

DEFENCE FORCE (RETIREMENT AND DEATH BENEFITS AMENDMENTS) ACT 1977

No. 13 of 1977

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DEFENCE FORCE (RETIREMENT AND DEATH BENEFITS AMENDMENTS) ACT 1977

No. 13 of 1977

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

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

PART I—PRELIMINARY

1. This Act may be cited as the *Defence Force (Retirement and Death Benefits Amendments) Act 1977*.¹ Short title.

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

(2) The Part inserted in the *Defence Forces Retirement Benefits Act 1948* by section 3 of this Act and the Part inserted in the *Defence Force Retirement and Death Benefits Act 1973* by section 4 of this Act shall be deemed to have come into operation on 1 July 1976.

PART II—AMENDMENT OF THE DEFENCE FORCES RETIREMENT BENEFITS ACT

3. After Part VIC of the *Defence Forces Retirement Benefits Act 1948*² the following Part is inserted:—

“PART VID—PENSION INCREASES

“83. (1) In this Part, unless the contrary intention appears— Interpretation.

‘pension’ means a pension payable under or in accordance with this Act, Part III of the *Defence Forces Retirement Benefits Act 1959*, Part IV of the *Defence Forces Retirement Benefits Act 1962*, Part IV of the *Defence Forces Retirement Benefits Act 1963* or the *Defence Forces Special Retirement Benefits Act 1960*;

‘prescribed year’ means the year commencing on 1 July 1976, or a subsequent year;

‘Statistician’ means the Australian Statistician.

“(2) Subject to sub-section (3), if at any time, whether before or after the commencement of this Part, the Statistician has published or

publishes in respect of a particular March quarter an all groups consumer price index number for the weighted average of the 6 State capital cities in substitution for an index number previously published by him in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this Part.

“(3) If at any time, whether before or after the commencement of this Part, the Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this Part after the change took place or takes place, regard shall be had only to index numbers published in terms of the new reference base.

“(4) Where the prescribed percentage for the purposes of section 84 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.

Increase
in certain
pensions.

“84. (1) Subject to this Part, if 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 immediately preceding a prescribed year exceeds the highest 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 any earlier year, not being a year earlier than the year that commenced on 1 July 1974, a person who was in receipt of a pension immediately before the commencement of that prescribed year is entitled, at the commencement of that prescribed year, to an increase, as ascertained in accordance with this section, in the rate at which the pension was payable to him immediately before the commencement of that prescribed year.

“(2) The increase provided for by sub-section (1) in the rate at which a pension was payable to a person immediately before the commencement of a prescribed year is the prescribed percentage, ascertained in accordance with sub-section (3), of that rate.

“(3) For the purposes of this section, the prescribed percentage, in relation to a prescribed year, is the percentage that represents $A-B$ expressed as a percentage of B , 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 immediately preceding the prescribed year; and

B is the highest 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 any year earlier

than the year immediately preceding the prescribed year but not being earlier than the year that commenced on 1 July 1974.

“(4) Where, by reason of the death on 30 June immediately preceding the commencement of a prescribed year of a person in receipt of pension that became payable to him upon his retirement, including pension that became payable by reason of the invalidity of the person or of his physical or mental incapacity to perform his duties, a pension becomes payable, on the following day, to another person, that other person shall be entitled, at the commencement of that prescribed year, to such an increase in the rate of that pension as he would have been entitled to had the pension become payable to him on that 30 June.

“84A. Where a pension would, but for its suspension under section 53B, be payable to a person immediately before the commencement of a prescribed year, that pension shall, for the purposes of this Part, be deemed to have been payable to that person immediately before the commencement of that prescribed year but any increase in the rate of that pension by virtue of this Part does not take effect in respect of any part of that period of suspension.

Application of increase to suspended pensions.

“84B (1) Where a person in receipt of a pension payable in accordance with section 82ZB would, but for this section, be entitled to an increase in the rate at which the pension was payable to the person immediately before the commencement of a prescribed year and—

Adjustment of increase in case of certain pensions.

