

Defence Forces Retirement Benefits (No. 3)

No. 128 of 1968

An Act relating to Retirement Benefits for Members
of the Defence Force.

[Assented to 9 December 1968]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

PART I.—PRELIMINARY.

1.—(1.) This Act may be cited as the *Defence Forces Retirement Benefits Act (No. 3) 1968*. Short title and citation.

(2.) The *Defence Forces Retirement Benefits Act 1948–1966*,* as amended by the *Defence Forces Retirement Benefits Act 1968*† and by the *Defence Forces Retirement Benefits Act (No. 2) 1968*,‡ is in this Act referred to as the Principal Act.

(3.) Section 1 of the *Defence Forces Retirement Benefits Act (No. 2) 1968* is amended by omitting sub-section (4.).

* Act No. 31, 1948, as amended by No. 37, 1949; No. 73, 1950; No. 29, 1951; No. 93, 1952; No. 80, 1953; No. 20, 1954; No. 19, 1955; No. 24, 1956; No. 95, 1957; No. 46, 1958; No. 103, 1959; No. 67, 1962; No. 103, 1963; Nos. 25, 98 and 135, 1965; and No. 70, 1966.

† Act No. 55, 1968.

‡ Act No. 56, 1968.

(4.) The Principal Act, as amended by this Act, may be cited as the *Defence Forces Retirement Benefits Act 1948-1968*.

Commence-
ment.

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

(2.) Sections 5, 6, 7, 8, 9, 11, 12, 13, 20, 21, 22 and 23 of this Act shall come into operation on a date to be fixed by Proclamation.

(3.) Sections 10 and 24 of this Act shall be deemed to have come into operation on the date fixed under sub-section (2.) of section 2 of the *Defence Forces Retirement Benefits Act 1968*.

Parts.

3. This Act is divided into Parts, as follows:—

Part I.—Preliminary (Sections 1-3).

Part II.—Amendments of the Principal Act (Sections 4-13).

Part III.—Distribution of Amount out of Defence Forces Retirement Benefits Fund (Sections 14-19).

Part IV.—Miscellaneous (Sections 20-25).

PART II.—AMENDMENTS OF THE PRINCIPAL ACT.

Interpretation.

4. Section 4 of the Principal Act is amended—

(a) by omitting from the definition of “retiring age for the rank held” in sub-section (1.) all the words after the words “the date of his retirement”;

(b) by omitting from sub-section (1.) the definition of “short service commission”; and

(c) by adding at the end thereof the following sub-section:—

“(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.”.

Quinquennial
investigation by
Commonwealth
Actuary.

5. Section 22 of the Principal Act is amended—

(a) by inserting in sub-section (3.), after the words “he shall”, the words “, subject to the next succeeding sub-section,”; and

(b) by inserting after sub-section (3.) the following sub-section:—

“(3A.) Where the Commonwealth Actuary finds the Fund to be more than sufficient to provide for the benefits that are a charge upon the Fund, he shall, for the purpose of stating, as required by the last preceding sub-section, what additional benefits could, in his opinion, be provided out of the surplus or in what other manner the surplus should, in his opinion, be dealt with, disregard any surplus to the extent that, in his opinion, it is attributable, directly or indirectly, to the amendments made by sections eight and twenty-two of the *Defence Forces Retirement Benefits Act (No. 3) 1968*.”.

6. Section 23 of the Principal Act is amended by omitting sub-section (2.). Commencement and cessation of contributions.

7. Section 30 of the Principal Act is repealed and the following section inserted in its stead—

“ 30.—(1.) Subject to the next succeeding sub-section, the contribution to be paid by a member is an amount per fortnight ascertained in accordance with the formula— Rates of contribution.

$$\frac{A}{26} \left[B + C \left(D - \frac{B}{130} \right) + \frac{C}{2} \right], \text{ where—}$$

A is—

- (a) in the case of a member required to contribute to the Fund from a date earlier than the twentieth anniversary of his birth—the factor set out in the second column of Part I. of the First Schedule opposite to the age set out in the first column of that Part that will be or was the age of the member on the anniversary of his birth next following the date from which he was required to contribute to the Fund;
- (b) in the case of a male officer who is not a special duties officer and to whom the last preceding paragraph does not apply—the factor set out in the second column of Part II. of the First Schedule opposite to the age set out in the first column of that Part that will be or was the age of the officer on the anniversary of his birth next following the date from which he was required to contribute to the Fund; and
- (c) in any other case—Five and one-half cents;

B is the number of dollars in the prescribed amount;

C is—

- (a) if the annual pay of the member is less than the prescribed amount—one hundred and thirty; and
- (b) in any other case—two hundred and twenty-eight;

D is the category number of the member.

