

**82S Category numbers of certain officers to be reduced**

- (1) This section applies in relation to a member who is an officer at the time when he becomes a contributor, or becomes an officer after that time, and:
- (a) to or in respect of whom a transfer value or transfer values became payable in accordance with paragraph 82Q(1)(a) but in relation to whom section 82R does not apply; or
  - (b) in relation to whom paragraph 82Q(1)(b), (c), (d), (e) or (f) applies, whether or not section 82R applies in relation to him.
- (2) For the purposes of this Act, the category number of a member in relation to whom this section applies is the number that, but for this section, would be his category number reduced by such number (if any) as is determined by the Authority.
- (3) In furnishing advice to the Authority in relation to the determination by the Authority, for the purposes of subsection (2), of a number in relation to a member, the Commonwealth Actuary shall have regard to actuarial principles and practice and shall take into account all relevant matters, including:
- (a) in respect of any transfer value referred to in paragraph 82Q(1)(a) or (b) that was, or would have become, payable to the member:
    - (i) the amount of that transfer value; and
    - (ii) the extent to which that transfer value was, or would have been, based upon contributions under the relevant superannuation scheme by the employer of the member and the extent (if any) to which it was, or would have been, based upon contributions by the member;
  - (b) in respect of any pension referred to in paragraph 82Q(1)(c) or (d) that is, or would have become, payable to the member:
    - (i) the amount that was the amount of that pension at the date on which he became an officer or the date on which he became a contributor, whichever was the later, or would have been the amount of the pension at that later date if the pension had become payable to the member; and



- (ii) whether, in the event of the death of the member leaving a widow or a child or children, any benefits would be payable under the relevant superannuation scheme to the widow or in respect of the child or children or would have been so payable if the pension had become payable to the member;
  - (c) in respect of any deferred benefits referred to in paragraph 82Q(1)(e) or (f) that are, or would have become, applicable in respect of the member:
    - (i) the nature of the deferred benefits;
    - (ii) the circumstances in which the benefits were to become, or would have become, payable; and
    - (iii) the amount of any pension or lump sum that has or will become, or would have become, payable as, or as part of, the deferred benefits;
  - (d) the age of the member at the date on which he became a contributor or the date on which he became an officer, whichever was the later;
  - (e) the respective rates of mortality, invalidity and withdrawal from the Fund that are assumed, for the purposes of the advice, to apply in relation to the class of contributors in which the member is included; and
  - (f) the rates of interest that it is assumed, for the purposes of the advice, will be earned by the assets of the Fund.
- (4) Where:
- (a) a transfer value became payable to or in respect of a member in accordance with paragraph 82Q(1)(a); and
  - (b) a transfer value of a greater amount would have become so payable but for the doing of, or the failure to do, any act or thing referred to in paragraph 82Q(1)(b);
- the first-mentioned transfer value shall not be taken into account for the purposes of paragraph (3)(a).
- (5) Where:
- (a) a transfer value became payable to or in respect of a member in accordance with paragraph 82Q(1)(a); and

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- (b) a transfer value of a smaller amount would have become so payable but for the doing of, or the failure to do, any act or thing referred to in paragraph 82Q(1)(b);  
the last-mentioned transfer value shall not be taken into account for the purposes of paragraph (3)(a).
- (6) The amount per fortnight of the contribution that, but for this section, would be payable by a member to whom this section applies is reduced by so much of that amount as the Authority determines, having regard to the reduction in his category number effected by subsection (2).

## **Division 3—Preservation of Rights of Contributors Ceasing to be Members**

### **82T Interpretation**

- (1) For the purposes of this Division, the prescribed period in relation to a person who has ceased to be a member is:
  - (a) in the case of a person other than a person in relation to whom paragraph (b) applies—the period of 3 months immediately after he ceased to be a member; or
  - (b) in the case of a person who ceased to be a member 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 1969* 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 a 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 3 months immediately after the date that is the declared date in relation to the election under the *Defence (Parliamentary Candidates) Act 1969*.
- (2) For the purposes of this Division but subject to subsection (3):
  - (a) a period in respect of which a pension, being invalidity benefit, was payable to a person under this Act and immediately before the commencement of which he was a contributor shall be treated as if it had been a period during which he was a contributor;
  - (b) a period in respect of which a pension, being invalidity benefit, was payable to a person under this Act and immediately before the commencement of which he was employed in public employment shall be treated as if it had been a period in which he was employed in public employment; and

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- (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 superannuation scheme constituted by the provisions of this Act and of the other Acts relating to retirement benefits for members of the Defence Force) 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 a pension, being invalidity benefit, was not payable to a person under this Act during any period by reason only of section 53A or 53B, that period shall be treated for the purposes of this Division as if it had been a period during which that pension was payable, but:
  - (a) if the person was, immediately before the pension became payable, a contributor—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 during which he was a contributor; or
  - (b) if the person was, immediately before the pension became payable, employed in public employment—shall not, in the calculation of the period during which he was employed in public employment, be treated, by reason of paragraph (2)(b), as if it had been a period during which he was employed in public employment.

**82U Eligible employment**

- (1) For the purposes of the application of this Division in relation to a person who has ceased to be a member, the following periods of employment of the person are periods of eligible employment:
  - (a) the period of employment during which the person was a contributor and which terminated at the time when he so ceased to be a member;
  - (b) subject to subsections (2) and (3), a period of employment of the person by the Commonwealth, by the Northern Territory, by the Administration of a Territory (including the Northern Territory), by a body corporate established for a public purpose by a law of the Commonwealth or of a Territory or

- by a company that is established under the law of the Commonwealth or of a State or Territory and in which the Commonwealth has a controlling interest;
- (c) subject to subsection (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 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 subsection (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 1922-1971* 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 the commencement of this section unless, before the expiration of 3 months 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 the commencement of this section unless:
- (a) a lump sum that was based, or included an amount based, wholly upon contributions by his employer under a

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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 Board in accordance with subsection 82R(1);

- (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 3 months 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

subparagraph (1)(c)(i) unless an amount equal to the lump sum referred to in that subparagraph, or an amount that included an amount based upon that lump sum, has been paid into the Fund.

- (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 1922-1971*; 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 preceding paragraph of that subsection applies.

### **82V Public employment**

- (1) The Finance Minister 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.
- (2) A declaration under subsection (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 1 January 1970) 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 Finance Minister under this section that was, or is to be deemed to have been, in force at that time.

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- (4) Where any public employment in which a person is employed terminates and, within 3 months 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.

**82W Eligible superannuation schemes**

- (1) The Finance Minister 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 subsection (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 1 January 1970) 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 Finance Minister under this section was, or is to be deemed to have been, in force at that time.

**82X Transfer value**

- (1) 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 a member is a reference to such amount as is determined by the Board to be the value of the rights of the person under this Act as at the time immediately before he ceased to be a member.



- (2) In furnishing advice to the Board in relation to the determination of the value of the rights of a person under this Act as at the time immediately before he ceased to be a member, the Commonwealth Actuary shall have regard to actuarial principles and practice and shall take into account all relevant matters, including:
- (a) the contributions to the Fund made by the person;
  - (b) subject to subsection (3), the payments to the Fund that would have been made by the Commonwealth if, on each occasion on which the person was required to pay an amount of contributions to the Fund or would have been required to pay an amount of contributions to the Fund but for an election made by him under subsection 61A(1) or 61B(1) of the *Defence Forces Retirement Benefits Act 1963-1968*, the Commonwealth had paid to the Fund such amount as would have been necessary to provide for the share of pension that would have been payable by the Commonwealth in respect of the person;
  - (c) any amounts paid to the Board in accordance with subsection 82R(1) in respect of the person;
  - (d) the amount of the liability of the Fund in respect of the person from time to time during the period throughout which the person was a contributor, having regard, in addition to any other relevant matters, to:
    - (i) the age of the person at the date on which he became a contributor; and
    - (ii) the respective rates of mortality, invalidity and withdrawal from the Fund that are assumed, for the purposes of the advice, to apply in relation to the class of contributors in which the person was included;
  - (e) the rates of interest that it is assumed, for the purposes of the advice, have been earned by the assets of the Fund;
  - (f) the state and sufficiency of the Fund at the date on which the person ceased to be a contributor; and
  - (g) the value of any benefit that, but for this Division, would be payable to or in respect of the person under this Act by reason of his having ceased to be a contributor.
- (3) For the purposes of the application of subsection (2) in relation to a person who, being a member other than an officer, ceased to be a member by reason that he was discharged for disciplinary reasons, paragraph (2)(b) does not apply in relation to the payments to the
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Fund that would have been made by the Commonwealth during the period of the engagement under which the person was serving immediately before he ceased to be a member.

- (4) In this section, a reference to the Board shall be read as including a reference to the Authority.

**82Y Deferred benefits**

- (1) The deferred benefits applicable under this Division in respect of a person who has ceased to be a member 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 ceased to be a member and had not made the election by virtue of which the deferred benefits became applicable.
- (2) The amount of any pension or lump sum constituting or forming part of any deferred benefits shall be as determined by the Board.
- (3) In furnishing advice to the Board in relation to the determination of the amount of a pension or lump sum constituting or forming part of any deferred benefits applicable in respect of a person, the Commonwealth Actuary shall have regard to actuarial principles and practice and shall take into account all relevant matters, including:
- (a) the matters that he would be required to take into account by virtue of subsection 82X(2) if he were furnishing advice to the Board in relation to a determination of the value of the rights of the person under this Act as at the time immediately before he ceased to be a member;
  - (b) the circumstances in which, and the conditions on which, the pension or lump sum would be payable;
  - (c) the circumstances in which the deferred benefits would cease to be applicable in respect of the person and the amount of any benefit that would be payable to or in respect of the person in the event of the occurrence of those circumstances;
  - (d) the respective rates of mortality and invalidity that are assumed, for the purposes of the advice, to apply in relation to the person; and

- (e) the rates of interest that it is assumed, for the purposes of the advice, will be earned by the assets of the Fund.
- (4) Sections 51 and 52 do not apply for the purposes of this section.
- (5) In this section, a reference to the Board shall be read as including a reference to the Authority.

**82Z Election that Division apply**

- (1) Subject to this section, where, after the commencement of this section, a person, being a contributor, ceases to be a member and is not entitled to a pension, he may, within 21 days after he ceases to be a member, elect that this Division shall apply in relation to him.
- (2) The Board 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 subsection (1).
- (3) If a person makes an election for the purposes of this section within one month before he ceases to be a member, the election has effect as if it had been made on the day after he ceased to be a member.
- (4) Subject to subsection (5), an election under this section is of no effect unless the person who made the election gives notice in writing to the Board within 21 days, or within such longer period as the Board 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) subsection (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 subsection and without having given such a notice.
- (6) Where a person who is entitled to make an election under this section dies within the period referred to in subsection (1), or within any period for which that period has been extended under subsection (2), without making such an election:

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- (a) if the person leaves a widow—the widow may make such an election within 21 days after the date of the death of the person; or
  - (b) if the person does not leave a widow, or the widow dies within the period referred to in paragraph (a) without making such an election, but the person leaves an eligible child or eligible children—such an election may be made within that period by such person as the Board permits;
- and, in that case, this Act has effect as if the election had been made by the first-mentioned person but subsection (4) does not apply.
- (7) The Board may, if it is satisfied that there are special circumstances that justify it in so doing, extend the period referred to in paragraph (6)(a) or (b).
  - (8) This section does not apply in relation to a person to whom section 35A of the *Superannuation Act 1922-1971* applied immediately before he ceased to be a member and who, at the time when he ceased to be a member, had not ceased to be a contributor to the Superannuation Fund.
  - (9) This section does not apply in relation to a member who:
    - (a) ceases to be a contributor 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 a pension or other benefit by reason that the Board is of the opinion that the invalidity or incapacity was due to wilful action on his part for the purpose of obtaining pension or other benefit or by reason of the operation of section 71.
  - (10) Subsection (1) does not apply to a person who ceases to be a member on or after 1 October 1972.
  - (11) In this section, a reference to the Board shall be read as including a reference to the Authority.