- (a) in a case where the pension became payable to the person otherwise than as a widow—it became payable to the person during the year (in this section referred to as the ‘preceding year’) immediately preceding that prescribed year; or
- (b) in a case where the pension became payable to the person as a widow—
 - (i) if pension in accordance with that section was not payable to the person’s husband immediately before his death—the pension became payable to the widow during the preceding year; or
 - (ii) if pension in accordance with that section was payable to the person’s husband immediately before his death—the husband’s pension became payable during the preceding year,

the following provisions of this section have effect in relation to the first-mentioned pension.

“(2) If the pension became payable after 16 June in the preceding year, the person is not entitled to the increase.

“(3) If the pension became payable on or before 16 June in the preceding year, the amount of the increase is so much only of the amount that, but for this section, would have been the amount of the increase as

bears to that last-mentioned amount the same proportion as the number of months in the period that commenced on the day on which the pension became payable, and ended on 30 June in the preceding year, bears to 12.

“(4) If the period referred to in sub-section (3) is less than 1 month, that period shall be treated as 1 month.

“(5) If the period referred to in sub-section (3) consists of a number of whole months and a part of a month—

- (a) where the number of days in that part of that month is less than one-half of the number of days in that month—that part shall be disregarded; and
- (b) where the number of days in that part of that month is not less than one-half of the number of days in that month—that part shall be treated as a whole month.

**Increases in
children's
pensions.**

“84C. Section 84 does not apply to a pension payable to or in respect of an eligible child, but, for the purposes of paragraph (b) of sub-section (1) of section 55, sub-sections (2) and (3) of section 55, paragraph (b) of sub-section (1) of section 57, sub-sections (4) and (5) of section 57 and sub-section (1) of section 58, regard shall be had to any increase in the rate of a pension payable under paragraph (a) of sub-section (1) of section 55, under paragraph (a) of sub-section (1) of section 57 or sub-section (3) of section 57 to which, by virtue of this Act, a widow is, or, but for her death, remarriage or divorce, would be, entitled.

**Date of
payment of
increases.**

“84D. Subject to sections 84E and 84F, an increase payable by virtue of this Part in the rate of a pension that was, or is, under sub-section (4) of section 84, to be treated as having been, payable to a person on 30 June in a year applies in relation to the instalment of pension falling due on the first pension pay-day occurring after that day and in relation to all subsequent instalments.

**Rate of
invalidity
pension
payable on
reclassification
during a
prescribed
year.**

“84E. Where—

- (a) a person to whom pension is payable under section 52 is reclassified under section 53 during a prescribed year; and
- (b) the person became entitled at the commencement of that year to an increase under this Part in the rate at which the pension was payable to him immediately before the commencement of that year,

the rate at which the pension is payable to him on and after the date from which the reclassification has effect is the rate at which the pension would have been payable to him at the commencement of that year if his classification, on and after the date on which he became entitled to the pension, had been in accordance with the reclassification.

“84F. (1) Section 74 does not authorize the commutation of a pension in so far as the pension has been increased by virtue of this Part.

Commutation
of pensions
during a
prescribed
year.

(2) Where—

(a) a portion of the pension of a person is commuted during a prescribed year; and

(b) the person became entitled at the commencement of that year to an increase under this Part in the rate at which pension was payable to him immediately before the commencement of that year,

the rate at which the pension is payable to him on and after the date on which that portion of the pension is so commuted is the rate at which the pension would have been payable to him at the commencement of that year if he had so commuted that portion of his pension on the date on which he became entitled to the pension.”

PART III—AMENDMENT OF THE DEFENCE FORCE RETIREMENT AND DEATH BENEFITS ACT

4. After Part X of the *Defence Force Retirement and Death Benefits Act 1973*³ the following Part is inserted:—

“PART XA—PENSION INCREASES

“98A. (1) In this Part, unless the contrary intention appears—

‘prescribed year’ means the year commencing on 1 July 1976, or a subsequent year;

‘Statistician’ means the Australian Statistician.