“(2.) Where a person was required to contribute to the Fund from, or from a date later than, the thirtieth anniversary of his birth, then, whether or not he was previously a member, the amount of contribution to be paid by him is the amount that would have been payable by him in accordance with the last preceding sub-section if he had been required to contribute to the Fund from the day immediately preceding the thirtieth anniversary of his birth increased by such percentage as is determined in relation to him by the Board on the advice of the Commonwealth Actuary.

“(3.) In this section—

‘special duties officer’ means—

- (a) an officer of the Special Duties List of the Naval Forces;
- (b) an officer of the Military Forces who is a Quartermaster or a member of a prescribed Corps or prescribed Service;
- (c) an officer of the Air Force not of the General Duties Branch; or
- (d) a Chaplain;

‘the prescribed amount’ has the same meaning as in section four A of this Act.”.

Commonwealth
contributions
in respect
of pensions.

8.—(1.) Section 32 of the Principal Act is amended by omitting from sub-sections (1.) and (3.) the words “seventy-seven and one-half per centum” and inserting in their stead the words “eighty per centum”.

(2.) The amendments made by the last preceding sub-section do not apply in relation to a payment of pension payable in respect of a period that ended on or before the date of the pension pay day last preceding the date of commencement of this section.

Rate or
amount of
invalidity
benefit.

9. Section 52 of the Principal Act is amended by omitting from sub-section (9.) the words “and after attaining the age of eighteen years”.

Pension on
death of
pensioner.

10. Section 57 of the Principal Act is amended by omitting from paragraph (b) of sub-section (2.) the word and figure “sub-section (4.)” and inserting in their stead the word and figure “sub-section (9.)”.

11. After section 58 of the Principal Act the following section is inserted:—

Basic rate
of pensions.

“58A.—(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 the next succeeding sub-section,

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—seventeen 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—thirteen 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.”.

12.—(1.) Section 73 of the Principal Act is amended—

- (a) by omitting from sub-section (2.) the words “ Five hundred and forty-six dollars ” and “ Two hundred and seventy-three dollars ” and inserting in their stead the words “ One thousand one hundred and five dollars ” and “ Five hundred and fifty-two dollars fifty cents ”, respectively; and

Special
invalidity
benefit to
members under
eighteen years
of age.

- (b) by adding at the end thereof the following sub-section:—

“ (6.) This section does not apply to or in relation to any member who retires on or after the date fixed under sub-section (2.) of section two of the *Defence Forces Retirement Benefits Act (No. 3) 1968.*”.

(2.) The amendment made by paragraph (a) of the last preceding sub-section applies to pensions payable to or in respect of a person who retired before the commencement of this section from and including the first fortnightly payment of pensions made after the commencement of this section.

13. The First Schedule to the Principal Act is repealed and the

First Schedule.

Schedule set out in the Schedule to this Act inserted in its stead.

PART III.—DISTRIBUTION OF AMOUNT OUT OF DEFENCE FORCES
RETIREMENT BENEFITS FUND.

14. The object of this Part is to make provision for and in relation to the distribution out of the Defence Forces Retirement Benefits Fund of an amount of Four million four hundred and sixty-five thousand seven hundred and seventy dollars to or in respect of contributors to whom this Part applies and to or in respect of pensioners to whom this Part applies, and—

Object of
Part.

- (a) the amount available for distribution to or in respect of contributors to whom this Part applies is Three million six hundred and eighty-nine thousand seven hundred and seventy dollars; and
- (b) the amount available for distribution to or in respect of pensioners to whom this Part applies is Seven hundred and seventy-six thousand dollars.

Interpretation.

