

Defence Forces Retirement Benefits Act 1973

No. 82 of 1973

AN ACT

To amend the *Defence Forces Retirement Benefits Act* 1948–1971, and for purposes related thereto.

[Assented to 19 June 1973]

BE IT ENACTED by the Queen, the Senate and the House of Representatives of Australia, as follows:—

1. (1) This Act may be cited as the *Defence Forces Retirement Benefits Act* 1973. Short title
and
citation.

(2) The *Defence Forces Retirement Benefits Act* 1948–1971* 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* 1948–1973.

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

(2) The amendments made by paragraph 4 (a), section 5, sub-section 10 (1), sections 13 to 24 (inclusive), sub-sections 25 (1) and 28 (1), sections 30, 31 and 32, paragraphs 33 (a), (b), (c), (d), (e) and (g), paragraphs 34 (a) and (b), sections 35, 36, 37 and 40, paragraph 41 (c),

* Act No. 31 of 1948, as amended by No. 37, 1949; No. 73, 1950; No. 29, 1951; No. 93, 1952; No. 80, 1953; No. 20, 1954; No. 19, 1955; No. 26, 1956; No. 95, 1957; No. 46, 1958; No. 103, 1959; No. 67, 1962; No. 103, 1963; No. 25, 1965; No. 98, 1965; No. 135, 1965; No. 70, 1966; No. 55, 1968; No. 56, 1968; No. 128, 1968; No. 61, 1969; No. 34, 1970; and No. 47, 1971.

sections 45, 46, 48, 49 and 50, paragraph 52 (b), sections 53 and 54, and sub-section 57 (1) shall be deemed to have come into operation on 1st October, 1972.

(3) Sub-section 10 (2) shall be deemed to have come into operation on 1st October, 1972.

Parts.

3. Section 3 of the Principal Act is amended—

(a) by omitting the words—

“ Part VI—Assurance Policies (Section 75).”;

(b) by omitting the words—

“ Part VII—Miscellaneous (Sections 83–88).”

and substituting the words—

“ Part VII—Miscellaneous (Sections 85–88).”; and

(c) by omitting the words—

“ Division 3.—Transfer to the Superannuation Fund (Sections 74A–74B).”.

Interpretation.

4. Section 4 of the Principal Act is amended—

(a) by omitting paragraph (b) of the definition of “ eligible child ” in sub-section (1) and substituting the following paragraph:—

“ (b) a child who—

(i) has attained the age of sixteen years but has not attained the age of twenty-five years;

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

(iii) is not ordinarily in employment or engaged in work on his own account;”; and

(b) by inserting in sub-section (1), before the definition of “ the Board ”, the following definition:—

“ ‘ the Authority ’ means the Defence Force Retirement and Death Benefits Authority established by the *Defence Force Retirement and Death Benefits Act 1973*;”.

Categories of members.

5. Section 4A of the Principal Act is amended by inserting in sub-section (1), after the word “ Act ”, the words “ in its operation before 1st October, 1972 ”.

Constitution of Defence Forces Retirement Benefits Board.

6. (1) Section 5 of the Principal Act is amended—

(a) by omitting paragraph (c) of sub-section (1) and substituting the following paragraph:—

“ (c) a person to represent the Minister;”;

(b) by omitting from sub-section (2) the word “ Treasury ” and substituting the word “ Minister ”;

(c) by omitting from sub-section (3) the words “ and approval of the relevant Service Minister ”;

(d) by omitting from sub-section (5) the word "Treasury" and substituting the word "Minister"; and

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

"(6) The Board shall cease to exist on such date as is fixed by the Minister by notice published in the *Gazette*."

(2) The member of the Defence Forces Retirement Benefits Board who, immediately before the day on which this Act receives the Royal Assent, is the member representing the Treasury shall, by force of this sub-section, cease to be a member of the Board on that day.

7. Section 6 of the Principal Act is amended by omitting the word "Treasurer" and substituting the word "Minister". Appointment of deputies.

8. Section 9 of the Principal Act is repealed.

Remuneration of members.

9. Section 14 of the Principal Act is repealed and the following section substituted:—

"14. (1) The Board shall, in respect of the period commencing on 1st July, 1972, and ending on 30th September, 1972, furnish to the Minister a report dealing with the general administration and working of this Act. Reports.

"(2) The Board shall, at such times and in respect of such periods as the Treasurer directs (other than a period commencing before 1st October, 1972), furnish to the Treasurer reports dealing with the administration of Part III of this Act."

