**Defence Forces Retirement Benefits**

**No. 47 of 1971**

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

[*Assented to 25 May 1971*]

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

**Short title and citation.**

**1.**—(1.) his Act may be cited as the *Defence Forces Retirement Benefits Act* 1971.

(2.) The *Defence Forces Retirement Benefits Act* 1948–1970 is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Defence Forces Retirement Benefits Act* 1948–1971.

**Commencement**

**2.** This Act shall come into operation on the day on which it receives the Royal Assent.

**Parts.**

**3.** Section 3 of the Principal Act is amended by inserting after the words—

“Part VIb.—Application of this Act to Pensioners who again become Contributors (Sections 82e–82h).”

the words—

“Part VIc.—Preservation of Rights of Certain Members and Former Members.

Division 1.—Preliminary (Sections 82j–82k).

Division 2.—Contributors Who Have Preserved Rights from Previous Employment (Sections 82l–82s).

Division 3.—Preservation of Rights of Contributors Ceasing to be Members (Sections 82t-82zg).

Division 4.—Miscellaneous (Sections 82zh-82zj).”.

**Interpretation.**

**4.** Section 4 of the Principal Act is amended by inserting in sub-section (1.), at the end of the definition of “invalidity benefit”, the words “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 (*a*) of sub-section (2.) of section eighty-two zb of this Act”.

**5.** Section 81 of the Principal Act is repealed and the following section inserted in its stead:—

**Rights of contributors who resign to contest elections and are not reinstated.**

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

‘person to whom this section applies’ means a person who ceased to be a member by reason of having been transferred to a Reserve, having been discharged from the Defence Force or having had his continuous full-time service terminated under the Defence (Parliamentary Candidates) Act;

‘the declared date’, in relation to an election, means the date that, for the purposes of the Defence (Parliamentary Candidates) Act, is the declared date in relation to the election;

‘the election’, in relation to a person to whom this section applies, means the election in relation to which he made the application in pursuance of which he was transferred to a Reserve, discharged from the Defence Force or had his continuous full-time service terminated under the Defence (Parliamentary Candidates) Act.

“(2.) Where a person to whom this section applies—

(*a*) dies on or before the date that is the declared date in relation to the election; and

(*b*) had not, at the time of his death, attained an age greater by more than two years than the retiring age for the rank held by him immediately before he ceased to be a member,

he shall, for the purposes of this Act, be deemed to have continued to have been a member during the period that commenced upon his ceasing to be a member and ended on the day on which he died and to have held, on that day, the rank that he held immediately before he ceased to be a member.

“(3.) Where a person to whom this section applies—

(*a*) was a candidate at the election but failed to be elected;

(*b*) dies within the period of three months after the date that is the declared date in relation to the election; and

(*c*) had not, at the time of his death, attained an age greater by more than two years than the retiring age for the rank held by him immediately before he ceased to be a member,

he shall, for the purposes of this Act, be deemed to have continued to have been a member during the period that commenced upon his ceasing to be a member and ended on the day on which he died and to have held, on that day, the rank that he held immediately before he ceased to be a member.

“(4.) Where—

(*a*) the Board is satisfied that, if a person to whom this section applies had not ceased to be a member, he would, at a time (in this sub-section referred to as ‘the relevant time’) within the period that commenced upon his ceasing to be a member and ended on the date that is the declared date in relation to the election, have been retired on the ground of invalidity or physical or mental incapacity to perform his duties;

(*b*) he had not, at the relevant time, attained an age greater by more than two years than the retiring age for the rank held by him immediately before he ceased to be a member; and

(*c*) he was not a candidate at the election by reason of the invalidity or incapacity or was such a candidate but failed to be elected,

he shall, for the purposes of this Act, be deemed to have continued to have been a member during the period that commenced upon his ceasing to be a member and ended at the relevant time and to have held, at that time, the rank that he held immediately before he ceased to be a member, but shall be deemed, for the purposes of this Act, to have been retired at the relevant time on that ground.