15.—(1.) In this Part—

“ contributor to whom this Part applies ” means a person, or a deceased person, who became liable to contribute to the Fund before the fourth day of December, One thousand nine hundred and fifty-nine, who contributed to the Fund during, or during a part of, the quinquennium and who—

- (a) is a contributor on such date as is declared by the Treasurer, by notice in the *Gazette*, to be the applicable date for the purposes of this definition (in this definition referred to as “ the declared date ”);
- (b) at any time after the commencement of the quinquennium and before the declared date, has been in receipt of a pension; or
- (c) after the commencement of the quinquennium and before the declared date, has died, while a contributor, leaving a widow or a child who, at the time of his death or at any later time, was an eligible child,

but does not include—

- (d) a person in relation to whom regulation 5 or regulation 7 of the Defence Forces Retirement Benefits (Existing Contributors) Regulations, or regulation 6 of the Defence Forces Retirement Benefits (Prescribed Contributors) Regulations, apply or have applied; or
- (e) a person who, on the declared date, was not contributing to the Fund by virtue of the operation of sub-section (1.) of section 36 of the Defence Forces Retirement Benefits Act;

“ non-contributory pension ” means a pension that became payable under section 73 of the Defence Forces Retirement Benefits Act;

“ pensioner to whom this Part applies ” means a person, or a deceased person, who became liable to contribute to the Fund before the fourth day of December, One thousand nine hundred and fifty-nine, and to or in respect of whom, at any time during the quinquennium, pension, other than a non-contributory pension, was payable or would, but for the pension having been suspended, have been payable, but does not include—

- (a) a person to whom regulation 5 or regulation 7 of the Defence Forces Retirement Benefits (Existing Contributors) Regulations or regulation 6 of the Defence Forces Retirement Benefits (Prescribed Contributors) Regulations, applied; or
- (b) a person who, before such date as is declared by the Treasurer, by notice in the *Gazette*, to be the applicable date for the purposes of this definition, ceased to be

entitled to pension upon being reclassified as Class C under section 53 of the Defence Forces Retirement Benefits Act;

“ the Defence Forces Retirement Benefits Act ” means the *Defence Forces Retirement Benefits Act* 1948 as amended and in force from time to time;

“ the quinquennium ” means the period of five years that ended on the thirtieth day of June, One thousand nine hundred and sixty-four.

(2.) Expressions used in this Part that are also used in the *Defence Forces Retirement Benefits Act* 1948–1968 have in this Part, unless the contrary intention appears, the same respective meanings as they have in that Act.

(3.) A reference in this Part to pension shall, unless the contrary intention appears, be read as including a reference to pension payable under the *Defence Forces Special Retirement Benefits Act* 1960.

16.—(1.) The amount available for distribution to or in respect of contributors to whom this Part applies shall be allocated by the Board among those contributors in such manner as the Treasurer, after receiving advice from the Commonwealth Actuary, determines.

Allocation of amounts to be distributed.

(2.) The amount available for distribution to or in respect of pensioners to whom this Part applies shall be allocated by the Board among those pensioners in such manner as the Treasurer, after receiving advice from the Commonwealth Actuary, determines.

(3.) In furnishing advice to the Treasurer for the purposes of either of the last two preceding sub-sections, the Commonwealth Actuary shall have regard to actuarial principles and practice and shall take into account all relevant matters necessary to ensure that each person concerned will receive a fair and reasonable share of the amount to be distributed.

17.—(1.) Subject to the next succeeding section, as soon as practicable after the making of determinations under the last preceding section, there shall be paid out of the Defence Forces Retirement Benefits Fund—

Payment of amounts in respect of individual contributors and pensioners.

- (a) to each contributor to whom this Part applies and each pensioner to whom this Part applies; or
- (b) if he is dead—to such person as the Board considers proper having regard to all the circumstances of the case,
an amount equal to the sum of—
 - (c) the amount allocated to the contributor or pensioner under the last preceding section; and
 - (d) the amount that, if compound interest were payable on the amount referred to in the last preceding paragraph, calculated at

the specified rate, in respect of the period commencing on the first day of July, One thousand nine hundred and sixty-four, and ending on—

- (i) in the case of a payment to or in respect of a contributor to whom this Part applies—the date that is the declared date for the purposes of the definition of “contributor to whom this Part applies” in sub-section (1.) of section 15 of this Act; or
- (ii) in the case of a payment to or in respect of a pensioner to whom this Part applies—the date that is the declared date for the purposes of the definition of “pensioner to whom this Part applies” in that sub-section,

would be the amount of that interest.

