

Western Australia

Judges' Salaries and Pensions Act 1950

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Judges' Salaries and Pensions Act 1950

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Judges' Salaries and Pensions Act 1950

An Act relating to salaries and pensions for Judges of the Supreme Court of Western Australia and to make provision for the families of such Judges and for other purposes.

1. Short title

This Act may be cited as the *Judges' Salaries and Pensions Act 1950*¹.

2. Interpretation

(1) In this Act, unless the contrary intention appears —

“actuary” means a Fellow or Accredited Member of The Institute of Actuaries of Australia;

“commencement of the 1987 Act” means the day on which the *Judges' Salaries and Pensions Amendment Act 1987* comes into operation¹;

“current judicial salary”, in relation to a Judge who has retired or died, means salary, including any allowance of an annual nature, at the rate that —

- (a) would be payable to the Judge if he had not retired or died; or
- (b) is determined under subsection (2);

“final salary” means salary at the rate payable (whether under this Act or the *Salaries and Allowances Act 1975*) to a Judge immediately prior to his retirement or to his death before retirement, as the case may be, including any allowance of an annual nature payable to him at that time;

“**Index**” means the Consumer Price Index number (All Groups Index) for Perth published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth;

“**Judge**” means a Judge to whom this Act applies;

“**retirement**” includes resignation from office;

“**Senior Puisne Judge**” means the senior Judge of the Supreme Court who is neither the Chief Justice of Western Australia, the President of the Court of Appeal nor a judge of appeal;

“**spouse or de facto partner**”, in relation to a Judge or former Judge who has died means —

(a) the widow or widower of the Judge or former Judge;
or

(b) a person who, at the time of the death of the Judge or former Judge, was a de facto partner of the Judge or former Judge.

(2) If a pensionable office is abolished, the Minister shall, for the purposes of the definition of “current judicial salary”, determine the rate of salary that shall apply to the calculation of a pension under this Act.

(3) For the purposes of a pension under this Act —

(a) length of service in a pensionable office is the total period of service in that office and in another pensionable office or other pensionable offices to the extent that the total period of service in all such offices, whether before or after the commencement of the 1987 Act, was continuous or the Minister certifies that it was substantially continuous; and

(b) prior service —

(i) as a judge of a court of the Commonwealth or of another State or a Territory (not being service as a justice of the peace or a magistrate); or

(ii) in an office of the Commonwealth or of another State or a Territory (other than the office of a

judge referred to in subparagraph (i)), the holder of which office qualifies for a pension of the same kind as that for which a person serving as such a judge qualifies,

is service as a Judge.

- (4) In subsections (2) and (3) “**pensionable office**” means an office that is pensionable —
- (a) under this Act; or
 - (b) under this Act as applied by another written law.

[Section 2 amended by No. 13 of 1973 s. 2; No. 108 of 1975 s. 3; No. 125 of 1976 s. 4; No. 82 of 1987 s. 4; No. 12 of 1989 s. 4; No. 62 of 1990 s. 4; No. 28 of 2003 s. 94; No. 65 of 2003 s. 99; No. 45 of 2004 s. 35(2).]

3. **Judges to whom Act applies**

This Act shall apply to the Chief Justice of Western Australia, the President of the Court of Appeal and all other Judges of the Supreme Court of Western Australia appointed or to be appointed under section 7A of the *Supreme Court Act 1935*.

[Section 3 amended by No. 2 of 1960 s. 2; No. 45 of 2004 s. 35(3).]

4. **Amendments of Acts**

The Acts specified in the first column of the First Schedule are amended as respectively specified in the second column of the First Schedule and as so amended may be cited as respectively specified in the third column of the First Schedule.

[Section 4 amended by No. 108 of 1975 s. 4.]

5. **Judges' salaries**

- (1) The rate of the annual salary payable to a Judge while his commission remains in force shall be determined from time to

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time under section 7 of the *Salaries and Allowances Act 1975* but —

- (a) the rate of the annual salary payable to the President of the Court of Appeal shall not exceed that payable to the Chief Justice of Western Australia;
 - (b) the rate of the annual salary payable to the senior judge of appeal, other than the Chief Justice of Western Australia and the President of the Court of Appeal, shall not exceed that payable to the Senior Puisne Judge.
- (1a) A Judge who is appointed to act in the office of Chief Justice under section 10(3) of the *Supreme Court Act 1935* shall be entitled, for so long as his commission remains in force, to be remunerated and to receive other allowances and reimbursements as if he had been appointed substantively to the office of Chief Justice under section 7A(5) of the *Supreme Court Act 1935*.
- (1aa) A judge of appeal who is appointed to act in the office of President under section 10A(3) of the *Supreme Court Act 1935* shall be entitled, for so long as his commission remains in force, to be remunerated and to receive other allowances and reimbursements as if he had been appointed substantively to the office of President under section 7A(6) of the *Supreme Court Act 1935*.
- (1b) The rate of the annual salary payable to a person —
- (a) who is an auxiliary Judge; and
 - (b) who is receiving a non-contributory pension under this Act or any other Act, or under a law of the Commonwealth or of another State or a Territory,
- shall be the difference between the rate of that pension and the rate of the annual salary payable under subsection (1)(c) to that person, in lieu of the full amount of that rate of salary.
- (1c) For the purposes of the provisions of this Act relating to pensions, the salary of any Judge retiring after

