

DEFENCE FORCE (RETIREMENT AND DEATH BENEFITS AMENDMENTS) ACT (No. 2) 1977

No. 161 of 1977

An Act to amend the *Defence Forces Retirement Benefits Act 1948* and the *Defence Force Retirement and Death Benefits Act 1973* and for related purposes.

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

PART I—PRELIMINARY

- Short title 1. This Act may be cited as the *Defence Force (Retirement and Death Benefits Amendments) Act (No. 2) 1977*.¹
- Commence-
ment 2. (1) Subject to sub-section (2), this Act shall come into operation on the day on which it receives the Royal Assent.¹
- (2) The amendments made by sections 5, 11, 12, 13, 14, 15, 16, 17, 24 and 26, sub-sections 27 (2) and 28 (2), section 34, sub-section 35 (1) and sections 36, 38, 39, 40, 41, 42, 46 and 48 shall be deemed to have come into operation on 1 October 1972.

PART II—AMENDMENTS OF THE DEFENCE FORCES RETIREMENT BENEFITS ACT 1948

- Principal Act 3. In this Part, the *Defence Forces Retirement Benefits Act 1948*² is referred to as the Principal Act.
4. After section 12 of the Principal Act the following section is inserted:
- Delegation “12A. (1) The Authority may, by resolution, either generally or as otherwise provided in the instrument of delegation, delegate to a member or to a deputy member, or to any other person, all or any of its powers under this Act, other than this power of delegation.
- “(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Authority.

“(3) A delegation of a power under this section—

- (a) may be revoked by resolution of the Authority (whether or not constituted by the persons constituting the Authority at the time the power was delegated);
- (b) does not prevent the exercise of the power by the Authority; and
- (c) continues in force notwithstanding a change in the membership of the Authority.

“(4) Section 34A of the *Acts Interpretation Act* 1901 applies in relation to a delegation under this section as if the Authority were a person.

“(5) A certificate signed by the Chairman stating any matter with respect to a delegation of a power under this section is *prima facie* evidence of that matter.

“(6) A document purporting to be a certificate mentioned in sub-section (5) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.”

5. Section 42A of the Principal Act is amended by omitting from sub-section (13) “having been retired on the ground of invalidity or of physical or mental incapacity to perform his duties” and substituting “his having become entitled to invalidity benefit under the *Defence Force Retirement and Death Benefits Act* 1973”.

Payments to other ranks after 3 years and 6 years service for pension

6. Section 53B of the Principal Act is amended—

- (a) by inserting in sub-section (4) “such later day as is determined by the Authority, not being a day later than ” after “ends on”; and
- (b) by inserting after sub-section (6A) the following sub-section:

“(6B) Where a person whose pension has been suspended under this section, dies before the pension again becomes payable, he shall, for the purpose of section 57, be deemed to have been entitled to pension immediately before his death and, for the purposes of that section, the pension shall be deemed to have been payable at the rate at which it would have been payable to him if it had not been suspended.”

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

7. (1) Section 55 of the Principal Act is amended—

- (a) by omitting “of her remarriage” (wherever occurring) and substituting “born after the death of the member unless the child is also the child of the member”; and
- (b) by omitting sub-section (3).

Pension on death of member

(2) Where a widow ceased, upon her remarriage before the date upon which this Act received the Royal Assent, by virtue of sub-section 65 (3) of the *Defence Forces Retirement Benefits Act* 1948, to be entitled to receive pension under paragraph 55 (1) (a) of that Act, then, for the

purpose of ascertaining, at any time, the rate of any additional pension payable in respect of a child under paragraph 55 (1) (b), or sub-section 55 (2), of that Act, the whole of the first-mentioned pension shall be deemed never to have ceased to be payable to her.

Pension on
death of
pensioner

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

(a) by omitting “of her remarriage” (wherever occurring) and substituting “born after the death of the pensioner unless the child is also the child of the pensioner”; and

(b) by omitting sub-section (5).

(2) Where a widow ceased, upon her remarriage before the date upon which this Act receives the Royal Assent, by virtue of sub-section 65 (3) of the *Defence Forces Retirement Benefits Act 1948*, to be entitled to receive a pension under paragraph 57 (1) (a) of that Act, then, for the purpose of ascertaining, at any time, the rate of any additional pension payable in respect of a child under paragraph 57 (1) (b), or sub-section 57 (4), of that Act the whole of the first-mentioned pension shall be deemed never to have ceased to be payable to her.

9. After section 63 of the Principal Act the following section is inserted:

Special grant
of pension

“64. (1) If, at any time after the date of commencement of this section (in this section referred to as the ‘commencing date’), a pension is not payable under section 57 of this Act to a person to whom a pension benefit would be payable at that time under Division 1 of Part VI of the *Defence Force Retirement and Death Benefits Act 1973*, were that Act, as amended and in force on the commencing date, to have been in force before a deceased pensioner (including a pensioner who died before the commencing date) ceased to be a member and were the deceased pensioner to have been, at the time of his death, a recipient member under that Act as so amended and in force, the Authority may grant, from such date as it specifies, a pension to the person at such rate and on such conditions as the Authority, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, determines.

“(2) If, at any time after the commencing date, a pension is not payable under section 55 or section 57 of this Act in respect of a person to whom a pension benefit would be payable at that time under section 42 of the *Defence Force Retirement and Death Benefits Act 1973*, were that Act, as amended and in force on the commencing date, to have been in force before the death of a deceased contributor or the retirement of a deceased pensioner (including a pensioner who died before the commencing date) and were the deceased contributor to have been, at the time of his death, a contributing member, or the deceased pensioner to have been, at the time of his retirement, a recipient member, under that Act as so amended and in force, the Authority may grant, from such date

as it specifies, a pension to the person at such rate and on such conditions as the Authority, having regard to such matters (if any) as are prescribed, and such matters as it considers relevant, determines.

