**Defence Forces Retirement Benefits (No. 2)**

**No. 98 of 1965**

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

[Assented to 10 December, 1965]

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.

**Short title and citation.**

**1.**—(1.) This Act may be cited as the *Defence Forces Retirement Benefits Act* (*No.* 2) 1965.

(2.) The *Defence Forces Retirement Benefits Act* 1948–1963, as amended by the *Defence Forces Retirement Benefits Act* 1965, is in this Act referred to as the Principal Act.

(3.) Section 1 of the *Defence Forces Retirement Benefits Act* 1965 is amended by omitting sub-section (3.).

(4.) The Principal Act, as amended by Part II. of this Act, may be cited as the *Defence Forces Retirement Benefits Act* 1948–1965.

**Commencement.**

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

(2.) Section 4, sections 6 to 13 (inclusive) and section 20 of this Act shall be deemed to have come into operation on the twenty-fourth day of September, One thousand nine hundred and sixty-five.

**Parts.**

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

Part I.—Preliminary (Sections 1–3).

Part II.—Amendments of the Principal Act (Sections 4–15).

Part III.—Miscellaneous (Sections 16–20).

Part II.—Amendments of the Principal Act.

**Interpretation.**

**4.** Section 4 of the Principal Act is amended by inserting in sub-section (1.), after the definition of “daily rate of pay”, the following definition:—

“‘eligible child’ means—

(*a*) a child under the age of sixteen years; or

(*b*) a child who—

(i) has attained the age of sixteen years but is under the age of twenty-one years; and

(ii) is receiving full-time education at a school, college or university;”.

**Categories of members.**

**5.** Section 4a of the Principal Act is amended—

(*a*)by omitting from sub-section (4.) the words “Two thousand six hundred pounds” and inserting in their stead the words “Two thousand seven hundred and thirty pounds”; and

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

“(6.) A regulation for the purposes of sub-section (4.) of this section 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 six months before the date on which the regulation is made”.

**Pension on death of married member.**

**6.** Section 55 of the Principal Act is amended—

(*a*)by omitting paragraph (*b*)of sub-section (1.) and inserting in its stead the following paragraph:—

*“*(*b*)in respect of each child of the widow who is an eligible child (other than a child of her remarriage), and in respect of each child of the member who is an eligible child— a pension at the rate of One hundred and four pounds per annum.”; and

(*b*)by omitting sub-section (2.) and inserting in its stead the following sub-section:—

“(2.) On the death of a widow who was in receipt of a pension under the last preceding sub-section, pension shall, in addition to any pension payable in pursuance of paragraph (*b*)of that sub-section, be payable in respect of each child of the widow who is an eligible child (other than a child of her remarriage), and in respect of each child of the member who is an eligible child, at the rate of One hundred and fifty-six pounds per annum.”.

**Pension on death of pensioner.**

**7.** Section 57 of the Principal Act is amended—

(*a*)by omitting paragraph (*b*)of sub-section (1.) and inserting in its stead the following paragraph:—

*“*(*b*)in respect of each child of the widow who is an eligible child (other than a child of her remarriage), and in respect of each child of the pensioner who is an eligible child—a pension at the rate of One hundred and four pounds per annum.”; and

(*b*)by omitting sub-section (4.) and inserting in its stead the following sub-section:—

“(4.) On the death of a widow who was in receipt of a pension under the preceding provisions of this section, pension shall, in addition to any pension payable in pursuance of paragraph (*b*)of sub-section (1.) of this section, be payable in respect of each child of the widow who is an eligible child (other than a child of her remarriage), and in respect of each child of the male pensioner who is an eligible child, at the rate of One hundred and fifty-six pounds per annum.”.

**Pensions payable in respect of orphans.**

**8.** Section 58 of the Principal Act is amended by omitting sub-section (1.) and inserting in its stead the following sub-section:—

“(1.) 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, the pension payable under this Act in respect of each child shall be at the rate of Two hundred and sixty pounds per annum.”.

**Benefits on death of certain members.**

**9.** Section 59 of the Principal Act is amended by omitting from paragraph (*a*)the words “under the age of sixteen years” and inserting in their stead the words “who are eligible children”.

**Disposal of pension on imprisonment of pensioner.**

**10.** Section 62 of the Principal Act is amended by omitting from sub-sections (1.) and (2.) the words “under the age of sixteen years” and inserting in their stead the words “eligible children”.

**Disposal of pension on insanity of pensioner.**

**11.** Section 63 of the Principal Act is amended by omitting from sub-sections (1.) and (2.) the words “under the age of sixteen years” and inserting in their stead the words “eligible children”.