10. (1) After section 15C of the Principal Act the following section is inserted:—

"15D. Sub-section (1) of section 15B of this Act does not apply in respect of instalments of pension that become payable under this Act on or after 1st October, 1972, or in respect of any other benefit that becomes payable under this Act on or after that date, and any instalment of pension, or any other benefit, that becomes so payable on or after that date shall be paid by the Commonwealth, instead of from the Fund, and the Consolidated Revenue Fund is appropriated accordingly." Benefits to be paid by Commonwealth after 1st October, 1972.

(2) Section 61 of the *Defence Forces Retirement Benefits Act 1959–1968*, sub-sections 61E (7) and (8) of the *Defence Forces Retirement Benefits Act 1963–1968* and section 20 of the *Defence Forces Retirement Benefits Act 1965–1966* do not apply in respect of a payment of pension that becomes payable on or after 1st October, 1972.

11. After section 21 of the Principal Act the following section is inserted:—

"21A. Notwithstanding anything in this Part, the moneys of the Fund, whether invested or not, shall, as soon as practicable after the commencement of this section, be transferred by the Board to the Commonwealth, Transfer of Fund to Commonwealth.

and for that purpose the Board may, subject to and in accordance with any directions of the Treasurer, convert any investments of the Fund into cash.”.

Quinquennial
investigation
by
Common-
wealth
actuary.

12. Section 22 of the Principal Act is repealed.

Commence-
ment and
cessation of
contribu-
tions.

13. Section 23 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(6) A person is not required to contribute to the Fund in respect of any period after the pay-day last preceding 1st October, 1972.”.

Common-
wealth
contributions
in respect of
pensions.

14. Section 32 of the Principal Act is amended by inserting in sub-section (1), after the word “Act” (first occurring), the words “(not being a payment of the whole or of a part of an instalment of pension that becomes payable on or after 1st October, 1972) ”.

Common-
wealth
contributions
in respect of
benefits
other than
pensions or
refunds of
contribu-
tions.

15. Section 33 of the Principal Act is amended by inserting after the word “Act” the words “(not being a payment of a benefit that becomes payable on or after 1st October, 1972) ”.

Absences
without
leave for
more than
twenty-one
days.

16. Section 36 of the Principal Act is amended—

(a) by inserting in sub-section (1), before the words “any continuous period”, the words “the whole or any part of”; and

(b) by adding at the end thereof the words “, including any such period that extends beyond 30th September, 1972 ”.

Pension on
retirement
after
twenty
years’
service for
pension—
officers.

17. Section 38 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(5) This section does not apply to a person who retires on or after 1st October, 1972.”.

Pension on
retirement
under
special
circum-
stances—
officers.

18. Section 39 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(5) This section does not apply to a person who retires on or after 1st October, 1972.”.

Benefits
other than
pension—
officers.

19. Section 40 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(5) This section does not apply to a person who retires on or after 1st October, 1972.”.

20. Section 41 of the Principal Act is amended by adding at the end thereof the following sub-section:—

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

Pension
after
twenty
years’
service—
other ranks.

21. Section 42 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(5) This section does not apply to a person who retires on or after 1st October, 1972.”.

Benefits
other than
pension—
other ranks.

22. Section 42A of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(13) Sub-sections (7) and (9) of this section do not apply to a person who retires on or after 1st October, 1972, but, where a member who has received a payment or payments under this section ceases (otherwise than by death or otherwise than by reason of having been retired on the ground of invalidity or of physical or mental incapacity to perform his duties) to be a member on or after 1st October, 1972, an amount equal to the payment or the aggregate of the payments, as the case may be, shall be paid by him to the Commonwealth.

Payments to
other ranks
after three
years’
and six
years’
service for
pension.

23. Section 43 of the Principal Act is amended by adding at the end thereof the following sub-section:—

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

Non-
completion
of
engagement.

24. Section 50 of the Principal Act is amended by inserting in sub-section (1), after the words “instalment of the pension”, the words “(other than an instalment that becomes payable on or after 1st October, 1972) ”.

Service on
Reserve.

25. (1) Section 51 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(5) This section does not apply to a person who retires on or after 1st October, 1972.”.

Invalidity
benefits.