**82ZA Circumstances in which transfer value payable**

- (1) Subject to this Division, where:
    - (a) a person makes an election under section 82Z; and
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- (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;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.

### **82ZB Circumstances in which person entitled to deferred benefits**

- (1) Where a person makes an election under section 82Z 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 82ZA; or
  - (b) he does not become employed in public employment within that period but at the time when he ceased to be a member he had completed 20 years' eligible employment or had attained the age of 60 years;deferred benefits are, subject to this Division, applicable in respect of the person.
- (2) Subject to section 82ZG, 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 20 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 a member and the duties performed by him in employment (if

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- any) in which he was employed after he ceased to be 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 20 years' eligible employment—that date;
  - (c) if he was an officer immediately before he ceased to be a member—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 a member or the date on which he completes 15 years' service for pension, whichever is the later;
  - (d) if he was not an officer immediately before he ceased to be a member—the date on which he completes 20 years' service for pension; and
  - (e) the date on which he attains the age of 60 years or, if he attained that age before he ceased to be a member, the date on which he ceased to be a member.
- (3) For the purposes of the application of paragraphs (2)(c) and (d) in relation to a person, the following periods are periods of service for pension:
- (a) a period of service of the person as a member that would be a period of service for pension apart from this Division;
  - (b) a period of public employment in which the person was employed after he ceased to be a member; and
  - (c) a period (not being a period of public employment referred to in paragraph (b)) occurring after the person ceased or last ceased to be a member and after the person has completed 20 years' eligible employment.
- (4) For the purposes of subsections (2) and (3), a period of public employment in which a person became employed after he ceased to be a member 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 subsections (7) and (8), where a person in relation to whom paragraph (1)(a) applies and who, at the time when he ceased to be a member, had not completed 20 years' eligible employment ceases to be employed in public employment and the deferred benefits applicable in respect of him have not become payable under subsection (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 82Z had not been made.
- (7) If a deferred benefit by way of a pension has previously become payable to a person referred to in subsection (6) by reason of paragraph (2)(a), any amount that, but for this subsection, would be payable to the person by reason of subsection (6) is payable only to the extent to which it exceeds the sum of the amounts previously paid to him.
- (8) Subsection (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 a member is not less than 20 years.

**82ZC Person who is entitled to rights under this Division not entitled to other retirement benefits**

- (1) Subject to subsection 82ZB(6), where section 82ZA or 82ZB applies in relation to a person:
- (a) any benefit that, but for this Division, would be payable to or in respect of him by reason of his having ceased to be a member is not payable; and
  - (b) any gratuity in respect of his service as a member of the Defence Force that, but for this section, would have become payable to or in respect of him otherwise than under this Act upon the expiration of that service is not payable;
- except where that benefit or gratuity is payable by virtue of the operation of this Division.

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(2) Where:

- (a) a payment has been made under section 40, 42, 42A, 43, 52, 56, 56A, 60 or 82G to a person who has ceased to be a member; and
- (b) after the payment was made, the person makes an election under section 82Z;

the election does not have any effect unless an amount equal to the amount of the payment is paid to the Fund within 7 days after the date of the election or within such further period as the Board in special circumstances allows.

(3) An amount, or the sum of the amounts, paid to the Fund in accordance with subsection (2) in respect of a benefit consisting of a refund of contributions and a gratuity received by a person shall, to the extent that it exceeds the amount of the refund of contributions, be paid from the Fund to the Commonwealth.

(4) Where:

- (a) a gratuity in respect of the service of a person as a member of the Defence Force has been paid to the person otherwise than under this Act upon the expiration of that service; and
- (b) after the gratuity was paid, the person makes an election under section 82Z;

the election does not have any effect unless an amount equal to the amount of the gratuity is paid to the Commonwealth within 7 days after the date of the election or within such further period as the Board in special circumstances allows.

(5) Upon the transfer of the moneys of the Fund, by virtue of section 21A, to the Commonwealth, this section has effect as if:

- (a) the requirement in subsection (2) that an amount be paid to the Fund were a requirement that that amount be paid to the Commonwealth and not to the Fund; and
- (b) subsection (3) were omitted.

(6) In this section, a reference to the Board shall be read as including a reference to the Authority.



**82ZD Certain former contributors not entitled to benefits under this Division**

- (1) Where a person (other than a person who, at the time when he ceased to be a member, had completed 20 years' eligible employment) who has made an election under section 82Z 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 20 years;
  - (b) he died or attained the age of 60 years within that prescribed period at a time when he was employed in public employment;
  - (c) if he was an officer immediately before he ceased to be a member—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 a member or, having attained that age, he completed 15 years' service for pension within the meaning of subsection 82ZB(3);
  - (d) he attained the age of 60 years before he ceased to be a member; or
  - (e) the Board is satisfied that:
    - (i) he ceased within that prescribed period, by reason of invalidity or 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 a member and the duties performed by him in employment in which he was employed after he ceased to be a member;

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

- (2) Where:
- (a) a person who ceases to be a member is, at the expiration of the period that is the prescribed period in relation to him,

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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 82Z; and

(c) if a payment were made to him under section 40, 42, 42A, 43, 52, 56, 56A, 60 or 82G, he would, under the rules of the superannuation scheme applicable in respect of that employment, be entitled to pay the amount of the payment or a part of that amount to the person administering that scheme in exchange for benefits under that scheme;

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

(3) In this section, a reference to the Board shall be read as including a reference to the Authority.

**82ZE Member who resigned to contest an election**

Where a person who has made an election under section 82Z is, for the purposes of Part VIA, a re-instated candidate to whom that Part applies or is, by virtue of section 81, to be deemed to have continued to have been a member, this Act has effect as if the election had not been made.

**82ZF Invalid pensioner restored to health**

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

(a) if the pension is suspended under section 53B—the deferred benefit does not cease to be applicable in relation to him by reason only of the suspension of the pension and the suspension ceases to have effect if the deferred benefit becomes payable under paragraph 82ZB(2)(b), (c) or (d); and

(b) section 53 does not apply in relation to the person but subsection (2) has effect in relation to him.

(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 a member and the duties performed by him in employment (if any) in which

he was employed after he ceased to be a member, the Authority may cancel his pension but the deferred benefit does not cease to be applicable in relation to him by reason only of the cancellation of the pension.

- (3) The pension payable to a person shall not be cancelled under subsection (2) at a time when the pension would have become payable apart from the operation of paragraph 82ZB(2)(a).

**82ZG Person entitled to deferred benefits again becoming a member**

- (1) Subject to subsection (2), where a person to whom section 82ZB applies again becomes a member, the deferred benefits applicable in respect of him shall not become, or be, payable while he is a member.
- (2) Where a person to whom section 82ZB applies:
- (a) having again become a member before 1 October 1972, has not ceased to be a member at any time before that day; or
  - (b) has again become a member on or after that day;
- the deferred benefits applicable in respect of him cease to be so applicable.

## Division 4—Miscellaneous

### 82ZH Special provisions affecting former members of certain superannuation schemes

(1) Where:

- (a) a person who becomes a contributor after the commencement of this section was, at any time before becoming a contributor, 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 the person became a contributor;
- (b) by virtue of subsection 82L(3), a transfer value is to be deemed for the purposes of Division 2 to have become payable in respect of the person after the commencement of this section under that superannuation scheme because the person was the owner of a life policy or policies of a kind referred to in that subsection, or because the person was entitled to have the rights of the owner of such a policy or policies assigned to him or her; and
- (c) the person has elected in accordance with paragraph 82R(1)(b) to pay to the Board 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 82R(1)(b), elect that this section shall have effect in relation to him and, where an election is so made, section 82R has effect as if the amount referred to in paragraph 82R(1)(c), or, if part only of that amount relates to the transfer value referred to in subsection (1), that part of that amount, had been paid to the Board in accordance with that paragraph and the Board had made the payments referred to in subsections 82R(3) and (4) in relation to that amount or that part of that amount, as the case may be.

- (3) An election under subsection (2) does not have effect unless the person causes to be assigned to the Board, within the period referred to in that subsection, 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 pay of the person upon his becoming a member 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 subsection (1) related; or
  - (b) after the person became a member his annual pay is increased;
- the Board shall so far as is practicable arrange for the amount or amounts of any life policy or life policies assigned to the Board 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 the scheme and had been in receipt of an annual remuneration equal to that annual pay or that increased annual pay, as the case may be.
- (5) So much of any premium payable in respect of any life policy assigned to the Board in accordance with subsection (3) or issued in accordance with subsection (4) as relates to a period during which the person is a member 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 Fund 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 subsection referred to as *the former contributor*) makes an election under subsection 82Z(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) of this section is applicable and becomes a member of that scheme, then:
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- (a) subject to paragraph (c) of this subsection, 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 Board shall assign to the person administering that superannuation scheme the life policies assigned by the former contributor to the Board in accordance with subsection (3) of this section or issued in relation to the former contributor in accordance with subsection (4) of this section;
  - (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 82ZA to the person administering that scheme; and
  - (d) the Board shall:
    - (i) if the amount of any fortnightly contribution paid by the former contributor to the Fund exceeded the amount that was the prescribed amount in relation to him at the time of the payment—pay to him out of the Fund an amount equal to the amount of the excess; and
    - (ii) pay to the Commonwealth out of the Fund an amount equal to the amount that, but for this Part, would have been payable to the former contributor under section 60 less any amounts paid to him under subparagraph (i).
- (8) If the life policy or life policies assigned by the person to the Board in accordance with subsection (3) or issued in relation to him in accordance with subsection (4) becomes or become payable at or before the time when he ceases to be a contributor:
- (a) the Board shall, out of the amount paid to it under the policy or policies:
    - (i) pay to the Fund an amount equal to the amount that, but for subsection (2) of this section, would have been paid by the Board to the Fund under subsection 82R(3) together with compound interest on that amount, in respect of the period that commenced on the date on which the person made an election in accordance with paragraph 82R(1)(b) and ended on the date on which the life policy or life policies became payable, at the rate or rates applicable under subsection (15) of this section;

- (ii) in the case of a policy or policies assigned by the person to the Board in accordance with subsection (3)—pay to the person, or, if he is dead, to his legal personal representative, 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 contributor; and
    - (iii) pay the balance to the Commonwealth; and
  - (b) the Commonwealth shall pay to the person, or, if he is dead, to his legal personal representative, an amount equal to the sum of any amounts paid by the person to the Commonwealth under subsection (6).
- (9) Where the person ceases to be a contributor and neither subsection (7) nor subsection (8) applies in relation to him, then, if the election made by him under subsection (2) of this section has not been revoked in accordance with subsection (10):
  - (a) the Board shall surrender the life policy or life policies assigned by him to the Board in accordance with subsection (3) of this section or issued in relation to him in accordance with subsection (4) of this section and, out of the proceeds of the surrender, shall:
    - (i) pay to the Fund an amount equal to the amount that, but for subsection (2) of this section, would have been paid by the Board to the Fund under subsection 82R(3) together with compound interest on that amount, in respect of the period that commenced on the date on which the person made an election in accordance with paragraph 82R(1)(b) and ended on the date as at which the surrender value or surrender values of the life policy or life policies was or were calculated, at the rate or rates applicable under subsection (15) of this section;
    - (ii) in the case of a policy or policies assigned by the person to the Board in accordance with subsection (3) of this section—pay to the person 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

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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 contributor; and

(iii) pay the balance to the Commonwealth; and

(b) the Commonwealth shall pay to the person an amount equal to the sum of any amounts paid by him to the Commonwealth under subsection (6) of this section.

