

Approved for Reprint 30th May, 1974

WESTERN AUSTRALIA.

JUDGES' SALARIES AND PENSIONS.

14° and 15° Geo. VI., No. XXXV.

No. 35 of 1950.

[As amended by Acts:

No. 70 of 1953, assented to 9th January, 1954;
No. 57 of 1955, assented to 9th December, 1955;
No. 13 of 1959, assented to 25th September, 1959;
No. 2 of 1960, assented to 6th October, 1960;
No. 45 of 1961, assented to 23rd November, 1961;
No. 32 of 1962, assented to 4th October, 1962;
No. 47 of 1964, assented to 19th November, 1964;
No. 30 of 1966, assented to 27th October, 1966;
No. 26 of 1969, assented to 16th May, 1969;
No. 99 of 1970, assented to 8th December, 1970;
No. 18 of 1972, assented to 26th May, 1972;
No. 91 of 1972,¹ assented to 4th December, 1972;
No. 13 of 1973, assented to 25th May, 1973;

and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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.

[Assented to 16th December, 1950.]

BE it enacted—

1. This Act may be cited as the *Judges' Salaries and Pensions Act, 1950-1973*.

Short title.
Amended by
No. 13 of
1973, s. 1.

2. In this Act, unless the contrary intention appears—

Interpre-
tation.
Amended by
No. 13 of
1973, s. 2.

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

¹ Came into operation on 1st January, 1973; see Act No. 91 of 1972, s. 2.

“Prior judicial service”, in relation to a person who is a Judge or retired Judge, means service as a judge of a court of another State or Territory of the Commonwealth (not being service as a Justice of the Peace or Magistrate) being service prior to the appointment of that person as a Judge;

“salary”, except in section five of this Act, means salary at the rate payable to a Judge immediately prior to his retirement or to his death before retirement, as the case may be;

“the Schedule” means the Schedule to this Act.

Judges to whom Act applies.
Amended by No. 2 of 1960, s. 2.

3. This Act shall apply to the Chief Justice of Western Australia and all other Judges of the Supreme Court of Western Australia appointed or to be appointed under section seven of the Supreme Court Act, 1935.

Amendments of Acts.

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

Judges' salaries.
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.

5. (1) The rate of the annual salary payable to—

- (a) the Chief Justice of Western Australia shall be twenty-seven thousand dollars;
- (b) the Judge who is senior of the Judges other than the Chief Justice of Western Australia, whose office shall be known as that of Senior Puisne Judge shall be twenty-four thousand seven hundred and fifty dollars;
- (c) each other Judge shall be twenty-four thousand dollars,

so long as his commission remains in force.

(1a) [*Repealed by No. 47 of 1964, s. 2.*]

(1b) [*Repealed by No. 47 of 1964, s. 2.*]

(1c) For the purposes of the provisions of this Act relating to pensions, the salary of any Judge retiring after the twenty-fourth day of December, one thousand nine hundred and fifty-four, and before the first day of December, one thousand nine hundred and fifty-five, shall be deemed to be six thousand eight hundred dollars.

(1d) For the purposes of the provisions of this Act relating to pensions, the salary of any Judge who retired after the twenty-seventh day of February, one thousand nine hundred and fifty-nine, and before the 30th day of June, one thousand nine hundred and fifty-nine, shall be deemed to be ten thousand five hundred dollars.

(2) Such salaries are hereby charged on the Consolidated Revenue Fund and such Fund, to the extent required for the payment thereof, is hereby permanently appropriated.

(3) Judges shall be entitled to such travelling and other allowances or reimbursements as the Governor may from time to time approve.

6. (1) Where a Judge who has attained the age of sixty years retires after serving as a Judge for not less than ten years, he is entitled to a pension at a rate equal to fifty per centum of his salary.

Pensions
of Judges.
Repealed
and
re-enacted
by No. 45 of
1961, s. 2.
Amended by
No. 99 of
1970, s. 3;
No. 13 of
1973, s. 3.