“(3) If, at any time after the commencing date, a pension is not payable under section 55, 57 or 58 of this Act in respect of a person to whom a pension benefit would be payable at that time under section 43 of the *Defence Force Retirement and Death Benefits Act 1973*, were that Act, as amended and in force on the commencing date, to have been in force before the death of a deceased contributor or the retirement of a deceased pensioner (including a pensioner who died before the commencing date) and were the deceased contributor to have been, at the time of his death, a contributing member, or the deceased pensioner to have been, at the time of his retirement, a recipient member, under that Act as so amended and in force, the Authority may grant, from such date as it specifies, pension to the person at such rate and on such conditions as the Authority, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, determines.

“(4) A date specified by the Authority under sub-section (1), (2) or (3) in relation to the granting of an entitlement to pension shall not, unless the Authority is satisfied that special circumstances exist that justify an earlier date being so specified, be a date earlier than the date upon which the grant is made, and shall not, in any event, be a date earlier than the commencing date.

“(5) A determination by the Authority for the purpose of sub-section (1), (2) or (3) shall be in writing.

“(6) Where, at any time before the commencing date, a pension has been paid to a person under section 57 as the widow of a deceased pensioner, the Authority shall not, under sub-section (1) of this section, grant a pension to any other person in respect of that deceased pensioner.

“(7) The Authority shall not, under sub-section (1), grant a pension to a person unless the Authority, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, is satisfied that the person is in necessitous circumstances or that the grant of the pension is otherwise warranted.

“(8) The Authority shall not, under sub-section (1), grant a pension to a female person in relation to a deceased male pensioner from a specified date at a rate that exceeds the rate at which pension would have been payable from that specified date to the person under this Act had the person been, for the purposes of this Act as amended and in force at the date of death of the deceased pensioner, the widow of the deceased pensioner.

“(9) The Authority shall not, under sub-section (1), grant a pension to a male person in relation to a deceased female pensioner from a specified date at a rate that exceeds the rate at which a pension would have been payable from that specified date to the person under this Act had the deceased pensioner been a male pensioner and had the person been, for the purposes of this Act as amended and in force at the date of death of the deceased pensioner, the widow of the deceased pensioner.

“(10) The Authority shall not, under sub-section (2), grant a pension to a person in relation to a deceased contributor or a deceased pensioner from a specified date at a rate that exceeds the rate at which pension would have been payable from that specified date in respect of that person under this Act had the person been, for the purposes of this Act as amended and in force at, and at all times after, the date of death of the deceased contributor or the deceased pensioner, the child of the deceased contributor or the deceased pensioner and an eligible child.

“(11) The Authority shall not, under sub-section (3), grant a pension to a person in relation to a deceased contributor or a deceased pensioner from a specified date at a rate that exceeds the rate at which pension would have been payable from that specified date in respect of that person under this Act, had the person been, for the purposes of this Act as amended and in force at, and at all times after, the date of death of the deceased contributor or the deceased pensioner, the child of the deceased contributor or the deceased pensioner and an eligible child and had the person become, at the time when he would, in the circumstances set out in sub-section (3) have first become entitled, as an eligible orphan, to pension benefit in section 43 of the *Defence Force Retirement and Death Benefits Act 1973*, entitled to pension under sub-section (2) of section 55, sub-section (4) of section 57, or sub-section (1) of section 58, of this Act.

“(12) Where a pensioner dies on or after the commencing date and a pension is paid to a person, under section 57, as a widow of the pensioner, then, during the period that the pension continues to be paid, for the purpose of calculating the maximum rate of pension payable under sub-section (1) to another person but not for the purpose of calculating the maximum rate of pension payable under sub-section (2) or (3) to another person, this Act has effect as if the reference in paragraph (a) of sub-section (1) of section 57 to five-eighths were a reference to three-eighths.

“(13) The grant by the Authority, under this section, of a pension to a person does not effect the entitlement of any other person under this Act to a pension that is payable otherwise than by virtue of a grant of a pension under this section or the rate of such a pension.”

10. (1) Section 65 of the Principal Act is amended by omitting sub-section (3). General provisions as to pensions

(2) Where—

- (a) a person's entitlement to pension under paragraph 55 (1) (a), or 57 (1) (a), of the *Defence Forces Retirement Benefits Act* 1948 has ceased, before the date on which this Act receives the Royal Assent, upon the person's remarriage; and
- (b) the person makes application to the Authority for the restoration of that pension and the Authority, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, is satisfied that the person is in necessitous circumstances or that the restoration of the pension is otherwise warranted,

the Authority may direct that the person's entitlement to that pension be restored with effect from such date as the Authority specifies, and, upon such a direction being given, the person again becomes entitled to that pension from that date at a rate determined by the Authority (being a rate that does not exceed the rate at which the pension would have been payable if the entitlement had not ceased).

(3) The date specified by the Authority under sub-section (2) in relation to the restoring of a person's entitlement to pension shall not, unless the Authority, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, is satisfied that special circumstances exist that justify an earlier date being so specified, be a date earlier than the date of the direction, and shall not, in any event, be a date earlier than the date on which this Act receives the Royal Assent.

(4) A direction by the Authority under sub-section (2) shall be in writing.

11. Section 82R of the Principal Act is amended by adding at the end thereof the following sub-sections: Rights of members who elect to pay transfer value to Board

“(11) Upon the transfer of the moneys of the Fund, by virtue of section 21A, to the Commonwealth, this section has effect as if—

- (a) the requirement in sub-section (3) of this section that an amount be paid to the Fund were a requirement that that amount be paid to the Commonwealth and not to the Fund; and
- (b) sub-section (6) of this section were amended—
 - (i) by omitting from paragraph (c) ‘to the Fund and to the Commonwealth’;
 - (ii) by omitting from paragraph (e) ‘withdrawal from the Fund’ and substituting ‘resignation upon which no benefit other than a refund of contributions is payable’; and

- (iii) by omitting from paragraph (f) ‘will be earned by the assets of the Fund’ and substituting ‘would have been earned by the assets of the Fund if the moneys of the Fund had not been transferred to the Commonwealth and had included any amounts paid to the Commonwealth in pursuance of paragraph (a) of this sub-section’.

