

Superannuation

No. 49 of 1968

An Act to amend the *Superannuation Act 1922-1967* in relation to Employees who become Contributors to the Defence Forces Retirement Benefits Fund, and for purposes related thereto.

[Assented to 21 June 1968]

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

1.—(1.) This Act may be cited as the *Superannuation Act 1968*.

Short title
and citation.

(2.) The *Superannuation Act 1922-1967** is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Superannuation Act 1922-1968*.

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

Commence-
ment.

3. Section 3 of the Principal Act is amended by omitting the words and figures—

Para.

“ Part IX.—Special Provisions in Relation to Certain Former Contributors to the Defence Forces Retirement Benefits Fund (Sections 110-115).”

and inserting in their stead the words and figures—

“ Part IX.—Special Provisions in Relation to Certain Former Contributors to the Defence Forces Retirement Benefits Fund (Sections 111-115).”

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

Interpretation.

“ ‘ The Defence Forces Retirement Benefits Fund ’ means the Defence Forces Retirement Benefits Fund established under the *Defence Forces Retirement Benefits Act 1948-1968*.”

5. After section 4 of the Principal Act the following section is inserted:—

“ 4AA.—(1.) A member of the Defence Force shall not, by reason only of being a member of the Defence Force, be deemed to be an employee.

Members
of the Defence
Force.

* Act No. 33, 1922, as amended by No. 45, 1924; No. 22, 1930; No. 10, 1931; No. 45, 1934; No. 28, 1937; No. 53, 1942; No. 18, 1943; Nos. 15 and 30, 1945; No. 2, 1946; Nos. 1 and 35, 1947; No. 19, 1948; No. 76, 1950; Nos. 49 and 62, 1951; No. 92, 1952; No. 11, 1954; No. 27, 1955; Nos. 19 and 112, 1956; No. 94, 1957; No. 45, 1958; No. 102, 1959; No. 102, 1963; Nos. 97 and 154, 1965; Nos. 69 and 86, 1966; and No. 52, 1967.

“(2.) Where a member of the Defence Force who is liable to contribute to the Defence Forces Retirement Benefits Fund would, but for this section, by reason of becoming employed in a permanent capacity by the Commonwealth or for any other reason, become an employee, he shall be deemed not to be an employee until he ceases to be liable to contribute to the Defence Forces Retirement Benefits Fund.”.

Employees on leave of absence.

6. Section 34 of the Principal Act is amended by inserting after the word “ shall ” the words “, subject to section thirty-five A of this Act,”.

Manner of payment—deduction from wages or salaries.

7. Section 35 of the Principal Act is amended by inserting after the word “ shall ” (first occurring) the words “, subject to the next succeeding section,”.

8. After section 35 of the Principal Act the following section is inserted:—

Deferment of contributions of contributors to Defence Forces Retirement Benefits Fund.

“ 35A. Where an employee becomes liable to contribute to the Defence Forces Retirement Benefits Fund, his liability to make contributions to the Superannuation Fund is deferred until, for any reason (including death)—

(a) he ceases (otherwise than by reason of the operation of section four AA or section thirty-six of the *Defence Forces Retirement Benefits Act 1948–1968*) to be liable to contribute to the Defence Forces Retirement Benefits Fund; or

(b) he ceases to be an employee, whichever first occurs, but, upon his so ceasing to be liable or so ceasing to be an employee, the amount of the deferred contributions shall be paid to the Superannuation Fund.”.

Determination of annual salary.

9. Section 36 of the Principal Act is amended by omitting from subsection (1.) the words “ the last preceding section ” and inserting in their stead the words “ section thirty-five of this Act ”.

10. After section 48B of the Principal Act the following section is inserted:—

Pension to or in respect of certain contributors to Defence Forces Retirement Benefits Fund.