24 December 1954, and before 1 December 1955, shall be deemed to be \$6 800.

- (1d) For the purposes of the provisions of this Act relating to pensions, the salary of any Judge who retired after 27 February 1959, and before 30 June 1959, shall be deemed to be \$10 500.
- (2) Such salaries are hereby charged on the Consolidated Account and such Account, to the extent required for the payment thereof, is hereby permanently appropriated.
- (3) Subject to section 7 of the *Salaries and Allowances Act 1975*, Judges shall be entitled to such travelling and other allowances or reimbursements as the Governor may from time to time approve.
- (4) A person who holds more than one office under the *Supreme Court Act 1935* is entitled to the rate of annual salary of only one of those offices.
- (5) If a Judge is appointed to be also a judge of appeal and as a result ceases to be the Senior Puisne Judge, he is entitled to retain the rate of annual salary of the Senior Puisne Judge if that rate is higher than his rate of annual salary as a judge of appeal.

[Section 5 amended by No. 70 of 1953 s. 2; No. 57 of 1955 s. 2; No. 13 of 1959 s. 2; No. 32 of 1962 s. 5; No. 47 of 1964 s. 2; No. 30 of 1966 s. 2; No. 26 of 1969 s. 2; No. 99 of 1970 s. 2; No. 91 of 1972 s. 4; No. 23 of 1974 s. 4; No. 45 of 1975 s. 4; No. 108 of 1975 s. 5; No. 7 of 1982 s. 6; No. 12 of 1989 s. 5; No. 6 of 1993 s. 11; No. 23 of 1997 s. 14; No. 45 of 2004 s. 35(4)-(7); No. 77 of 2006 s. 4 and 5(2).]

6. Pensions of Judges

- (1) Where a Judge who has attained the age of 60 years retires, before the commencement of the 1987 Act, after serving as a Judge for not less than 10 years, he is entitled to a pension at a rate equal to 50% of his final salary.

- (2) Where a Judge, not being a Judge to whom subsection (1) applies, retires before the commencement of the 1987 Act and the Minister certifies that his retirement is due to permanent disability or infirmity, he is entitled —
- (a) if his retirement occurs before he has completed 6 years' service as a Judge to a pension at a rate equal to 40% of his final salary; or
 - (b) in any other case, to a pension at a rate equal to 40% of his final salary at an additional rate equal to 2% of his final salary for each complete year of his service as a Judge in excess of 5 years of such service, but so that the rate of his pension shall not exceed 50% of his final salary.
- (2a) Where a Judge who has attained the age of 60 years retires, on or after the commencement of the 1987 Act, after serving as a Judge for not less than 10 years, he is entitled to a pension at a rate equal to 60% of the current judicial salary.
- (2aa) Where a Judge who has attained the age of 55 years but has not attained the age of 60 years retires, on or after the commencement of the *Judges' Salaries and Pensions Amendment Act 1990*¹, after serving as a Judge for not less than 10 years, he is entitled to a pension —
- (a) at a rate equal to 50% of the current judicial salary; and
 - (b) at an additional rate equal to 2% of the current judicial salary for each year by which his age exceeds 55 years,
- but so that the rate of his pension shall not exceed 60% of the current judicial salary.
- (2b) Where a Judge, not being a Judge to whom subsection (2a) or (2aa) applies, retires on or after the commencement of the 1987 Act and the Minister certifies that his retirement is due to permanent disability or infirmity, he is entitled —

- (a) if his retirement occurs before he has completed 6 years' service as a Judge to a pension at a rate equal to 50% of the current judicial salary; or
 - (b) in any other case, to a pension at a rate equal to 50% of the current judicial salary and at an additional rate equal to 2% of the current judicial salary for each complete year of his service as a Judge in excess of 5 years of such service, but so that the rate of his pension shall not exceed 60% of the current judicial salary.
- (2c) Unless the Governor decides otherwise no pension is payable under this section to a Judge who has been removed under section 55 of the *Constitution Act 1889*, or section 9 of the *Supreme Court Act 1935*.
- (3) Subject to subsection (3a), if a person entitled to receive, or in receipt of, a pension under this Act —
- (a) holds any judicial office under the Crown in right of Western Australia, of the Commonwealth or of another State or a Territory for which he is remunerated out of the moneys of the Crown, then the pension otherwise receivable under this Act by that person shall be reduced by an amount equal to the amount of the salary remuneration received by that person in respect of that judicial office;
 - (b) is in receipt of a pension received by that person by reason of having held the office of a judge within the meaning of section 2(3)(b)(i) (in this paragraph referred to as “**the other judicial pension**”), then the pension otherwise receivable under this Act by that person shall be reduced by an amount equal to the amount of the other judicial pension; or
 - (c) is in receipt of any pension under the *Superannuation and Family Benefits Act 1938*² received by that person by reason of having been a contributor within the meaning of that Act, then the pension otherwise receivable under this Act by that person shall be reduced by an amount equal to

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the State share of his pension payable in respect of service as an employee within the meaning of that Act³.