Interpretation.

“(2) Subject to sub-section (3), if at any time, whether before or after the commencement of this Part, the Statistician has published or publishes in respect of a particular March quarter an all groups consumer price index number for the weighted average of the 6 State capital cities in substitution for an index number previously published by him in respect of that quarter, the publication of the later index number shall be disregarded for the purposes of this Part.

“(3) If at any time, whether before or after the commencement of this Part, the Statistician has changed or changes the reference base for the Consumer Price Index, then, for the purposes of the application of this Part after the change took place or takes place, regard shall be had only to index numbers published in terms of the new reference base.

“(4) Where the prescribed percentage for the purposes of section 98B 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.

Increase in
certain
pension
benefits.

“98B. (1) Subject to this Part, if 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 immediately preceding a prescribed year exceeds the highest 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 any earlier year, not being a year earlier than the year that commenced on 1 July 1974, a person (in this section referred to as the ‘pensioner’) to whom a pension benefit was payable immediately before the commencement of that prescribed year is entitled, at the commencement of that prescribed year, to an increase, as ascertained in accordance with this section, in the rate at which the pension benefit was payable to him immediately before the commencement of that prescribed year.

“(2) The increase provided for by sub-section (1) in the rate at which a pension benefit was payable to a pensioner immediately before the commencement of a prescribed year (in this section referred to as the ‘relevant prescribed year’) is the prescribed percentage, ascertained in accordance with sub-section (3), of the rate of pension benefit that, under sub-section (4), is the relevant rate of pension in relation to the pensioner.

“(3) For the purposes of sub-section (2), the prescribed percentage, in relation to a prescribed year, is the percentage that represents $A-B$ expressed as a percentage of B , 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 immediately preceding the prescribed year; and
- B is the highest 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 any year earlier than the year immediately preceding the prescribed year but not being earlier than the year that commenced on 1 July 1974.

“(4) For the purpose of sub-section (2), the relevant rate of pension benefit is—

- (a) in relation to a pensioner who is a recipient member to whom invalidity pay is payable or who is the widow of a person who, immediately before his death, was such a recipient member or was a contributing member—the rate at which pension benefit was payable to the pensioner immediately before the commencement of the relevant prescribed year;
- (b) in relation to a pensioner who is a recipient member to whom retirement pay is payable—the rate at which retirement pay was

payable to the pensioner immediately before the commencement of the relevant prescribed year or, if a notional rate of retirement pay is applicable to the pensioner in accordance with sub-section (5) and the notional rate of retirement pay so applicable immediately before the commencement of that year is lower than the rate at which retirement pay was payable to the pensioner immediately before the commencement of that year, the notional rate of retirement pay so applicable immediately before the commencement of that year;

- (c) in relation to a pensioner who is the widow of a recipient member to whom, immediately before his death, retirement pay was payable—a rate equal to five-eighths of the rate at which retirement pay would have been payable to the deceased recipient member immediately before the commencement of the relevant prescribed year if he had not died or, if a notional rate of retirement pay is applicable to the deceased recipient member in accordance with sub-section (5) and the notional rate of retirement pay so applicable immediately before the commencement of that year is lower than the rate at which retirement pay would have been payable to the deceased recipient member immediately before the commencement of that year if he had not died, a rate equal to five-eighths of the notional rate of retirement pay so applicable immediately before the commencement of that year;
- (d) in relation to a pensioner, other than a pensioner referred to in paragraph (e), who is a child—the rate at which pension benefit referred to as additional pension was payable immediately before the commencement of the relevant prescribed year to the child under whichever of sub-sections 42 (2), 42 (3), 43 (2) and 43 (3) is applicable; or
- (e) in relation to a pensioner to whom sub-section 42 (3) or 43 (3) applies and who is the child of a recipient member to whom, immediately before his death, retirement pay was payable—a rate equal to such proportion as, under sub-section (6), is the appropriate proportion of the rate at which retirement pay would, immediately before the commencement of the relevant prescribed year, have been payable to the deceased recipient member if he had not died or, if a notional rate of retirement pay is applicable to the deceased recipient member in accordance with sub-section (5) and the notional rate of retirement pay so applicable immediately before the commencement of that year is lower than the rate at which retirement pay would have been payable to the deceased recipient member immediately before the commencement of that year if he had not died, a rate

equal to such proportion as, under sub-section (6), is the appropriate proportion of the notional rate of retirement pay so applicable immediately before the commencement of that year.