“(12) In this section, a reference to the Board shall be read as including a reference to the Authority.”

Transfer
value

12. Section 82X of the Principal Act is amended by adding at the end thereof the following sub-section:

“(4) In this section, a reference to the Board shall be read as including a reference to the Authority.”

Deferred
benefits

13. Section 82Y of the Principal Act is amended by adding at the end thereof the following sub-section:

“(5) In this section, a reference to the Board shall be read as including a reference to the Authority.”

Election that
Division
apply

14. Section 82Z of the Principal Act is amended by adding at the end thereof the following sub-section:

“(11) In this section, a reference to the Board shall be read as including a reference to the Authority.”

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

15. Section 82ZC of the Principal Act is amended by adding at the end thereof the following sub-sections:

“(5) Upon the transfer of the moneys of the Fund, by virtue of section 21A, to the Commonwealth, this section has effect as if—

- (a) the requirement in sub-section (2) that an amount be paid to the Fund were a requirement that that amount be paid to the Commonwealth and not to the Fund; and
- (b) sub-section (3) were omitted.

“(6) In this section, a reference to the Board shall be read as including a reference to the Authority.”

Certain
former
contributors
not entitled
to benefits
under this
Division

16. Section 82ZD of the Principal Act is amended by adding at the end thereof the following sub-section:

“(3) In this section, a reference to the Board shall be read as including a reference to the Authority.”

17. Section 82ZG of the Principal Act is repealed and the following section substituted:

“82ZG. (1) Subject to sub-section (2), where a person to whom section 82ZB applies again becomes a member, the deferred benefits applicable in respect of him shall not become, or be, payable while he is a member.

Person entitled to deferred benefits again becoming a member

“(2) Where a person to whom section 82ZB applies—

- (a) having again become a member before 1 October 1972, has not ceased to be a member at any time before that day; or
- (b) has again become a member on or after that day,

the deferred benefits applicable in respect of him cease to be so applicable.”

18. Section 84B of the Principal Act is amended by omitting sub-sections (1), (2) and (3) and substituting the following sub-sections:

Adjustment of increases in case of certain pensions

“(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 the prescribed year and—

- (a) if the pension became payable to the person otherwise than as a widow—the pension became payable to the person during the year (in this section referred to as the ‘preceding year’) immediately preceding that prescribed year;
- (b) if the pension became payable to the person as the widow of another person and pension in accordance with that section was not payable to that other person immediately before his death—the pension became payable to the widow during the preceding year; or
- (c) if the pension became payable to the person as the widow of another person and pension in accordance with that section was payable to that other person immediately before his death—pension became payable to that other person during that preceding year,

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

“(2) If the pension that became payable by virtue of section 82ZB to the person, or, in a case where paragraph (1) (c) applies, to another person in relation to whom the person is a widow, became so payable after 16 June in the preceding year, the person is not entitled to an increase.

“(3) If the pension that became payable by virtue of section 82ZB to the person, or, in a case where paragraph (1) (c) applies, to another person in relation to whom a person is a widow, 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 the 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.”

19. Section 84C of the Principal Act is repealed and the following section substituted:

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-section (2) of section 55, paragraph (b) of sub-section (1) of section 57, sub-section (4) 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 under sub-section (3) of section 57 to which, by virtue of this Act, a widow is, or, but for her death or divorce, would be, entitled.”

PART III—AMENDMENTS OF THE DEFENCE FORCE RETIREMENT AND DEATH BENEFITS ACT 1973

Principal Act

20. In this Part the *Defence Force Retirement and Death Benefits Act 1973*³ is referred to as the Principal Act.

Interpretation

21. (1) Section 3 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “dependent female”;
- (b) by omitting from sub-section (1) the definition of “widow” and substituting the following definition:

“ ‘widow’, in relation to a male person who has died and was, at the time of his death, a contributing member, a recipient member or a person in respect of whom deferred benefits were applicable means—

- (a) a person who was legally married to the deceased person at the time of the deceased person’s death and who, at that time, was living with the deceased person on a permanent and *bona fide* domestic basis;
- (b) a person who was legally married to the deceased person at the time of the deceased person’s death but who was not living with the deceased person on a permanent and *bona fide* domestic basis at that time, and who, in the opinion of the Authority, was wholly or substantially dependent upon the deceased person at that time;
- (c) a person who was not legally married to the deceased person at the time of the deceased person’s death but who, for a continuous period of not less than 3 years immediately preceding the deceased

person's death, had ordinarily lived with the deceased person as the spouse of the deceased person on a permanent and *bona fide* domestic basis; and

- (d) a person who was not legally married to the deceased person at the time of the deceased person's death but who, for a continuous period of less than 3 years immediately preceding the person's death, had ordinarily lived with the deceased person as the spouse of the deceased person, on a permanent and *bona fide* domestic basis, and who, in the opinion of the Authority was wholly or substantially dependent upon the deceased person at the time of the deceased person's death, but, where the deceased person was, at the time of his death, a recipient member, does not include—
- (e) a person who was legally married to the deceased person at the time of the deceased person's death if the marriage took place after the deceased person had become a recipient member and after the deceased person had attained the age of 60 years unless—
- (i) the marriage took place not less than 5 years before the deceased persons's death; or
 - (ii) the marriage took place less than 5 years before the deceased person's death but—
 - (A) the person had, immediately preceding the marriage, for a continuous period that commenced while the deceased person was a recipient member and not later than 5 years before the deceased person's death, lived with the deceased person as the spouse of the deceased person on a permanent and *bona fide* domestic basis;
 - (B) the person had, immediately preceding the marriage, for a continuous period that commenced while the deceased person was a contributing member and not later than 3 years before the deceased person's death, lived with the deceased person as the spouse of the

deceased person on a permanent and *bona fide* domestic basis; or

- (C) The person had, immediately preceding the marriage, for a continuous period that commenced while the deceased person was a contributing member but later than 3 years before the deceased person's death, lived with the deceased person as the spouse of the deceased person on a permanent and *bona fide* domestic basis and was, in the opinion of the Authority, wholly or substantially dependent upon the deceased person at the time of the deceased person's death; or

- (f) a person who was not legally married to the deceased person at the time of the deceased person's death if the person commenced living with the deceased person as the spouse of the deceased person on a permanent and *bona fide* domestic basis after the deceased person had become a recipient member and after the deceased person had attained the age of 60 years unless the person had so lived with the deceased person for a continuous period of not less than 5 years immediately preceding the deceased person's death;"; and

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

“(4) In this Act, a reference to a widower, in relation to a female person who has died shall be read as a reference to a male person who would, had that female person been a male and he a female, have been her widow.”.