(2) Where a Judge, not being a Judge to whom subsection (1) of this section applies, retires 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 six years' service as a Judge to a pension at a rate equal to thirty per centum of his salary; or

- (b) in any other case, to a pension at a rate equal to thirty per centum of his salary and at an additional rate equal to four per centum of his salary for each complete year of his service as a Judge in excess of five years of such service, but so that the rate of his pension shall not exceed fifty per centum of his salary.

(2a) For the purposes of this Act, where a Judge had prior judicial service, the period of that service shall be added to, and be deemed to form part of, his period of service as a Judge.

(3) If a person entitled to receive or in receipt of a pension under this Act—

- (a) holds any judicial or other office under the Crown, whether in Western Australia or elsewhere, for which he is remunerated out of the moneys of the Crown; or
- (b) is in receipt of a pension received by him by reason of having held such office,

then the pension otherwise receivable under this Act by the said person shall be reduced by the amount of the salary remuneration or the State share of his pension received by the said person as mentioned in paragraphs (a) or (b) of this subsection.

(4) In subsection (3) of this section "State share of his pension" has the same meaning as that expression has in section eighty of the Superannuation and Family Benefits Act, 1938.

Pension to widow on death of Judge before retirement. Repealed and re-enacted by No. 45 of 1961, s. 3. Amended by No. 99 of 1970, s. 4

7. (1) Subject to subsection (2) of this section, where a Judge dies before retirement, a pension shall be paid to his widow at a rate equal to fifteen per centum of his salary and at an additional rate equal to two per centum of his salary for each completed year of his service as a Judge in excess of five years of such service, but so that the rate of pension of the widow shall not exceed twenty-five per centum of that salary.

(2) If a widow in receipt of a pension under this section remarries, her pension shall thereupon cease and determine.

8. Upon the death of a retired Judge who is in receipt of a pension under section six of this Act, an annual pension shall be paid to his widow, if her marriage to the retired Judge occurred prior to his retirement, at the rate of one-half of the rate of pension payable to that pensioner immediately prior to his death:

Pension to widow on death of retired Judge.

Provided that, if the widow re-marries, her pension under this section shall thereupon cease and determine.

8A. Where a widow to whom section seven or section eight of this Act applies is entitled to receive or is in receipt of—

Pension of widow in receipt of another pension reducible by the State share of pension. Added by No. 99 of 1970, s. 5.

(a) a pension under either of those sections; and

(b) a pension under the Superannuation and Family Benefits Act, 1938, by reason of her being the widow of a deceased 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, 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.

8B. (1) The Treasurer, before the thirtieth day of June, nineteen hundred and seventy-two and before each thirtieth day of June thereafter, shall

Increase of rate of certain pensions. Added by No 18 of 1972, s. 2.

determine by instrument in writing under his hand that the rate of pension payable under this Act to—

- (a) a Judge who retired on or before the thirty-first day of December in the year that is two years prior to the year in which the Treasurer so determines; and
- (b) the widow of a Judge who died or retired on or before the thirty-first day of December in the year that is two years prior to the year in which the Treasurer so determines,

shall be respectively increased in accordance with and as specified in the instrument making the determination.

(2) A determination made by the Treasurer under subsection (1) of this section—

- (a) has effect, for the purposes of this Act, according to its tenor;
- (b) may be so made as to have effect in addition to the operation of any determination previously made under this section, or in substitution therefor; and
- (c) shall take effect, on and from the first monthly payment of the pension in the year in which the determination is made.

Allowances
in respect of
children of
deceased
Judge.
Amended by
No. 30 of
1966, s. 3.

9. (1) On the death of a person who is a Judge or was, immediately prior to his death, in receipt of a pension under section six of this Act, an allowance at the rate of two dollars per week shall be paid in respect of each of his, or of his widow's children who are under the age of sixteen years and until the age of sixteen years has been attained:

Provided that, if the widow re-marries, an allowance under this subsection shall not be payable in respect of any child of the re-marriage.