- (3a) If a person entitled to receive, or in receipt of, a pension under this Act holds the office of auxiliary Judge, then, while that person holds that office, subsection (3) does not apply to or in relation to that person in respect of that office.
- (3b) Service as an auxiliary Judge does not constitute service as a Judge for the purposes of this section.
- (3c) In subsections (3a) and (3b) —
“auxiliary Judge” means auxiliary Judge referred to in section 11AA of the *Supreme Court Act 1935*.
- (4) In subsection (3)(c) —
“State share of his pension” has the meaning given by the definition of that expression in section 80(4)⁴ of the *Superannuation and Family Benefits Act 1938*², references in that definition to a “pensioner” and “the pensioner” being construed as references to the person referred to in subsection (3)(c)³.

[Section 6 inserted by No. 45 of 1961 s. 2; amended by No. 99 of 1970 s. 3; No. 13 of 1973 s. 3; No. 35 of 1979 s. 3; No. 82 of 1987 s. 5; No. 12 of 1989 s. 6; No. 62 of 1990 s. 5; No. 23 of 1997 s. 15; No. 65 of 2003 s. 100.]

7. Derivative pensions

- (1) The Second Schedule sets out the pensions and allowances payable under this Act to and in respect of spouses, de facto partners and children of Judges and retired Judges.
- (2) A person is eligible to receive a pension or allowance under the Second Schedule whether the circumstances or events which gave rise to the eligibility occurred before, on, or after the date on which the Second Schedule comes into operation.

- (3) A pension is not payable under this Act to a de facto partner of a Judge or former Judge who died before the commencement of this subsection.

[Section 7 inserted by No. 108 of 1975 s. 6; amended by No. 125 of 1976 s. 5; No. 35 of 1979 s. 4; No. 28 of 2003 s. 95.]

[8. Repealed by No. 108 of 1975 s. 7.]

8A. Pension of spouse or de facto partner in receipt of another pension reducible by the State share of pension³

Where a spouse or de facto partner is entitled to receive or is in receipt of —

- (a) a pension under this Act as the spouse or de facto partner of a Judge or retired Judge;
- (b) a pension under the *Superannuation and Family Benefits Act 1938*², by reason of being the spouse or de facto partner of a Judge who was at some time a contributor under that Act,

then the first mentioned pension shall be reduced by such proportion of the pension under the *Superannuation and Family Benefits Act 1938*², as is verified by the Board under that Act to be equivalent to the amount paid or payable to the Fund under that Act by the State or a Department under that Act in respect of the last mentioned pension.

[Section 8A inserted by No. 99 of 1970 s. 5; amended by No. 108 of 1975 s. 8; No. 28 of 2003 s. 96.]

8B. Annual adjustment of pensions

- (1) Subject to this section, every pension payable under this Act shall be increased in each year, commencing with the year 1976, with effect on and from 1 January in that year by the percentage by which the Index for the quarter ending on the immediately preceding 31 December is greater than the Index for the quarter ending on the penultimate preceding 31 December.

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- (2) The following provisions apply to and in relation to the first increase of a pension pursuant to this section if, on 1 January in the year in which the increase is to be made, or would, but for paragraph (a) be made the pension has been in force for less than 12 months, namely —
- (a) in the case of a pension which first becomes payable after 1 October in any year, the first increase of that pension shall be made so as to operate from 1 January in the second year after the year in which the pension first became payable; and
 - (b) in the case of a pension which first becomes payable on or before 1 October in any year, the first increase in that pension shall be made so as to operate from 1 January in the year next after the year in which the pension first becomes payable, and the annual amount by which the pension is to be increased shall be calculated in accordance with the prescribed formula.

- (3) For the purposes of subsection (2)(b), the prescribed formula is the formula —

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

where —

- P represents the annual amount referred to in that paragraph;
- A represents the amount by which, but for the operation of that subsection, the pension would have been increased; and
- Q represents the number of whole quarters (ending on 30 June, 30 September and 31 December) within the period commencing on the day on which the pension became payable and ending on the following 31 December, for which the pension was payable.

- (4) If, in any year, the Index for the quarter ending on the immediately preceding 31 December is less than the Index for the quarter ending on the penultimate preceding 31 December, no increase shall be made in pensions for that year, and the percentage by which the first-mentioned Index is less than the second-mentioned Index shall first be taken into account before any subsequent adjustments of pensions are made pursuant to this section.