- (2) Section 3 of the Principal Act is further amended by omitting from sub-section (1) the definition of “fortnightly rate of pay” and substituting the following definition:

“‘fortnightly rate of pay’, in relation to a member of the Defence Force on a particular day, means an amount calculated in accordance with the formula—

$$\frac{14 \times A}{365}$$

where A is the annual rate of pay applicable to him on that day;”.

(3) Notwithstanding the amendments effected by sub-section (1)—

- (a) a person who was not, for the purposes of the Principal Act, the widow or widower of another person who died before the date on which this Act receives the Royal Assent, shall not be taken, for the purposes of the Principal Act as amended and in force on, or at any time after, that date, to be such a widow or widower by virtue of those amendments; and
- (b) a person who, by reason of the death before that date of another person, was, for the purposes of the Principal Act, the widow or widower of that other person, shall not be taken, for the purposes of that Act as amended and in force on, or at any time after, that date, to have ceased to be such a widow or widower by virtue of those amendments.

(4) Where, but for the operation of this sub-section, a person who was legally married to a recipient member at the time of death of the recipient member, being a recipient member—

- (a) whom the person had married before the date on which this Act receives the Royal Assent;
- (b) who had become such a recipient member before that date; and
- (c) who died on or after that date,

would not, by virtue only of the amendments effected by sub-section (1), have been the widow or widower of the recipient member for the purposes of the Principal Act as amended and in force after the death of the recipient member, the person shall be taken, notwithstanding those amendments, to be the widow or widower of the recipient member for the purpose of that Act as so amended and in force.

22. Section 9 of the Principal Act is amended—

Deputies of
members

- (a) by omitting from sub-section (1) “referred to in paragraph 8 (2) (b)”;
- (b) by omitting sub-section (2) and substituting the following sub-section:

“(2) The Deputy of the Chairman and the deputy of the Member nominated by the Minister shall each be appointed on the nomination of the Minister.”; and
- (c) by omitting sub-section (8) and substituting the following sub-section:

“(8) In the absence of a member from a meeting of the Authority, the deputy of the member may attend the meeting, and shall be deemed while so attending to have all the powers and functions of a member other than the Chairman or the Deputy Chairman.”.

Irregularities
in
nomination
of members
and deputy
members

23. Section 10 of the Principal Act is amended by omitting “such”.

Purchase of
previous
non-
contributory
service

24. Section 21 of the Principal Act is amended by inserting after sub-section (3) the following sub-sections:

“(4) An election under sub-section (1) is of no effect unless, at the time when the election is made, or, within such period after that time as the Authority, in special circumstances, allows, there is refunded to the Commonwealth, or arrangements satisfactory to the Authority are made for there to be refunded to the Commonwealth, any payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty or deferred pay) paid to the person under the previous legislation, or under legislation relating to conditions of service of members of the Defence Force, in respect of the period to which the election relates.

“(5) Where a person who makes an election under this section had credited to him, in respect of the period to which the election relates, under the previous legislation or under legislation relating to the conditions of service of members of the Defence Force, any deferred pay or interest thereon, that credit shall, by force of this section, be deemed to have been cancelled.”

Entitlement
to retirement
pay

25. (1) Section 23 of the Principal Act is amended—

- (a) by omitting from paragraph (b) of sub-section (1) “, invalidity pay or pension” and substituting “under this Act or pension, other than invalidity benefit, ”; and
- (b) by omitting from sub-section (5) “, the cancelled invalidity pay”.

(2) Notwithstanding the amendments effected by sub-section (1), section 23 of the Principal Act continues to apply to and in relation to any person who became an eligible member of the Defence Force before the commencement of this section.

Retirement
pay
commutation

26. Section 24 of the Principal Act is amended by omitting sub-section (2) and inserting the following sub-sections:

“(2) An election by a recipient member under sub-section (1) shall specify the amount that is to be payable to him by virtue of the commutation.

“(2A) The amount specified in an election by a recipient member under sub-section (1) shall not be an amount that, together with—

- (a) any amount or amounts specified in any previous election or elections by the member, under this section, to commute a

portion or portions of his retirement pay, reduced by any amount or amounts required under paragraph 62 (4) (a) of this Act, to be paid by the member to the Commonwealth in respect of that commutation or those commutations; and

- (b) any amount paid to the member in pursuance of an application, under section 74 of the previous Act, to commute a portion of any pension payable to him under that Act reduced by—
 - (i) any amount or amounts required, under paragraph 62 (4) (a) of this Act, to be paid by the member to the Commonwealth; and
 - (ii) any amount or amounts required, under sub-section 69 (1B) or 69 (3A) of the previous Act, to be paid by the member to the Defence Forces Retirement Benefits Fund established under the previous Act,

in respect of that commutation,

exceeds 4 times the amount per annum of the retirement pay to which the recipient member was entitled on retirement.”.