“(5.) Where—

(*a*) the Board is satisfied that, if a person to whom this section applies had not ceased to be a member, he would, at a time (in this sub-section referred to as ‘the relevant time’) within the period of three months after the date that is the declared date in relation to the election, have been retired on the ground of invalidity or physical or mental incapacity to perform his duties;

(*b*) he had not, at the relevant time, attained an age greater by more than two years than the retiring age for the rank held by him immediately before he ceased to be a member; and

(*c*) he was not a candidate at the election by reason of the invalidity or incapacity or was such a candidate but failed to be elected,

he shall, for the purposes of this Act, be deemed to have continued to have been a member during the period that commenced upon his ceasing to be a member and ended at the relevant time and to have held, at that time, the rank that he held immediately before he ceased to be a member, but shall be deemed, for the purposes of this Act, to have been retired at the relevant time on that ground.

“(6.) Sub-sections (3.) and (5.) of this section do not apply in relation to a person if the Board is of the opinion that, if he had not died or suffered the invalidity or incapacity, as the case may be, he would not have been re-instated in the part of the Defence Force in which he was serving immediately before he ceased to be a member.

“(7.) This section does not apply in relation to a person unless, within the period of three months after the date that is the declared date in relation to the election or within such further period as the Board allows—

(*a*) there is paid to the Fund an amount equal to the amount, or to the sum of the amounts, of any benefit (including benefit consisting of a refund of contributions) paid under this Act to or in respect of the person by reason of his having ceased to be a member; and

(*b*) there is paid to the Fund the contributions that the person would have been required to make to the Fund after he ceased to be a member if he had not so ceased and he had, during that period, held the rank that he held immediately before he ceased to be a member.

“(8.) An amount, or the sum of the amounts, paid to the Fund under paragraph (*a*) of the last preceding sub-section in respect of payments of pension received by a person shall, to the extent that it exceeds the difference between the sum of the payments of pension and the sum of the amounts paid by the Commonwealth in respect of the payments of pension, be paid from the Fund to the Commonwealth.

“(9.) An amount, or the sum of the amounts, paid to the Fund under paragraph (*a*) of sub-section (7.) of this section in respect of 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.”.

**Application of Part.**

**6.** Section 82e of the Principal Act is amended by inserting in sub-section (1.), after the words “been a member” the words “other than a pension being a deferred benefit applicable under Division 3 of Part VIc”.

**7.** After Part VIb. of the Principal Act the following Part is inserted:—

“Part VIc.—Preservation of Rights of Certain Members and Former Members.

“*Division* 1.—*Preliminary.*

**Interpretation.**

“82j.—(1.) In this Part, unless the contrary intention appears—

‘employment’ means employment by the terms of which persons employed in that employment are required to give the whole of their time to the duties of their employment;

‘life policy’ means a life policy as defined by sub-section (1.) of section four of the *Life Insurance Act* 1945–1965;

‘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;

‘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 provisions 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 member.

**Determinations by the Board.**

“82k.—(1.) The Board shall make a determination under this Part only after receiving advice in writing from the Commonwealth Actuary.

“(2.) Where, in pursuance of this Part, the Board 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.*

**Transfer value payable in respect of previous employment.**

“82l.—(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 (ii) of the last preceding paragraph 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 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 the next succeeding sub-section, a transfer value shall be deemed, for the purposes of this Division, to have become payable in respect of a person under a superannuation scheme upon the termination of any employment if, upon the termination of that employment, he had the legal title to a life policy, or was entitled to have the legal title to such a policy assigned to him, being a policy the premiums for which were, while he was employed in that employment, paid in whole or in part by his employer, and, in that case, the surrender value of the policy as at the date of the termination of the employment shall be taken to be the amount of the transfer value.

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

**Pension payable in respect of previous employment.**

“82m. 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 the last preceding paragraph 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.

**Deferred benefits applicable in respect of previous employment.**

“82n. 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.