(2.) For the purposes of the last preceding sub-section, the specified rate is, in respect of any period being a financial year or a part of a financial year, such rate of interest as is determined by the Treasurer in respect of that financial year or, if the Treasurer has not determined a rate of interest in respect of that financial year, the rate of interest determined by the Treasurer in respect of the last preceding financial year in respect of which the Treasurer has determined a rate of interest.

(3.) In determining a rate of interest in respect of a financial year for the purposes of sub-section (1.) of this section, the Treasurer shall have regard to the average rate of interest that was earned by the Defence Forces Retirement Benefits Fund in that financial year and to such other matters as he thinks relevant.

Payment on account of distribution

18. The Treasurer may authorize the payment out of the Defence Forces Retirement Benefits Fund to or in respect of a contributor to whom this Part applies or a pensioner to whom this Part applies, on account of any amount that may become payable to or in respect of him under the last preceding section, of an amount ascertained in such manner as the Treasurer, after receiving advice from the Commonwealth Actuary, determines, and where payment of such an amount is made under this section, there shall be deducted from the amount that would otherwise be payable to or in respect of the contributor or pensioner under the last preceding section, an amount equal to the sum of—

- (a) the amount paid under this section; and
- (b) such additional amount as the Board determines as being appropriate having regard to the provisions of paragraph (d) of sub-section (1.) of the last preceding section.

Assignment and attachment of amounts payable under this Part.

19. Sections 85 and 85A of the Defence Forces Retirement Benefits Act apply in relation to any amount payable under this Part as if the amount were a benefit under that Act.

PART IV.—MISCELLANEOUS.

20.—(1.) In this section—

“category number”, in relation to a contributor, means the category number of the contributor immediately before he ceased to be a member or, if that category number would, if the Principal Act, and the Defence Forces Retirement Benefits Regulations as in force on the commencing date, had been in force immediately before he ceased to be a member, have been a different number, that different number;

“the commencing date” means the date of commencement of this section.

(2.) The reference in the definition of “category number” in the last preceding sub-section to the category number of a contributor immediately before he ceased to be a member shall, in the case of a contributor who ceased to be a member before the fourteenth day of December, One thousand nine hundred and fifty-nine, be read as a reference to the number of units for which he was last contributing to the Defence Forces Retirement Benefits Fund before he ceased to be a member.

(3.) Where pension is payable to or in respect of a contributor who ceased to be a member (whether by reason of retirement or death) before the commencing date and whose category number was less than seventeen, the rate of that pension may be increased by the Board to such extent as the Board considers appropriate having regard to the provision made for a basic rate of pension by section 58A of the Principal Act as amended by this Act in respect of certain contributors who cease to be members on or after the commencing date.

21.—(1.) The reference in sub-section (1.) of section 15B of the Principal Act as amended by this Act to benefits under that Act as so amended shall be read as including a reference to increases in pensions made under the last preceding section.

(2.) The Commonwealth shall pay to the Defence Forces Retirement Benefits Fund amounts equal to the amounts by which payments of pensions are increased under the last preceding section, and the Consolidated Revenue Fund is, to the necessary extent, appropriated accordingly.

22.—(1.) Section 61 of the *Defence Forces Retirement Benefits Act 1959–1966** is amended—

(a) by omitting from sub-sections (1.) and (2.) the words “eighty-five per centum” and inserting in their stead the words “eighty per centum”; and

(b) by omitting from paragraph (b) of sub-section (1.) the words “seventy-seven and one-half per centum” and inserting in their stead the words “eighty per centum”.

Increase in certain pensions having regard to basic rate.

Payment of pension increases.

Amendment of *Defence Forces Retirement Benefits Act 1959–1966*.

* Act No. 103, 1959, as amended by No. 15, 1961; No. 67, 1962; No. 98, 1965; and Nos. 70 and 93, 1966.