“(5) For the purposes of sub-section (4)—

- (a) a notional rate of retirement pay is applicable to a recipient member if and only if that member has not elected under section 24 to commute his retirement pay to the maximum extent permitted under that section, and the notional rate of retirement pay applicable to the member at a particular time is the rate at which retirement pay would have been payable to him at that time if he had so commuted his retirement pay immediately upon his retirement; and
- (b) A notional rate of retirement pay is applicable to a deceased recipient member if and only if that deceased member had not, before his death, elected under section 24 to commute his retirement pay to the maximum extent permitted under that section, and the notional rate of retirement pay applicable to the deceased member at a particular time is the rate at which retirement pay would have been payable to him at that time if he had not died and if he had so commuted his retirement pay immediately upon his retirement.

“(6) For the purposes of sub-section (4), the appropriate proportion is—

- (a) in the case of a pension benefit payable under sub-section 42 (3)—one-sixth of five-eighths; and
- (b) in the case of a pension benefit payable under sub-section 43 (3)—one-eighth of five-eighths.

“(7) Where, by reason of the death of a recipient member on 30 June immediately preceding the commencement of a prescribed year, a pension benefit becomes payable, on the following day, to another person, that other person shall be entitled, at the commencement of that prescribed year, to such an increase in the rate of that pension benefit as he would have been entitled to had the pension benefit become payable to him on that 30 June.

Application
of increase to
suspended
pension
benefits.

“98C. Where a pension benefit would, but for its suspension under section 35, be payable to a person immediately before the commencement of a prescribed year, that pension benefit shall, for the purposes of this Part, be deemed to have been payable to that person immediately before the commencement of that prescribed year but any increase in the rate of that pension benefit by virtue of this Part does not take effect in respect of any part of that period of suspension.

“98D. (1) Where a person to whom a pension benefit has become payable would, but for this section, be entitled to an increase in the rate at which the pension benefit was payable to him immediately before the commencement of a prescribed year and—

Adjustment
of increase in
case of
certain
pension
benefits.

- (a) except in a case where the pension benefit became payable to the person in accordance with section 78—it became payable to the person in respect of—
 - (i) the retirement of a member of the scheme during the year (in this section referred to as the ‘preceding year’) immediately preceding the prescribed year; or
 - (ii) the death, during the preceding year, of a member of the scheme who was, immediately before the commencement of the preceding year a contributing member of the scheme; or
- (b) in a case where the pension benefit became payable to the person in accordance with section 78—
 - (i) if the pension benefit became payable to the person otherwise than as a widow or as an eligible child—it became payable during the preceding year;
 - (ii) if the pension benefit became payable to the person as a widow and pension benefit in accordance with that section was not payable to the person’s husband immediately before his death—the pension benefit became payable to the widow during the preceding year;
 - (iii) if the pension benefit became payable to the person as a widow and pension benefit in accordance with that section was payable to the person’s husband immediately before his death—the husband’s pension became payable during the preceding year;
 - (iv) if the pension benefit became payable to the person as an eligible child and 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 to the child during the preceding year; or
 - (v) if the pension benefit became payable to the person as an eligible child and pension benefit in accordance with that section was payable to a member of the scheme in relation to whom that person is a child—the member’s pension benefit became payable during the preceding year,

this section applies to the first-mentioned pension benefit.