**Declaration by member who has previously been in employment.**

“82p.—(1.) Where a person who has attained the age of twenty-one 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 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 the last preceding sub-section applies shall furnish to the Board, within the period referred to in that sub-section, 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 sub-section from his previous employer or from any person administering the superannuation scheme applicable in relation to his previous employment.

**Members with superannuation rights from previous employment.**

“82q.—(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 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,

the succeeding sections of this Division have effect.

“(2.) Paragraph (*b*) of the last preceding sub-section 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 (*c*) or paragraph (*e*)of that sub-section applies in relation to him.

“(3.) Paragraph (*d*) of sub-section (1.) of this section 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 (*a*) or paragraph (*e*) of that sub-section applies in relation to him.

“(4.) Paragraph (*f*) of sub-section (1.) of this section 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 (*a*) or paragraph (*c*) of that sub-section applies in relation to him.

**Rights of members who elect to pay transfer value to Board.**

“82r.—(1.) If—

(*a*) a transfer value or transfer values became payable to or in respect of the member in accordance with paragraph (*a*) of sub-section (1.) of the last preceding section;

(*b*) the member elected not later than three 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 two 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 three 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 the last preceding sub-section.

“(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 thirty of this Act 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 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 the last preceding sub-section, 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 sub-sections (3.) and (4.) of this section;

(*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 twenty 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 sub-section (5.) of this section; or

(*b*) the period that commenced on the day on which he attained the age of twenty 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 sub-section (4.) of this section 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 the last preceding sub-section, 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.

**Category numbers of certain officers to be reduced.**

“82s.—(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 (*a*) of sub-section (1.) of section eighty-two q of this Act but in relation to whom the last preceding section does not apply; or

(*b*) in relation to whom paragraph (*b*), (*c*), (*d*), (e) or (*f*) of sub-section (1.) of section eighty-two q of this Act applies, whether or not the last preceding section 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 Board.

“(3.) In furnishing advice to the Board in relation to the determination by the Board, for the purposes of the last preceding sub-section, 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 (*a*) or (*b*) of sub-section (1.) of section eighty-two q of this Act 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 (*c*) or (*d*) of sub-section (1.) of section eighty-two q of this Act 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 (*e*) or (*f*) of sub-section (1.) of section eighty-two q of this Act 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 (*a*) of sub-section (1.) of section eighty-two q of this Act; 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 (*b*) of that sub-section,

the first-mentioned transfer value shall not be taken into account for the purposes of paragraph (*a*) of the last preceding sub-section.

“(5.) Where—

(*a*) a transfer value became payable to or in respect of a member in accordance with paragraph (*a*) of sub-section (1.) of section eighty-two q of this Act; and

(*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 (*b*) of that sub-section,

the last-mentioned transfer value shall not be taken into account for the purposes of paragraph (*a*) of sub-section (3.) of this section.

“(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 Board determines, having regard to the reduction in his category number effected by sub-section (2.) of this section.

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

**Interpretation.**

“82t.—(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 the next succeeding paragraph applies—the period of three 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 three 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 the next succeeding sub-section—

(*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

(*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 fifty-three a or section fifty-three b of this Act, 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 (*b*) of the last preceding sub-section, as if it had been a period during which he was employed in public employment.

**Eligible employment.**

“82u.—(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 the next two succeeding sub-sections, a period of employment of the person by the Commonwealth, by the Administration of a Territory of the Commonwealth, by a body corporate established for a public purpose by a law of the Commonwealth or of a Territory of the Commonwealth or by a company that is established under the law of a State or Territory of the Commonwealth and in which the Commonwealth has a controlling interest;

(*c*) subject to sub-section (4.) of this section, 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 cont ributions 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 sub-section (5.) of this section, 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 (*b*) of the last preceding sub-section 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 three months after the termination of that employment, the person became employed in other employment that is eligible employment.

