

**NEW SOUTH WALES RETIREMENT BENEFITS
(AMENDMENT) ACT, 1977**

New South Wales



ANNO VICESIMO SEXTO

ELIZABETHÆ II REGINÆ

Act No. 56, 1977.

An Act to amend the New South Wales Retirement Benefits Act, 1972, so as to provide for the automatic adjustment of pensions payable under that Act, and in certain other respects. [Assented to, 24th June, 1977.]

BE

New South Wales Retirement Benefits (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "New South Wales Retirement Benefits (Amendment) Act, 1977". **Short title.**

2. (1) This section and section 1 shall commence on the date of assent to this Act. **Commencement.**

(2) Section 3 and Schedule 1 shall commence or be deemed to have commenced, as the case may require, on 31st March, 1977.

3. The New South Wales Retirement Benefits Act, 1972, is amended in the manner set forth in Schedule 1. **Amendment of Act No. 70, 1972.**

SCHEDULE 1.

Sec. 3.

AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT BENEFITS ACT, 1972.

(1) (a) Section 1 (2)—

After the matter relating to Part IV, insert :—

PART IVA.—AUTOMATIC ADJUSTMENT OF PENSIONS—ss. 31A–31H.

(b) Section 1 (2)—

From the matter relating to Part IX, omit "72", insert instead "73".

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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(2) Section 27 (6)—

After section 27 (5), insert :—

(6) Subsection (5) does not authorise the commutation of the amount of any increase of pension payable under Part IVA.

(3) Section 29 (7)—

After section 29 (6), insert :—

(7) This section does not authorise the commutation of the amount of any increase of pension payable under Part IVA.

(4) Part IVA—

After Part IV, insert :—

PART IVA.

AUTOMATIC ADJUSTMENT OF PENSIONS.

31A. (1) In this Part, except in so far as the context or subject-matter otherwise indicates or requires—

“adjustment date”, in relation to a year, means the first day of the pension pay period that ends on the first pension pay day in the October that next follows that year;

“adjustment percentage”, in relation to a year, means (subject to section 31B (2)) the percentage for that year, calculated in accordance with section 31B;

Interpre-
tation:
Pt. IVA.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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“Index number”, in relation to a June quarter, means the number for that June quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician under the Census and Statistics Act 1905 of the Parliament of the Commonwealth as amended from time to time or any Act of that Parliament passed in substitution therefor;

“June quarter”, in relation to a year, means the period commencing on and including 1st April in that year and ending on and including 30th June in that year;

“pension” means a pension payable under this Act, but does not include so much of a pension as is referable to an addition to the amount upon which the calculation of the pension is based, as referred to in section 24 (3) (b);

“pensioner” means a person in receipt of a pension;

“quarter”, in relation to a year, means—

- (a) the period commencing on and including 1st July in that year and ending on and including 30th September in that year;
- (b) the period commencing on and including 1st October in that year and ending on and including 31st December in that year;

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SCHEDULE 1—*continued.*AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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- (c) the period commencing on and including 1st January in that year and ending on and including 31st March in that year; or
- (d) the period commencing on and including 1st April in that year and ending on and including 30th June in that year;

“year” means—

- (a) the period commencing on and including 1st July, 1975, and ending on and including 30th June, 1976; or
- (b) a subsequent period commencing on and including 1st July and ending on and including the next following 30th June.

(2) Where a pension is to be adjusted under this Part by reference to the adjustment percentage for a year, a reference (however expressed) in this Part to adjusting the pension is a reference to—

- (a) where the adjustment percentage is calculated in accordance with the formula set out in section 31B (1) (a)—increasing the pension; or
- (b) where the adjustment percentage is calculated in accordance with the formula set out in section 31B (1) (b)—reducing the pension.

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*New South Wales Retirement Benefits (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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31B. (1) For the purposes of the definition of "adjustment percentage" in section 31A (1), the percentage for a year shall be calculated—

Calculation
of adjust-
ment
percentage.

- (a) if the Index number for the June quarter in that year is greater than the Index number for the immediately preceding June quarter—in accordance with the following formula :—

$$P = \frac{100 (C - L)}{L}$$

- (b) if the Index number for the June quarter in that year is less than the Index number for the immediately preceding June quarter—in accordance with the following formula :—

$$P = \frac{100 (L - C)}{L}$$

where—

- P is the percentage to be obtained;
C is the Index number for the June quarter in that year; and
L is the Index number for the immediately preceding June quarter.