(2) Section 51 of the Principal Act as amended by sub-section (1) of this section is further amended by adding at the end thereof the following sub-section:—

“(6) Where a member who is a contributor has, before 1st October, 1972, been retired otherwise than on the ground of invalidity or of physical or mental incapacity to perform his duties but the Naval Board, the Military Board or the Air Board, as the case requires, informs the Authority that, at the time the member was retired, grounds existed on which he could have been retired on the ground of invalidity or of physical or mental incapacity to perform his duties, he may, for the purposes of this Act, be treated as if he had been retired on that ground.”.

(3) The Defence Force Retirement and Death Benefits Authority may, in relation to a person to whom sub-section (6) of section 51 of the Principal Act as amended by this Act applies, exercise the powers of the Defence Forces Retirement Benefits Board under that section.

Rate or
amount of
invalidity
benefit.

26. Section 52 of the Principal Act is amended by omitting from sub-section (10), the word "Board" (wherever occurring) and substituting the word "Authority".

Reclassification
of
percentage
of incapacity.

27. Section 53 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:—

"(1) The Authority may, from time to time, if it is satisfied that the percentage of incapacity in relation to civil employment of a pensioner classified under section 51 of this Act is such that the classification of the pensioner should be altered, reclassify him accordingly as if he were being classified under section 51."; and

(b) by omitting from sub-section (2) the word "Board" and substituting the word "Authority".

Invalidity
pensioner
engaged in
employment.

28. (1) Section 53A of the Principal Act is repealed.

(2) Where any suspension of a pension was in force, immediately before 1st October, 1972, under the section of the Principal Act repealed by sub-section (1), the suspension is, by force of this sub-section, revoked with effect on and from 1st October, 1972.

(3) Where—

(a) any suspension of a person's pension is revoked by force of sub-section (2); and

(b) the person is, on or after the day on which this Act receives the Royal Assent, reclassified under section 53 of the Principal Act as amended by this Act,

the date from which the reclassification has effect shall not be a date earlier than 1st October, 1972.

(4) Any suspension by the Board of a pension under section 53A of the Principal Act on or after 1st October, 1972, shall be deemed to have been of no effect.

Power to
require
invalid
pensioners
to be
medically
examined
and to
furnish
information
as to
employment.

29. (1) Section 53B of the Principal Act is amended by omitting the word "Board" (wherever occurring) and substituting the word "Authority".

(2) Where the Defence Forces Retirement Benefits Board has suspended a person's pension under section 53B of the Principal Act by virtue of the person's having failed to comply with a notice requiring him to submit himself for medical examination or by virtue of the person's having failed to comply with a notice requiring him to furnish information

to the Board, section 53B of the Principal Act as amended by this Act applies in relation to the suspension as if the notice had been given, and the pension suspended, by the Authority under the Principal Act as amended by this Act.

30. Section 55 of the Principal Act is amended—

- (a) by inserting in sub-section (1), after the word "retirement", the words "prior to 1st October, 1972,";
- (b) by omitting from paragraph (b) of sub-section (1) the words "a pension at the rate of Two hundred and eight dollars per annum" and substituting the words "a pension at the rate of Three hundred and twelve dollars per annum and an additional pension at a rate equal to one-sixth of the rate at which pension payable under paragraph (a) of this sub-section is payable to the widow"; and
- (c) by omitting sub-sections (2) and (3) and substituting the following sub-sections:—

Pension on death of married member.

"(2) On the death of the widow, there shall be payable in respect of each child of the widow who is an eligible child (other than a child of her remarriage), and in respect of each child of the member who is an eligible child, a pension at the rate of Seven hundred and two dollars per annum and an additional pension at a rate equal to one-eighth of the rate at which pension payable under paragraph (a) of sub-section (1) of this section would, but for her death, have been payable to the widow.

"(3) Where, upon her remarriage, a widow to whom pension (in this sub-section referred to as 'widow's pension') is payable under paragraph (a) of sub-section (1) of this section ceases to be entitled to receive that pension by virtue of sub-section (3) of section 65 of this Act, then, for the purposes of ascertaining the rate of any additional pension payable to a child under paragraph (b) of sub-section (1), or under sub-section (2), of this section, the widow's pension shall be deemed to have continued to be payable to her."

31. Section 56 of the Principal Act is repealed.

Alternative benefits for officers serving under short service commissions.

32. Section 56A of the Principal Act is amended by adding at the end of paragraph (a) of sub-section (2) the words "before 1st October, 1972".