27. (1) Section 25 of the Principal Act is amended by inserting after sub-section (2) the following sub-section:

Rate of
retirement
pay
applicable to
certain
existing
contributors

“(2A) Where a person to whom this section applies has made an election under section 44 of the *Defence Forces Retirement Benefits Act 1959*, section 28 of the *Defence Forces Retirement Benefits Act 1962* or section 38, 61A or 61B of the *Defence Forces Retirement Benefits Act 1963*, this section has effect as if the previous pension percentage of pay in relation to that person were a percentage that would have been the previous pension percentage of pay in relation to him if he had not made that election and had paid all the contributions which he would, but for that election, have been required to pay under the previous legislation.”.

(2) Section 25 of the Principal Act is further amended by adding at the end thereof the following sub-section:

“(5) In the application of this section to a person who was, immediately before 1 October 1972, a non-Permanent Forces officer as defined by section 54A of the previous Act, the retiring age for rank held shall be the age that is deemed, for the purposes referred to in sub-section 54A (2) of that Act, to be the retiring age for the rank held by the person on his retirement.”.

Rate of
invalidity
pay
applicable to
certain
existing
contributors

28. (1) Section 33 of the Principal Act is amended by inserting after sub-section (2) the following sub-section:

“(2A) Where a person to whom this section applies has made an election under section 44 of the *Defence Forces Retirement Benefits Act* 1959, section 28 of the *Defence Forces Retirement Benefits Act* 1962 or section 38, 61A or 61B of the *Defence Forces Retirement Benefits Act* 1963, this section has effect as if the previous pension percentage of pay in relation to the person were a percentage that would have been the previous pension percentage of pay in relation to him if he had not made the election and had paid all the contributions which he would, but for that election, have been required to pay under the previous legislation.”

(2) Section 33 of the Principal Act is further amended by adding at the end thereof the following sub-section:

“(6) In the application of this section to a person who was, immediately before 1 October 1972, a non-Permanent Forces officer as defined by section 54A of the previous Act, the retiring age for rank held shall be the age that is deemed, for the purposes referred to in sub-section 54A (2) of that Act, to be the retiring age for the rank held by the person on his retirement.”

Power of
authority to
require
persons to be
medically
examined,
&c.

29. Section 35 of the Principal Act is amended by inserting in sub-section (4) “such later day as is determined by the Authority not being a day later than” after “ends on”.

Marriage of
widow after
death of
member

30. (1) Section 40 of the Principal Act is repealed.

(2) Where—

- (a) a person’s entitlement to pension benefit under section 38 or 39 of the *Defence Force Retirement and Death Benefits Act* 1973 has ceased, before the date on which this Act receives the Royal Assent, upon the marriage of the person; and
- (b) the person makes application to the Authority for the restoration of that pension benefit and the Authority, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, is satisfied that the person is in necessitous circumstances or that the restoration of the pension benefit is otherwise warranted,

the Authority may direct that the person’s entitlement to that pension benefit be restored with effect from such date as the Authority specifies, and, upon such a direction being given, the person again becomes entitled to that pension benefit from that date at a rate determined by the Authority (being a rate that does not exceed the rate at which the pension benefit would have been payable if the entitlement had not ceased).

(3) The date specified by the Authority under sub-section (2) in relation to the restoring of a person's entitlement to pension benefit shall not, unless the Authority is satisfied, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, that special circumstances exist that justify an earlier date being so specified, be a date earlier than the date of the direction, and shall not, in any event, be a date earlier than the date on which this Act receives the Royal Assent.

(4) A direction by the Authority under sub-section (2) shall be in writing.

(5) Where a direction given by the Authority under sub-section 40 (2) of the *Defence Force Retirement and Death Benefits Act 1973* was in force immediately before the date on which this Act receives the Royal Assent, that direction continues in force on and after that date, as if it were a direction given by the Authority under sub-section (2) of this section restoring entitlement of the widow to pension on and from that date.

31. Section 41 of the Principal Act is repealed and the following section substituted:

“41. Where, upon the death of a member of the scheme, the member is survived by a person who is the widow of the member by reason of being legally married to the member and also by another person who is the widow of the member but is not so legally married to the member, then, in the application of section 38 or 39 to the widow who is not so legally married to the member, any reference in that section to the fraction of five-eighths shall be read to the fraction of three-eighths.”

Rate of pension payable on death of member of scheme leaving more than one widow

32. After Division 2 of Part VI of the Principal Act the following Division is inserted:

“Division 2A—Special Pensions

“43A. (1) If, at any time after the date of commencement of this section (in this section referred to as the ‘commencing date’), pension is not payable under section 39 to a person to whom pension would be payable at that time under that section were this Act, as amended, and in force on the commencing date, to have been in force before the date of death of a member of the scheme who died before the commencing date, the Authority may grant, from such date as it specifies, a pension to the person at such rate and on such conditions as the Authority, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, determines.

Special pensions

“(2) If, at any time after the commencing date, pension is not payable under section 42 or 43 to a person to whom pension would be payable under that section were this Act, as amended and in force on the

commencing date, to have been in force before the date of death for a member of the scheme who died before the commencing date, the Authority may grant, from such date as it specifies, a pension to the person at such rate and on such conditions as the Authority, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, determines.

“(3) A date specified by the Authority under sub-section (1) or (2) in relation to the granting of an entitlement to pension benefit shall not, unless the Authority is satisfied that special circumstances exist that justify an earlier date being so specified, be a date earlier than the date upon which the grant is made, and shall not, in any event, be a date earlier than the commencing date.

“(4) A determination by the Authority for the purpose of sub-section (1) or (2) shall be in writing.

“(5) Where, at any time before the commencing date, pension has been paid to a person under section 39 as the widow of a deceased recipient member, the Authority shall not under sub-section (1) of this section, grant a pension to any other person in respect of that deceased recipient member.

“(6) The Authority shall not, under sub-section (1), grant a pension to a person unless the Authority, having regard to such matters (if any) as are prescribed and such other matters as it considers relevant, is satisfied that the person is in necessitous circumstances or that the grant of the pension is otherwise warranted.