(10) A person who has made an election under subsection (2) may, if:

(a) he has not ceased to be a contributor; and

(b) the life policy or life policies assigned by him to the Board in accordance with subsection (3) or issued in relation to him in accordance with subsection (4) has not or have not become payable;

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

(11) The Finance Minister 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 subsection (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 1 January 1970) 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 Finance Minister under subsection (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 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 Board in accordance with subsection (3) or issued in relation to him in accordance with subsection (4);
  - b* is the amount, or the sum of the amounts, payable by him under the superannuation scheme referred to in subsection (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 Board in accordance with subsection (3);
  - c* is 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 Board in accordance with subsection (3) immediately before he ceased to be a member of the superannuation scheme referred to in subsection (4).
- (15) For the purposes of this section, the rate of compound interest in respect of any period that is a financial year or a part of a financial year is the rate of interest determined by the Finance Minister in respect of that financial year or, if the Finance Minister has not determined a rate of interest in respect of that financial year, the rate of interest determined by the Finance Minister in respect of the last preceding financial year in respect of which the Finance Minister has determined a rate of interest.
- (16) In determining a rate of interest in respect of a financial year for the purposes of this section, the Finance Minister shall have regard to the average rate of interest that was earned by the Fund in that financial year and to such other matters as he thinks relevant.

### **82ZJ Payments by Commonwealth**

- (1) Where a transfer value is paid under section 82ZA, the Commonwealth shall pay to the Fund an amount equal to so much of the amount of the transfer value as the Board determines.
- (2) Where:
  - (a) a payment of any deferred benefits is made under section 82ZB; or
  - (b) a payment of pension (other than a pension constituting or forming part of any deferred benefits referred to in

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section 82ZB) is made under this Act to or in respect of a person in respect of whom an amount has been paid to the Fund under Division 2;

section 32 of this Act, subsection (1) of this section, section 61 of the *Defence Forces Retirement Benefits Act 1959-1968* and subsections 61E(7) and (8) of the *Defence Forces Retirement Benefits Act 1963-1968* do not apply in relation to the payment but, except in the case of a payment that becomes payable on or after 1 October 1972, the Commonwealth shall pay to the Fund an amount equal to so much of the amount of the payment as the Board determines.

## Part VID—Pension increases

### 83 Interpretation

- (1) In this Part, unless the contrary intention appears:

*first quarter*, in relation to a half-year, means:

- (a) for a half-year beginning on 1 January in a year—the March quarter of the year; and
- (b) for a half-year beginning on 1 July in a year—the September quarter of the year.

*half-year* means a period of 6 months beginning on 1 January or 1 July in any year.

*pension* means a pension payable under or in accordance with this Act, Part III of the *Defence Forces Retirement Benefits Act 1959*, Part IV of the *Defence Forces Retirement Benefits Act 1962*, Part IV of the *Defence Forces Retirement Benefits Act 1963* or the *Defence Forces Special Retirement Benefits Act 1960*, but does not include associate pension under Part VIA of this Act.

*prescribed half-year* means the half-year commencing on 1 January 2002 or a subsequent half-year.

*Statistician* means the Australian Statistician.

- (2) Subject to subsection (3), if at any time, whether before or after the commencement of this Part, the Statistician has published or publishes in respect of a particular first quarter in a half-year an all groups consumer price index number for the weighted average of the 8 capital cities in substitution for an index number previously published by him in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this Part.
- (3) If at any time, whether before or after the commencement of this Part, the Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this Part after the change took place or takes place, regard shall

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be had only to index numbers published in terms of the new reference base.

- (4) Where the prescribed percentage for the purposes of section 84 is or includes a fraction of one-tenth of 1%:
  - (a) if that fraction is less than one-half of one-tenth—that fraction shall be disregarded; and
  - (b) if that fraction is not less than one-half of one-tenth—that fraction shall be treated as one-tenth.

**84 Increase in certain pensions**

- (1) Subject to this Part, if the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of the half-year immediately preceding a prescribed half-year exceeds the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of any earlier half-year, not being a half-year earlier than the half-year that commenced on 1 July 1985, a person who was in receipt of a pension immediately before the commencement of that prescribed half-year is entitled, at the commencement of that prescribed half-year, to an increase, as ascertained in accordance with this section, in the rate at which the pension was payable to him immediately before the commencement of that prescribed half-year.
- (2) The increase provided for by subsection (1) in the rate at which a pension was payable to a person immediately before the commencement of a prescribed half-year is the prescribed percentage, ascertained in accordance with subsection (3), of that rate.
- (3) For the purposes of this section, the prescribed percentage, in relation to a prescribed half-year, is the percentage that represents  $A-B$  expressed as a percentage of  $B$ , where:
  - A is the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of the half-year immediately preceding the prescribed half-year; and
  - B is the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the

Statistician in respect of the first quarter of any half-year earlier than the half-year immediately preceding the prescribed half-year but not being earlier than the half-year that commenced on 1 July 1985.

- (4) Where, by reason of the death on 30 June or 31 December (as the case requires) immediately preceding the commencement of a prescribed half-year of a person in receipt of pension that became payable to him upon his retirement, including pension that became payable by reason of the invalidity of the person or of his physical or mental incapacity to perform his duties, a pension becomes payable, on the following day, to another person, that other person shall be entitled, at the commencement of that prescribed half-year, to such an increase in the rate of that pension as he would have been entitled to had the pension become payable to him on that 30 June or 31 December (as the case requires).

#### **84A Application of increase to suspended pensions**

Where a pension would, but for its suspension under section 53B, be payable to a person immediately before the commencement of a prescribed half-year, that pension shall, for the purposes of this Part, be deemed to have been payable to that person immediately before the commencement of that prescribed half-year but any increase in the rate of that pension by virtue of this Part does not take effect in respect of any part of that period of suspension.

#### **84B Adjustment of increases in case of certain pensions**

- (1) Where a person in receipt of a pension payable in accordance with section 82ZB would, but for this section, be entitled to an increase in the rate at which the pension was payable to the person immediately before the commencement of the prescribed half-year and:
- (a) if the pension became payable to the person otherwise than as a widow—the pension became payable to the person during the half-year (in this section referred to as the *preceding half-year*) immediately preceding that prescribed half-year;
  - (b) if the pension became payable to the person as the widow of another person and pension in accordance with that section was not payable to that other person immediately before his

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death—the pension became payable to the widow during the preceding half-year; or

- (c) if the pension became payable to the person as the widow of another person and pension in accordance with that section was payable to that other person immediately before his death—pension became payable to that other person during that preceding half-year;

the following provisions of this section have effect in relation to the first-mentioned pension.

- (2) If the pension that became payable by virtue of section 82ZB to the person, or, in a case where paragraph (1)(c) applies, to another person in relation to whom the person is a widow, became so payable after 16 June or 16 December (as the case requires) in the preceding half-year, the person is not entitled to an increase.
- (3) If the pension that became payable by virtue of section 82ZB to the person, or, in a case where paragraph (1)(c) applies, to another person in relation to whom a person is a widow, became so payable on or before 16 June or 16 December (as the case requires) in the preceding half-year, the amount of the increase is so much only of the amount that, but for this section, would have been the amount of the increase as bears to the last-mentioned amount the same proportion as the number of months in the period that commenced on the day on which the pension became payable, and ended on 30 June or 31 December (as the case requires) in the preceding half-year bears to 6.
- (4) If the period referred to in subsection (3) is less than 1 month, that period shall be treated as 1 month.
- (5) If the period referred to in subsection (3) consists of a number of whole months and a part of a month:
  - (a) where the number of days in that part of that month is less than one-half of the number of days in that month—that part shall be disregarded; and
  - (b) where the number of days in that part of that month is not less than one-half of the number of days in that month—that part shall be treated as a whole month.

**84C Increases in children's pensions**

- (1) Section 84 does not apply to a pension payable to or in respect of an eligible child, but, for the purposes of paragraph 55(1)(b), subsection 55(2), paragraph 57(1)(b), subsection 57(4) and subsection 58(1), regard shall be had to any increase in the rate of a pension payable under paragraph 55(1)(a), under paragraph 57(1)(a) or under subsection 57(3) to which, by virtue of this Act, a widow is, or, but for her death or divorce, would be, entitled.
- (2) If the all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of the half-year immediately preceding a prescribed half-year exceeds the highest all groups consumer price index number for the weighted average of the 8 capital cities published by the Statistician in respect of the first quarter of any earlier half-year, not being a half-year earlier than the half-year that commenced on 1 July 1985:
  - (a) paragraphs 55(1)(b) and 57(1)(b) have effect as if, for the amount of \$312, there were substituted; and
  - (b) subsections 55(2), 57(4) and 58(1) have effect as if, for the amount of \$5,000, there were substituted;on the first day of that prescribed half-year, an amount calculated by adding to the existing amount the prescribed percentage of the existing amount.
- (3) For the purposes of the application of subsection (2) to a provision specified in that subsection, the existing amount is:
  - (a) in relation to the prescribed half-year that commenced on 1 January 2002—the amount that was the existing amount in relation to that provision, as calculated under this section immediately before the commencement of Schedule 2 to the *Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004*; and
  - (b) in relation to any subsequent prescribed half-year—the amount that, because of a previous application or previous applications of subsection (2), is taken to have been substituted, or last substituted, for the amount specified in that provision.

**84D Date of payment of increases**

Subject to sections 84E and 84F, an increase payable by virtue of this Part in the rate of a pension that was, or is, under subsection 84(4), to be treated as having been, payable to a person on 30 June or 31 December (as the case requires) in a half-year applies in relation to the instalment of pension falling due on the first pension pay-day occurring after that day and in relation to all subsequent instalments.

**84E Rate of invalidity pension payable on reclassification during a prescribed half-year**

(1) Where:

- (a) a person to whom pension is payable under section 52 is reclassified under section 53 during a prescribed half-year;
- (b) the person became entitled at the commencement of that half-year to an increase under this Part in the rate at which the pension was payable to him immediately before the commencement of that half-year;

the rate at which the pension is payable to him on and after the date from which the reclassification has effect is the rate at which the pension would have been payable to him at the commencement of that half-year if his classification, on and after the date on which he became entitled to the pension, had been in accordance with the reclassification.

(3) Where:

- (a) at the commencement of a prescribed half-year a person entitled to invalidity benefit was classified as Class C under subsection 51(2) but was not entitled to pension under section 52; and
- (b) during the prescribed half-year the person is reclassified as Class A or Class B;

the rate at which a pension is payable to the person on or after the day from which the reclassification has effect is the rate at which the pension would be payable to the person on that day if, at all times during the period during which the person was classified as Class C, the person had been classified as Class A or Class B (as the case may be).