[(5) repealed]

- (6) This section does not apply to —
- (a) the pension of a Judge who retires on or after the commencement of the 1987 Act or to a pension payable under the Second Schedule to the spouse or de facto partner of such a Judge or in respect of any eligible child of such a Judge; or
 - (b) a pension payable under the Second Schedule to the spouse or de facto partner, or in respect of any eligible child, of a Judge who dies prior to retiring and after the commencement of the 1987 Act.

[Section 8B inserted by No. 108 of 1975 s. 9; amended by No. 82 of 1987 s. 6; No. 28 of 2003 s. 97; No. 65 of 2003 s. 101.]

[9, 10. Repealed by No. 108 of 1975 s. 10.]

11. Payment of pensions and allowances

The pensions and allowances payable under or by virtue of this Act —

- (a) shall grow due from day to day; and

- (b) shall be payable monthly, or at such other frequency as is agreed between the Minister and the person entitled to the pension, and charged to the Consolidated Account which is, to the necessary extent, hereby appropriated accordingly.

[Section 11 amended by No. 6 of 1993 s. 11; No. 49 of 1996 s. 64; No. 65 of 2003 s. 102; No. 77 of 2006 s. 4.]

12. Application of pensions provisions

- (1) The provisions of sections 6 to 11 (inclusive) shall apply to and in relation to every Judge who is appointed after the commencement of this Act.
- (2) The provisions of sections 6 to 11 (inclusive) shall not apply to or in relation to any Judge who is serving as a Judge at the date of the commencement of this Act unless, by notice in writing to the Minister within 6 months after the commencement of this Act, he elects to come within the application of those provisions.
- (3) A Judge to and in relation to whom the provisions of sections 6 to 11 (inclusive) apply by virtue of an election in pursuance of the last preceding subsection shall, as on and from the date of his election, have the rights and benefits provided by those provisions in substitution for any right to pension to which he would have been entitled under any provision of an Act specified in the first column of the First Schedule if the Act so specified had not been amended as provided in this Act.
- (4) A Judge who is serving as such at the date of the commencement of this Act and who does not make an election in pursuance of subsection (2) shall retain any right to pension to which he was entitled, immediately prior to the commencement of this Act, under any provision of an Act specified in the first column of the First Schedule, and that provision shall continue to apply to and in relation to that Judge as if the Act so specified had not been amended as provided in this Act.

[Section 12 amended by No. 35 of 1979 s. 5.]

12A. Commencement of service and payment of salary of acting Judge appointed Judge

- (1) For the purposes of the provisions of this Act relating to pensions, any person —
- (a) who has been appointed an acting Judge under the provisions of section 11 of the *Supreme Court Act 1935*; and
 - (b) who while holding the office under that appointment is appointed a Judge,

shall be deemed to have been appointed a Judge on and from the date of the first-mentioned appointment.

- (2) On and from 1 July 1960, the provisions of section 5 apply to the salary and any adjustment thereto, of a person who before 4 March in that year was so appointed an acting Judge and who while holding that office is appointed a Judge before 31 December in that year.

[Section 12A inserted by No. 2 of 1960 s. 3.]

[13. Repealed by No. 12 of 1989 s. 7.]

[14. Repealed by No. 65 of 2003 s. 103.]

15. Pensions not payable if Judge practises as a barrister

- (1) Subject to this section, if any person who may be entitled to or be in receipt of a pension by virtue of this Act shall practise as a barrister, solicitor or proctor in Western Australia, or in any other part of Her Majesty's Dominions, his right to such pension shall be forfeited and the pension, if already granted, shall cease to be payable.
- (2) The Governor may in writing exempt a person who is entitled to or in receipt of a pension by virtue of this Act from the application of subsection (1) in respect of any circumstances, matter or purpose specified in that exemption.

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- (3) Subsection (1) does not apply to or in relation to a person exempted under subsection (2) in respect of the circumstances, matter or purpose specified in that exemption.

[Section 15 amended by No. 2 of 1960 s. 5; No. 12 of 1989 s. 8.]

16. Commutation of pension to meet surcharge debt

- (1) A retired Judge who —
- (a) is in receipt of a pension under this Act; and
 - (b) is liable to pay a surcharge as a result of becoming entitled to that pension,

may commute part of the pension for the purpose of paying all or part of the surcharge.