“(3.) Paragraph (*b*) of sub-section (1.) of this section 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 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 sub-section (1.) of section eighty-two r of this Act;

(*b*) a pension that was based, or included an amount based, wholly upon contributions by his employer under a superannuation scheme applicable in relation to that employment or partly upon such contributions and partly upon contributions under the scheme by the person became payable to him;

(*c*) benefits, whether by way of a lump sum or of a pension, that were payable at a future time and were based, or included an amount or amounts based, wholly upon contributions by his employer under a superannuation scheme applicable in relation to that employment or partly upon such contributions and partly upon contributions under the scheme by the person became applicable in respect of him; or

(*d*) before the expiration of three 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*) of this sub-section 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*) of this sub-section 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 the last preceding paragraph 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 (*c*) of sub-section (1.) of this section does not apply in relation to a period of employment of a person by reason of the operation of sub-paragraph (i) of that paragraph unless an amount equal to the lump sum referred to in that sub-paragraph, or an amount that included an amount based upon that lump sum, has been paid into the Fund.

“(5.) Paragraph (*d*) of sub-section (1.) of this section 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 (*b*), (*c*) or (*d*) of sub-section (1.) of this section 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 sub-section applies.

**Public employment.**

“82v.—(1.) The Treasurer may, by instrument under his hand published in the *Gazette,* declare employment, whether within or outside Australia, by a person, or by persons included in a class of persons, specified in the instrument to be public employment for the purposes of this Division.

“(2.) A declaration under the last preceding sub-section 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 the first day of

January, One thousand nine hundred and seventy) is specified in the instrument as the day on which the declaration is to be deemed to have come into force, shall be deemed to have come into force on that earlier day.

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

“(4.) Where any public employment in which a person is employed terminates and, within three 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.

**Eligible superannuation schemes.**

“82w.—(1.) The Treasurer may, by instrument under his hand published in the *Gazette,* declare a superannuation scheme specified in the instrument to be an eligible superannuation scheme for the purposes of this Division.

“(2.) A declaration under the last preceding sub-section 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 the first day of January, One thousand nine hundred and seventy) is specified in the instrument as the day on which the declaration is to be deemed to have come into force, shall be deemed to have come into force on that earlier day.

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

**Transfer value.**

“82x.—(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 the next succeeding sub-section, 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 sub-section (1.) of section sixty-one a, or sub-section (1.) of section sixty-one b, 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 sub-section (1.) of section eighty-two r of this Act 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 the last preceding sub-section 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 (*b*) of that sub-section does not apply in relation to the payments to the 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.

**Deferred benefits.**

“82y.—(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 sub-section (2.) of the last preceding section 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 fifty-one and fifty-two of this Act do not apply for the purposes of this section.

**Election that Division apply.**

“82z.—(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 twenty-one 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 the last preceding sub-section.

“(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 the next succeeding sub-section, an election under this section is of no effect unless the person who made the election gives notice in writing to the Board within twenty-one 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.) The last preceding sub-section does not apply if the person who made the election dies before the expiration of the period for the giving of a notice by him under that sub-section and without having given such a notice.

“(6.) Where a person who is entitled to make an election under this section dies within the period referred to in sub-section (1.) of this section, or within any period for which that period has been extended under sub-section (2.) of this section, without making such an election—

(*a*) if the person leaves a widow—the widow may make such an election within twenty-one 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 the last preceding paragraph 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 sub-section (4.) of this section 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 (*a*) or paragraph (*b*) of the last preceding sub-section.

“(8.) This section does not apply in relation to a person to whom section thirty-five a 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 seventy-one of this Act.

**Circumstances in which transfer value payable.**

“82za.—(1.) Subject to this Division, where—

(*a*) a person makes an election under the last preceding section; and

(*b*) within the period that is the prescribed period in relation to him,he—

(i) becomes employed in public employment; and

(ii) becomes a member of an eligible superannuation scheme that is applicable in relation to persons employed in that employment,

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.