(2) Where—

- (a) the percentage calculated for a year in accordance with this section is less than 1.0 per centum; or

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SCHEDULE 1—*continued.*AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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- (b) the Index number for the June quarter in that year is the same as the Index number for the immediately preceding June quarter,

there shall be deemed to be no adjustment percentage for that year.

(3) Where there is deemed to be no adjustment percentage for a year, then, for the purposes of calculating the percentage for the next year—

- (a) the Index number for the June quarter in the firstmentioned year shall be deemed not to have been published; and
- (b) the Index number for that quarter shall be deemed to be the same as the Index number for the June quarter in the last year for which there was an adjustment percentage.

(4) If at any time, whether before or after the commencement of this Part, the Australian Statistician has published in respect of a particular June quarter an Index number in substitution for an Index number previously published by him in respect of that quarter—

- (a) except as provided in paragraph (b)—the publication of the later Index number shall be disregarded; or

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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- (b) if the Minister so directs—regard shall, after the direction is given, be had to the later and not to the earlier Index number,

for the purposes of this Part.

(5) Notwithstanding subsection (4), if at any time after the commencement of this Part the Australian Statistician changes the reference base for the Consumer Price Index (All Groups Index) for Sydney, 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.

31c. (1) Subject to this Act, where there is an adjustment percentage for a year (in this section referred to as “the particular year”), the pension payable on the adjustment date for that year to a person to whom this section applies is hereby adjusted, on and from that adjustment date, by that percentage.

Adjustment of pensions: general cases.

(2) This section applies to—

- (a) a person who last became a pensioner on or before 1st July in the particular year; and
- (b) a person who was the spouse of a pensioner immediately before the pensioner’s death, where the pensioner last became a pensioner on or before 1st July in the particular year and died before the adjustment date for that year.

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New South Wales Retirement Benefits (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
BENEFITS ACT, 1972—*continued.*

(3) A reference in subsection (1) to a pension payable to a person includes a reference to the pension that would have been payable to him had section 59A not been enacted.

Adjustment
of pensions:
partial
adjustment.

31D. (1) Subject to this Act, where there is an adjustment percentage for a year (in this section referred to as "the particular year"), the pension payable on the adjustment date for that year to a person to whom this section applies is hereby adjusted, on and from that adjustment date, by the percentage calculated in accordance with the formula set out in subsection (3).

(2) This section applies to—

- (a) a person who last became a pensioner after 1st July in the particular year but on or before 1st April in that year; and
- (b) a person who was the spouse of a pensioner immediately before the pensioner's death, where the pensioner last became a pensioner after 1st July in the particular year but on or before 1st April in that year and died before the adjustment date for that year,

but does not apply to a person to whom section 31C applies.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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(3) The formula referred to in subsection (1) is—

$$A = P \times \frac{Q}{4}$$

where—

- A is the percentage by which the pension is to be adjusted;
- P is the adjustment percentage for the particular year; and
- Q is the number of whole quarters of the particular year, being whole quarters after, and (if applicable) the whole quarter on the first day of which—
- (a) in the case of a person referred to in subsection (2) (a)—the person last became a pensioner; or
 - (b) in the case of a person referred to in subsection (2) (b)—the person's late pensioner spouse last became a pensioner.

(4) A reference in subsection (1) to a pension payable to a person includes a reference to the pension that would have been payable to him had section 59A not been enacted.

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New South Wales Retirement Benefits (Amendment).

 SCHEDULE 1—*continued.*

 AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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Special provisions applicable to certain classes of pensions.

31E. (1) In this section, “special pension” means a pension payable under section 26 (7) (b) or (d), section 27 (2) (b) or (d) or section 29 (2) (a) (ii).

(2) For the purposes of this section—

- (a) a person in receipt of a special pension shall be deemed also to be in receipt of a notional pension;
- (b) that notional pension is the pension that, in the opinion of the Board, would be payable if that person’s pension had always been payable under section 26 (7) (a) or (c), section 27 (2) (a) or (c) or section 29 (2) (a) (i), as the case may require; and
- (c) that notional pension shall be deemed to be adjusted under this Part as if it were the pension actually payable to that person.

(3) Notwithstanding anything in this Part, where a person’s notional pension is deemed to be adjusted by an amount, his special pension shall be adjusted by that amount, instead of by any other amount.

(4) Nothing in subsection (3) affects the operation of the provisions of section 26 (7) (b) or (d), section 27 (2) (b) or (d) or section 29 (2) (a) (ii) in so far as they provide for the increase of a special pension.