Gratuity payable to certain short service commission officers and certain other officers.

Pension on
death of
pensioner.

33. Section 57 of the Principal Act is amended—

- (a) by omitting from paragraph (b) of sub-section (1) the words “a pension at the rate of Two hundred and eight dollars per annum” and substituting the words “a pension at the rate of Three hundred and twelve dollars per annum and an additional pension at a rate equal to one-sixth of the rate at which pension payable under paragraph (a) of this sub-section is payable to the widow”;
- (b) by adding at the end of paragraph (b) of sub-section (2) the word “or”;
- (c) by omitting from paragraph (c) of sub-section (2) the word “or”;
- (d) by omitting paragraph (d) of sub-section (2);
- (e) by omitting from sub-section (2) the words “, the amount had not been deducted from his pension or his pension had not been suspended” and substituting the words “or the amount had not been deducted from his pension”;
- (f) by omitting from sub-section (3) the word “Board” and substituting the word “Authority”; and
- (g) by omitting sub-sections (4) and (5) and substituting the following sub-sections:—

“(4) On the death of a widow to whom this section applies, there shall be payable in respect of each child of the widow who is an eligible child (other than a child of her remarriage), and in respect of each child of the male pensioner who is an eligible child, a pension at the rate of Seven hundred and two dollars per annum and an additional pension at a rate equal to one-eighth of the rate at which pension payable under paragraph (a) of sub-section (1), or under sub-section (3), of this section, as the case may be, would, but for her death, have been payable to the widow.

“(5) Where, upon her remarriage, a widow to whom pension (in this sub-section referred to as ‘widow’s pension’) is payable under paragraph (a) of sub-section (1) of this section ceases to be entitled to receive that pension by virtue of sub-section (3) of section 65 of this Act, then, for the purposes of ascertaining the rate of any additional pension payable to a child under paragraph (b) of sub-section (1), or under sub-section (4), of this section, the widow’s pension shall be deemed to have continued to be payable to her.”.

Pensions
payable in
respect of
orphans.

34. Section 58 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the words “the pension payable under this Act in respect of each child shall be at the rate of Five hundred and twenty dollars per annum or at a rate of such amount per annum as is determined in accordance with the next succeeding sub-section, whichever rate is the higher” and substituting the words “pension payable under this Act in respect of each child shall be a pension at the rate of Seven hundred and two

dollars per annum and an additional pension at a rate equal to one-eighth of the rate at which pension payable under paragraph (a) of sub-section (1) of section 55 of this Act, or pension payable under paragraph (a) of sub-section (1), or under sub-section (3), of section 57 of this Act, as the case may be, would, but for her death or divorce, have been payable to the widow”;

(b) by omitting sub-section (1A); and

(c) by omitting sub-section (2) and substituting the following sub-section:—

“(2) Where the present value, as determined by the Authority, of a pension or pensions payable, on the death of a member, in pursuance of sub-section (1) of this section, is less than the contributions made by him, the amount of the difference shall be paid by the Commonwealth to the personal representatives of the member or, failing them, to such persons (if any) as the Authority determines.”.

35. Section 59 of the Principal Act is amended by adding at the end thereof the following sub-section:—

Benefits on death of certain members.

“(2) This section does not apply in respect of a member who dies on or after 1st October, 1972.”.

36. Section 60 of the Principal Act is amended by adding at the end thereof the following sub-section:—

Refund of contributions.

“(4) This section does not apply to a contributor who retires, or otherwise ceases to be a member, on or after 1st October, 1972.”.

37. (1) Section 61 of the Principal Act is repealed.

Desertion by male pensioner of wife or children.

(2) Notwithstanding the repeal effected by sub-section (1), any order made under that section before 1st October, 1972, shall continue to have effect.

38. Sections 62, 63 and 64 of the Principal Act are repealed and the following sections substituted:—

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

Children's pensions.

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

Payment of pensions, &c., otherwise than to person entitled.

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

Payments of
pensions
otherwise
than to
pensioner.

39. Section 67 of the Principal Act is repealed.

Re-
engagement,
&c., of
pensioners.

40. Section 69 of the Principal Act is amended by adding at the end thereof the following sub-section:—

“(11) Sub-section (1A) of this section does not apply to a pensioner who again becomes a member on or after 1st October, 1972, sub-section (5) of this section does not apply to a person whose retirement on pension under the *Superannuation Act* 1922-1959, or that Act as amended and in force from time to time, occurred on or after 1st October, 1972, and sub-section (7) of this section does not apply to a pensioner who again becomes a member on or after that date.”.