**Circumstances in which person entitled to deferred benefits.**

“82zb.—(1.) Where a person makes an election under section eighty-two z of this Act 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 the last preceding section; 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 twenty years’ eligible employment or had attained the age of sixty years,

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

“(2.) Subject to section eighty-two zg of this Act, 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 Board is satisfied that the person has, by reason of invalidity or of physical or mental incapacity, become incapable (otherwise than temporarily), at a time when he was employed in public employment or after he had completed twenty years’ eligible employment, of performing duties of a kind suitable to be performed by him having regard to the duties performed by him in the employment in which he was employed immediately before he ceased to be a member and the duties performed by him in employment (if any) in which he was employed after he ceased to be a member—

(i) if, at the date that the Board is satisfied was the date on which he became so incapable, he was not employed in public employment—that date; or

(ii) if, at that date, he was employed in public employment—the date on which that public employment terminates;

(*b*) if, at the date of his death, he was employed in public employment or had completed twenty years’ eligible employment—that date;

(*c*) 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 fifteen 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 twenty years’ service for pension; and

(*e*) the date on which he attains the age of sixty 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 (*c*) and (*d*) of the last preceding sub-section 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 occurring after the person has completed twenty years’ eligible employment.

“(4.) For the purposes of the last two preceding sub-sections, 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 Board requesting payment of the benefits; and

(*b*) the applicant has furnished to the Board any information that is necessary to enable the Board to determine whether the benefits are payable.

“(6.) Subject to the next two succeeding sub-sections, where a person in relation to whom paragraph (*a*) of sub-section (1.) of this section applies and who, at the time when he ceased to be a member, had not completed twenty years’ eligible employment ceases to be employed in public employment and the deferred benefits applicable in respect of him have not become payable under sub-section (2.) of this section, 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 eighty-two z of this Act had not been made.

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

“(8.) Sub-section (6.) of this section 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 twenty years.

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

“82zc.—(1.) Subject to sub-section (6.) of the last preceding section, where either of the last two preceding sections 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.

“(2.) Where—

(*a*) a payment has been made under section forty, forty-two, forty-two a, forty-three, fifty-two, fifty-six, fifty-six a, sixty or eighty-two g of this Act to a person who has ceased to be a member; and

(*b*) after the payment was made, the person makes an election under section eighty-two z of this Act,

the election does not have any effect unless an amount equal to the amount of the payment is paid to the Fund within seven 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 the last preceding sub-section 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 eighty-two z of this Act,

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

**Certain former contributors not entitled to benefits under this Division.**

“82zd.—(1.) Where a person (other than a person who, at the time when he ceased to be a member, had completed twenty years’ eligible employment) who has made an election under section eighty-two z of this Act is not employed in public employment at the expiration of the period that is the prescribed period in relation to him, then, unless—

(*a*) the sum of the periods of eligible employment in which he has been employed and the period of public employment (if any) in which he was employed during that prescribed period was not less than twenty years;

(*b*) he died or attained the age of sixty years within that prescribed period at a time when he was employed in public employment;

(*c*) 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 fifteen years’ service for pension within the meaning of sub-section (3.) of section eighty-two zb of this Act;

(*d*) he attained the age of sixty 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, 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 eighty-two z of this Act; and

(*c*) if a payment were made to him under section forty, forty-two, forty-two a, forty-three, fifty-two, fifty-six, fifty-six a, sixty or eighty-two g of this Act, 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.

**Member who resigned to contest an election.**

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

**Invalid pensioner restored to health.**

“82zf.—(1.) Where a deferred benefit is payable to a person by reason that the Board is satisfied as to the matters referred to in paragraph (*a*)of sub-section (2.) of section eighty-two zb of this Act—

(*a*) if the pension is suspended under section fifty-three a or section fifty-three b of this Act—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 (*b*), (*c*) or (*d*) of sub-section (2.) of section eighty-two zb of this Act; and

(*b*) section fifty-three of this Act does not apply in relation to the person but the next succeeding sub-section has effect in relation to him.

“(2.) If the Board 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 Board 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 the last preceding sub-section at a time when the pension would have become payable apart from the operation of paragraph (*a*) of sub-section (2.) of section eighty-two zb of this Act.