(2.) The amendments made by the last preceding sub-section do not apply in relation to—

- (a) a pension payable to or in respect of a person who ceased to be a member on or before the thirtieth day of June, One thousand nine hundred and sixty-four; or
- (b) a payment of pension payable in respect of a period that ended on or before the date of the pension pay day last preceding the date of commencement of this section.

(3.) Section 65 of the *Defence Forces Retirement Benefits Act 1959–1966* is amended by omitting sub-section (1.).

(4.) The *Defence Forces Retirement Benefits Act 1959–1966*, as amended by this section, may be cited as the *Defence Forces Retirement Benefits Act 1959–1968*.

Amendments
of *Defence
Forces
Retirement
Benefits Act
1963–1965*.

23.—(1.) Section 61A of the *Defence Forces Retirement Benefits Act 1963–1965** is amended by inserting in sub-section (2.), after the words “Defence Forces of the Commonwealth”, the words “(other than section fifty-eight A of the *Defence Forces Retirement Benefits Act 1948–1968*)”.

(2.) Section 61B of the *Defence Forces Retirement Benefits Act 1963–1965* is amended by inserting in sub-section (2.), after the words “Defence Forces of the Commonwealth”, the words “(other than section fifty-eight A of the *Defence Forces Retirement Benefits Act 1948–1968*)”.

(3.) The *Defence Forces Retirement Benefits Act 1963–1965*, as amended by this section, may be cited as the *Defence Forces Retirement Benefits Act 1963–1968*.

Amendments
of *Defence
Forces
Retirement
Benefits Act
1968*.

24.—(1.) Section 30 of the *Defence Forces Retirement Benefits Act 1968*† is amended—

- (a) by omitting paragraph (a) of the definition of “deceased former member” and inserting in its stead the following paragraph:—
 - “(a) at any time on or after the twenty-eighth day of June, One thousand nine hundred and sixty-five—
 - (i) was a member of the Defence Force but was not a member as defined by sub-section (1.) of section 4 of the *Defence Forces Retirement Benefits Act*, but would have been a member as so defined, and would have been required to contribute to the *Defence Forces Retirement Benefits Fund*, if the amendments made by this Act had been in force at that time; or

* Act No. 103, 1963, as amended by No. 25, 1965; and No. 135, 1965.

† Act No. 55, 1968.

(ii) was a member as defined by sub-section (1.) of section 4 of the Defence Forces Retirement Benefits Act but did not contribute to the Defence Forces Retirement Benefits Fund by reason of sub-section (3.) or (4.) of section 23 of the Defence Forces Retirement Benefits Act, but would have been required to contribute to the Fund if the amendments made by this Act had been in force at that time; and ”;

(b) by omitting paragraph (a) of the definition of “ former member ” and inserting in its stead the following paragraph:—

“ (a) at any time on or after the twenty-eighth day of June, One thousand nine hundred and sixty-five—

(i) was a member of the Defence Force but was not a member as defined by sub-section (1.) of section 4 of the Defence Forces Retirement Benefits Act, but would have been a member as so defined, and would have been required to contribute to the Defence Forces Retirement Benefits Fund, if the amendments made by this Act had been in force at that time; or

(ii) was a member as defined by sub-section (1.) of section 4 of the Defence Forces Retirement Benefits Act but did not contribute to the Defence Forces Retirement Benefits Fund by reason of sub-section (3.) or (4.) of section 23 of the Defence Forces Retirement Benefits Act, but would have been required to contribute to the Fund if the amendments made by this Act had been in force at that time; and ”; and

(c) by omitting paragraph (b) of the definition of “ serving member ” and inserting in its stead the following paragraph:—

“ (b) is, on the commencing date, a member as defined by sub-section (1.) of section 4 of the Principal Act as amended by this Act and—

(i) was not, immediately before that date, a member as defined by sub-section (1.) of section 4 of the Principal Act; or

(ii) was, immediately before that date, a member as defined by sub-section (1.) of section 4 of the Principal Act but was not contributing to the Defence Forces Retirement Benefits Fund by reason of sub-section (3.) or (4.) of section 23 of the Principal Act, but would have been required