Special
invalidity
benefit to
members
under
eighteen
years of age.

41. Section 73 of the Principal Act is amended—

(a) by omitting sub-section (3) and substituting the following sub-section:—

“(3) The Authority may, from time to time, if it is satisfied that the percentage of incapacity in relation to civil employment of a pensioner classified under sub-section (1) of this section is such that the classification of the pensioner should be altered, reclassify him accordingly.”;

(b) by omitting from sub-section (4) the word “Board” and substituting the word “Authority”; and

(c) by inserting in sub-section (5), after the word “pension”, the words “(being a payment that became payable before 1st October, 1972) ”.

Commuta-
tion of
pension.

42. Section 74 of the Principal Act is amended by omitting the word “Board” (wherever occurring) and substituting the word “Authority”.

Repeal of
Division 3
of Part V.

43. Division 3 of Part V of the Principal Act is repealed.

Repeal of
Part VI.

44. Part VI of the Principal Act is repealed.

Definitions.

45. Section 76 of the Principal Act is amended by inserting in paragraphs (a) and (b) of the definition of “re-instated candidate”, after the word “member”, the words “before 1st October, 1972”.

46. Section 81 of the Principal Act is amended—
- (a) by inserting in paragraph (b) of sub-section (3), after the word “ dies ”, the words “ before 1st October, 1972, and ”; and
 - (b) by inserting in paragraph (a) of sub-section (4), after the word “ time ” (first occurring), the words “ before 1st October, 1972 ”.
- Rights of contributors who resign to contest elections and are not re-instated.
47. Section 82K of the Principal Act is amended—
- (a) by omitting sub-section (1); and
 - (b) by inserting in sub-section (2), after the word “ Board ”, the words “ or Authority ”.
- Determination by Board or Authority.
48. Section 82P of the Principal Act is amended by adding at the end thereof the following sub-section:—
- “ (3) Sub-section (1) of this section does not apply to a person who becomes a member and an officer, or becomes an officer, as the case may be, on or after 1st October, 1972.”.
- Declaration by member who has previously been in employment.
49. Section 82Q of the Principal Act is amended by adding at the end thereof the following sub-section:—
- “ (5) Sub-section (1) of this section does not apply to a person who becomes a member and a contributor, or becomes a contributor, as the case may be, on or after 1st October, 1972.”.
- Members with superannuation rights from previous employment.
50. Section 82Z of the Principal Act is amended by adding at the end thereof the following sub-section:—
- “ (10) Sub-section (1) of this section does not apply to a person who ceases to be a member on or after 1st October, 1972.”.
- Election that Division apply.
51. Section 82ZB of the Principal Act is amended by omitting from sub-sections (2) and (5) the word “ Board ” (wherever occurring) and substituting the word “ Authority ”.
- Circumstances in which person entitled to deferred benefit.
52. Section 82ZF of the Principal Act is amended—
- (a) by omitting from sub-sections (1) and (2) the word “ Board ” (wherever occurring) and substituting the word “ Authority ”; and
 - (b) by omitting from paragraph (a) of sub-section (1) the words “ section fifty-three A or ”.
- Invalid pensioner restored to health.
53. Section 82ZG of the Principal Act is amended by adding at the end thereof the words “ or, if such a person again becomes a member on or after 1st October, 1972, the deferred benefits applicable in respect of him cease to be so applicable”.
- Person entitled to deferred benefits again becoming a member.

Payment by
Common-
wealth.

54. Section 82ZJ of the Principal Act is amended by inserting in sub-section (2), before the words " the Commonwealth ", the words " , except in the case of a payment that becomes payable on or after 1st October, 1972, ".

Repeal of
sections
83 and 84.

55. Sections 83 and 84 of the Principal Act are repealed.

Assignment
of pensions.

56. Section 85 of the Principal Act is amended by inserting after the word " Fund " the words " , or by the Commonwealth, ".

Attachment
of pensions.