- (2) If a surcharge becomes payable from the estate of a deceased Judge or retired Judge, a person who is in receipt of a pension under section 7 as a result of the Judge's or retired Judge's death may commute part of the pension for the purpose of paying all or part of the surcharge on behalf of the executor or administrator of the estate.
- (3) A person wanting to commute a pension under subsection (1) or (2) is to give to the Minister a notice to that effect, setting out the amount of the lump sum benefit that the person wants to be paid (the "**requested amount**"), which cannot be more than the surcharge.
- (4) On receipt of a notice under subsection (3) the Minister is to give to the person a notice setting out the amount by which the person's pension would be reduced under subsection (6)(b) if the commutation was effected on the day on which the Minister gives the notice.
- (5) If, after receiving the Minister's notice, the person wants to proceed with the commutation, the person is to give to the Minister a notice to that effect.
- (6) On receipt by the Minister of a notice under subsection (5) —

-
- (a) the person becomes entitled to a lump sum benefit of an amount equal to the requested amount; and
 - (b) the person's pension (as at the date of that receipt) is reduced to an amount determined by the Minister, on the advice of an actuary, to be actuarially equivalent to the value of the pension before the application of this section, reduced by the requested amount.
- (7) A notice given to the Minister for the purposes of this section is to be —
- (a) made in the form and manner, and given within the period, determined by the Minister; and
 - (b) accompanied by such information as is determined by the Minister.
- (8) In this section —
- “surcharge”** means an amount payable to the Commissioner of Taxation under the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth or any other Act of the Commonwealth prescribed for the purposes of this definition.

[Section 16 inserted by No. 65 of 2003 s. 104.]

17. Benefit if no pension payable

- (1) If a Judge ceases to hold office as a Judge (other than as a result of the death of the Judge) but does not become entitled to a pension under this Act, the Judge is entitled to —
 - (a) if the Judge is under 55 years of age, a preserved benefit; or
 - (b) otherwise, payment of a lump sum benefit,of an amount determined under subsection (3).
- (2) If a Judge who does not have a spouse or de facto partner dies while still in office a lump sum benefit of an amount determined

- under subsection (3) is to be paid to the executor or administrator of the Judge's estate.
- (3) The amount of the lump sum benefit is the amount determined by the Minister on the advice of an actuary to be —
- (a) the minimum benefit required for the State not to incur an individual superannuation guarantee shortfall in respect of the Judge; less
 - (b) the employer sponsored component of any benefit —
 - (i) to which the Judge is entitled as a result of ceasing to hold office as a Judge; or
 - (ii) payable as a result of the death of the Judge, (as the case requires) from any other superannuation scheme to which the State contributed in respect of the Judge while he or she was a Judge.
- (4) A preserved benefit to which a Judge is entitled under subsection (1)(b) is to be dealt with in accordance with the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth as if —
- (a) the benefit were a preserved benefit in a regulated superannuation fund (within the meaning of that Act); and
 - (b) the preservation age for the Judge was 55 years (or such greater age as is prescribed).
- (5) If a Judge who is entitled to a benefit under subsection (1) dies before it is paid, the benefit is to be paid to the executor or administrator of the Judge's estate.
- (6) Benefits payable under this section are to be charged to the Consolidated Account which is, to the necessary extent, appropriated accordingly.
- (7) The Governor may make regulations prescribing an age greater than 55 years for the purposes of subsection (4)(b).
- (8) In subsection (3) —

“individual superannuation guarantee shortfall” has the meaning given by section 17 of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

[Section 17 inserted by No. 65 of 2003 s. 104; amended by No. 77 of 2006 s. 4.]

18. Conversion of lump sum to meet surcharge debt

- (1) A Judge who becomes entitled to a lump sum benefit under section 17 and is liable to pay a surcharge as a result of becoming entitled to that benefit may —
 - (a) convert all or part of the benefit into a commutable pension; and
 - (b) fully commute that pension.
- (2) A Judge wanting to convert a benefit under subsection (1) is to give to the Minister a notice to that effect, setting out the amount that the Judge wants to be paid in the form of the commuted pension (the **“requested amount”**), which cannot be more than the surcharge.
- (3) On receipt by the Minister of a notice under subsection (2) —
 - (a) the benefit to which the Judge is entitled under section 17 is reduced by the amount of the requested amount;
 - (b) the Judge becomes entitled to a pension of an amount calculated to be actuarially equivalent to a lump sum benefit of the requested amount; and
 - (c) that pension is commuted into, and the Judge becomes entitled to, a lump sum of the amount of the requested amount.
- (4) In this section —
“surcharge” has the same meaning as in section 16.

[Section 18 inserted by No. 65 of 2003 s. 104.]

19. Administration costs

The costs of administering sections 6 to 17 are to be charged to the Consolidated Account which is, to the necessary extent, appropriated accordingly.

[Section 19 inserted by No. 65 of 2003 s. 104; amended by No. 77 of 2006 s. 4.]

First Schedule

[section 4]

First Column	Second Column	Third Column
<i>Acts Amendment (Increase in number of Judges of the Supreme Court) Act 1949.</i>	Delete from section one the words "a day to be fixed by proclamation after the King's approval thereto has been proclaimed in the State," and substitute the words "the twenty-fourth day of September, 1949."	<i>Acts Amendment (Increase in number of Judges of the Supreme Court) Act 1949-1950.</i>
<i>Constitution Act 1889.</i>	Section fifty-six is repealed.	<i>Constitution Act 1889-1950.</i>
<i>Constitution Acts Amendment Act 1899-1950.</i>	Delete from the Fourth Schedule the words and figures following: — Chief Justice . . . 2 600 First Puisne Judge 2 300 Second Puisne Judge 2 300 Third Puisne Judge 2 300 Fourth Puisne Judge 2 300	<i>Constitution Acts Amendment Act 1899-1950.</i>
<i>Supreme Court Act 1935-1949.</i>	Sections thirteen and fourteen are repealed.	<i>Supreme Court Act 1935-1950.</i>
<i>Judges' Retirement Act 1937.</i>	Section four is repealed.	<i>Judges' Retirement Act 1937-1950.</i>

[First Schedule amended by No. 57 of 1955 s. 3; No. 108 of 1975 s. 11; No. 35 of 1979 s. 7.]