“(7) The Authority shall not, under sub-section (1), grant a pension to a person in relation to a deceased member of the scheme from a specified date at a rate that exceeds the rate at which pension would have been payable from that specified date to the person under this Act had the person been, for the purpose of this Act as amended and in force at the date of death of the deceased member of the scheme, the widow or widower of the deceased member of the scheme.

“(8) The Authority shall not, under sub-section (2), grant a pension to a person in relation to a deceased member of the scheme from a specified date at a rate that exceeds the rate at which pension would have been payable from that specified date to the person under this Act had the person been, for the purposes of this Act as amended and in force at the date of death of the deceased member of the scheme, the child of the deceased member of the scheme and an eligible child.

“(9) The grant by the Authority, under this section, of a pension to a person does not effect the entitlement of any other person under this Act to a pension benefit that is payable otherwise than by virtue of a grant of pension under this section, or the rate of such a pension benefit.”

33. Section 44 of the Principal Act is repealed and the following section substituted:

“44. Where a female person, being a contributing member or a recipient member, dies, leaving a widower, the provisions of this Act apply as if she had been a male member of the scheme and as if the widower had been the widow of a male member of the scheme.”

Widowers

34. Section 48 of the Principal Act is amended by inserting after subsection (2) the following sub-sections:

Lump sum payments on or after death of certain members

“(3) Where—

- (a) a member of the scheme dies before retirement and, on his death, pension benefit is payable under this Part; and
- (b) the aggregate amount of that pension benefit paid or payable in respect of him under this Part is less than an amount equal to one and one-half times the amount of his contributions,

a lump sum payment equal to the difference shall be paid to the personal representatives of the member, or failing them, to such persons, if any, as the Authority determines.

“(4) Where—

- (a) a member of the scheme who is a recipient member dies and, on his death, pension benefit is payable under this Part; and
- (b) the aggregate amount of retirement pay or invalidity pay paid or payable to the member before his death and of pension benefit paid or payable in respect of him under this Part is less than an amount equal to one and one-half times the amount of his contributions,

a lump sum payment equal to the difference shall be paid to the personal representatives of the member, or failing them, to such persons, if any, as the Authority determines.

“(5) In this section, a reference to the amount of retirement pay paid or payable to a member of the scheme before his death shall be read as including, where an election has been made, by or on behalf of the member, under section 24, to commute a portion of the retirement pay payable to the member, the amount paid or payable to or in respect of the member under paragraph 24 (3) (a) by virtue of that election.”

35. (1) Section 53 of the Principal Act is amended by omitting subsection (2) and substituting the following sub-section:

Refund of benefits by re-instated candidates to whom this Part applies

“(2) Where a person who is a re-instated candidate to whom this Part applies was paid, upon his ceasing to be an eligible member of the Defence Force—

- (a) a refund of his contributions; or

- (b) a payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty) under legislation relating to conditions of service of members of the Defence Force, in respect of his service before he so ceased,

he shall pay to the Commonwealth an amount equal to that refund of contributions or to that payment, as the case requires.”

(2) Any amount paid by a person to the Commonwealth in pursuance of sub-section 53 (2) of the Principal Act shall be deemed, for the purposes of the Principal Act as amended by this Act, to have been paid in pursuance of sub-section 53 (2) of the Principal Act as so amended.

Rights of contributing members who resign to contest elections and are not re-instated

36. Section 55 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (5) “and”; and
(b) by inserting after paragraph (b) of that sub-section the following word and paragraph:

“; and (c) there is paid to the Commonwealth an amount equal to the amount of any payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty) paid to the person under legislation relating to conditions of service of members of the Defence Force, in respect of his service before he ceased to be an eligible member of the Defence Force.”

Instalments of pension benefits

37. Section 59 of the Principal Act is amended by omitting sub-section (2) and substituting the following sub-section:

“(2) The amount of a fortnightly instalment of pension benefit shall be an amount calculated in accordance with the formula—

$$\frac{14 \times P}{365}$$

where P is the amount per annum of the pension benefit.”

Non-recipient retired member who again becomes an eligible member after 90 days

38. Section 64 of the Principal Act is amended—

- (a) by omitting from paragraph (a) of sub-section (2) “and” (last occurring); and
(b) by omitting paragraph (b) of sub-section (2) and substituting the following sub-sections:

“(b) he shall, if he was paid a payment of a prescribed kind (being a payment of, or in the nature of, a gratuity or bounty) under legislation relating to the conditions of service of members of the Defence Force, in respect of the period to which the election relates, pay to the Commonwealth an amount equal to the amount of that payment; and

“(c) upon his death or retirement, the period to which the election relates shall, for the purposes of this Act, be deemed to be a period of effective service in relation to him.”.

39. Section 85 of the Principal Act is amended by omitting from paragraph (a) of the definition of “period of previous contributory qualifying service” in sub-section (1) “for pension” and substituting “in respect of which, before that date, he had contributed, or was liable to contribute,”.

Interpretation

40. After section 87 of the Principal Act the following section is inserted:

“87A. (1) This section applies to an existing contributor—

- (a) who had, before 1 October 1972, elected under section 27 of the previous Act to have a period of service taken into account as service for pension under that Act;
- (b) who had not, before that date, paid, under that section, an amount equal to the lesser of the amount of the contributions determined by the Defence Forces Retirement Benefits Board to be payable by him in respect to that period and an amount equal to 5.5 per centum of his aggregate pay in respect of that period; and
- (c) the amount of whose previous contributions is less than 5.5 per centum of the amount of his aggregate pay in respect of his period of previous contributory qualifying service.

Additional contributions by certain persons purchasing service under section 27 of the previous Act

“(2) An existing contributor to whom this section applies—

- (a) shall pay an additional contribution to the Commonwealth under this section of such an amount, not exceeding the difference between the amount (if any) paid by him under section 27 of the previous Act and the amount first mentioned in paragraph (b) of sub-section (1), as the Authority determines as being appropriate in the circumstances; and
- (b) shall not be required to make any further payments under section 27 of the previous Act in relation to the period to which the election under that section relates.”.

