



Defence Force Retirement and Death Benefits (Pension Increases) Act 1976

No. 34, 1976

**An Act to make Provision for and in relation to
Increases in Pensions payable to or in respect of
former Members of the Defence Force**

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Defence Force Retirement and Death Benefits (Pension Increases) Act 1976

No. 34, 1976

An Act to make Provision for and in relation to Increases in Pensions payable to or in respect of former Members of the Defence Force

[Assented to 7 May 1976]

The Parliament of Australia enacts:

Defence Force Retirement and Death Benefits (Pension Increases) Act 1976 *No. 34, 1976*

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Part I—Preliminary

1 Short title

This Act may be cited as the *Defence Force Retirement and Death Benefits (Pension Increases) Act 1976*.

2 Commencement

- (1) Subject to subsections (2) and (3), this Act shall come into operation on the day on which it receives the Royal Assent.
- (2) Part II, other than section 16, shall be deemed to have come into operation on 1 July 1973.
- (3) Part III shall be deemed to have come into operation on 1 July 1975.

3 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.

Part II—Increases in certain pensions payable under Defence Forces Retirement Benefits Act

4 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* or that Act as amended and in force at any relevant time.

5 Interpretation

- (1) In this Part, unless the contrary intention appears:

Defence Forces Retirement Benefits Act means the *Defence Forces Retirement Benefits Act 1948*, 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*.

Defence Forces Retirement Benefits Act 1948 means 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.

prescribed year means the year commencing on 1 July 1974 or the year commencing on 1 July 1975.

- (2) Subject to subsection (3), if, at any time, whether before or after the commencement of this section, the Statistician has published in respect of a particular March quarter or June quarter 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 the Commonwealth in substitution for an index number or estimate
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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 Part.

- (3) Notwithstanding subsection (2), if, at any time after the commencement of this section the Statistician changes the reference base for the Consumer Price Index, then, for the purposes of the application of this Part after the change takes place, regard shall be had only to index numbers published in terms of the new reference base.
- (4) If the prescribed percentage for the purposes of section 6 or 7 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.

6 Increase in certain pensions for 1973-74

- (1) Subject to this Part, 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 1973 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 June quarter of the year 1971; and
 - (b) the estimate of the seasonally adjusted average weekly earnings per employed male unit throughout the Commonwealth published by the Statistician in respect of the March quarter of the year 1973 exceeds the estimate of the seasonally adjusted average weekly earnings per employed male unit throughout the Commonwealth published by the Statistician in respect of the June quarter of the year 1971;a person who was in receipt of a pension (other than a pension payable to or in respect of an eligible child) immediately before 1 July 1973 is entitled to an increase, as ascertained in accordance with this section, in the amount of the annual pension that was payable to him immediately before that date.

- (2) The increase provided for by subsection (1) in the amount of the annual pension payable to a person immediately before 1 July 1973, is the prescribed percentage of the non-contributory portion of the amount of the annual pension.
- (3) For the purposes of this section, 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 1973;

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 June quarter of the year 1971;

C is the estimate of the seasonally adjusted average weekly earnings per employed male unit throughout the Commonwealth published by the Statistician in respect of the March quarter of the year 1973; and

D is the estimate of the seasonally adjusted average weekly earnings per employed male unit throughout the Commonwealth published by the Statistician in respect of the June quarter of the year 1971.

7 Increases in certain pensions for 1974-75 and for 1975-76

- (1) Subject to this Part, 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 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 1972; and
 - (b) the estimate of the seasonally adjusted average weekly earnings per employed male unit throughout the
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Commonwealth published by the Statistician in respect of the March quarter of the year immediately preceding that prescribed year exceeds the highest estimate of the seasonally adjusted average weekly earnings per employed male unit throughout the Commonwealth 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 1972;

a person who was in receipt of a pension (other than a pension payable to or in respect of an eligible child) immediately before the commencement of that prescribed year is entitled to an increase, as ascertained in accordance with this section, in the amount of the annual pension that was payable to him immediately before the commencement of that prescribed year.