**Children’s pensions payable to guardian.**

**12.** Section 64 of the Principal Act is amended—

(*a*)by omitting from sub-section (1.) the words “One hundred and fifty-six pounds” and inserting in their stead the words “Two hundred and sixty pounds”; and

(*b*)by omitting from sub-section (2.) the words “under the age of sixteen years”.

**General provisions as to pensions.**

**13.** Section 65 of the Principal Act is amended by omitting sub-section (2.) and inserting in its stead the following sub-section:—

“(2.) Pension in respect of a child shall be payable only while the child is an eligible child.”.

**Re-engagement, &c., of pensioners.**

**14.** Section 69 of the Principal Act is amended—

(*a*)by omitting sub-section (1.);

(*b*) by omitting sub-sections (2.) and (3.) and inserting in their stead the following sub-section:—

“(2.) In the application of section fifty-seven of this Act to the widow of a pensioner, any cancellation of a part of his pension under sub-section (1a.) of this section shall be disregarded.”;

(*c*) by omitting sub-sections (6.) and (7.) and inserting in their stead the following sub-section:—

“(7.) Where a pensioner, other than a pensioner under section fifty-five or fifty-seven of this Act—

(*a*)again becomes a member for the purposes of this Act; or

(*b*)commences to serve on full-time continuous service in the Service and receives pay in respect of that full-time service,

he shall, within fourteen days after he again becomes a member or he commences so to serve, as the case may be, notify the Board accordingly in such manner as is prescribed.

Penalty: Twenty pounds.”;

(*d*)by omitting from sub-section (9.) the words and figures “sub-section (1.), (1a.) or (3.)” and inserting in their stead the word and figure “sub-section (1a.)”; and

(*e*)by omitting from sub-section (10.) the figures “(1.), (3.).”.

**15.** Section 85 of the Principal Act is repealed and the following sections are inserted in its stead:—

**Assignment of pensions.**

“85. Subject to the next succeeding section, 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 on the death of a member are not liable to be applied or made available in payment of his debts or liabilities.

**Attachment of pensions.**

“85a.—(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 the Board, in such manner as is prescribed, a copy of the judgment, certified under the hand of the Registrar or other proper officer of the court by which the judgment was given, and a statutory declaration by the judgment creditor stating that the judgment has not been fully satisfied by the judgment debtor and specifying the amount due by the judgment debtor under the judgment.

“(2.) Where a copy of a judgment and a statutory declaration are served on the Board in accordance with the last preceding sub-section, the Board shall, as soon as practicable, by notice in writing given to the judgment debtor, inform him of the service of those documents and require him, within such period as is specified in the notice and in such manner as is so specified, to notify the Board whether the amount specified in the declaration is still due under the judgment and, if no amount or a lesser amount is due under the judgment, to furnish to the Board, in such manner as is specified in the notice, evidence in support of that fact.

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

Penalty: Twenty pounds.

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

“(5.) A deduction shall not be made from—

(*a*)an instalment of pension payable in respect of a child; or

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

“(6.) If, after a copy of a judgment given against a pensioner or beneficiary, being a judgment in respect of which the Board is satisfied that an amount is due, has been served in accordance with

sub-section (1.) of this section, a copy of another judgment given (whether before or after the first-mentioned judgment) against the same pensioner or beneficiary in favour of the person in whose favour the first-mentioned judgment was given or in favour of another person is served in accordance with that sub-section, the Board shall not make a payment in 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.

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

Penalty: Fifty pounds or imprisonment for three months.

“(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.”.

Part III.—Miscellaneous.

**Contributions for additional widow’s pension.**

**16.** Section 47 of the *Defence Forces Retirement Benefits Act* 1959–1962 is amended by adding at the end thereof the following sub-sections:—

“(8.) An existing contributor who, before the commencement of this sub-section, elected under sub-section (6.) of this section not to contribute to the Fund under this section may, within a period of six months after the commencement of this sub-section, by notice in writing to the Board, revoke the election.

“(9.) A revocation under the last preceding sub-section does not have effect unless, within a period of six months after the revocation, the contributor satisfies the Board that he is not suffering from any physical or mental defect likely to render him incapable of performing his duties.

“(10.) Sub-sections (1.) to (5.) (inclusive) of this section do not apply to an existing contributor who, under sub-section (8.) of this section, revokes an election made under sub-section (6.) of this section.