Second Schedule

Second Schedule

Part I — Pensions for spouses and de facto partners

[Heading inserted by No. 28 of 2003 s. 99.]

1. Pension on death of Judge in office

If a Judge dies and is survived by a spouse or de facto partner, the spouse or de facto partner is entitled to a pension of an amount equal to —

- (a) if the Judge died before 1 December 1987, 62.5% of the pension to which the Judge would have been entitled under section 6(2) if the Judge had retired on the day the Judge dies; or
- (b) if the Judge died on or after 1 December 1987, 37.5% of current judicial salary.

[Clause 1 inserted by No. 28 of 2003 s. 99.]

2. Pension on death of retired Judge

If a former Judge dies after retiring and is survived by a spouse or de facto partner, the spouse or de facto partner is entitled to a pension of an amount equal to —

- (a) if the former Judge retired before 1 December 1987, 62.5% of the pension which the former Judge was receiving before death; or
- (b) if the former Judge retired on or after 1 December 1987, 62.5% of the pension which would have been payable to the former Judge if the former Judge had not died.

[Clause 2 inserted by No. 28 of 2003 s. 99.]

3. Payment of pension

- (1) Subject to subclause (2), a pension under this Part is payable from the day after the Judge died.
- (2) If a person entitled to a pension under clause 2 —
 - (a) was not the former Judge's spouse or de facto partner when the former Judge retired; and

- (b) has not attained the age of 55 years on the day the former Judge died,
- the pension is payable from —
- (c) the day on which the person attains the age of 55 years; or
 - (d) such earlier day as the Minister considers appropriate in the circumstances.
- (3) A pension under this Part is payable until the death of the person to whom it is payable.

[Clause 3 inserted by No. 28 of 2003 s. 99.]

Part II

Children's allowances

Eligibility and Rate of Benefit, etc.

Division A

Application of this Division

This Division applies where the death of a Judge or former Judge occurs before the commencement of the 1987 Act.

Item 1:

- (1) Subject to the following, upon the death of a Judge or of a former Judge who was in receipt of pension under this Act, an allowance of \$8.00 per week is payable in respect of each of his children who was at that time wholly or substantially dependent upon the Judge or former Judge.
- (2) Allowance is payable under this item only during any period when the child —
 - (a) is wholly or substantially dependent upon the surviving parent or other person having the care of the child; and
 - (b) is under the age of 16 years or is a student child under the age of 25 years.

Second Schedule

Item 2:

- (1) Subject to the following, an allowance at the rate fixed by sub-item (2) is payable in respect of the child of a Judge or of a former Judge who was in receipt of pension under this Act, where —
- (a) the Judge or former Judge had died and was at the date of his or her death a widow or widower or divorced and not remarried, in which case the allowance is payable as from the day after the death of the Judge or former Judge; or
 - (b) the Judge or former Judge had died and was survived by a widow or widower who has since died, in which case the allowance is payable from the day after the death of that widow or widower.
- (2) The rate per week at which allowance is payable under this item is the greater of the following rates —
- (a) \$10.00; or
 - (b) \$4.00 plus the amount calculated in accordance with the formula
$$\frac{R}{N}$$
where —
- R is the rate of reversionary pension that was payable (or would if the widow or widower were eligible, have been payable) to the surviving widow or widower at the date of her or his death (or the rate of reversionary pension that would have been so payable if the spouse of the Judge or former Judge had survived the Judge or former Judge); and
 - N is 4 or the number of children of the Judge to whom allowance is payable under this item, whichever is the greater.
- (3) Allowance is payable under this item only during any period when the child is under the age of 16 years or is a student child under the age of 25 years.

- (4) Allowance is not payable under this item in respect of a child who was not, at the date of the death of the Judge, wholly, or substantially dependent upon him or her.

Division B

Application of this Division

This Division applies where the death of a Judge or former Judge occurs on or after the commencement of the 1987 Act.

Interpretation of this Division

In this Division —

“eligible child” means —

- (a) a child under the age of 16 years; or
- (b) a child who —
 - (i) has attained the age of 16 years but is under the age of 25 years; and
 - (ii) is receiving full-time education at a school, college or university,

who is for the time being, in the opinion of the Minister, wholly or substantially dependent on the person having the care of the child;

“relevant pension” means —

- (a) where a Judge has died, 60% of the current judicial salary;
- (b) where a retired Judge has died, the pension that would have been payable to the Judge had the Judge not died.