**Person entitled to deferred benefits again becoming a member.**

“82zg. If a person to whom section eighty-two zb of this Act applies again becomes a member, the deferred benefits applicable in respect of him shall not become, or be, payable while he is a member.

“*Division* 4.—*Miscellaneous.*

**Special provisions affecting former members of certain superannuation schemes.**

“82zh.—(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 he became a contributor;

(*b*) by virtue of sub-section (3.) of section eighty-two l of this Act, a transfer value is to be deemed for the purposes of Division 2 of this Part to have become payable in respect of him after the commencement of this section under that superannuation scheme by reason of his having the legal title to a life policy or life policies of a kind referred to in that sub-section or by reason of his being entitled to have the legal title to such a policy or policies assigned to him; and

(*c*) he has elected in accordance with paragraph (*b*) of sub-section (1.) of section eighty-two r of this Act 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 (*b*) of sub-section (1.) of section eighty-two r of this Act, elect that this section shall have effect in relation to him and, where an election is so made, section eighty-two r of this Act has effect as if the amount referred to in paragraph (*c*) of sub-section (1.) of that section, or, if part only of that amount relates to the transfer value referred to in the last preceding sub-section, 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 sub-sections (3.) and (4.) of that section in relation to that amount or that part of that amount, as the case may be.

“(3.) An election under the last preceding sub-section does not have effect unless the person causes to be assigned to the Board, within the period referred to in that sub-section, the life policy or life policies referred to in paragraph (*b*) of sub-section (1.) of this section 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 sub-section (1.) of this section 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 sub-section (3.) of this section or issued in accordance with the last preceding sub-section 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 sub-section referred to as ‘the former contributor’) makes an election under sub-section (1.) of section eighty-two z of this Act and, within the period that is the prescribed period in relation to him for the purposes of Division 3 of this Part, he becomes employed in employment in respect of which a superannuation scheme referred to in paragraph (*a*) of sub-section (1.) of this section is applicable and becomes a member of that scheme, then—

(*a*) subject to paragraph (*c*) of this sub-section, Division 3 of this Part 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 sub-section (3.) of this section or issued in relation to the former contributor in accordance with sub-section (4.) of this section;

(*c*) the assignment of those life policies in accordance with the last preceding paragraph shall be deemed to constitute the payment of a transfer value in respect of the former contributor in accordance with section eighty-two za of this Act 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 sixty of this Act less any amounts paid to him under the last preceding sub-paragraph.

“(8.) If the life policy or life policies assigned by the person to the Board in accordance with sub-section (3.) of this section or issued in relation to him in accordance with sub-section (4.) of this section 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 sub-section (2.) of this section, would have been paid by the Board to the Fund under sub-section (3.) of section eighty-two r of this Act 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 (*b*) of sub-section (1.) of section eighty-two r of this Act and ended on the date on which the life policy or life policies became payable, at the rate or rates applicable under sub-section (15.) of this section;

(ii) in the case of a policy or policies assigned by the person to the Board in accordance with sub-section (3.) of this section—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 (*b*) of sub-section (1.) of this section is to be deemed for the purposes of Division 2 of this Part 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 sub-section (6.) of this section.

“(9.) Where the person ceases to be a contributor and neither of the last two preceding sub-sections applies in relation to him, then, if the election made by him under sub-section (2.) of this section has not been revoked in accordance with the next succeeding sub-section—

(*a*) the Board shall surrender the life policy or life policies assigned by him to the Board in accordance with sub-section (3.) of this section or issued in relation to him in accordance with sub-section (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 sub-section (2.) of this section, would have been paid by the Board to the Fund under sub-section (3.) of section eighty-two r of this Act 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 (*b*) of sub-section (1.) of section eighty-two r of this Act 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 sub-section (15.) of this section;

(ii) in the case of a policy or policies assigned by the person to the Board in accordance with sub-section (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 period that commenced on the date on which the transfer value referred to in paragraph (*b*) of sub-section (1.) of this section is to be deemed for the purposes of Division 2 of this Part 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 sub-section (6.) of this section.