- (2) The increase provided for by subsection (1) in the amount of the annual pension payable to a person immediately before the commencement of a prescribed year is the prescribed percentage of the non-contributory portion of the amount of the annual pension.
- (3) For the purposes of this section, 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 immediately preceding the prescribed year;

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 1972;

C is the estimate of the seasonally adjusted average weekly earnings per employed male unit throughout the Commonwealth published by the Statistician in respect of the March quarter of the year immediately preceding the prescribed year; and

D is the highest estimate of the seasonally adjusted average weekly earnings per employed male unit throughout the Commonwealth

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 1972.

8 Non-contributory portion of annual pension

- (1) For the purposes of this Part, the non-contributory portion of the amount of annual pension payable to a person at a particular time (in this section referred to as *relevant time*) is:
- (a) in a case to which paragraph (b) does not apply—the amount remaining after deducting from the amount of the annual pension:
 - (i) subject to subparagraphs (ii) and (iii)—an amount equal to the sum of:
 - (A) the amount (if any) by which the amount of the annual pension has been increased by virtue of section 45 of the *Defence Forces Retirement Benefits Act 1948*; and
 - (B) an amount equal to two-sevenths of the amount of the person's contributory pension as ascertained in accordance with subsection (2);
 - (ii) if the pension is payable to a person under section 52 of the *Defence Forces Retirement Benefit Act 1948* and, as a result of the re-classification of the person under section 53 of that Act, his classification at the relevant time is different from his classification upon retirement—an amount equal to two-sevenths of the amount that would have been the amount of his contributory pension if his classification at the time of his retirement had been the same as his classification at the relevant time; or
 - (iii) if a portion of the person's pension had been commuted, or several portions of the person's pension have been commuted, before the relevant time—an amount that bears to an amount equal to two-sevenths of the amount that would have been the amount of his contributory pension if no portion of his pension had been commuted the same proportion as the amount of the annual pension that would have been payable to the person upon the day following the day on which he retired if that portion

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or those portions of his pension had been commuted upon the day on which he retired bears to the pension that was payable to him upon the first-mentioned day; and

- (b) in the case of a pension payable to a person by virtue of that person's being a widow;
 - (i) in the case of a widow whose husband made, and did not revoke, an election under subsection 47 (6) of the *Defence Forces Retirement Benefits Act 1959*—so much of the amount of the annual pension as is equal to one-half of the amount that would have been the non-contributory portion, as ascertained under paragraph (a), of the amount of the annual pension payable to her husband at the relevant time if:
 - (A) in a case to which clause (B) does not apply—he had not died and, in a case where he had commuted a portion of his pension, he had not done so; or
 - (B) in a case where he died before retirement or where pension is, under subsection 57 (3) of the *Defence Forces Retirement Benefits Act 1948*, payable to the widow as if her husband had so died—he had not died but, at the time of his death, had retired on the grounds of invalidity and had been classified as class A under subsection 51(2) of the *Defence Forces Retirement Benefits Act 1948*;
 - (ii) in the case of a widow whose husband made an election under subsection 47(6) of the *Defence Forces Retirement Benefits Act 1959* and an election under section 61A or 61B of the *Defence Forces Retirement Benefits Act 1963* or that Act as amended and in force at any time and, after the date on which the later election took effect, he revoked the former election—the amount remaining after deducting from the amount of the annual pension payable to her at the relevant time an amount equal to:
 - (A) in a case to which clause (B) does not apply—one-half of the amount that, if her husband had not died, and, in a case where he had commuted a portion of his pension, he had not done so,

would, for the purpose of ascertaining the non-contributory portion of the amount of the annual pension payable to him at the relevant time, have been deducted under paragraph (a) from the amount of the annual pension payable to him at that time; and

