



# **Defence Force Retirement and Death Benefits (Pension Increases) Act 1974**

**No. 105, 1974**

**An Act to provide for Increases in certain Defence  
Force Retirement and Death Benefit Pensions**



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# **Defence Force Retirement and Death Benefits (Pension Increases) Act 1974**

**No. 21, 1977**

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## **An Act to provide for Increases in certain Defence Force Retirement and Death Benefit Pensions**

*[Assented to 28 Nov 1974]*

The Parliament of Australia enacts:

### **Part I—Preliminary**

#### **1 Short title**

This Act may be cited as the *Defence Force Retirement and Death Benefits (Pension Increases) Act 1974*.

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**2 Commencement**

This Act shall be deemed to have come into operation on 1 July 1974.

**3 Interpretation**

- (1) For the purposes of this Act, the prescribed percentage is whichever is the lower of:
- (a) 1.4 times the percentage that represents A—B expressed as a percentage of B; or
  - (b) the percentage that represents C—D expressed as a percentage of D;

where:

**A** is the all groups consumer price index number for the weighted average of the 6 State capital cities published by the Statistician in respect of the March quarter of the year 1974;

**B** is the all groups consumer price index number for the weighted average of the 6 State capital cities published by the Statistician in respect of the March quarter of the year 1973;

**C** is the estimate of the seasonally adjusted average weekly earnings per employed male unit throughout Australia published by the Statistician in respect of the March quarter of the year 1974; and

**D** is the estimate of the seasonally adjusted average weekly earnings per employed male unit throughout Australia published by the Statistician in respect of the March quarter of the year 1973.

- (2) If, at any time, whether before or after the commencement of this Act, the Statistician has published in respect of the March quarter of the year 1974 or the March quarter of the year 1973, an all groups consumer price index number for the weighted average of the 6 State capital cities or an estimate of the seasonally adjusted average weekly earnings per employed male unit throughout Australia in substitution for an index number or estimate previously published by him in respect of that quarter, the publication of the later index number or estimate shall be disregarded for the purposes of this Act.
- (3) If the prescribed percentage for the purposes of this Act is or includes a fraction of one-tenth of 1 per centum:

- (a) if that fraction is less than one-half of one-tenth—that fraction shall be disregarded; and
  - (b) if that fraction is not less than one-half of one-tenth—that fraction shall be treated as one-tenth.
- (4) A reference in this Act to the Statistician shall be read as a reference to the Commonwealth Statistician.

#### **4 Increases to be paid out of Consolidated Revenue Fund**

Amounts by which payments of pensions, or pension benefits, are increased by virtue of this Act are payable out of the Consolidated Revenue Fund, which is appropriated accordingly.

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**Part II—Increases in certain pensions payable  
under Defence Forces Retirement Benefits  
Act 1948-1973**

**5 Incorporation with the Defence Forces Retirement Benefits Act**

This part is incorporated, and shall be read as one, with the *Defence Forces Retirement Benefits Act 1948-1973*.

**6 Interpretation**

In this Part, unless the contrary intention appears:

***Defence Forces Retirement Benefits Act*** means the *Defence Forces Retirement Benefits Act 1948-1973*, and includes any other Act relating to retirement benefits for members of the Defence Force that came into operation before 1 October 1972 and that modifies or affects the provisions of the *Defence Forces Retirement Benefits Act 1948* or that Act as amended and in force from time to time.

***pension*** means a pension payable under the Defence Forces Retirement Benefits Act.

**7 Increase in certain pensions**

If:

- (a) the all groups consumer price index number for the weighted average of the 6 State capital cities published by the Statistician in respect of the March quarter of the year 1974 exceeds the all groups consumer price index number for the weighted average of the 6 State capital cities published by the Statistician in respect of the March quarter of the year 1973; and
- (b) the estimate of the seasonally adjusted average weekly earnings per employed male unit throughout Australia published by the Statistician in respect of the March quarter of the year 1974 exceeds the estimate of the seasonally adjusted average weekly earnings per employed male unit



throughout Australia published by the Statistician in respect of the March quarter of the year 1973;  
a person to whom a pension (not being a pension payable to or in respect of an eligible child) was payable immediately before 1 July 1974 is entitled to an increase, as ascertained in accordance with section 8 or 9, in the annual amount of that pension.