**84F Commutation of pension benefits during a prescribed half-year**

(1) Section 74 does not authorize the commutation of a pension in so far as the pension has been increased by virtue of this Part.

(2) Where:

(a) a portion of the pension of a person is commuted during a prescribed half-year; and

(b) the person became entitled at the commencement of that half-year to an increase under this Part in the rate at which pension was payable to him immediately before the commencement of that half-year;

the rate at which the pension is payable to him on and after the date on which that portion of the pension is so commuted is the rate at which the pension would have been payable to him at the commencement of that half-year if he had so commuted that portion of his pension on the date on which he became entitled to the pension.

## Part VII—Miscellaneous

### 85 Assignment of pensions

Subject to section 85A, pensions and other benefits under this Act are not capable of being assigned or charged or of passing by operation of law, and any moneys payable out of the Fund, or by the Commonwealth, on the death of a member are not liable to be applied or made available in payment of his debts or liabilities.

### 85A Attachment of pensions

- (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 pension or other benefit under this Act, the judgment creditor may serve on CSC 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 CSC in accordance with subsection (1), CSC 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 CSC 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 CSC, in such manner as is specified in the notice, evidence in support of that fact.
- (3) A person is guilty of an offence if:
  - (a) the person is given a notice under subsection (2); and
  - (b) the person does not comply with the requirements in the notice.

Maximum penalty: \$40.

- (4) If, at the expiration of the period specified in the notice, CSC is satisfied that an amount is due under the judgment, CSC may, in its discretion, deduct from the pension or benefit, and pay to the judgment creditor, such sums as do not exceed that amount or, in a case where a payment of pension or benefit becomes payable on or after 1 October 1972, CSC may, in its discretion, authorize the deduction from the pension or 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 made from:
- (a) an instalment of pension payable in respect of a child; or
  - (b) an instalment of any other pension if the deduction will reduce the amount of the instalment payable to less than one-half of the amount that would, but for this section, be payable.
- (6) If, after a copy of a judgment given against a pensioner or beneficiary, being a judgment in respect of which CSC is satisfied that an amount is due, has been served in accordance with subsection (1), a copy of another judgment given (whether before or after the first-mentioned judgment) against the same pensioner or beneficiary in favour of the person in whose favour the first-mentioned judgment was given or in favour of another person is served in accordance with that subsection, 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 Board and the pensioner or beneficiary, be deemed to be a payment from the Fund to the pensioner or beneficiary and, in the case of a payment made to the judgment creditor in relation to a payment of pension or benefit that became payable on or after 1 October 1972, shall, as between the Commonwealth and the pensioner or beneficiary, be deemed to be a payment by the Commonwealth to the pensioner or beneficiary.
- (8) A judgment creditor is guilty of an offence if:
- (a) the judgment creditor serves a copy of a judgment on CSC under subsection (1); and

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- (b) the judgment creditor does not notify CSC immediately the judgment debt is satisfied.

Maximum penalty:

- (c) if the offender is a natural person—\$100 or imprisonment for 3 months; or
  - (d) if the offender is a body corporate—\$500.
- (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.

### **86 Recovery of contributions**

CSC may recover contributions under the Act in any court of competent jurisdiction.

### **86A Cancellation of elections**

Where:

- (a) a person makes an election (whether before or after the commencement of this subsection) under section 74, 82R or 82Z;
  - (b) that person makes an application to CSC not later than 3 months after the day on which the election is made, or within such further period as CSC, in special circumstances, allows, requesting that CSC cancel the election; and
  - (c) CSC, having regard to such matters (if any) as it considers relevant, is satisfied that the election should be cancelled;
- CSC may direct that the election shall be cancelled and, if it so directs, this Act has effect as if the election had not been made.

### **87 Extension or modification of the Act by regulations**

The regulations may make provision for or in relation to:

- (a) the modification of the application of this Act in relation to members in the conditions of whose service there is a change; and

- (b) the application, with or without modification, of this Act in relation to members of the Defence Force of the Commonwealth in relation to whom this Act does not otherwise apply;

and provisions so made shall have effect notwithstanding anything contained in this Act.

## **88 Regulations**

- (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 time within which an election under this Act may be made;
  - (b) for prescribing the manner in which the accounts of the Fund shall be kept; and
  - (c) for prescribing penalties for offences against the regulations, but so that no prescribed penalty shall exceed a fine of \$100.
- (2) Where the pay of any class of members is increased or reduced, regulations for the purpose of the definition of *daily rate of pay* in subsection 4(1) in relation to members included within 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.

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## The Schedules

### Second Schedule—Pension factors

Sections 38, 39 and 41

<b>First column</b> <b>Officers—age (in years)</b>	<b>Second column</b> <b>Members other than officers—number of completed years of service for pension</b>	<b>Third column</b> <b>Factors</b>
59	39	.96
58	38	.92
57	37	.89
56	36	.86
55	35	.83
54	34	.80
53	33	.77
52	32	.74
51	31	.72
50	30	.70
49	29	.68
48	28	.66
47	27	.64
46	26	.62
45	25	.60
44	24	.58
43	23	.56
42	22	.54
41	21	.52
40	20	.50
39	..	.40
38	..	.46
37	..	.44
36	..	.42
35	..	.40

## Fourth Schedule—Period of service for pension referred to in paragraph 39(2)(C)

Section 39

<b>Rank</b>				<b>Period</b>
<b>Permanent Navy</b>		<b>Regular Army</b>	<b>Permanent Air Force</b>	
<b>General List</b>	<b>Special Duties List</b>			
Rear-Admiral, or relative or higher rank	.....	Major-General, or higher rank	Air Vice-Marshal, or higher rank	30
Captain, or relative rank	.....	Brigadier.....	Air Commodore .....	28
.....	Commander (S.D.) or relative rank	Colonel.....	Group Captain .....	26
Commander, or relative rank Senior Chaplain	Lieutenant-Commander (S.D.), or relative rank	Lieutenant-Colonel Major (Quarter-master) Captain (Quarter-master) Chaplain, First Class or Second Class Colonel (Royal Australian Army Nursing Corps) Colonel (Women's Royal Australian Army Corps)	Wing Commander Chaplain, First Class or Second Class Group Officer (Royal Australian Air Force Nursing Service) Group Officer (Women's Royal Australian Air Force)	24
Lieutenant-Commander, or relative rank Chaplain Chief Officer (Women's Royal Australian Naval Forces)				Lieutenant (S.D.), or relative rank or lower rank

**Fourth Schedule** Period of service for pension referred to in paragraph 39(2)(C)

<b>Rank</b>				<b>Period</b>
<b>Permanent Navy</b>		<b>Regular Army</b>	<b>Permanent Air Force</b>	
<b>General List</b>	<b>Special Duties List</b>			
Lieutenant, or relative rank First Officer, or lower rank (Women's Royal Australian Naval Forces)	.....	Captain Lieutenant (Quarter-master) Chaplain, Fourth Class Major (Royal Australian Army Nursing Corps) Major (Women's Royal Australian Army Corps) Any lower rank	Flight Lieutenant Chaplain, Fourth Class Squadron Officer (Royal Australian Air Force Nursing Service) Squadron Officer (Women's Royal Australian Air Force) Any lower rank	20



**Table of Acts****Notes to the *Defence Forces Retirement Benefits Act 1948*****Note 1**

The *Defence Forces Retirement Benefits Act 1948* as shown in this compilation comprises Act No. 31, 1948 amended as indicated in the Tables below.

All relevant information pertaining to application, saving or transitional provisions prior to 22 March 2001 is not included in this compilation. For subsequent information *see* Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Forces Retirement Benefits Act 1948 (a)</i>	31, 1948	26 June 1948		
<i>Defence Forces Retirement Benefits Act 1949 (a)</i>	37, 1949	18 July 1949		
<i>Defence Forces Retirement Benefits Act 1950 (a)</i>	73, 1950	15 Dec 1950		
<i>Defence Forces Retirement Benefits Act 1951 (a)</i>	29, 1951	17 Nov 1951		
<i>Defence Forces Retirement Benefits Act 1952 (a)</i>	93, 1952	18 Nov 1952		
<i>Defence Forces Retirement Benefits Act 1953 (a)</i>	80, 1953	10 Dec 1953		
<i>Defence Forces Retirement Benefits Act 1954 (a)</i>	20, 1954	20 Apr 1954		
<i>Defence Forces Retirement Benefits Act 1955 (a)</i>	19, 1955	10 June 1955		
<i>Defence Forces Retirement Benefits Act 1956 (a)</i>	24, 1956	23 May 1956		
<i>Defence Forces Retirement Benefits Act 1957 (a)</i>	95, 1957	12 Dec 1957		
<i>Defence Forces Retirement Benefits Act 1958</i>	46, 1958	29 Sept 1958	29 Sept 1958	S. 8