- (B) in a case where her husband died before retirement or where pension is, under subsection 57(3) of the Defence Forces Retirement Benefits Act, payable to her as if her husband had so died—one-half of the amount that, if her husband had not died but, at the time of his death, had retired on the ground of invalidity and had been classified as class A under subsection 51(2) of the *Defence Forces Retirement Benefits Act 1948*, would, for the purpose of ascertaining the non-contributory portion of the annual pension payable to him at the relevant time, have been deducted under paragraph (a) from the amount of the annual pension payable to him at that time; and
- (iii) in any other case—so much of the amount of the annual pension as is equal to five-eighths of the amount that would have been the non-contributory portion, as ascertained under paragraph (a), of the amount of the annual pension payable to the husband of the widow at the relevant time if:
- (A) in a case to which clause (B) does not apply — he had not died and, in a case where he had commuted a portion of his pension, he had not done so; or
- (B) in a case where he died before retirement or where pension is, under subsection 57(3) of the *Defence Forces Retirement Benefits Act 1948*, payable to the widow as if her husband had so died—he had not died but, at the time of his death, had retired on the grounds of invalidity and had been classified as class A under subsection 51(2) of the *Defence Forces Retirement Benefits Act 1948*.
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- (2) In subsection (1), **contributory pension** in relation to a person referred to in that subsection means:
- (a) if the person made an election under section 61A or 61B of the *Defence Forces Retirement Benefits Act 1963* or that Act as amended and in force at any time—the pension, other than pension payable to him by virtue of section 45 of the *Defence Forces Retirement Benefits Act 1948*, that would have been payable to him on his retirement if the category number that was applicable to him immediately before the election took effect had been the category number applicable to him on his retirement; and
 - (b) in any other case—the pension, other than pension payable to him by virtue of section 45 of the *Defence Forces Retirement Benefits Act 1948*, that was payable to him on his retirement.

9 Application of increase to suspended pensions

Where a pension would, but for its suspension under section 53B of the *Defence Forces Retirement Benefits Act 1948*, be payable to a person immediately before 1 July 1973 or 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 at that time but any increase in that pension by virtue of this Act does not take effect in respect of any part of that period of suspension.

10 Adjustment of first increase under this Part in case of pensions that first became payable on or after 1 October 1971

- (1) Where a person would, but for this section, be entitled to an increase in the amount of the annual pension that was payable to the person immediately before 1 July 1973, and:
- (a) that pension is payable in respect of the retirement or death of a contributor on or after 1 October 1971; or
 - (b) in the case of a pension payable in accordance with section 82ZB of the *Defence Forces Retirement Benefits Act 1948*:
 - (i) if the pension was payable to the person otherwise than as a widow—the pension became payable on or after 1 October 1971; or
 - (ii) if the pension was payable to the person as a widow:
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- (A) if a pension in accordance with that section was not payable to the husband of the person immediately before his death—the pension became payable on or after 1 October 1971; or
- (B) if a pension in accordance with that section was payable to the husband of the person immediately before his death—the pension that was payable to that husband became payable on or after 1 October 1971;

the following provisions of this section have effect.

- (2) Subject to the succeeding provisions of this section, the amount of the increase under section 6 is, by virtue of this subsection, so much only of the amount that, but for this subsection, would have been the amount of the increase under that section as bears to that last-mentioned amount the same proportion as the number of months in the period that commenced on the day after the day on which the retirement or death referred to in paragraph (1)(a) took place, or the pension referred to in subparagraph (1)(b)(i), clause (1)(b)(ii)(A) or clause (1)(b)(ii)(B), as the case may be, became payable, and ended on 30 June 1973, bears to 21.
- (3) If the pension in accordance with section 82ZB of the *Defence Forces Retirement Benefits Act 1948* became payable after 15 June 1973, the person is not entitled to the increase under section 6.
- (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.
- (6) Where:
 - (a) subsection 69 (1A) of the *Defence Forces Retirement Benefits Act 1948* applied to a pensioner on his again becoming a member; and

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(b) that member again retired on a date on or after 1 October 1971, and before 1 October 1972;
the date of retirement of that member for the purposes of this section is the date of his retirement before that subsection applied to him or first applied to him.