Item 1:

- (1) Where a Judge or a retired Judge dies leaving a spouse or de facto partner, there shall, in addition to any pension that is payable to the spouse or de facto partner under Part I, be paid, in respect of any eligible child, or any eligible children, of the Judge or retired Judge, a pension at a rate equal to the applicable percentage of the rate of the relevant pension in relation to the Judge.

Second Schedule

- (2) For the purposes of sub-item (1), the applicable percentage is —
- (a) where there is one eligible child, 12.5%;
 - (b) where there are 2 eligible children, 25%; or
 - (c) where there are 3 or more eligible children, 37.5%.

Item 2:

- (1) Where —
- (a) the spouse or de facto partner of a Judge or retired Judge, being a spouse or de facto partner who became entitled upon the death of the Judge or retired Judge to a pension under Part I, has died; or
 - (b) a Judge or retired Judge has died without leaving a spouse or de facto partner who became entitled, upon the death of the Judge or retired Judge, to a pension under Part I,

there shall be paid, in respect of any eligible child, or any eligible children of the Judge or retired Judge, a pension at a rate equal to the applicable percentage of the rate of the relevant pension in relation to the Judge.

- (2) For the purposes of sub-item (1), the applicable percentage is —
- (a) where there is one eligible child, 25%;
 - (b) where there are 2 eligible children, 50%;
 - (c) where there are 3 eligible children, 75%;
 - (d) where there are 4 or more eligible children, 100%.

Part III

General provisions

Item 1:

Where a person is entitled under the foregoing provisions of this Schedule to receive more than one pension or child's allowance, or both such a pension and allowance, only the greatest of them shall be paid to that person.

Item 2:

Any child's allowance payable under the provisions of Part II may be paid to the parent or other person or body having the care or support of the child, or directly to the child, as the Minister may determine.

[Item 2 amended by No. 65 of 2003 s. 105.]

Item 3:

If more than one person is entitled under Part I to a pension as the spouse or de facto partner of a particular Judge or former Judge, then each of those persons are entitled only to a share of the pension that would be payable if there was only one spouse or de facto partner, apportioned between them as is determined by the Minister.

[Second Schedule inserted by No. 108 of 1975 s. 12; amended by No. 125 of 1976 s. 6; No. 82 of 1987 s. 7; No. 4 of 1993 s. 3; No. 28 of 2003 s. 99; No. 65 of 2003 s. 105.]

Notes

- ¹ This is a compilation of the *Judges' Salaries and Pensions Act 1950* and includes the amendments made by the other written laws referred to in the following table. The table also contains information about any reprint ^{1a}.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Judges' Salaries and Pensions Act 1950</i>	35 of 1950	16 Dec 1950	16 Dec 1950
<i>Judges' Salaries and Pensions Act Amendment Act 1953</i>	70 of 1953	9 Jan 1954	9 Jan 1954
<i>Judges' Salaries and Pensions Act Amendment Act 1955</i>	57 of 1955	9 Dec 1955	9 Dec 1955
<i>Judges' Salaries and Pensions Act Amendment Act 1959</i>	13 of 1959	25 Sep 1959	25 Sep 1959
<i>Judges' Salaries and Pensions Act Amendment Act 1960</i>	2 of 1960	6 Oct 1960	6 Oct 1960
<i>Judges' Salaries and Pensions Act Amendment Act 1961</i>	45 of 1961	23 Nov 1961	23 Nov 1961
Reprint of the <i>Judges' Salaries and Pensions Act 1950</i> approved 3 Aug 1962 in Vol. 17 of Reprinted Acts (includes amendments listed above)			
<i>Judges' Salaries and Pensions Act Amendment Act 1962</i>	32 of 1962	4 Oct 1962	4 Oct 1962
<i>Judges' Salaries and Pensions Act Amendment Act 1964</i>	47 of 1964	19 Nov 1964	19 Nov 1964
<i>Judges' Salaries and Pensions Act Amendment Act 1966</i>	30 of 1966	27 Oct 1966	27 Oct 1966
<i>Judges' Salaries and Pensions Act Amendment Act 1969</i>	26 of 1969	16 May 1969	16 May 1969