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Forces Retirement Benefits Act 1959</i>	103, 1959	4 Dec 1959	14 Dec 1959	Ss. 39–43, 45, 46, 48, 52–56, 66–70, 72–74, 76, 77, 80–86 S. 38 (am. by 67, 1962, s. 14) S. 44 (am. by 15, 1961, s. 3) S. 47 (am. by 15, 1961, s. 4; 98, 1965, s. 16) S. 49 (am. by 67, 1962, s. 15) S. 50 (am. by 67, 1962, s. 16) S. 50A (ad. by 67, 1962, s. 17) S. 51 (am. by 67, 1962, s. 18) S. 57 (rs. by 98, 1965, s. 17) S. 58 (rs. by 15, 1961, s. 5) S. 58A (ad. by 67, 1962, s. 19) S. 61 (am. by 70, 1966, s. 8; 128, 1968, s. 22(1)) S. 62 (am. by 15, 1961, s. 6) S. 63 (am. by 15, 1961, s. 7; 93, 1966, s. 3) S. 64 (am. by 15, 1961, s. 8; 93, 1966, s. 3)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Forces Retirement Benefits Act 1959—continued</i>				S. 65 (am. by 128, 1968, s. 22(3)) S. 71 (am. by 15, 1961, s. 9) S. 75 (am. by 15, 1961, s. 10) S. 78 (am. by 15, 1961, s. 11) S. 79 (am. by 15, 1961, s. 12) S. 79A (ad. by 67, 1962, s. 20)
<b>as amended by</b>				
<i>Defence Forces Retirement Benefits Act 1961</i>	15, 1961	11 May 1961	14 Dec 1959 (see s. 2)	—
<i>Defence Forces Retirement Benefits Act 1962</i>	67, 1962	24 Nov 1962	(see 67, 1962 below)	Ss. 22–50
<i>Defence Forces Retirement Benefits Act (No. 2) 1965</i>	98, 1965	10 Dec 1965	(see 98, 1965 below)	S. 20
<i>Defence Forces Retirement Benefits Act 1966</i>	70, 1966	29 Oct 1966	29 Oct 1966	S. 10
<i>Statute Law Revision (Decimal Currency) Act 1966</i>	93, 1966	29 Oct 1966	S. 3: 1 Dec 1966 (b)	—
<i>Defence Forces Retirement Benefits Act (No. 3) 1968</i>	128, 1968	9 Dec 1968	(see 128, 1968 below)	S. 22(2)
<i>Defence Forces Retirement Benefits Act 1962</i>	67, 1962	24 Nov 1962	Ss. 11, 15, 18–20: 14 Dec 1959 Remainder: 30 Nov 1962 (see <i>Gazette</i> 1962, p. 4325)	Ss. 22–39 S. 40 (as am. by 103, 1963) Ss. 41–50
<b>as amended by</b>				
<i>Defence Forces Retirement Benefits Act 1963</i>	103, 1963	1 Nov 1963	S. 63: 30 Nov 1962 (see s. 63(2) and <i>Gazette</i> 1962, p. 4325)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Forces Retirement Benefits Act 1963</i>	103, 1963	1 Nov 1963	1 Nov 1963	Ss. 19–31 S. 32 (am. by 25, 1965, s. 11) Ss. 33–42 S. 43 (am. by 25, 1965, s. 12) S. 44 S. 44A (ad. by 25, 1965, s. 13) Ss. 45–55 S. 56 (am. by 25, 1965, s. 14) Ss. 57–61 S. 61A (ad. by 25, 1965, s. 15; am. by 128, 1968, s. 23(1)) S. 61B (ad. by 25, 1965, s. 15; am. by 128, 1968, s. 23(2)) Ss. 61C–61F (ad. by 25, 1965, s. 15) S. 61G (rs. by 135, 1965, s. 11(1))
<b>as amended by</b>				
<i>Defence Forces Retirement Benefits Act 1965</i>	25, 1965	28 May 1965	28 May 1965	—
<i>Defence Forces Retirement Benefits Act (No. 3) 1965</i>	135, 1965	18 Dec 1965	14 Feb 1966	Ss. 7–11
<i>Defence Forces Retirement Benefits Act (No. 3) 1968</i>	128, 1968	9 Dec 1968	(see 128, 1968 below)	—
<i>Defence Forces Retirement Benefits Act 1965</i>	25, 1965	28 May 1965	28 May 1965	—
<i>Defence Forces Retirement Benefits Act (No. 2) 1965</i>	98, 1965	10 Dec 1965	Ss. 4, 6–13 and 20: 24 Sept 1965 Remainder: Royal Assent	S. 20 (am. by 70, 1966, s. 9)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Defence Forces Retirement Benefits Act 1966</i>	70, 1966	29 Oct 1966	29 Oct 1966	S. 10
<i>Defence Forces Retirement Benefits Act (No. 3) 1965</i>	135, 1965	18 Dec 1965	14 Feb 1966	Ss. 7, 8, 9 and 10
<i>Defence Forces Retirement Benefits Act 1966</i>	70, 1966	29 Oct 1966	29 Oct 1966	S. 10
<i>Defence Forces Retirement Benefits Act 1968</i>	55, 1968	25 June 1968	Ss. 3–41: 19 July 1968 ( <i>see Gazette</i> 1968, p. 3801) Remainder: Royal Assent	S. 30 (am. by 128, 1968, s. 24) Ss. 31–42
<b>as amended by</b>				
<i>Defence Forces Retirement Benefits Act (No. 3) 1968</i>	128, 1968	9 Dec 1968	( <i>see</i> 128, 1968 below)	—
<i>Defence Forces Retirement Benefits Act (No. 2) 1968</i>	56, 1968	25 June 1968	19 July 1968: ( <i>see</i> s. 2 and <i>Gazette</i> 1968, p. 3801)	Ss. 21 and 22
<i>Defence Forces Retirement Benefits Act (No. 3) 1968</i>	128, 1968	9 Dec 1968	Ss. 5–9, 11–13 and 20–23: 31 Jan 1969 ( <i>see Gazette</i> 1969, p. 803) Ss. 10 and 24: 19 July 1968 ( <i>see</i> s. 2(3) and <i>Gazette</i> 1968, p. 3801) Remainder: Royal Assent	Ss. 12(2) and 14–21
<i>Defence Forces Retirement Benefits Act 1969</i>	61, 1969	5 Sept 1969	5 Sept 1969	—
<i>Defence Forces Retirement Benefits Act 1970</i>	34, 1970	23 June 1970	Ss. 3(1)(a) and (b): 4 June 1969 S. 3(1)(c): 1 Nov 1963 Remainder: Royal Assent	Ss. 5 and 6
<i>Defence Forces Retirement Benefits Act 1971</i>	47, 1971	25 May 1971	25 May 1971	S. 8 (am. by 164, 1984, s. 97) S. 9 (am. by 164, 1984, s. 98) S. 10
<b>as amended by</b>				
<i>Defence Legislation Amendment Act 1984</i>	164, 1984	25 Oct 1984	( <i>see</i> 164, 1984 below)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Forces Retirement Benefits Act 1973</i>	82, 1973	19 June 1973	Ss. 4(a), 5, 10(1) and (2), 13–24, 25(1), 28(1), 30–32, 33(a)–(e) and (g), 34(a) and (b), 35–37, 40, 41(c), 45, 46, 48–50, 52(b), 53, 54 and 57(1):1 Oct 1972 Remainder: Royal Assent	Ss. 6(2), 10(2), 25(3), 28(2)–(4), 29(2), 37(2), 57(3), 58 and 59
<i>Statute Law Revision Act 1973</i>	216, 1973	19 Dec 1973	31 Dec 1973	Ss. 9(1) and 10
<i>Defence Force Re-organization Act 1975</i>	96, 1975	9 Sept 1975	Part XI (ss. 164–167): 9 Feb 1976 (see <i>Gazette</i> 1975, No. G42, p. 2) (c)	Ss. 166(2) and 167(2)
<i>Defence Force (Retirement and Death Benefits Amendments) Act 1977</i>	13, 1977	28 Feb 1977	Ss. 3 and 4: 1 July 1976 Remainder: Royal Assent	—
<i>Defence Force (Retirement and Death Benefits Amendments) Act (No. 2) 1977</i>	161, 1977	10 Nov 1977	Ss. 5, 11–17, 24, 26, 27(2), 28(2), 34, 35(1), 36, 38–42, 46 and 48: 1 Oct 1972 Remainder: Royal Assent	Ss. 7(2), 8(2) and 10(2)–(4)
<i>Administrative Changes (Consequential Provisions) Act 1978</i>	36, 1978	12 June 1978	12 June 1978	Ss. 6–9
<i>Defence Force (Retirement and Death Benefits Amendments) Act 1979</i>	15, 1979	19 March 1979	19 March 1979	S. 6
<i>Defence Force (Retirement and Death Benefits Amendments) Act (No. 2) 1979</i>	135, 1979	23 Nov 1979	23 Nov 1979	—
<i>Companies (Miscellaneous Amendments) Act 1981</i>	92, 1981	18 June 1981	Ss. 1 and 2: Royal Assent S. 36: 1 July 1981 (see s. 2(2) and <i>Gazette</i> 1981 No. S118) Remainder: 1 July 1982 (see s. 2(3) and <i>Gazette</i> 1982, No. S124)	
<i>Commonwealth Banks Amendment Act 1984</i>	76, 1984	25 June 1984	29 June 1984 (see <i>Gazette</i> 1984, No. S241)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Legislation Amendment Act 1984</i>	164, 1984	25 Oct 1984	Ss. 1, 2, 16–19, and Part XIV (ss. 115, 116) and 120: Royal Assent Ss. 23–70 and 72–78: 3 July 1985 (see s. 2(4) and <i>Gazette</i> 1985, No. S255) S. 71: 31 Dec 1982 (see s. 2(3)) Ss. 82, 83, 85 and 87–89: 1 July 1983 Ss. 84 and 86: 1 Oct 1972 Part XI (ss. 108, 109): 1 Jan 1985 Part XV (ss. 117–119): 1 Aug 1984 (see s. 2(8) and <i>Gazette</i> 1984, No. S292) S. 121: 1 Jan 1982 Remainder: 22 Nov 1984	—
<b>as amended by</b>				
<i>Statute Law (Miscellaneous Provisions) Act (No. 1) 1985</i>	65, 1985	5 June 1985	S. 3: 21 Nov 1984 (d)	—
<i>Statute Law Revision Act 1996</i>	43, 1996	25 Oct 1996	Schedule 3 (item 20): 25 Oct 1984 (e)	—
<i>Superannuation and Other Benefits Legislation Amendment Act 1986</i>	93, 1986	13 Oct 1986	10 Oct 1986	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Defence Legislation Amendment Act 1987</i>	65, 1987	5 June 1987	Ss. 1–3, 9, 10, 13(1), 23–25, 26(1), 27, 29, 31, 33–36, 42–45, 52–55, 58, 61(1), 62, 69(1), Part IX (ss. 71–74) and Part X (ss. 75–78): Royal Assent Ss. 46 and 47: 19 June 1973 ( <i>see s. 2(2)</i> ) Ss. 37(1) and Part VI (ss. 50, 51): 10 Nov 1977 ( <i>see s. 2(3)</i> ) Ss. 37(2) and 38–40: 3 July 1985 Ss. 48, 49, 56 and 57: 5 June 1987 Remainder: 1 July 1988 ( <i>see Gazette</i> 1988, No. S173)	—
<i>Defence Legislation Amendment Act (No. 2) 1988</i>	104, 1988	6 Dec 1988	S. 18: 1 Sept 1989 ( <i>see Gazette</i> 1989, No. S268) S. 25: 1 Oct 1972 Ss. 29 and 36: 1 July 1978 Part IX (ss. 52 and 53): 18 Dec 1987 Remainder: Royal Assent	—
<i>Superannuation and Other Benefits Legislation Amendment Act 1989</i>	125, 1989	17 Oct 1989	20 Oct 1989	—
<i>Defence Legislation Amendment Act 1990</i>	75, 1990	22 Oct 1990	S. 4(1): 30 June 1989 ( <i>f</i> )	S. 4(2)
<i>Defence Legislation Amendment Act (No. 2) 1990</i>	21, 1991	5 Feb 1991	Ss. 10–13 and 16–18: 1 July 1990 Remainder: Royal Assent	—
<i>Defence Force Superannuation Legislation Amendment Act 1991</i>	126, 1991	2 Sept 1991	Ss. 4(1), 15, 18 and 22: 1 July 1990 Remainder: Royal Assent	—
<i>Defence Legislation Amendment Act 1992</i>	91, 1992	30 June 1992	Ss. 13 and 14: 1 Sept 1992 ( <i>see Gazette</i> 1992, S211) Remainder: Royal Assent	S. 17(2)