### **8 Amount of increase in certain pensions**

- (1) Where, immediately before 1 July 1974, a pension was payable to a person:
  - (a) being a pension that became payable to the person before 1 July 1973; or
  - (b) being a pension that became payable, on or after 1 July 1973, to the person as a widow by reason of the death of a contributor who retired before 1 October 1972;this section applies to the person.
- (2) The increase provided for by section 7 in the annual amount of the pension payable to a person to whom this section applies is the prescribed percentage of an amount equal to the annual amount of the pension payable immediately before 1 July 1974 less:
  - (a) in the case of a pension referred to in paragraph (1)(a):
    - (i) subject to subparagraph (ii) or (iii)—22.5 per centum of the annual amount of the pension payable immediately before 1 July 1973;
    - (ii) if the pension is payable to the person under section 52 of the *Defence Forces Retirement Benefits Act 1948-1973* and the person has been re-classified under section 53 of that Act on or after 1 July 1973 but before 1 July 1974 and his classification immediately before 1 July 1974 is different from his classification immediately before 1 July 1973—22.5 per centum of the annual amount of the pension that would have been payable to the person immediately before 1 July 1973 if his classification immediately before 1 July 1974 had been his classification on 30 June 1973; or
    - (iii) if a portion of the person's pension has been commuted, or several portions of the person's pension have been commuted, on or after 1 July 1973 but before 1 July

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1974—22.5 per centum of the annual amount of the pension that would have been payable to the person immediately before 1 July 1973 if that portion or those portions of his pension had been commuted on 29 June 1973; or

- (b) in the case of a pension referred to in paragraph (1)(b)—22.5 per centum of the annual amount of the pension that would have been payable to the widow immediately before 1 July 1973 if her husband had died on 29 June 1973.
- (3) Where a pension would, but for its suspension under section 53B of the *Defence Forces Retirement Benefits Act 1948-1973*, have been payable to a person immediately before 1 July 1973 or immediately before 1 July 1974, that pension shall, for the purposes of this section, be deemed to have been payable to that person immediately before whichever of those dates is relevant, but any increase in that pension by virtue of this section does not take effect in respect of any part of that period of suspension.

**9 Amount of increase in certain pensions to which section 8 does not apply**

Where, immediately before 1 July 1974, a pension was payable to a person in accordance with section 82ZB of the *Defence Forces Retirement Benefits Act 1948-1973* (not being a pension that became payable after 15 June 1974) and:

- (a) if the pension became payable to the person otherwise than as a widow—it became payable on or after 1 July 1973; or
- (b) if the pension became payable to the person as a widow:
- (i) if a pension in accordance with that section was not payable to the person's husband immediately before his death—the pension became payable on or after 1 July 1973; or
- (ii) if a pension in accordance with that section was payable to the person's husband immediately before his death—the husband's pension became payable on or after 1 July 1973;

this section applies to the person.

- (2) Subject to the succeeding provisions of this section, the increase provided for by section 7 in the annual amount of the pension
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payable immediately before 1 July 1974 to a person to whom this section applies is an amount that bears to the amount determined in accordance with subsection (3) the same proportion as the number of months in the period that commenced on the day on which the pension referred to in paragraph (1)(a), or subparagraph (1)(b)(i) or (ii), as the case may be, became payable and ended on 30 June 1974 bears to 12.

- (3) The amount to be determined in accordance with this subsection in relation to the pension payable to a person to whom this section applies is the prescribed percentage of 77.5 per centum of an amount equal to the annual amount of the pension immediately before 1 July 1974.
- (4) If the period referred to in subsection (2) is less than 1 month, that period shall be treated as 1 month.
- (5) If the period referred to in subsection (2) consists of a number of whole months and a part of a month:
  - (a) where the number of days in that part of a month is less than one-half of the number of days in that month—that part of a month shall be disregarded; and
  - (b) where the number of days in that part of a month is not less than one-half of the number of days in that month—that part of a month shall be treated as a whole month.

## **10 Modifications of certain sections of Defence Forces Retirement Benefits Act**

- (1) In calculating, for the purposes of pension payable under paragraph 55(1)(b) or 57(1)(b) of the *Defence Forces Retirement Benefits Act 1948-1973*, the amount of the annual rate of the pension, being a pension under paragraph 55(1)(a) or 57(1)(a) of that Act, that is, or is to be deemed, by virtue of subsection 55(3) or 57(5) of that Act, to be, payable to a widow, any amount by which that amount is, or would have been, increased by virtue of the operation of this Part shall be taken into account.
- (2) In calculating, for the purposes of pension payable under subsection 55(2) or 57(4) of the *Defence Forces Retirement Benefits Act 1948-1973*, the amount of the annual rate of the pension, being a pension under paragraph 55(1)(a) or 57(1)(a) of

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that Act, that, but for the death of a widow, would have been payable, or would, by virtue of subsection 55(3) or 57(5) of that Act, have been deemed to have been payable, to the widow, any amount by which that amount would have been increased by virtue of the operation of this Part shall be taken into account.