“(10.) A person who has made an election under sub-section (2.) of this section 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 sub-section (3.) of this section or issued in relation to him in accordance with sub-section (4.) of this section has not or have not become payable,

by notice in writing to the Board revoke the election and, in that case, paragraphs (*a*) and (*b*) of the last preceding sub-section have effect in relation to him.

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

“(12.) A declaration under the last preceding sub-section 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 the first day of January, One thousand nine hundred and seventy) is specified in the instrument as the day on which the declaration is to be deemed to have come into force, shall be deemed to have come into force on that earlier day.

“(13.) A superannuation scheme shall be taken, for the purposes of this section, to have been an approved superannuation scheme at

a particular time if a declaration by the Treasurer under sub-section (11.) of this section 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  where—

*a* is the amount of the annual premium, or the sum of the amounts of the annual premiums, applicable at that time under the life policy or life policies assigned by him to the Board in accordance with sub-section (3.) of this section or issued in relation to him in accordance with sub-section (4.) of this section;

*b* is the amount, or sum of the amounts, payable by him under the superannuation scheme referred to in sub-section (4.) of this section 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 sub-section (3.) of this section;

*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 sub-section (3.) of this section immediately before he ceased to be a member of the superannuation scheme referred to in sub-section (4.) of this section.

“(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 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.

“(16.) In determining a rate of interest in respect of a financial year for the purposes of this section, the Treasurer 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.

**Payments by Commonwealth.**

“82zj.—(1.) Where a transfer value is paid under section eighty-two za of this Act, 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 eighty-two zb of this Act; or

(*b*) a payment of pension (other than a pension constituting or forming part of any deferred benefits referred to in section eighty-two zb

of this Act) 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 of this Part,

section thirty-two of this Act, sub-section (1.) of this section, section sixty-one of the *Defence Forces Retirement Benefits Act* 1959–1968 and sub-sections (7.) and (8.) of section sixty-one e of the *Defence Forces Retirement Benefits Act* 1963–1968 do not apply in relation to the payment but the Commonwealth shall pay to the Fund an amount equal to so much of the amount of the payment as the Board determines.”.

**Persons who became contributors on or after 1 January 1970 and before commencement of Act.**

**8.**—(1.) A person who became a contributor on or after the first day of January, One thousand nine hundred and seventy, and before the commencement of this Act may, within three months after the commencement of this Act, elect that the amendments made by this Act shall have effect in relation to him and, where an election is so made, the *Defence Forces Retirement Benefits Act* 1948–1971 applies in relation to him, subject to this section, as if the amendments made by this Act had come into operation on the first day of January, One thousand nine hundred and seventy.

(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 the last preceding sub-section.

(3.) In the application of Division 2 of Part VIc. of the *Defence Forces Retirement Benefits Act* 1948–1971 in relation to a person who has made an election under sub-section (1.) of this section, the reference in sub-section (1.) of section 82p of that Act to the date on which he became a member and an officer, or became an officer, and the reference in paragraph (*b*) of sub-section (1.) of section 82r of that Act to the date on which he became a contributor, shall each be read as a reference to the date on which he made the election.

(4.) here a person who is entitled to make an election under this section dies within the period of three months referred to in sub-section (1.) of this section, or within any period for which that period has been extended under sub-section (2.) of this section, without making such an election, or a person who died before the commencement of this Act would, if he had not died, have been entitled to make such an election—

(*a*) if the person leaves a widow—the widow may make such an election within twenty-one days after the date of the death of the person or the date of commencement of this Act, whichever is the later; or

(*b*) if the person does not leave a widow, or the widow dies within the period referred to in the last preceding paragraph 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, sub-section (1.) of this section has effect as if the election had been made by the first-mentioned person.

(5.) 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 (*a*) or paragraph (*b*) of the last preceding sub-section.