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Life Insurance (Consequential Amendments and Repeals) Act 1995</i>	5, 1995	23 Feb 1995	1 July 1995 ( <i>see s. 2 and Gazette 1995, No. GN24</i> )	S. 3(1)
<i>Defence Legislation Amendment Act (No. 1) 1997</i>	1, 1997	19 Feb 1997	Schedule 2 (items 22, 78 and 105): Royal Assent ( <i>g</i> )	—
<i>Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001</i>	10, 2001	22 Mar 2001	Schedule 2 (items 49–52, 94, 95): 19 Apr 2001 ( <i>h</i> )	Sch. 2 (items 94, 95) [ <i>see Table A</i> ]
<i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i>	141, 2001	1 Oct 2001	S. 4: Royal Assent Schedule 1 (items 93–97): 15 Dec 2001	S. 4 and Sch. 1 (item 95) [ <i>see Table A</i> ] S. 2(2) (am. by 135, 2003, Sch. 2 (item 28))
<b>as amended by</b>				
<i>Defence Legislation Amendment Act 2003</i>	135, 2003	17 Dec 2003	Schedule 2 (item 28): ( <i>i</i> )	—
<i>Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004</i>	58, 2004	4 May 2004	Schedule 1: 18 May 2004 Remainder: Royal Assent	Ss. 4 and 5 [ <i>see Table A</i> ]
<i>Defence Legislation Amendment Act (No. 1) 2005</i>	121, 2005	6 Oct 2005	Schedule 5: ( <i>j</i> ) Remainder: Royal Assent	—
<i>Superannuation Legislation Amendment Act 2007</i>	165, 2007	25 Sept 2007	Schedule 4 (items 6, 8): Royal Assent	Sch. 4 (item 8) [ <i>see Table A</i> ]
<i>Same-Sex Relationships (Equal Treatment in Commonwealth Laws—Superannuation) Act 2008</i>	134, 2008	4 Dec 2008	S. 4: Royal Assent Schedule 3 (items 25, 26): 1 Jan 2009	S. 4 and Sch. 3 (item 26) [ <i>see Table A</i> ]
<i>Statute Law Revision Act 2011</i>	5, 2011	22 Mar 2011	Schedule 5 (items 96–99): 19 Apr 2011	—
<i>Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011</i>	58, 2011	28 June 2011	Schedule 1 (items 59–80): ( <i>k</i> )	—

## Act Notes

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- (a) The *Defence Forces Retirement Benefits Act 1948* comprises the *Defence Forces Retirement Benefits Act 1948* (which was proclaimed to commence on 2 July 1948: see *Gazette* 1948, p. 2583) as amended by the other Acts specified in the Table of Acts. Many of the amending Acts specified in that table made express provision in relation to the commencement and application of the amendments. By reason that the *Defence Force Retirement and Death Benefits Act 1973* has, in the main, superseded the *Defence Forces Retirement Benefits Act 1948*, references are not made in the table to those provisions. If required, particulars relating to those provisions and to the saving and transitional provisions made by the amending Acts are to be found in the annual volumes of Acts for the respective years in which the amending Acts were enacted.
- (b) The *Defence Forces Retirement Benefits Act 1959* was amended by section 3 only of the *Statute Law Revision (Decimal Currency) Act 1966*, subsection 2(1) of which provides as follows:
- (1) Subject to the next succeeding subsection, this Act shall come into operation on the first day of December, One thousand nine hundred and sixty-six.
- (c) The *Defence Forces Retirement Benefits Act 1948* was amended by Part XI (sections 164–167) only of the *Defence Force Re-organization Act 1975*, section 2 of which provides as follows:
- 2 This Part shall come into operation on the day on which this Act receives the Royal Assent, and the remaining provisions of this Act shall come into operation on such date as is, or such respective dates as are, fixed by Proclamation.
- (d) The *Defence Legislation Amendment Act 1984* was amended by section 3 only of the *Statute Law (Miscellaneous Provisions) Act (No. 1) 1985*, subsection 2(19) of which provides as follows:
- (19) The amendment of Schedule 3 to the *Defence Legislation Amendment Act 1984* made by this Act shall be deemed to have come into operation immediately before the commencement of section 95 of that first-mentioned Act.
- (e) The *Defence Legislation Amendment Act 1984* was amended by Schedule 3 (item 20) only of the *Statute Law Revision Act 1996*, subsection 2(3) of which provides as follows:
- (3) Each item of Schedule 3 is taken to have commenced when the Act containing the provision amended by the item received the Royal Assent.
- (f) The *Defence Forces Retirement Benefits Act 1948* was amended by subsection 4(1) only of the *Defence Legislation Amendment Act 1990* subsection 2(4) of which provides as follows:
- (4) Subsection 4(1) is to be taken to have commenced on 30 June 1989.
- (g) The *Defence Forces Retirement Benefits Act 1948* was amended by Schedule 2 (items 22, 78 and 105) only of the *Defence Legislation Amendment Act (No. 1) 1997*, subsection 2(1) of which provides as follows:
- (1) Subject to subsections (2) and (3), this Act commences on the day on which it receives the Royal Assent.
- (h) The *Defence Forces Retirement Benefits Act 1948* was amended by Schedule 2 (items 49–52) only of the *Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the 28th day after the day on which it receives the Royal Assent.
- (i) Subsection 2(1) (item 9) of the *Defence Legislation Amendment Act 2003* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Act Notes****Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
9. Schedule 2, item 28	Immediately after the commencement of section 2 of the <i>Defence Legislation Amendment (Application of Criminal Code) Act 2001</i>	1 October 2001

- (j) Subsection 2(1) (item 3) of the *Defence Legislation Amendment Act (No. 1) 2005* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 5	Immediately after the commencement of section 3 of the <i>Legislative Instruments Act 2003</i> .	1 January 2005

- (k) Subsection 2(1) (item 2) of the *Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011* provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedules 1 and 2	Immediately after the commencement of section 2 of the <i>Governance of Australian Government Superannuation Schemes Act 2011</i> .	1 July 2011



**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Title .....	am. No. 55, 1968
<b>Part I</b>	
S. 3 .....	am. No. 73, 1950; No. 93, 1952 rs. No. 95, 1957; No. 103, 1959 am. No. 67, 1962; No. 25, 1965; Nos. 55 and 56, 1968; No. 61, 1969; No. 47, 1971; No. 82, 1973 rep. No. 216, 1973
S. 4 .....	am. No. 37, 1949; No. 73, 1950; No. 29, 1951; No. 80, 1953; No. 19, 1955; No. 95, 1957; No. 103, 1959; No. 67, 1962; No. 103, 1963; Nos. 25, 98 and 135, 1965; Nos. 55, 56 and 128, 1968; No. 47, 1971; No. 82, 1973; No. 96, 1975; No. 164, 1984 (as am. by No. 65, 1985); No. 91, 1992; No. 10, 2001; Nos. 5 and 58, 2011
S. 4AA .....	ad. No. 55, 1968 am. No. 164, 1984
S. 4A .....	ad. No. 103, 1959 am. No. 67, 1962 rs. No. 103, 1963 am. Nos. 25, 98 and 135, 1965; No. 55, 1968; No. 34, 1970; No. 82, 1973; No. 164, 1984
Heading to Part II .....	rep. No. 164, 1984
S. 5 .....	am. No. 55, 1968; No. 82, 1973; No. 96, 1975 rep. No. 164, 1984
S. 6 .....	am. No. 82, 1973 rep. No. 164, 1984
Ss. 7, 8 .....	rep. No. 164, 1984
S. 9 .....	rep. No. 82, 1973
Ss. 10, 11 .....	rep. No. 164, 1984
S. 12 .....	am. No. 95, 1957; No. 67, 1962 rep. No. 164, 1984
S. 12A .....	ad. No. 161, 1977 rep. No. 58, 2011
S. 13 .....	am. No. 91, 1992
S. 14 .....	rs. No. 82, 1973 am. No. 36, 1978 rep. No. 164, 1984
Part III .....	rep. No. 91, 1992
S. 15 .....	am. No. 103, 1959 rep. No. 91, 1992
S. 15A .....	ad. No. 103, 1959 rep. No. 91, 1992
Ss. 15B, 15C .....	ad. No. 103, 1959 am. No. 164, 1984 rep. No. 91, 1992

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 15D .....	ad. No. 82, 1973 am. No. 164, 1984 rs. No. 91, 1992
S. 16 .....	rs. No. 103, 1963 am. No. 216, 1973; No. 164, 1984 rep. No. 91, 1992
S. 17 .....	am. No. 19, 1955 rep. No. 103, 1959
Ss. 18, 19 .....	am. No. 76, 1984 rep. No. 91, 1992
Ss. 20, 21 .....	rep. No. 91, 1992
S. 21A .....	ad. No. 82, 1973 rep. No. 91, 1992
S. 22 .....	rs. No. 103, 1959 am. No. 128, 1968 rep. No. 82, 1973
Heading to Part IV .....	rep. No. 91, 1992
Heading to Div. 1 of Part IV .....	rep. No. 91, 1992
S. 23 .....	am. No. 37, 1949; No. 29, 1951; No. 19, 1955 rs. No. 103, 1959 am. Nos. 55, 56 and 128, 1968; No. 82, 1973; No. 164, 1984 rep. No. 91, 1992
S. 24 .....	rep. No. 103, 1959
S. 25 .....	am. No. 73, 1950 rs. No. 93, 1952 am. No. 164, 1984
S. 26 .....	am. No. 73, 1950; No. 29, 1951 rep. No. 103, 1959 ad. No. 141, 2001
S. 27 .....	rs. No. 93, 1952 am. No. 103, 1959; No. 164, 1984 rep. No. 91, 1992
Div. 2 of Part IV .....	rep. No. 103, 1959
S. 28 .....	am. No. 73, 1950; No. 20, 1954 rs. No. 19, 1955 rep. No. 103, 1959
S. 29 .....	am. No. 37, 1949 rs. No. 19, 1955 rep. No. 103, 1959
Heading to Div. 3 of Part IV .....	rep. No. 91, 1992
Div. 3 of Part IV .....	rs. No. 103, 1959
S. 30 .....	rs. No. 103, 1959; No. 103, 1963 am. No. 135, 1965; No. 55, 1968 rs. No. 128, 1968 am. No. 34, 1970; No. 164, 1984 rep. No. 91, 1992
S. 31 .....	rs. No. 103, 1959 am. No. 67, 1962 rep. No. 91, 1992

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 31A .....	ad. No. 67, 1962 am. No. 164, 1984 rep. No. 91, 1992
Heading to Div. 4 of Part IV .....	rep. No. 91, 1992
Div. 4 of Part IV .....	rs. No. 103, 1959
S. 32 .....	am. No. 95, 1957; No. 46, 1958 rs. No. 103, 1959 am. No. 70, 1966; No. 128, 1968; No. 82, 1973; No. 164, 1984 rep. No. 91, 1992
S. 33 .....	rs. No. 103, 1959 am. No. 82, 1973; No. 164, 1984 rep. No. 91, 1992
S. 34 .....	rep. No. 103, 1959 ad. No. 55, 1968 am. No. 36, 1978; No. 164, 1984 rep. No. 91, 1992
Heading to Div. 5 of Part IV .....	rep. No. 91, 1992
S. 35 .....	rep. No. 103, 1959 ad. No. 25, 1965 am. No. 164, 1984 rep. No. 91, 1992
S. 36 .....	rs. No. 19, 1955 am. No. 103, 1959; No. 82, 1973; No. 164, 1984 rep. No. 91, 1992
S. 37 .....	rep. No. 91, 1992
<b>Part V</b>	
<b>Division 1</b>	
S. 38 .....	am. No. 20, 1954; No. 19, 1955; No. 24, 1956 rs. No. 103, 1959 am. No. 103, 1963; No. 135, 1965; No. 82, 1973; No. 164, 1984
S. 39 .....	am. No. 20, 1954; No. 19, 1955; No. 24, 1956 rs. No. 103, 1959 am. No. 67, 1962; No. 103, 1963; No. 135, 1965; No. 56, 1968; No. 82, 1973; No. 164, 1984
S. 39A .....	ad. No. 20, 1954 rep. No. 19, 1955
S. 40 .....	am. No. 73, 1950; No. 19, 1955 rs. No. 103, 1959 am. No. 135, 1965; No. 82, 1973; No. 164, 1984 rep. No. 91, 1992
S. 41 .....	am. No. 37, 1949; No. 73, 1950; No. 93, 1952; No. 19, 1955; No. 24, 1956 rs. No. 103, 1959 am. No. 103, 1963; No. 135, 1965; No. 56, 1968; No. 82, 1973; No. 164, 1984
S. 41A .....	ad. No. 103, 1963 rs. No. 135, 1965 am. No. 164, 1984