“(2) If the retirement or death referred to in paragraph (1) (a) took place after 15 June in the preceding year, or the pension benefit that became payable by virtue of section 78 became so payable after 16 June in the preceding year, the person is not entitled to the increase.

“(3) If the retirement or death referred to in paragraph (1) (a) took place on or before 15 June in the preceding year, or the pension benefit that became payable by virtue of section 78 became so payable on or before 16 June in the preceding year, the amount of the increase is so much only of the amount that, but for this section, would have been the amount of the increase as bears to that last-mentioned amount the same proportion as the number of months in the period that commenced on the day next following the day on which retirement or death took place, or the period that commenced on the day on which the pension benefit became payable, and ended on 30 June in the preceding year, bears to 12.

“(4) If the period referred to in sub-section (3) is less than 1 month, that period shall be treated as 1 month.

“(5) If the period referred to in sub-section (3) consists of a number of whole months and a part of a month—

- (a) where the number of days in that part of that month is less than one-half of the number of days in that month—that part shall be disregarded; and
- (b) where the number of days in that part of that month is not less than one-half of the number of days in that month—that part shall be treated as a whole month.

“(6) For the purpose of the application of sub-paragraph (1) (b) (ii) or (iii) to a person who is a widow for the purposes of this Act by reason of her having been a dependent female, the member of the scheme with whom she was, immediately before his death, living as his wife shall be deemed to have been her husband.

Date of
payment of
increases.

“98E. Subject to sections 98F and 98G, an increase payable by virtue of this Part in the rate of a pension benefit that was, or is, under sub-section 98B (7), to be treated as having been, payable to a person on 30 June in a year applies in relation to the instalment of pension benefit falling due on the first pension pay-day occurring after that day and in relation to all subsequent instalments.

“98F. Where—

- (a) a person to whom pension benefit, being invalidity pay, is payable, is reclassified under section 34 during a prescribed year; and
- (b) the person became entitled at the commencement of that year to an increase under this Part in the rate at which the pension benefit was payable to him immediately before the commencement of that year,

Rate of
invalidity
pay payable
on reclassi-
fication
during a
prescribed
year.

the rate at which the pension benefit is payable to him on and after the date from which the reclassification has effect is the rate at which the pension benefit would have been payable to him at the commencement of that year if his classification, on and after the date on which he became entitled to the pension benefit, had been in accordance with the reclassification.

“98G. (1) Section 24 does not authorize the commutation of a pension benefit in so far as the pension benefit has been increased by virtue of this Part.

Commutation
of pension
benefits
during a
prescribed
year.

“(2) Where—

- (a) a portion of the pension benefit of a person is commuted during a prescribed year; and
- (b) the person became entitled at the commencement of the year to an increase under this Part in the rate at which pension benefit was payable to him immediately before the commencement of that year,

the rate at which the pension benefit is payable to him on and after the date on which that portion of the pension benefit is so commuted is the rate at which the pension benefit would have been payable to him at the commencement of the year if—

- (c) he had commuted that portion of his pension benefit on the date on which he became entitled to the pension benefit; and
- (d) he had attained, on the date on which he became entitled to the pension benefit, the age that is his age on the date of commutation.”

NOTES

1. Act No. 13, 1977; assented to 28 February 1977.
2. Act No. 31, 1948, as amended. For previous amendments *see* Act No. 37, 1949; No. 73, 1950; No. 29, 1951; No. 93, 1952; No. 80, 1953; No. 20, 1954; No. 19, 1955; No. 24, 1956; No. 95, 1957; No. 46, 1958; No. 103, 1959; No. 67, 1962; No. 103, 1963; Nos. 25, 98 and 135, 1965; No. 70, 1966; Nos. 55, 56 and 128, 1968; No. 61, 1969; No. 34, 1970; No. 47, 1971; No. 82, 1973; No. 216, 1973 (as amended by No. 20, 1974); and No. 96, 1975.

NOTES—continued

3. Act No. 81, 1973, as amended. For previous amendments *see* Act No. 59, 1974; No. 96, 1975; and No. 33, 1976.