41. Section 89 of the Principal Act is amended—

- (a) by omitting from sub-section (6) “or deferred pay” and substituting “deferred pay or a part of a pension”; and
- (b) by inserting after sub-section (6) the following sub-section:

Purchase of previous non-contributory service

“(6A) Where a person who makes an election under this section had credited to him, in respect of the period to which the

election relates, under the previous legislation or under legislation relating to the conditions of service of members of the Defence Force, any deferred pay or interest thereon, that credit shall, by force of this section, be deemed to have been cancelled.”.

Elections to
become
contributors
by certain
members

42. Section 90 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(3) Where a person referred to in paragraph (1) (a) makes an election under sub-section (2)—

- (a) he is not entitled to receive, or to have credited to him, any deferred pay or interest thereon to which he would, but for this sub-section, have been entitled after 30 September 1972 by virtue of his services as a member of the Defence Force on continuous full-time service on or after that date;
- (b) he shall repay to the Commonwealth the amount of any deferred pay or interest thereon that he has received in respect of such service; and
- (c) any credit to him of deferred pay in respect of such service shall be cancelled.”.

Interpretation

43. Section 98A of the Principal Act is amended by inserting in sub-section (1), before the definition of “prescribed year”, the following definition:

“ ‘pension benefit’ includes a pension granted under section 43A;”.

Increase in
certain
pension
benefits

44. Section 98B of the Principal Act is amended—

- (a) by omitting “or” from paragraph (d) of sub-section (4); and
- (b) by adding at the end of sub-section (4) the following word and paragraph:
 - “; or (f) in relation to a pensioner to whom a pension benefit is payable under section 43A—a rate determined by the Authority, being the rate which, in the opinion of the Authority, is the appropriate rate to be regarded as the relevant rate of pension in relation to the pensioner for the relevant prescribed year.”.

45. Section 98D of the Principal Act is repealed and the following section substituted:

Adjustment
of increase in
case of
certain
pension
benefits

“98D. (1) Where a person to whom pension benefit has become payable (whether or not it has become payable to the person by virtue of section 78) would, but for this section, be entitled to an increase in the rate at which the pension benefit was payable to the person immediately before the commencement of the prescribed year and—

- (a) if the pension benefit became payable to the person otherwise than as a widow or as an eligible child—the pension benefit became payable to the person during the year (in this section referred to as the ‘preceding year’) immediately preceding the prescribed year;
- (b) if the pension benefit became payable to the person as the widow of a member of the scheme and pension benefit in accordance with that section was not payable to the member immediately before his death—the pension benefit became payable to the widow during the preceding year;
- (c) if the pension benefit became payable to the person as the widow of a member of the scheme and pension benefit was payable to the member immediately preceding his death—the member’s pension benefit became payable during the year;
- (d) if the pension benefit became payable to the person as an eligible child and pension benefit was not payable to the member of the scheme in relation to whom the person is an eligible child—the pension benefit became payable to the child during the preceding year; and
- (e) if the pension benefit became payable to the person as an eligible child and pension benefit was payable to a member of the scheme in relation to whom the person is an eligible child—the member’s pension benefit became payable during the preceding year,

this section applies to the first-mentioned pension benefit.

“(2) Where a pension benefit is, under section 43A, payable to a person immediately before the commencement of a prescribed year—

- (a) in a case where the pension benefit became so payable by virtue of the retirement and death, during the preceding year, of a member of the scheme who was, at the time of his death, a recipient member—this section applies to the pension benefit as if it were a pension benefit payable to the person otherwise than as a widow or as an eligible child from the day following the date of retirement of the member of the scheme;
- (b) in a case where the pension benefit became so payable by virtue of the death, during the preceding year, of a member of the scheme who was, at the time of this death, a contributing member—this section applies to the pension benefit as if it were a pension benefit payable to the person otherwise than as a widow or as an eligible child from the day following the date of death of the member of the scheme; or
- (c) in any other case—this section does not apply to the pension benefit.

“(3) If—

- (a) the pension benefit;
- (b) where paragraph (1) (c) applies—the pension benefit that was payable to the member of the scheme in relation to whom the person is a widow; or
- (c) where paragraph (1) (e) applies—the pension benefit that was payable to the member of the scheme in relation to whom the person was an eligible child,

became payable after 16 June in the preceding year the person is not entitled to the increase.

“(4) If—

- (a) the pension benefit;
- (b) where paragraph (1) (c) applies—the pension benefit that was payable to the member of the scheme in relation to whom the person is a widow; or
- (c) where paragraph (1) (e) applies—the pension benefit that was payable to the member of the scheme in relation to whom the person was an eligible child,

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 benefit referred to in paragraph (a), (b) or (c) became payable and ended on 30 June in the preceding year bears to 12.

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

“(6) If the period referred to in sub-section (4) 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.”.

46. After section 130 of the Principal Act the following section is inserted:

“130A. Where a person—

- (a) made an election under section 21, 53, 55, 64 or 89;
- (b) paid to the Commonwealth, in accordance with the requirements of that section, the amount of any gratuity, bounty or deferred pay received by him in respect of the period to which the election relates; and
- (c) is not, upon ceasing to be a member of the Defence Force after having made that election and made that payment, entitled to retirement pay or invalidity pay, or to a gratuity in respect of the period in relation to which the election relates,

Repayment of amounts that have been refunded to the Commonwealth

the Commonwealth shall repay to the person any amounts so paid by him.”.