SCHEDULE

*New South Wales Retirement Benefits (Amendment).*SCHEDULE 1—*continued.*AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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31F. Notwithstanding anything in this Part—

Minimum
amount to
which
pensions
may be
reduced.

- (a) a pension (other than a pension payable to a person by virtue of the person's being the spouse of a pensioner) shall not be reduced below the fortnightly amount that would, if this Part had not been enacted, have been payable; and
- (b) a pension payable to a person by virtue of the person's being the spouse of a pensioner shall not be reduced below the fortnightly amount that would have been payable by reference to the pension that would, if this Part had not been enacted, have been payable to the late pensioner.

31G. (1) Where, by virtue of there being an adjustment percentage for a year, an increased pension is payable to a pensioner or to the spouse of a deceased pensioner or contributor, the employer in whose service the pensioner or deceased pensioner was employed at the date of his retirement, or in whose service the contributor was employed at the date of his death, shall pay to the Board at such intervals as may be determined by the Board and on the requisition of the Board, an amount equal to the difference between the amount of the increased pension and the amount of pension that would have been payable had there been no adjustment percentage for that year.

Additional
payment
by
employer.

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SCHEDULE 1—*continued.*

AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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(2) The provisions of section 32 (3), (4) and (5) apply to and in respect of any payment required by subsection (1) to be made to the Board in the same way as they apply to and in respect of any payment required by section 32 (2) to be made to the Board.

Calculation
of per-
centages.

31H. Where a percentage that is to be calculated under this Part is or includes a fraction of one-tenth of one 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.

(5) (a) Section 32 (2) (f)—

After “26 (7)”, insert “, 27 or 29”.

(b) Section 32 (2) (f)—

After “26 (8)”, insert “, 27 (4) or 29 (4), as the case may be,”.

(c) Section 32 (6)—

After section 32 (5), insert :—

(6) A reference in subsection (2) (f) to a pension does not include the amount of any increase payable under Part IVA.

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SCHEDULE 1—*continued.*AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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(6) Section 59A—

After section 59, insert :—

59A. (1) Notwithstanding anything in this Act, where a person entitled to receive a pension payable under this Act (including any increase payable under Part IVA) would, in the opinion of the Board, thereby be prejudicially affected in respect of any benefits otherwise receivable by that person, the amount of pension payable shall be such lesser amount than that provided for under this Act as the Board from time to time determines.

Suspension
of part of
pension in
certain
circum-
stances.

(2) Where the Board, under subsection (1), reduces the amount of an increase payable under Part IVA, the amount of the increase as determined by the Board shall be payable in respect of such periods or at such times by way of lump sum or otherwise as the Board from time to time determines.

(3) A part of a pension that is not paid because of the Board's determination under subsection (1) shall, in calculating a pension payable to a person by virtue of that person's being the spouse of a pensioner, be taken into account as if it had been payable.

(7) Section 73—

After section 72, insert :—

73. (1) A person in receipt of a pension under—
(a) section 26 (7) (b) may elect to convert his pension to a pension under section 26 (7) (a);

Election
to convert
certain
pensions
in 1977.

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New South Wales Retirement Benefits (Amendment).

SCHEDULE 1—*continued.*AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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- (b) section 26 (7) (d) may elect to convert his pension to a pension under section 26 (7) (c); or
- (c) section 29 (2) (a) (ii) may elect to convert her pension to a pension under section 29 (2) (a) (i).

(2) An election under subsection (1) may only be made during a period determined by the Minister and specified in the Gazette.

(3) Only one period may be determined under subsection (2), and the period shall—

- (a) commence before 1st May, 1977;
- (b) end before 1st August, 1977; and
- (c) be not less than 2 months in length.

(4) The pension payable to a person consequent on an election under subsection (1) taking effect is the amount that, in the opinion of the Board, is the pension that would be payable if—

- (a) the pension; and
- (b) where the pension is calculated by reference to the pension payable to that person's deceased spouse—the lastmentioned pension,

had always been payable under section 26 (7) (a) or (c) or section 29 (2) (a) (i), as the case may require.

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New South Wales Retirement Benefits (Amendment).

SCHEDULE 1—*continued.*

AMENDMENTS TO THE NEW SOUTH WALES RETIREMENT
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(5) Any necessary adjustment shall be made in the amount of pension payable for any period before, as well as after, an election under subsection (1) to convert the pension takes effect.