“(11.) Subject to sub-section (13.) of this section, a contributor who, under sub-section (8.) of this section revokes an election made under sub-section (6.) of this section, shall, as from

the date of the revocation (or, if that date is not a pay-day, as from the pay-day next following that date), in addition to any other contributions that he is required to make to the Fund, make fortnightly contributions to the Fund of an amount determined by the Board on the advice of the Commonwealth Actuary.

“(12.) Where an existing contributor to whom the last preceding sub-section applies ceases to be a member on or after the date of the revocation (being a date that is not a pay-day) and before the pay-day next following that date, he shall, for the purposes of sub-section (1.) of section sixty-eight of the *Defence Forces Retirement Benefits Act* 1948–1965, be deemed, notwithstanding anything contained in section fifty-one of this Act, to be liable to pay to the Fund one fortnightly contribution under the last preceding sub-section.

“(13.) Sub-section (11.) of this section does not apply to—

(*a*)a contributor who has made or makes an election under section sixty-one a or sixty-one b of the *Defence Forces Retirement Benefits Act* 1963–1965 in respect of an occurrence that occurred before the revocation by him of the election made by him under sub-section (6.) of this section; or

(*b*)a contributor who has made or makes an election under section sixty-one d of that Act.”.

**17.** Section 57 of the *Defence Forces Retirement Benefits Act* 1959–1962 is repealed and the following section inserted in its stead:—

**Amount of widow’s pension where election made under section 47 or 48 of this Act.**

“57.—(1.) Subject to the next succeeding sub-section, where an existing contributor has made an election under sub-section (6.) of section forty-seven of this Act or an election under sub-section (4.) of section forty-eight of this Act, the amount of any pension payable under section fifty-five or section fifty-seven of the *Defence Forces Retirement Benefits Act* 1948–1965 to his widow is—

(*a*)the amount that would be payable if any reference in paragraph (*a*)of sub-section (1.) of section fifty-five, and in paragraph (*a*)of sub-section (1.) of section fifty-seven, of that Act to the fraction of five-eighths were a reference to the fraction of one-half; or

(*b*)in the case of a pension under section fifty-five of that Act where the contributor was, immediately before his death, a contributor not contributing for additional basic pension—the amount that would be payable if no provision were made in sub-sections (3.) and (4.) of section fifty-three of this Act for increasing the amount of pension payable to a widow by one-quarter.

“(2.) The last preceding sub-section does not apply in relation to a pension payable to the widow of an existing contributor—

(*a*)who, under sub-section (8.) of section forty-seven of this Act, revoked an election made under sub-section (6.) of that section; and

(*b*)to whom sub-section (11.) of that section applied.

“(3.) Where an existing contributor has, under sub-section (8.) of section forty-seven of this Act, revoked an election made under sub-section (6.) of that section but sub-section (11.) of that section does not apply to him, any payment of an instalment of pension payable under section fifty-five or section fifty-seven of the *Defence Forces Retirement Benefits Act* 1948–1965 to his widow shall be increased by an amount equal to the difference between the amount that the Commonwealth is, apart from the next succeeding sub-section, required to pay to the Fund in respect of that instalment and the amount that the Commonwealth would, apart from the next succeeding sub-section, have been required to pay to the Fund in respect of the instalment that would have been payable if the contributor had not made the election under sub-section (6.) of section forty-seven of this Act.

“(4.) Any increase under the last preceding sub-section in the amount of an instalment of pension shall not be taken into account for the purposes of section sixty-one of this Act, but the Commonwealth shall pay to the Fund an amount equal to the amount of the increase.”.

**Citation.**

**18.** The *Defence Forces Retirement Benefits Act* 1959–1962, as amended by the last two preceding sections, may be cited as the *Defence Forces Retirement Benefits Act* 1959–1965.

**Amendment of the *Defence Forces Special Retirement Benefits Act* 1960.**

**19.**—(1.) Section 11 of the *Defence Forces Special Retirement Benefits Act* 1960 is repealed.

(2.) The *Defence Forces Special Retirement Benefits Act* 1960, as amended by this section, may be cited as the *Defence Forces Special Retirement Benefits Act* 1960–1965.

**Commonwealth contributions to the Fund in respect of children’s pensions.**

**20.** In respect of each payment of pension paid from the Defence Forces Retirement Benefits Fund in respect of a child of a person who ceased to be a member before the date of commencement of the *Defence Forces Retirement Benefits Act* 1959, the Commonwealth shall, in lieu of making a payment to the Fund in accordance with any other law of the Commonwealth relating to retirement benefits for members of the Defence Forces of the Commonwealth, pay to the Fund an amount equal to eighty-five per centum of that payment.