Judges' Salaries and Pensions Act 1950

Short title	Number and year	Assent	Commencement
<i>Judges' Salaries and Pensions Act Amendment Act 1970</i>	99 of 1970	8 Dec 1970	8 Dec 1970
<i>Judges' Salaries and Pensions Act Amendment Act 1972</i>	18 of 1972	26 May 1972	26 May 1972
<i>Acts Amendment (Judicial Salaries and Pensions) Act 1972 Pt. I</i>	91 of 1972	4 Dec 1972	1 Jan 1973 (see s. 2)
<i>Judges' Salaries and Pensions Act Amendment Act 1973</i>	13 of 1973	25 May 1973	25 May 1973
Reprint of the Judges' Salaries and Pensions Act 1950 approved 30 May 1974 (includes amendments listed above)			
<i>Acts Amendment (Judicial Salaries and Pensions) Act 1974 Pt. I</i>	23 of 1974	23 Oct 1974	1 Jul 1974 (see s. 2)
<i>Acts Amendment (Judicial Salaries and Pensions) Act 1975 Pt. I</i>	45 of 1975	18 Sep 1975	8 Aug 1975 (see s. 2)
<i>Judges' Salaries and Pensions Act Amendment Act 1975</i>	108 of 1975	1 Dec 1975	1 Jan 1976 (see s. 2)
<i>Acts Amendment (Judicial Salaries and Pensions) Act 1976 Pt. I</i>	125 of 1976	2 Dec 1976	1 Jan 1977 (see s. 2)
Reprint of the Judges' Salaries and Pensions Act 1950 approved 14 Nov 1978 (includes amendments listed above)			
<i>Judges' Salaries and Pensions Act Amendment Act 1979</i>	35 of 1979	11 Oct 1979	21 Dec 1979 (see s. 2 and <i>Gazette</i> 21 Dec 1979 p. 3905)
<i>Acts Amendment (Judicial Appointments) Act 1982 Pt. II</i>	7 of 1982	6 May 1982	6 May 1982
<i>Judges' Salaries and Pensions Amendment Act 1987</i>	82 of 1987	1 Dec 1987	1 Dec 1987 (see s. 2)

Judges' Salaries and Pensions Act 1950

Short title	Number and year	Assent	Commencement
<i>Judges' Salaries and Pensions Amendment Act 1989</i>	12 of 1989	2 Nov 1989	s. 6: 1 Jan 1989 (see s. 2(2)); balance: 2 Nov 1989 (see s. 2(1))
<i>Judges' Salaries and Pensions Amendment Act 1990</i>	62 of 1990	17 Dec 1990	17 Dec 1990 (see s. 2)
<i>Judges' Salaries and Pensions Amendment Act 1993</i>	4 of 1993	19 Aug 1993	1 Dec 1987 (see s. 2)
<i>Financial Administration Legislation Amendment Act 1993 s. 11</i>	6 of 1993	27 Aug 1993	1 Jul 1993 (see s. 2(1))
Reprint of the <i>Judges' Salaries and Pensions Act 1950</i> as at 3 Mar 1994 (includes amendments listed above)			
<i>Financial Legislation Amendment Act 1996 s. 64</i>	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Acts Amendment (Auxiliary Judges) Act 1997 Pt. 5</i>	23 of 1997	18 Sep 1997	18 Sep 1997 (see s. 2)
<i>Acts Amendment (Equality of Status) Act 2003 Pt. 33</i>	28 of 2003	22 May 2003	1 Jul 2003 (see s. 2 and <i>Gazette</i> 30 Jun 2003 p. 2579)
Reprint 5: The <i>Judges' Salaries and Pensions Act 1950</i> as at 19 Sep 2003 (includes amendments listed above)			
<i>Acts Amendment and Repeal (Courts and Legal Practice) Act 2003 s. 98-105</i>	65 of 2003	4 Dec 2003	1 Jan 2004 (see s. 2 and <i>Gazette</i> 30 Dec 2003 p. 5722)
<i>Acts Amendment (Court of Appeal) Act 2004 s. 35</i>	45 of 2004	9 Nov 2004	1 Feb 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Financial Legislation Amendment and Repeal Act 2006 s. 4 and 5(2)</i>	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2 and <i>Gazette</i> 19 Jan 2007 p. 137)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnote referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000</i> s. 51 ³	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))

² The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* but its provisions continue to apply in relation to certain schemes because of the *State Superannuation (Transitional and Consequential) Act 2000* s. 26; and those provisions may be amended by regulations under subsection (3) of that section.

³ On the date on which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 51 had not come into operation. It reads as follows:

“

51. Judges' Salaries and Pensions Act 1950 amended

- (1) The amendments in this section are to the *Judges' Salaries and Pensions Act 1950*.
- (2) Section 6(3)(c) is deleted and the following paragraph is inserted instead —

“

- (c) is a Member under the *State Superannuation Act 2000* and is in receipt of a pension under that Act, then the pension under this Act is to be reduced by an amount equal to the State share (as defined under that Act) of the pension payable under the *State Superannuation Act 2000*.

”

- (3) Section 6(4) is repealed.
- (4) Section 8A is repealed and the following section is inserted instead —

“

8A. Pension of widow in receipt of another pension reducible by the State share of pension

If a widow entitled to, or in receipt of, a widow's pension under this Act is in receipt of a widow's pension under the *State Superannuation Act 2000* then the pension under this Act is to be reduced by an amount equal to the State share (as defined under that Act) of her pension under the *State Superannuation Act 2000*.

”

⁴ The *Superannuation and Family Benefits Act 1938* s. 80 was repealed by the *Superannuation Legislation Amendment Act 1993* s. 72.

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