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 42 .....	am. No. 73, 1950; No. 19, 1955; No. 95, 1957 rs. No. 103, 1959 am. No. 103, 1963; No. 135, 1965; No. 55, 1968; No. 82, 1973; No. 164, 1984 rep. No. 91, 1992
S. 42A .....	ad. No. 103, 1959 am. No. 103, 1963; Nos. 25 and 135, 1965 rs. No. 55, 1968 am. No. 82, 1973; No. 161, 1977; No. 164, 1984 rep. No. 91, 1992
S. 43 .....	am. No. 82, 1973; No. 164, 1984
S. 44 .....	rs. No. 73, 1950; No. 103, 1959 am. No. 55, 1968; No. 164, 1984
S. 45 .....	rs. No. 73, 1950 am. No. 29, 1951; No. 20, 1954 rs. No. 103, 1959 am. No. 164, 1984
S. 46 .....	am. No. 37, 1949 rep. No. 103, 1959
S. 47 .....	am. No. 37, 1949 rs. No. 73, 1950 rep. No. 103, 1959
S. 47A .....	ad. No. 73, 1950 rep. No. 103, 1959
S. 48 .....	am. No. 73, 1950; No. 20, 1954; No. 19, 1955; No. 24, 1956 rep. No. 103, 1959
S. 49 .....	rs. No. 103, 1959 rep. No. 91, 1992
S. 50 .....	rs. No. 103, 1959 am. No. 135, 1965; No. 82, 1973; No. 164, 1984
S. 51 .....	am. No. 73, 1950 rs. No. 103, 1959 am. No. 67, 1962; No. 103, 1963; No. 55, 1968; No. 61, 1969; No. 82, 1973; No. 96, 1975; No. 164, 1984; No. 126, 1991; No. 1, 1997
S. 52 .....	am. No. 73, 1950; No. 29, 1951; No. 20, 1954; No. 19, 1955 rs. No. 103, 1959 am. No. 103, 1963; No. 135, 1965; Nos. 55 and 128, 1968; No. 82, 1973; No. 164, 1984
S. 52A .....	ad. No. 55, 1968 am. No. 164, 1984
S. 53 .....	am. No. 103, 1959; No. 55, 1968; No. 82, 1973; Nos. 15 and 135, 1979; No. 164, 1984; No. 126, 1991
S. 53A .....	ad. No. 103, 1959 am. No. 25, 1965; No. 56, 1968 rep. No. 82, 1973
S. 53B .....	ad. No. 103, 1963 am. No. 56, 1968; No. 82, 1973; No. 161, 1977; No. 164, 1984; No. 104, 1988
S. 54 .....	am. No. 103, 1959



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 54A .....	ad. No. 56, 1968 am. No. 164, 1984
S. 55 .....	am. No. 73, 1950; No. 29, 1951; No. 20, 1954; No. 95, 1957; No. 46, 1958; No. 103, 1959; Nos. 98 and 135, 1965; No. 70, 1966; No. 55, 1968; No. 82, 1973; No. 161, 1977; No. 164, 1984; No. 21, 1991
S. 56 .....	am. No. 73, 1950; No. 103, 1959; Nos. 55 and 56, 1968 rep. No. 82, 1973
S. 56A .....	ad. No. 103, 1959 am. No. 135, 1965 rs. No. 55, 1968 am. No. 56, 1968; No. 82, 1973; No. 164, 1984 rep. No. 91, 1992
S. 57 .....	am. No. 73, 1950; No. 29, 1951; No. 93, 1952; No. 20, 1954; No. 95, 1957; No. 46, 1958; No. 103, 1959; Nos. 98 and 135, 1965; No. 70, 1966; No. 128, 1968; No. 82, 1973; No. 161, 1977; No. 164, 1984; Nos. 21 and 126, 1991; No. 58, 2004; No. 58, 2011
S. 57A .....	ad. No. 126, 1991
S. 58 .....	am. No. 29, 1951; No. 20, 1954; No. 95, 1957; No. 46, 1958; Nos. 98 and 135, 1965; No. 70, 1966; No. 82, 1973; No. 164, 1984; No. 75, 1990; No. 21, 1991; No. 58, 2004; No. 58, 2011
S. 58A .....	ad. No. 128, 1968 am. No. 164, 1984
S. 59 .....	rs. No. 103, 1959 am. No. 98, 1965; No. 55, 1968; No. 82, 1973; No. 164, 1984 rep. No. 91, 1992
S. 60 .....	am. No. 103, 1959; No. 25, 1965; No. 82, 1973; No. 164, 1984
S. 60A .....	ad. No. 55, 1968 am. No. 164, 1984 rep. No. 91, 1992
S. 61 .....	rep. No. 82, 1973
S. 62 .....	am. No. 98, 1965 rs. No. 82, 1973
S. 63 .....	am. No. 98, 1965 rs. No. 82, 1973 am. No. 164, 1984; No. 58, 2011
S. 64 .....	am. No. 29, 1951; No. 20, 1954; No. 95, 1957; No. 46, 1958; Nos. 98 and 135, 1965; No. 70, 1966 rep. No. 82, 1973 ad. No. 161, 1977 am. No. 164, 1984
Ss. 64AA–64AC .....	ad. No. 134, 2008 am. No. 58, 2011
S. 64A .....	ad. No. 165, 2007 am. No. 58, 2011
S. 65 .....	am. No. 98, 1965; No. 56, 1968; No. 161, 1977; No. 164, 1984

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 66 .....	am. No. 164, 1984
S. 67 .....	rep. No. 82, 1973
S. 68 .....	rs. No. 103, 1959 am. No. 164, 1984
S. 69 .....	am. No. 29, 1951; No. 20, 1954; No. 19, 1955; No. 103, 1959; Nos. 98 and 135, 1965; Nos. 55 and 56, 1968; No. 82, 1973; No. 164, 1984; No. 141, 2001
S. 70 .....	rs. No. 103, 1959 rep. No. 55, 1968
S. 71 .....	am. No. 164, 1984
S. 72 .....	am. No. 73, 1950 rs. No. 103, 1959
S. 72A .....	ad. No. 19, 1955 am. No. 95, 1957 rep. No. 103, 1959
S. 73 .....	rs. No. 103, 1959 am. No. 135, 1965; Nos. 55 and 128, 1968; No. 82, 1973; No. 15, 1979; No. 164, 1984; No. 126, 1991
S. 73A .....	ad. No. 37, 1949 am. No. 73, 1950 rep. No. 103, 1959
<b>Division 2</b>	
S. 74 .....	am. No. 37, 1949; No. 73, 1950; No. 93, 1952; No. 20, 1954; No. 19, 1955; No. 103, 1959; No. 82, 1973; No. 164, 1984
Div. 3 of Part V .....	ad. No. 93, 1952 rep. No. 82, 1973
S. 74A .....	ad. No. 93, 1952 rs. No. 103, 1959 rep. No. 82, 1973
S. 74B .....	ad. No. 93, 1952 am. No. 103, 1959 rep. No. 82, 1973
Part VI .....	rs. No. 103, 1959 rep. No. 82, 1973
S. 75 .....	am. No. 37, 1949; No. 95, 1957 rs. No. 103, 1959 rep. No. 82, 1973
<b>Part VIA</b>	
Part VIA .....	ad. No. 73, 1950 rep. No. 103, 1959 ad. No. 61, 1969 rep. No. 91, 1992 ad. No. 58, 2004
S. 76 .....	am. No. 37, 1949 rep. No. 103, 1959 ad. No. 61, 1969 am. No. 82, 1973; No. 164, 1984; No. 65, 1987 rep. No. 91, 1992

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 77 .....	am. No. 37, 1949; No. 73, 1950; No. 93, 1952; No. 19, 1955 rep. No. 103, 1959 ad. No. 61, 1969 am. No. 164, 1984 rep. No. 91, 1992
S. 78 .....	am. No. 37, 1949; No. 73, 1950; No. 29, 1951; No. 93, 1952; No. 80, 1953; No. 19, 1955; No. 24, 1956 rep. No. 103, 1959 ad. No. 61, 1969 rep. No. 91, 1992
S. 78A .....	ad. No. 80, 1953 am. No. 20, 1954 rep. No. 103, 1959
S. 78B .....	ad. No. 80, 1953 am. No. 20, 1954 rep. No. 103, 1959
S. 78C .....	ad. No. 24, 1956 rep. No. 103, 1959
S. 79 .....	am. No. 37, 1949; No. 93, 1952; No. 19, 1955 rep. No. 103, 1959 ad. No. 61, 1969 am. No. 164, 1984 rep. No. 91, 1992
S. 79A .....	ad. No. 93, 1952 rep. No. 103, 1959
S. 80 .....	am. No. 37, 1949 rep. No. 103, 1959 ad. No. 61, 1969 am. No. 164, 1984; No. 65, 1987 rep. No. 91, 1992
<b>Division 1</b>	
S. 80A .....	ad. No. 19, 1955 rep. No. 103, 1959 ad. No. 58, 2004 am. No. 58, 2011
<b>Division 2</b>	
Ss. 80B, 80C .....	ad. No. 58, 2004 am. No. 58, 2011
<b>Division 3</b>	
S. 80D .....	ad. No. 58, 2004
<b>Division 4</b>	
S. 80E .....	ad. No. 58, 2004 am. No. 121, 2005
S. 81 .....	rs. No. 37, 1949 am. No. 73, 1950 rep. No. 103, 1959 ad. No. 61, 1969 rs. No. 47, 1971 am. No. 82, 1973; No. 164, 1984 rep. No. 91, 1992

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 82 .....	am. No. 37, 1949 rep. No. 103, 1959
S. 82A .....	ad. No. 73, 1950 am. No. 95, 1957 rep. No. 103, 1959
Ss. 82B–82D .....	ad. No. 73, 1950 rep. No. 103, 1959
<b>Part VIB</b>	
Heading to Part VIB .....	am. No. 56, 1968
Part VIB .....	ad. No. 93, 1952 am. No. 56, 1968
S. 82E .....	ad. No. 93, 1952 rs. No. 56, 1968 am. No. 47, 1971; No. 164, 1984
S. 82F .....	ad. No. 93, 1952 am. No. 103, 1959; Nos. 55 and 56, 1968; No. 164, 1984
S. 82G .....	ad. No. 93, 1952 am. No. 56, 1968; No. 164, 1984 (as am. by No. 43, 1996)
S. 82GA .....	ad. No. 56, 1968 am. No. 164, 1984
S. 82H .....	ad. No. 93, 1952 am. No. 56, 1968
<b>Part VIC</b>	
Part VIC .....	ad. No. 47, 1971
<b>Division 1</b>	
S. 82J .....	ad. No. 47, 1971 am. No. 164, 1984; No. 5, 1995
S. 82K .....	ad. No. 47, 1971 am. No. 82, 1973
<b>Division 2</b>	
S. 82L .....	ad. No. 47, 1971 am. No. 164, 1984; No. 5, 1995
S. 82M .....	ad. No. 47, 1971 am. No. 164, 1984
S. 82N .....	ad. No. 47, 1971
Ss. 82P, 82Q .....	ad. No. 47, 1971 am. No. 82, 1973; No. 164, 1984
S. 82R .....	ad. No. 47, 1971 am. No. 161, 1977; No. 164, 1984
S. 82S .....	ad. No. 47, 1971 am. No. 164, 1984
<b>Division 3</b>	
S. 82T .....	ad. No. 47, 1971 am. No. 164, 1984
S. 82U .....	ad. No. 47, 1971 am. No. 216, 1973; No. 92, 1981; No. 164, 1984; No. 104, 1988