**Persons who ceased to be contributors on or after 1 January 1970 and before commencement of Act.**

**9.**—(1.) Where, on or after the first day of January, One thousand nine hundred and seventy, and before the commencement of this Act, a person, being a contributor, ceased to be a member and was not entitled to a pension, then, subject to this section, the *Defence Forces Retirement Benefits Act* 1948–1971 applies in relation to him as if the amendments made by this Act had come into operation immediately before he ceased to be a member.

(2.) A person to whom sub-section (1.) of this section applies may make an election under section 82z of the *Defence Forces Retirement Benefits Act* 1948–1971 within twenty-one days after the commencement of this Act.

(3.) 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 referred to in the last preceding sub-section.

(4.) If a person to whom sub-section (1.) of this section applies makes an election under section 82z of the *Defence Forces Retirement Benefits Act* 19481–1971, any election made by him under sub-section (1.) of section 74b of that Act shall be deemed not to have been made.

(5.) Sub-section (2.) of section 82zd of the *Defence Forces Retirement Benefits Act* 1948–1971 does not apply in relation to a person to whom sub-section (1.) of this section applies.

(6.) For the purposes of the application of Division 3 of Part VIc. of the *Defence Forces Retirement Benefits Act* 1948–1971 in relation to a person to whom sub-section (1.) of this section applies, the prescribed period is the period that commenced on the day after he ceased to be a member and ends at the expiration of three months after the commencement of this Act or at the expiration of the period that would, but for this sub-section, be the prescribed period in relation to him, whichever is the later.

(7.) Any period of more than three months occurring after the day on which a person to whom sub-section (1.) of this section applies ceased to be a member and before the expiration of three months after the commencement of this Act, being a period in which the person was not employed in public employment within the meaning of Division 3 of Part VIc. of the *Defence Forces Retirement Benefits Act* 1948–1971, shall, for the purposes of the application of sub-section (4.) of section 82v of that Act in relation to that person, be treated as if it were a period of three months.

(8.) Where a person who is entitled to make an election under sub-section (1.) of section 82z of the *Defence Forces Retirement Benefits Act* 1948–1971 as applying by virtue of sub-section (1.) of this section dies within the period referred to in sub-section (2.) of this section, or within any period for which that period has been extended under sub-section (3.) of this section, without making such an election, or a person who died before the commencement of this Act would, if he had not died, have been entitled to make such an election—

(*a*) if the person leaves a widow—the widow may make such an election within twenty-one days after the date of the death of the person or the date of commencement of this Act, whichever is the later; or

(*b*) if the person does not leave a widow, or the widow dies within the period referred to in the last preceding paragraph 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, the *Defence Forces Retirement Benefits Act* 1948–1971 has effect as if the election had been made by the first-mentioned person but sub-section (4.) of section 82z of that Act does not apply.

(9.) 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 (*a*) or paragraph (*b*) of the last preceding sub-section.

**Reduction of amount of retrospective pension in certain cases.**

**10.**—(1.) Where—

(*a*) a pension is payable to a person under Part VIc. of the *Defence Forces Retirement Benefits Act* 1948–1971 as applying by virtue of the last preceding section in respect of a period that occurred after the thirty-first day of December, One thousand nine hundred and sixty-nine, and before the commencement of that Part; and

(*b*) a pension or benefit that was paid to that person under the *Social Services Act* 1947–1971 or the *Commonwealth Employees’ Compensation Act* 1930–1971 in respect of that period would not have been paid, or the amount of that pension or benefit would have been reduced, if the person had been entitled to receive the pension referred to in the last preceding paragraph during the period in respect of which it is payable,

the amount of the pension referred to in paragraph (*a*) of this sub-section shall be reduced by the amount of the pension or benefit referred to in paragraph (*b*)of this sub-section or by the amount by which that last-mentioned pension or benefit would have been so reduced, as the case may be.

(2.) Any reduction that is required by the last preceding sub-section to be made in a pension referred to in paragraph (*a*)of that sub-section shall be made first from the part of that pension that would, but for this section, be payable by the Commonwealth.