47. Schedule 2 to the Principal Act is amended by omitting—

Schedule 2

Captain	Brigadier Colonel	Air Commodore	50
		Group Captain	
		Group Officer	

and substituting—

Commodore	Brigadier Colonel	Air Commodore	50
Captain		Group Captain	
		Group Officer	

48. Schedule 3 is amended by inserting, after—

Schedule 3

60	15.60	19.51
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the following—

61	14.94	18.72
62	14.29	17.94
63	13.67	17.17
64	13.06	16.42
65	12.47	15.68

49. (1) This section applies to a person who—

- (a) was a member of the Defence Force;
- (b) had, before the date of commencement of this section (in this section referred to as the “commencing date”) retired entitled to retirement pay; and
- (c) had made an election under section 44 of the *Defence Forces Retirement Benefits Act 1959*, section 28 of the *Defence Forces Retirement Benefits Act 1962* or section 38, 61A or 61B of the *Defence Forces Retirement Benefits Act 1963*.

Transitional provision in relation to section 25 of Principal Act

(2) A person to whom this section applies, or, if he has died before the commencing date, such other person as the Authority thinks appropriate, may, by notice in writing given to the Authority within 90 days after that date, or within such further period as the Authority, in special

circumstances, allows, whether or not any election (in this section referred to as a “former election”) has been made before that date under sub-section 25 (3) of the Principal Act by or in relation to the first-mentioned person, elect that the succeeding provisions of this section apply to and in relation to the first-mentioned person.

(3) Subject to sub-section (5), where—

(a) an election is made under sub-section (2); and

(b) the person by whom or in relation to whom the election referred to in paragraph (a) was made is a person by whom or in relation to whom a former election was made,

pension benefit shall be deemed to have been, and to be, payable, in pursuance of that former election, to the person, his widow or his child at the rate at which it would, from time to time, have been, or be, payable to the person, his widow or his child if sub-section 25 (2A) of the Principal Act as amended by this Act had been in force at the time of the former election.

(4) Subject to sub-section (5), where—

(a) an election is made under sub-section (2); and

(b) the person by whom or in relation to whom the election referred to in paragraph (a) was made is not a person by whom or in relation to whom a former election was made,

pension benefit shall be deemed to have been, and to be, payable to the person, his widow or his child at the rate at which it would, from time to time, have been, or be, payable to the person, his widow or his child if an election under sub-section 25 (3) of the Principal Act had been made by the person at the time of his retirement and if sub-section 25 (2A) of the Principal Act as amended by this Act had been in force at that time.

(5) Where the Authority so determines, an election under sub-section (2) is of no effect, unless the person making the election pays to the Commonwealth a contribution under this sub-section that the Authority determines as being appropriate in the circumstances or arrangements satisfactory to the Authority are made for the payment of that contribution to the Commonwealth.

50. Where a person makes an election under sub-section 49 (2) by virtue of which the amount per annum (in this sub-section referred to as the “revised amount per annum”) of retirement pay deemed to have been payable to him upon his retirement is greater than the amount per annum (in this sub-section referred to as the “original amount per annum”) of that retirement pay that was otherwise payable to him, the person may, within a period of 90 days after the date of commencement of this section or within such further period as the Authority, in special circumstances, allows, elect, under section 24 of the Principal Act as amended by this Act, to commute a portion of his retirement pay but where the person makes an election in pursuance of this sub-section he shall not, in that election, specify an amount that is to be payable to him by virtue of the commutation that exceeds, or that, when aggregated with amounts specified by him in previous elections in pursuance of this sub-section, exceeds, 4 times the difference between the revised amount per annum and the original amount per annum.

Persons may commute certain moneys payable to him by virtue of an election under section 49 of this Act

51. (1) This section applies to a person who—

- (a) was a member of the Defence Force;
- (b) had, before the date of commencement of this section (in this section referred to as the “commencing date”)—
 - (i) retired classified as Class B or Class C under section 30 of the Principal Act and been entitled to invalidity pay; or
 - (ii) been reclassified as Class B having retired classified as Class A; and
- (c) had made an election under section 44 of the *Defence Retirement Benefits Act 1959*, section 28 of the *Defence Forces Retirement Benefits Act 1962* or section 38, 61A or 61B of the *Defence Forces Retirement Benefits Act 1963*.

Transitional provision in relation to section 33 of Principal Act

(2) A person to whom this section applies, or, if he has died before the commencing date, such other person as the Authority thinks appropriate, may, by notice in writing given to the Authority within 90 days after that date, or within such further period as the Authority, in special circumstances, allows, whether or not any election (in this section referred to as a “former election”) has been made before that date under sub-section 33 (3) or (4) of the Principal Act by or in relation to the first-mentioned person, elect that the succeeding provisions of this section apply to and in relation to the first-mentioned person.

(3) Subject to sub-section (5), where—

- (a) an election is made under sub-section (2); and
- (b) the person by whom or in relation to whom the election referred to in paragraph (a) was made is a person by whom or in relation to whom a former election was made,

pension benefit shall be deemed to have been, and to be, payable, in pursuance of that former election, to the person, his widow or his child at

the rate at which it would, from time to time, have been, or be, payable to the person, his widow or his child if sub-section 33 (2A) of the Principal Act as amended by this Act had been in force at the time of the former election.

(4) Subject to sub-section (5), where—

(a) an election is made under sub-section (2); and

(b) the person by whom or in relation to whom the election referred to in paragraph (a) was made is not a person by whom or in relation to whom a former election was made,

pension benefit shall be deemed to have been, and to be, payable to the person, his widow or his child at the rate at which it would, from time to time, have been, or be, payable to the person, his widow or his child if an election under sub-section 33 (3) or (4) of the Principal Act had been made by the person at the time of his retirement or reclassification, as the case requires, and if sub-section 33 (2A) of the Principal Act as amended by this Act had been in force at that time.

(5) Where the Authority so determines, an election under sub-section (2) is of no effect, unless the person making the election pays to the Commonwealth a contribution under this sub-section that the Authority determines as being appropriate in the circumstances or arrangements satisfactory to the Authority are made for the payment of that contribution to the Commonwealth.

NOTES

1. Act No. 161, 1977; assented to 10 November 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. 13, 1977.
3. Act No. 81, 1973, as amended. For previous amendments *see* Act No. 59, 1974; No. 96, 1975; No. 33, 1976; and No. 13, 1977.