(2) An allowance payable under this section shall be payable—

- (a) to the widow of the deceased person during her own life and, in the event of her death before the child attains the age of sixteen years, to the guardian of the child, to be used for the child's support and education; or
- (b) in the event of the deceased person having been a widower, to the guardian of the child to be used for the child's support and education.

10. Notwithstanding anything contained in the last three preceding sections, where a retired Judge marries after his retirement and predeceases his wife, a pension shall not be payable to his widow, nor shall allowances in respect of the children of the marriage be payable.

Marriage after retirement.

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

Payment of pensions and allowances.

- (a) shall grow due from day to day; and
- (b) shall be payable monthly out of the Consolidated Revenue Fund which is, to the necessary extent, hereby appropriated accordingly.

12. (1) The provisions of sections six to eleven (inclusive) of this Act shall apply to and in relation to every Judge who is appointed after the commencement of this Act.

Application of pension, etc., provisions.

(2) The provisions of sections six to eleven (inclusive) of this Act 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 six 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 six to eleven (inclusive) of this Act 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 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) of this section 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 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.

Commence-
ment of
service and
payment of
salary, etc.,
of acting
Judge
appointed
Judge.
Added by
No. 2 of
1960, s. 3.

12A. (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 eleven 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 the first day of July, one thousand nine hundred and sixty the provisions of section five of this Act apply to the salary and any adjustment thereto, of a person who before the fourth day of March in that year was so appointed an acting Judge and who while holding that office is appointed a Judge before the thirty-first day of December in that year.

13. (1) Where, immediately prior to the commencement of this Act, a person, having retired from the office of Judge, is in receipt of a pension under any provision of an Act specified in the first column of the Schedule, that person shall, subject to this section, continue to receive that pension as if this Act had not been passed.

Persons in receipt of pensions at commencement of this Act.

(2) The salary, in relation to which the pension of any person to whom the last preceding subsection applies is calculated, shall be deemed to be salary at the rate payable, at the date of the commencement of this Act, to a holder of the office which that person held immediately prior to his retirement.

(3) If a person to whom subsection (1) of this section applies, elects, by notice in writing to the Minister within three months after the commencement of this Act, to come within the application of sections six, eight, nine and ten of this Act, that person shall, as on and from the date of his election, have the rights and benefits provided by those sections in substitution for his right to pension under subsections (1) and (2) of this section.

14. A pension or allowance under this Act shall not, unless the Governor otherwise decides, be payable to a Judge or to the widow and children of a Judge who has been removed under section fifty-five of the Constitution Act, 1889, or section nine of the Supreme Court Act, 1935.

Pensions, etc., not payable on removal of Judge. Amended by No. 2 of 1960, s. 4.

Pensions not payable if Judge practises as a barrister, etc.
Amended by No. 2 of 1960, s. 5.

15. If any person who may be entitled to or be in receipt of a pension by virtue of this Act, or of the Supreme Court Act, 1935, 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.

Amended by No. 57 of 1955, s. 3.

THE SCHEDULE.

First Column.	Second Column.	Third Column.
Acts Amendment (Increase in number of Judges of the Supreme Court) Act, 1949.	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."	Acts Amendment (Increase in number of Judges of the Supreme Court) Act, 1949-1950.
Constitution Act, 1889.	Section fifty-six is repealed.	Constitution Act, 1889-1950.
Constitution Acts Amendment Act, 1899-1950.	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	Constitution Acts Amendment Act, 1899-1950.
Supreme Court Act, 1935-1949.	Sections thirteen and fourteen are repealed.	Supreme Court Act, 1935-1950.
Judges' Retirement Act, 1937.	Section four is repealed.	Judges' Retirement Act, 1937-1950.