

Approved for Reprint 14th November, 1978.

WESTERN AUSTRALIA.

JUDGES' SALARIES AND PENSIONS.

14° and 15° Geo. VI., No. XXXV.

No. 35 of 1950.

(Affected by Act No. 27 of 1975.)

[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;
No. 23 of 1974,² assented to 23rd October, 1974;
No. 45 of 1975,³ assented to 18th September, 1975;
No. 108 of 1975,⁴ assented to 1st December, 1975;
No. 125 of 1976,⁵ assented to 2nd December, 1976,

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, 1950-1976*.

Short title.
Amended by No.
125 of 1976, s. 3.

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

² Came into operation on 1st July, 1974; see Act No. 23 of 1974, s. 2.

³ Came into operation on 8th August, 1975; see Act No. 45 of 1975, s. 2.

⁴ Came into operation on 1st January, 1976; see Act No. 108 of 1975, s. 2.

⁵ Came into operation on 1st January, 1977; see Act No. 125 of 1976, s. 2.

Interpretation.
Amended by No.
13 of 1973, s. 2;
No. 108 of 1975,
s. 3; No. 125 of
1976, s. 4.

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

“Index” means the table described as the Consumer Price Index Numbers—All Groups, Perth that is published by the Statistician under the authority of the Census and Statistics Act 1905 (as amended or re-enacted from time to time) of the Commonwealth;

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

“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 (whether under this Act or the Salaries and Allowances Tribunal 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;

“Schedule” means 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.
Amended by No.
108 of 1975, s. 4

4. 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.

5. (1) Subject to section seven of the Salaries and Allowances Tribunal Act, 1975, the rate of the annual salary payable to—

- (a) the Chief Justice of Western Australia shall be forty thousand five hundred 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 thirty-seven thousand one hundred and twenty-five dollars;
- (c) each other Judge shall be thirty-six 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) Subject to section seven of the Salaries and Allowances Tribunal Act, 1975, Judges shall be entitled to such travelling and other allowances or reimbursements as the Governor may from time to time approve.

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; No. 23 of 1974, s. 4; No. 45 of 1975, s. 4; No. 108 of 1975, s. 5.

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.

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.

(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.

7. (1) The pensions and allowances payable under this Act to the widows and children of Judges and retired Judges and the rates of those pensions and allowances shall, on and from the month of January in the year nineteen hundred and seventy-six, be those respectively set out in the Second Schedule to this Act.

Derivative pensions.
Substituted by No. 108 of 1975, s. 6.
Amended by No. 125 of 1976, s. 5.

(2) A person is eligible to receive a pension or allowance under the Second Schedule to this Act whether the circumstances or events which gave rise to the eligibility occurred before, on, or after the date on which the Second Schedule to this Act comes into operation.

(3) Any reference in this Act to a widow of a Judge or former Judge shall, by force of this subsection, be construed as including and extending to a widower of a Judge or former Judge.

8. [Repealed by No. 108 of 1975, S. 7.]

8A. Where a widow 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.
Amended by No. 108 of 1975, s. 8.

- (a) a widow's pension under this Act; and
- (b) a pension under the Superannuation and Family Benefits Act, 1938, by reason of her being a 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) Subject to this section, every pension payable under this Act shall be increased in each year, commencing with the year nineteen hundred and seventy-six, with effect on and from the first day of January in that year by such percentage as is determined by the Treasurer to be the percentage

Annual adjustment of pensions.
Added by No. 18 of 1972, s. 2.
Repealed and re-enacted by No. 108 of 1975, s. 9.

by which the Index for the quarter ending on the immediately preceding thirty-first day of December is greater than the Index for the quarter ending on the penultimate preceding thirty-first day of December.

(2) The following provisions apply to and in relation to the first increase of a pension pursuant to this section if, on the first day of January in the year in which the increase is to be made, or would, but for paragraph (a) of this subsection be made the pension has been in force for less than twelve months, namely—

- (a) in the case of a pension which first becomes payable after the first day of October in any year, the first increase of that pension shall be made so as to operate from the first day of 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 the first day of October in any year, the first increase in that pension shall be made so as to operate from the first day in 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 paragraph (b) of subsection (2) of this section, 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 the thirtieth day of June, the thirtieth day of September and the thirty-first day of December) within the period commencing on the day on which the pension became payable and ending on the following thirty-first day of December, for which the pension was payable.

(4) Where, for the purposes of determining the increase to be made in pensions for any year, the Treasurer determines that the Index for a quarter ending on the immediately preceding thirty-first day of December is less than the Index for the quarter ending on the penultimate preceding thirty-first day of December, no increase shall be made in pensions for that year, and the percentage by which the firstmentioned Index is less than the secondmentioned Index shall first be taken into account before any subsequent adjustments of pensions are made pursuant to this section.

(5) The provisions of this section apply with such modifications as are necessary to pensions payable to the widows of Judges or former Judges.

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

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

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.

Commencement
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 firstmentioned 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.

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.

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

Judges' Salaries and Pensions.

THE FIRST SCHEDULE.

First Schedule
Amended by No.
57 of 1955, s. 3;
No. 108 of 1975,
s.11.

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.

SECOND SCHEDULE
PART I
REVERSIONARY PENSIONS

Second Schedule
Added by No.
108 of 1975,
s. 12.
Amended by No.
125 of 1976, s. 6.

Column 1	Column 2	Column 3	Column 4	Column 5	
Item No.	Eligible Person	Rate of Pension or Benefit	Commencement of Pension	Termination of Pension	When Pension Restored
1.	Widow of former Judge who died after his retirement, if their marriage took place prior to retirement.	% of pension which former Judge was receiving at date of death.	As from day after former Judge's death.	(a) On re-marriage prior to attaining age of 55 years (including any such re-marriage after pension has been restored after cessation of previous re-marriage). (b) On death of widow.	(a) During any period after re-marriage when widow is not a party to a subsisting marriage. (b) During any period of re-marriage if widow satisfies Treasurer that loss of pension causes severe hardship. (c) On attaining the age of 55 years.
2.	Widow of former Judge who died after his retirement, if their marriage took place after retirement, and if widow has not re-married.	As in item 1.	(a) As from day after former Judge's death if widow then aged 55 or more. (b) As from date widow attains age of 55 if she is less than 55 at date of former Judge's death.	On death of widow or on her re-marriage.	
3.	Widow of Judge who died prior to his retirement.	% of pension to which Judge would have been entitled if he had not died but had, on the date on which he died, retired on the grounds of permanent disability.	As in item 1.	As in item 1.	As in item 1.

Judges' Salaries and Pensions.

Judges' Salaries and Pensions.

Second Schedule—continued.

PART II.

CHILDREN'S ALLOWANCES.

Eligibility and Rate of Benefit, etc.

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.

Item 2:

- (1) Subject to the following, an allowance at the rate fixed by subitem (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 death a 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 who has since died, in which case the allowance is payable from the day after the death of that widow.
- (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

R
accordance with the formula $\frac{R}{N}$ where—
N

R is the rate of reversionary pension that was payable (or would if the widow were eligible, have been payable) to the surviving widow at the date of her 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.

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 of this Schedule 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 Treasurer may determine.