11 Adjustment of increase in case of certain pensions that first became payable after previous increase granted under this Part

- (1) Where a person in receipt of a pension payable in accordance with section 82ZB of the *Defence Forces Retirement Benefits Act 1948* would, but for this section, be entitled to an increase in the amount of the annual pension that was payable to the person immediately before the commencement of a prescribed year and:
- (a) if the pension became payable to the person otherwise than as a widow—it became payable on or after 1 July in the year immediately preceding the prescribed year; or
 - (b) if the pension became payable to the person as a widow:
 - (i) in a case where 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 in the year immediately preceding the prescribed year; or
 - (ii) in a case where a pension in accordance with that section was payable to the person's husband immediately before his death—the pension became payable on or after 1 July in the year immediately preceding the prescribed year;
- the following provisions of this section have effect.
- (2) Subject to the succeeding provisions of this section, the amount of the increase under section 7 is, by virtue of this subsection, so much only of the amount that, but for this subsection, would have been the amount of the increase under that section 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 referred to in paragraph (1)(a), subparagraph (1)(b)(i) or subparagraph (1)(b)(ii) became payable, and ended on 30 June of the year immediately preceding the prescribed year, bears to 12.

- (3) If the pension in accordance with section 82ZB of the *Defence Forces Retirement Benefits Act 1948* became payable after 15 June in the year immediately preceding the prescribed year, the person is not entitled to the increase under section 7.
- (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.

12 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*, 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*, 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 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*, the amount of the annual rate of the pension, being a pension

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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.

13 Rate of invalidity pension payable on re-classification

- (1) Where, on or after 1 July 1973, a person to whom pension is payable under section 52 of the *Defence Forces Retirement Benefits Act 1948* and who is entitled to an increase in the rate of his pension under this Part is reclassified under section 53 of that Act, the rate at which pension is payable to him on and after the date (in this section referred to as the *re-classification date*) from which the re-classification has effect is the rate at which pension would have been payable to him upon the date that is the relevant date in relation to the re-classification date if he had been so re-classified with effect from 30 June last preceding the relevant date.
- (2) In this section, a reference to the relevant date, in relation to the date from which the re-classification of a person under section 53 of the *Defence Forces Retirement Benefits Act 1948* has effect, shall be read as a reference:
 - (a) if the re-classification has effect from a date occurring during the year commencing on 1 July 1973—to 1 July 1973;
 - (b) if the re-classification has effect from a date occurring during the year commencing 1 July 1974—to 1 July 1974; or
 - (c) if the re-classification has effect from 1 July 1975 or a later date—to 1 July 1975.

14 Commutation of pensions on or after 1 July 1973

- (1) Section 74 of the *Defence Forces Retirement Benefits Act 1948* 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 1973, 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 an amount as would, upon the date that is the relevant date in relation to the date on which that portion of his

pension is commuted, have been the annual amount of his pension if he had commuted that portion of his pension on 29 June last preceding the relevant date.

- (3) In this section, a reference to the relevant date, in relation to the date on which a portion of a pension is commuted, shall be read as a reference:
- (a) if that portion of the pension is commuted during the year commencing 1 July 1973—to that date;
 - (b) if the re-classification has effect from a date occurring during the year commencing 1 July 1974—to 1 July 1974; or
 - (c) if the re-classification has effect from 1 July 1975 or a later date—to 1 July 1975.

15 Dates of effect of increases

An increase payable by virtue of this Part in the amount of the annual pension that was 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.

16 Certain entitlements under this Part to be substituted for entitlements under other legislation etc.

- (1) In this section, *superseded enactment* means:
- (a) the *Defence Forces Retirement Benefits (Pension Increases) Act 1973*; and
 - (b) Part II of the *Defence Force Retirement and Death Benefits (Pension Increases) Act 1974*.
- (2) Upon the commencement of this section, but subject to subsection (3), there shall be deemed to be substituted for any entitlement (in this subsection referred to as the *superseded pension increase entitlement*) of a person to an increase in the rate of a pension provided for by a superseded enactment, the entitlement to the increase in the rate of that pension that is provided for by the preceding provisions of this Part and that has effect from the day from which the superseded pension increase entitlement had effect.