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Ss. 82V, 82W .....	ad. No. 47, 1971 am. No. 36, 1978; No. 164, 1984; No. 5, 2011
Ss. 82X, 82Y .....	ad. No. 47, 1971 am. No. 161, 1977; No. 164, 1984
S. 82Z .....	ad. No. 47, 1971 am. No. 82, 1973; No. 161, 1977; No. 164, 1984
S. 82ZA .....	ad. No. 47, 1971 am. No. 164, 1984
S. 82ZB .....	ad. No. 47, 1971 am. No. 82, 1973; No. 164, 1984; No. 65, 1987
Ss. 82ZC, 82ZD .....	ad. No. 47, 1971 am. No. 161, 1977; No. 164, 1984
S. 82ZE .....	ad. No. 47, 1971 am. No. 164, 1984
S. 82ZF .....	ad. No. 47, 1971 am. No. 82, 1973; No. 164, 1984
S. 82ZG .....	ad. No. 47, 1971 am. No. 82, 1973 rs. No. 161, 1977
<b>Division 4</b>	
S. 82ZH .....	ad. No. 47, 1971 am. No. 36, 1978; No. 164, 1984; No. 5, 1995; No. 5, 2011
S. 82ZJ .....	ad. No. 47, 1971 am. No. 82, 1973; No. 164, 1984
<b>Part VID</b>	
Part VID .....	ad. No. 13, 1977
S. 83 .....	rep. No. 82, 1973 ad. No. 13, 1977 am. No. 164, 1984; No. 65, 1987; No. 58, 2004
S. 84 .....	am. No. 135, 1965 rep. No. 82, 1973 ad. No. 13, 1977 am. No. 65, 1987; No. 58, 2004
S. 84A .....	ad. No. 13, 1977 am. No. 58, 2004
S. 84B .....	ad. No. 13, 1977 am. No. 161, 1977; No. 58, 2004
S. 84C .....	ad. No. 13, 1977 rs. No. 161, 1977 am. No. 164, 1984; No. 21, 1991; No. 58, 2004
S. 84D .....	ad. No. 13, 1977 am. No. 164, 1984; No. 58, 2004
Heading to s. 84E.....	am. No. 58, 2004
S. 84E .....	ad. No. 13, 1977 am. No. 93, 1986; No. 126, 1991; No. 58, 2004
Heading to s. 84F.....	am. No. 58, 2004
S. 84F .....	ad. No. 13, 1977 am. No. 93, 1986; No. 58, 2004

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 84G .....	ad. No. 93, 1986 rep. No. 58, 2004
S. 84GA .....	ad. No. 125, 1989 rep. No. 58, 2004
<b>Part VII</b>	
S. 85 .....	rs. No. 98, 1965 am. No. 82, 1973; No. 164, 1984
S. 85A .....	ad. No. 98, 1965 am. No. 135, 1965; No. 82, 1973; No. 164, 1984; No. 104, 1988; No. 141, 2001; No. 58, 2011
S. 86 .....	am. No. 104, 1988; No. 58, 2011
S. 86A .....	ad. No. 104, 1988 am. No. 58, 2011
S. 87 .....	rs. No. 93, 1952
S. 88 .....	ad. No. 93, 1952 am. No. 67, 1962; No. 135, 1965; No. 164, 1984
<b>Schedules</b>	
First Schedule .....	am. No. 73, 1950 rs. No. 20, 1954; No. 19, 1955 am. No. 24, 1956; No. 95, 1957 rs. No. 103, 1959; No. 67, 1962; No. 103, 1963; Nos. 55 and 128, 1968 rep. No. 91, 1992
Second Schedule .....	rs. No. 19, 1955; No. 103, 1959; No. 67, 1962; No. 103, 1963
Third Schedule .....	am. No. 37, 1949 rs. No. 73, 1950; No. 93, 1952 am. No. 80, 1953 rs. No. 20, 1954; No. 19, 1955 am. No. 24, 1956 rs. No. 103, 1959; No. 67, 1962 rep. No. 103, 1963
Heading to Fourth Schedule ....	am. No. 164, 1984
Fourth Schedule .....	rs. No. 29, 1951; No. 93, 1952; No. 20, 1954; No. 19, 1955; No. 103, 1959; No. 67, 1962 am. No. 10, 2001
Fifth Schedule .....	rs. No. 73, 1950; No. 93, 1952; No. 20, 1954 rep. No. 19, 1955 ad. No. 103, 1959 rs. No. 67, 1962 rep. No. 103, 1963
Sixth Schedule .....	rs. No. 80, 1953; No. 95, 1957 rep. No. 103, 1959
Seventh Schedule .....	rep. No. 103, 1959
Eighth Schedule .....	am. No. 73, 1950 rs. No. 20, 1954 rep. No. 103, 1959

**Table A**

**Application, saving or transitional provisions**

*Defence Legislation Amendment (Enhancement of the Reserves and Modernisation) Act 2001* (No. 10, 2001)

**Schedule 2**

**94 Saving—old regulations**

- (1) Regulations that were in effect under any Act immediately before the commencement of this item continue to have effect after that time as if members of an arm of the Defence Force who were members of a particular part or component of that arm immediately before the commencement of this item were still members of that part or component after that time, even if that part or component no longer exists.

Example: Assume that, immediately before the commencement of this item, regulations imposed training obligations on members of the Air Force Specialist Reserve. Those obligations would continue to apply to former members of that Reserve after commencement, even though the Air Force Specialist Reserve itself is no longer mentioned in the *Air Force Act 1923* and the members have now become members of the Air Force Reserve.

- (2) However, regulations that continue in effect under this item do so only to the extent that they are not amended or revoked by later regulations.

**95 Regulations about transitional matters**

- (1) The regulations may make provision in relation to other saving and transitional matters in connection with the amendments made by this Schedule.
- (2) In particular, such regulations may deal with the status, after the commencement of the amendments, of persons who were members of the Defence Force immediately before that time.
- (3) Subitem (2) does not limit the scope of subitem (1).

## **Table A**

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*Defence Legislation Amendment (Application of Criminal Code) Act 2001*  
(No. 141, 2000)

### **4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

### **Schedule 1**

#### **95 Saving—regulations**

Regulations that were in effect for the purposes of subsection 69(7) of the *Defence Forces Retirement Benefits Act 1948* immediately before the commencement of this item continue to have effect after that time as if they had been made for the purposes of subsection 69(7) of that Act, as in force after that time.

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*Superannuation Legislation Amendment (Family Law and Other Matters) Act 2004* (No. 58, 2004)

### **4 Application of family law interest-splitting amendments**

- (1) The family law interest-splitting amendments apply to:
  - (a) any splitting agreement, or splitting order, that has an operative time after the commencement of Schedule 1; and
  - (b) a splitting agreement, or splitting order, with an earlier operative time, if no benefits had become payable before the commencement of Schedule 1 in respect of the superannuation interest to which the agreement or order relates.

- (2) In this section:

*family law interest-splitting amendments* means the amendments made by Schedule 1, other than items 24 and 34.



## **5 Application of indexation amendments**

The amendments made by Schedule 2 apply:

- (a) for the purpose of working out an increase in the rate of a pension benefit that is payable immediately before:
  - (i) the prescribed half-year beginning on 1 January 2004; and
  - (ii) each subsequent prescribed half-year; and
- (b) for any other purpose related to the purpose mentioned in paragraph (a).

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*Superannuation Legislation Amendment Act 2007* (No. 165, 2007)

## **Schedule 4**

### **8 Application**

- (1) The amendments made by this Schedule apply in respect of any application for restoration of a pension, or for restoration of the full rate of a pension, that is made on or after the day on which this Schedule commences.
  - (2) If an application made before 1 January 2008 is granted, the pension is payable at the full rate only from 1 January 2008 (despite the following provisions:
    - (a) subsection 44(3) of the *Defence Force Retirement and Death Benefits Act 1973* (as inserted by item 1 of this Schedule);
    - (b) subsection 64A(3) of the *Defence Forces Retirement Benefits Act 1948* (as inserted by item 6 of this Schedule);
    - (c) subsection 48AA(3) of the *Superannuation Act 1922* (as inserted by item 7 of this Schedule)).
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**Table A**

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*Same-Sex Relationships (Equal Treatment in Commonwealth Laws—  
Superannuation) Act 2008* (No. 134, 2008)

**4 Entitlements from 1 July 2008**

(1) If:

- (a) a person would have been entitled to one or more payments (the *lost payments*) under an Act that is amended by Schedule 1, 2, 3 or 5 to this Act if the relevant Schedule had commenced on 1 July 2008; and
- (b) because the Schedule did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and
- (c) the person makes an application to the Finance Minister for one or more payments (the *replacement payments*) to compensate the person for the lost payments;

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

(2) If:

- (a) a person would have been entitled to one or more payments (the *lost payments*) under the *Military Superannuation and Benefits Act 1991* if the first amendment of the Trust Deed under that Act that is made after the commencement of this section had commenced on 1 July 2008; and
- (b) because that amendment did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and
- (c) the person makes an application to the Finance Minister for one or more payments (the *replacement payments*) to compensate the person for the lost payments;

the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.

(3) If:

- (a) a person would have been entitled to one or more payments (the *lost payments*) under the *Superannuation Act 1990* if the first amendment of the Trust Deed under that Act that is made after the commencement of this section had commenced on 1 July 2008; and

**Table A**

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- (b) because that amendment did not commence until after 1 July 2008, the person is not entitled to the payment or payments; and
  - (c) the person makes an application to the Finance Minister for one or more payments (the ***replacement payments***) to compensate the person for the lost payments;  
the Finance Minister must make a determination, in accordance with subsection (4), to fully compensate the person.
- (4) A determination by the Finance Minister under this subsection must:
- (a) be in writing; and
  - (b) set out:
    - (i) the amount and timing of the replacement payments; or
    - (ii) the method of determining the amount and timing of the replacement payments.
- (5) An application must be in writing in the form approved by the Finance Minister.
- (6) To avoid doubt, a determination of the Finance Minister that a person is entitled to one or more replacement payments does not affect the entitlements of any other person under an Act amended by Schedule 1, 2, 3 or 5 to this Act, the *Military Superannuation and Benefits Act 1991* or the *Superannuation Act 1990*.
- (7) Replacement payments are to be made out of the Consolidated Revenue Fund, which is appropriated accordingly.
- (8) A determination made under this section is not a legislative instrument.
- (9) In this section:
- Finance Minister*** means the Minister who administers the *Financial Management and Accountability Act 1997*.

**Table A**

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**Schedule 3**

**26 Application of amendment of the *Defence Forces Retirement Benefits Act 1948***

The amendment of the *Defence Forces Retirement Benefits Act 1948* made by this Schedule applies in relation to a pension or benefit payable under that Act in respect of a person who dies on or after the commencement of this Schedule, if, at the time of his or her death, the deceased person was:

- (a) receiving a pension under section 38, 39 or 41 of that Act; or
- (b) receiving a benefit under subsection 51(1) of that Act.