57. (1) Section 85A of the Principal Act is amended—

- (a) by adding at the end of sub-section (4) the words " or, in a case where a payment of pension or benefit becomes payable on or after 1st October, 1972, the Board may, in its discretion, authorize the deduction from the pension or benefit, and the payment to the judgment creditor, of such sums as do not exceed that amount, and those deductions, and those payments, shall be made accordingly "; and
- (b) by adding at the end of sub-section (7) the words " and, in the case of a payment made to the judgment creditor in relation to a payment of pension or benefit that became payable on or after 1st October, 1972, shall, as between the Commonwealth and the pensioner or beneficiary, be deemed to be a payment by the Commonwealth to the pensioner or beneficiary ".

(2) Section 85A of the Principal Act as amended by sub-section (1) of this section is further amended—

- (a) by omitting from sub-section (1) the words " Board, in such manner as is prescribed, " and substituting the word " Authority ";
- (b) by omitting from sub-section (2) the word " Board " (wherever occurring) and substituting the word " Authority ";
- (c) by omitting from sub-section (4) the word " Board " (wherever occurring) and substituting the word " Authority ";
- (d) by omitting from sub-section (6) the word " Board " (first occurring) and substituting the word " Authority ";
- (e) by omitting from sub-section (6) the words " the Board shall not make a payment " and substituting the words " a payment shall not be made ";
- (f) by omitting from sub-section (8) the word " Board " (wherever occurring) and substituting the word " Authority "; and
- (g) by omitting from sub-section (8) the words " , in such manner as is prescribed ".

(3) In the application of section 85A of the Principal Act as amended by sub-sections (1) and (2) of this section, any act or thing done to or in relation to, or by, the Board before the date on which this sub-section receives the Royal Assent shall be deemed to have been done to or in relation to, or by, the Authority.

58. (1) Where a person has made contributions to the Defence Forces Retirement Benefits Fund in respect of any period that commenced on or after 1st October, 1972, he is, subject to sub-section (2) of this section, entitled to a refund of those contributions from the Defence Forces Retirement Benefits Fund.

Adjustments
of contri-
butions
made under
Principal
Act after
1st October,
1972.

(2) Where a person entitled to a refund of contributions from the Defence Forces Retirement Benefits Fund under sub-section (1) of this section is liable to pay contributions to the Commonwealth under the *Defence Force Retirement and Death Benefits Act 1973*, the Defence Forces Retirement Benefits Board may pay that refund, or so much of that refund as does not exceed the amount of that liability, from the Fund to the Commonwealth, and the amount so paid to the Commonwealth shall, except for the purpose of any law of the Commonwealth relating to tax upon incomes, be deemed to have been paid by the person to the Commonwealth in respect of that liability.

59. (1) Where—

- (a) any pension or other benefit has, by reason of the retirement of a contributor on or after 1st October, 1972, or the death before retirement of a contributor on or after that date, been paid to the contributor, or to another person in respect of the contributor, on or after that date by virtue of provisions in the previous legislation; and
- (b) the pension or other benefit is not payable by reason of the operation of sub-section (2) of section 2 of this Act,

Adjustment
of benefit
payments
made under
Principal
Act after
1st October,
1972.

the amount of the pension or other benefit so paid shall, subject to sub-section (2) of this section, be repaid by the person to the Defence Forces Retirement Benefits Fund.

(2) Where—

- (a) the amount of any pension or other benefit is repayable to the Defence Forces Retirement Benefits Fund by a person by virtue of sub-section (1) of this section; and
- (b) the person is entitled to an amount of benefit under the *Defence Force Retirement and Death Benefits Act 1973*,

the Commonwealth may pay to the Defence Forces Retirement Benefits Fund an amount equal to the amount of the pension or other benefit that is repayable, or to so much of the amount of that pension or other benefit as does not exceed that amount of benefit under the *Defence Force Retirement and Death Benefits Act 1973*, and, upon the payment being

made by the Commonwealth, the pension or other benefit that is repayable shall, to the extent of the payment by the Commonwealth, be deemed to have been repaid to the Defence Forces Retirement Benefits Fund and the person by whom the pension or other benefit is repayable shall be deemed to have been paid by the Commonwealth an amount of the benefit payable under the *Defence Force Retirement and Death Benefits Act 1973* equal to that payment.

(3) In this section, the “previous legislation” means the *Defence Forces Retirement Benefits Act 1948* or that Act as amended and in force from time to time before 1st October, 1972, and includes any other Act relating to retirement benefits for members of the Defence Force that came into operation before 1st October, 1972, and modifies or affects the provisions of the first-mentioned Act, or of the first mentioned Act as so amended.

(4) Any payment by the Commonwealth under sub-section (2) of this section shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.