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- (3) Where an amount of pension that has become payable to a person before the commencement of this section in respect of a period that commenced on or after 1 July 1973 and ended not later than the commencement of this section (whether or not the amount has been paid before the commencement of this section) exceeds the amount that, but for this subsection would be payable to the person in respect of the period by virtue of the operation of subsection (2), the person shall not cease to be entitled to the amount of the excess.

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

17 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* or that Act as amended and in force at any relevant time.

18 Interpretation

- (1) In this Part, unless the contrary intention appears:

Defence Force Retirement and Death Benefits Act means the *Defence Force Retirement and Death Benefits Act 1973* or that Act as amended and in force from time to time.

pension benefit means a pension benefit payable under the Defence Force Retirement and Death Benefits Act.

- (2) For the purposes of this Part, the prescribed percentage is the percentage which 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 1975; and

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 1974.

- (3) If, at any time, whether before or after the commencement of this Part, the Statistician has published in respect of the March quarter of the year 1975 or the March quarter of the year 1974, 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

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publication of the latter index number shall be disregarded for the purpose of this Part.

- (4) If the prescribed percentage for the purposes of this section 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.

19 Increase in certain pension benefits

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 1975 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 1974 a person to whom a pension benefit was payable immediately before 1 July 1975 is entitled to an increase, as ascertained in accordance with section 20 or 21, in the amount of the annual pension benefit that was payable to him immediately before that date.

20 Amount of increase in certain pension benefits

- (1) Where, immediately before 1 July 1975, a pension was payable to a person:
- (a) being a pension benefit that became payable to the person before 1 July 1974; or
 - (b) being a pension benefit that became payable, on or after 1 July 1974, 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 1974;
- this section applies to the person.
- (2) The increase provided for by section 19 in the annual amount of the pension benefit payable to a person to whom this section applies is the prescribed percentage of the annual amount of the pension benefit payable immediately before 1 July 1975 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) and 43(3) of the
Defence Force Retirement and Death Benefits Act is applicable.

**21 Amount of increase in certain pension benefits to which
section 20 does not apply**

(1) Where:

(a) immediately before 1 July 1975, a pension benefit (not being
a pension benefit that became payable after 15 June 1975)
was payable to a person in respect of:

- (i) the retirement, on or after 1 July 1974, of a member of
the scheme; or
- (ii) the death, on or after 1 July 1974, of a member of the
scheme who was a contributing member on 30 June
1974; or

(b) immediately before 1 July 1975, a pension benefit was
payable to a person in accordance with section 78 of the
Defence Force Retirement and Death Benefits Act (not being
a pension benefit that became payable after 15 June 1975)
and:

- (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 1974;
- (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 1974; or
 - (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
1974; 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

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child—the pension benefit became payable on or after 1 July 1974; or

- (B) if a 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 on or after 1 July 1974;

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 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 20 in the annual amount of the pension benefit payable to a person immediately before 1 July 1975 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 1975 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 an amount equal to the annual amount of the pension benefit immediately before 1 July 1975, 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) and 43(3) of the Defence Force Retirement and Death Benefits Act 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.

22 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, have been payable to a person immediately before 1 July 1974 or immediately before 1 July 1975, 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.

23 Rate of invalidity pension benefit payable on re-classification

Where, on or after 1 July 1975, a person to whom pension benefit, being invalidity pay, is payable under the Defence Force Retirement and Death Benefits Act 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 reclassification has effect is the rate at which pension benefit would have been payable to him on 1 July 1975 if he had been so re-classified with effect on and from 30 June 1975.

24 Commutation of pension benefits on or after 1 July 1975

- (1) Section 24 of the Defence Force Retirement and Death Benefits Act 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 1975, 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 is so commuted, the annual amount of his

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pension benefit shall be reduced to such amount as would, on 1 July 1975, have been the annual amount of his pension benefit if:

- (a) he had commuted that portion of his pension benefit on 29 June 1975; and
- (b) in a case where an anniversary of his birth occurs after 30 June 1975 and on or before the date of commutation—he had, on 29 June 1975, attained the age that is his age on the date of commutation.

25 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 the pension pay-day that occurred on 3 July 1975, and in relation to all subsequent instalments.