- (3) In calculating, for the purposes of pension payable under subsection 58(1) of the *Defence Forces Retirement Benefits Act 1948-1973*, the amount of the annual rate of the pension, being a pension under paragraph 55(1)(a) or 57(1)(a) of that Act, that, but for the death or divorce of the wife of a contributor or pensioner, would have been payable to the wife, any amount by which that amount would have been increased by virtue of the operation of this Part shall be taken into account.

### **11 Rate of invalidity pension payable on re-classification**

Where, on or after 1 July 1974, a person to whom pension is payable under section 52 of the *Defence Forces Retirement Benefits Act 1948-1973* and who is entitled to an increase in the rate of his pension under this Part is re-classified under section 53 of that Act, the rate at which pension is payable to him on and after the date from which the re-classification has effect is the rate at which pension would have been payable to him on 1 July 1974 if he had been so re-classified with effect on and from 30 June 1974.

### **12 Commutation of pensions on and after 1 July 1974**

- (1) Section 74 of the *Defence Forces Retirement Benefits Act 1948-1973* does not authorize the commutation of a pension in so far as the pension has been increased by virtue of this Part.
- (2) Where, on or after 1 July 1974, a portion of the pension of a person who is entitled to an increase in the rate of his pension under this Part is commuted, then, as from the date on which that portion of his pension is so commuted, the annual amount of his pension shall be reduced to such amount as would, on 1 July 1974, have been the annual amount of the pension if he had commuted that portion of his pension on 29 June 1974.

**13 Date of effect of increases**

An increase payable by virtue of this Part in the pension payable to a person applies in relation to the instalment of pension falling due on the pension pay-day that occurred on 4 July 1974, and in relation to all subsequent instalments.

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**Part III—Increases in certain pension benefits payable under Defence Force Retirement and Death Benefits Act 1973-1974**

**14 Incorporation with the Defence Force Retirement and Death Benefits Act**

This Part is incorporated, and shall be read as one, with the *Defence Force Retirement and Death Benefits Act 1973-1974*.

**15 Definition**

In this Part, unless the contrary intention appears, *pension benefit* means a pension benefit payable under the *Defence Force Retirement and Death Benefits Act 1973-1974*.

**16 Increase in certain pension benefits**

If:

- (a) the all groups consumer price index number for the weighted average of the 6 State capital cities published by the Statistician in respect of the March quarter of the year 1974 exceeds the all groups consumer price index number for the weighted average of the 6 State capital cities published by the Statistician in respect of the March quarter of the year 1973; and
- (b) the estimate of the seasonally adjusted average weekly earnings per employed male unit throughout Australia published by the Statistician in respect of the March quarter of the year 1974 exceeds the estimate of the seasonally adjusted average weekly earnings per employed male unit throughout Australia published by the Statistician in respect of the March quarter of the year 1973;

a person to whom a pension benefit was payable immediately before 1 July 1974 is entitled to an increase, as ascertained in accordance with section 17 or 18, in the amount of the annual pension benefit that was payable to him immediately before that date.

**17 Amount of increase in certain pension benefits**

- (1) Where, immediately before 1 July 1974, a pension benefit was payable to a person:
  - (a) being a pension benefit that became payable to the person before 1 July 1973; or
  - (b) being a pension benefit that became payable, on or after 1 July 1973, to the person as a widow, or as an eligible child, by reason of the death of a member of the scheme who retired before 1 July 1973;this section applies to the person.
- (2) The increase provided for by section 16 in the annual amount of the pension benefit payable to a person to whom this section applies is the prescribed percentage of 71.43 per centum of the annual amount of the pension benefit payable immediately before 1 July 1974 or, if the pension benefit is a child's pension, so much of the annual amount of that benefit so payable as is referred to as additional pension in whichever of subsections 42(2), 42(3), 43(2) or 43(3) of the *Defence Force Retirement and Death Benefits Act 1973-1974* as is applicable.

**18 Amount of increase in certain pension benefits to which section 17 does not apply**

- (1) Where:
  - (a) immediately before 1 July 1974, a pension benefit (not being a pension benefit that became payable after 15 June 1974) was payable to a person in respect of:
    - (i) the retirement, on or after 1 July 1973, of a member of the scheme; or
    - (ii) the death, on or after 1 July 1973, of a member of the scheme who was a contributing member on 30 June 1973; or
  - (b) immediately before 1 July 1974, a pension benefit was payable to a person in accordance with section 78 of the *Defence Force Retirement and Death Benefits Act 1973-1974* (not being a pension benefit that became payable after 15 June 1974) and:

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- (i) if the pension benefit became payable to the person otherwise than as a widow or as an eligible child—it became payable on or after 1 July 1973;
- (ii) if the pension benefit became payable to the person as a widow:
  - (A) if a pension benefit in accordance with that section was not payable to the person's husband immediately before his death—the pension became payable on or after 1 July 1973;
  - (B) if a pension benefit in accordance with that section was payable to the person's husband immediately before his death—the husband's pension became payable on or after 1 July 1973; or
- (iii) if the pension benefit became payable to the person as an eligible child:
  - (A) if a pension benefit in accordance with that section was not payable to the member of the scheme in relation to whom that person is a child—the pension benefit became payable on or after 1 July 1973; or
  - (B) if a pension benefit in accordance with that section was payable to the member of the scheme in relation to whom that person is a child—the member's pension benefit became payable on or after 1 July 1973,

this section applies to the person.