“ 48C.—(1.) Where—

(a) the liability of an employee to make contributions to the Superannuation Fund has been deferred by virtue of section thirty-five A of this Act; and

(b) before he has ceased to be liable to contribute to the Defence Forces Retirement Benefits Fund, he ceases to be an employee and becomes entitled to a pension under this Act by reason that he was retired on the ground of invalidity or of physical or mental incapacity to perform his duties,

his entitlement to that pension is suspended until such time as he ceases to be liable to contribute to the Defence Forces Retirement Benefits Fund,

but, if he dies before he ceases to be liable to contribute to the Defence Forces Retirement Benefits Fund, he shall, for the purposes of sections forty-seven and forty-eight of this Act, be deemed to have been a pensioner at the time of his death in receipt of pension at the rate at which pension would, but for this sub-section, have been payable to him at that time.

“(2.) Where—

- (a) the liability of an employee to make contributions to the Superannuation Fund has been deferred by virtue of section thirty-five A of this Act;
- (b) he ceases to be an employee and, upon so ceasing, becomes entitled to a pension under this Act by reason that he was retired on the ground of invalidity or of physical or mental incapacity to perform his duties;
- (c) either of the following applies in relation to him:—
 - (i) he has been or is discharged from the Defence Force on the ground of invalidity or of physical or mental incapacity to perform his duties, section fifty-two A of the *Defence Forces Retirement Benefits Act 1948–1968* applies to him and, in the opinion of the Board, the ground on which he was retired as an employee is related to the ground on which he was discharged from the Defence Force; or
 - (ii) he dies after ceasing to be an employee but before being discharged from the Defence Force from causes that, in the opinion of the Board, are related to the ground on which he was retired as an employee; and
- (d) the number of units of pension for which he was contributing under this Act immediately before he ceased to be an employee was less than the number that, for the purposes of the *Defence Forces Retirement Benefits Act 1948–1968*, was his category number immediately before he was discharged from the Defence Force or died, as the case may be.

pension payable to or in respect of him under this Act (including pension that became payable before he was discharged from the Defence Force) shall be calculated as if, immediately before he ceased to be an employee, he had been contributing under this Act for a number of units of pension equal to the number that was that category number.

“(3.) Where—

- (a) the liability of an employee to make contributions to the Superannuation Fund has been deferred by virtue of section thirty-five A of this Act;

- (b) before being discharged from the Defence Force, he dies, or, having been discharged from the Defence Force on the ground of invalidity or of physical or mental incapacity to perform his duties, he dies from causes which, in the opinion of the Board, are related to the ground on which he was discharged from the Defence Force; and
- (c) the number of units of pension for which he was contributing under this Act immediately before he died was less than the number that, for the purposes of the *Defence Forces Retirement Benefits Act 1948-1968*, was his category number immediately before he died or was discharged, as the case may be,

any pension payable in respect of him under this Act shall be calculated as if, immediately before he died, he had been contributing under this Act for a number of units of pension equal to the number that was that category number.

“(4.) An employee who is liable to contribute to the Defence Forces Retirement Benefits Fund shall, for the purposes of this section, be deemed not to have ceased to be liable to contribute to that Fund by reason only of the operation of section four AA or section thirty-six of the *Defence Forces Retirement Benefits Act 1948-1968* in relation to him.”

Refund of contributions on death of contributor without dependants.

11. Section 49 of the Principal Act is amended by inserting in paragraph (a), after the word “retirement”, the words “or the entitlement of a contributor to pension on his retirement is suspended by virtue of sub-section (1.) of the last preceding section and he dies before the suspension ceases”.

Definition.

12. Section 110 of the Principal Act is repealed.

Transitional provision.

13.—(1.) Where the Superannuation Board is of the opinion that the amount of any instalment of pension under the Superannuation Act that became payable on or after the twenty-eighth day of June, One thousand nine hundred and sixty-five, and before the commencement of this Act, or that becomes payable after the commencement of this Act, would, if the amendments made by this Act and the *Defence Forces Retirement Benefits Act 1968* had come into operation on the twenty-eighth day of June, One thousand nine hundred and sixty-five, have been or be, by virtue of sub-section (2.) or (3.) of section 48C of the Principal Act as amended by this Act, greater than the amount that, apart from this section, was or would be the amount of the instalment, the amount of the instalment shall be increased to the greater amount.

(2.) In this section, “the Superannuation Act” means the *Superannuation Act 1922* as amended and in force from time to time.