- (2) For the purposes of the application of subparagraph (1)(b)(ii) to a person who is a widow for the purposes of the *Defence Force Retirement and Death Benefits Act 1973-1974* by reason of her having been a dependent female, the member of the scheme with whom she had, immediately before his death, lived as his wife shall be deemed to have been her husband.
- (3) Subject to the succeeding provisions of this section, the increase provided for by section 16 in the annual amount of the pension benefit payable to a person immediately before 1 July 1974 is, in the case of a person to whom this section applies, an amount that bears to an amount determined in accordance with subsection (4) the same proportion as the number of months in the period that



commenced on the day after the day on which the relevant retirement or death referred to in paragraph (1)(a) took place, or the period that commenced on the day on which the pension benefit referred to in subparagraph (1)(b)(i), clause (1)(b)(ii)(A), clause (1)(b)(ii)(B), clause (1)(b)(iii)(A) or clause (1)(b)(iii)(B), as the case may be, became payable and ended on 30 June 1974 bears to 12.

- (4) The amount to be determined in accordance with this subsection in relation to the pension benefit payable to a person to whom this section applies is the prescribed percentage of 71.43 per centum of an amount equal to the annual amount of the pension benefit immediately before 1 July 1974 or, if the pension benefit is a child's pension, so much of the annual amount of that benefit so payable as is referred to as additional pension in whichever of subsections 42(2), 42(3), 43(2) or 43(3) of the *Defence Force Retirement and Death Benefits Act 1973-1974* as is applicable.
- (5) If the period referred to in subsection (3) is less than 1 month, that period shall be treated as 1 month.
- (6) If the period referred to in subsection (3) consists of a number of whole months and a part of a month:
  - (a) where the number of days in that part of a month is less than one-half of the number of days in that month—that part of a month shall be disregarded; and
  - (b) where the number of days in that part of a month is not less than one-half of the number of days in that month—that part of a month shall be treated as a whole month.

## **19 Application of increase to suspended pension benefits**

Where a pension benefit would, but for its suspension under section 35 of the *Defence Force Retirement and Death Benefits Act 1973-1974*, have been payable to a person immediately before 1 July 1973 or immediately before 1 July 1974, that pension benefit shall, for the purposes of this Part, be deemed to have been payable to that person immediately before whichever of those dates is relevant, but any increase in that pension benefit by virtue of this Part does not have effect in respect of any part of that period of suspension.

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**20 Rate of invalidity pension benefit payable on re-classification**

Where, on or after 1 July 1974, a person to whom pension benefit, being invalidity pay, is payable under the *Defence Force Retirement and Death Benefits Act 1973-1974* and who is entitled to an increase in the rate of his pension benefit under this Part is re-classified under section 34 of that Act, the rate at which pension benefit is payable to him on and after the date from which the re-classification has effect is the rate at which pension benefit would have been payable to him on 1 July 1974 if he had been so re-classified with effect on and from 30 June 1974.

**21 Commutation of pension benefits on and after 1 July 1974**

- (1) Section 24 of the *Defence Force Retirement and Death Benefits Act 1973-1974* does not authorize the commutation of a pension benefit in so far as the pension benefit has been increased by virtue of this Part.
- (2) Where, on or after 1 July 1974, a portion of the pension benefit of a person who is entitled to an increase in the rate of his pension benefit under this Part is commuted, then, as from the date on which that portion of his pension benefit is so commuted, the annual amount of his pension benefit shall be reduced to such amount as would, on 1 July 1974, have been the annual amount of his pension benefit if:
  - (a) he had commuted that portion of his pension benefit on 29 June 1974; and
  - (b) in a case where an anniversary of his birth occurs after 30 June 1974 and on or before the date of commutation—he had, on 29 June 1974, attained the age that is his age on the date of commutation.

**22 Date of effect of increases**

An increase payable by virtue of this Part in the pension benefit payable to a person applies in relation to the instalment of pension benefit falling due on the pension pay-day that occurred on 4 July 1974, and in relation to all subsequent instalments.