

WESTERN AUSTRALIA

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# JUDGES' SALARIES AND PENSIONS AMENDMENT ACT

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No. 82 of 1987

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AN ACT to amend the *Judges' Salaries and Pensions Act 1950*,  
and to make consequential amendments to certain other Acts.

[Assented to 1 December 1987]

**BE** it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

## Short title

1. This Act may be cited as the *Judges' Salaries and Pensions Amendment Act 1987*.

**Commencement**

2. This Act shall come into operation on the day on which it receives the Royal Assent.

**Principal Act**

3. In this Act the *Judges' Salaries and Pensions Act 1950\** is referred to as the principal Act.

[\*Reprinted as approved 14 November 1978 and amended by Acts Nos. 35 of 1979 and 7 of 1982.]

**Section 2 amended**

4. Section 2 of the principal Act is amended—

(a) by inserting after the section designation “2.” the subsection designation “(1)”;

(b) in subsection (1) as so designated—

(i) by inserting immediately before the definition of “Index” the following definitions—

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

“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; ”; and

(ii) by deleting the definitions of “Prior judicial service” and “salary”; and

(c) by inserting the following subsections—

“ (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 as a judge of a court of the Commonwealth or of another State or Territory of the Commonwealth (not being service as a Justice of the Peace or a Magistrate) 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 6 amended**

5. Section 6 of the principal Act is amended—

(a) in subsection (1)—

(i) by inserting after “retires” the following—

“ , before the commencement of the 1987 Act, ”; and

(ii) by inserting after “his” the following—

“ final ”;

(b) in subsection (2)—

(i) by inserting after “retires” the following—

“ before the commencement of the 1987 Act ”; and

(ii) by inserting immediately before “salary” in each place where it appears the following —

“ final ” and

- (c) by repealing subsection (2a) and substituting the following subsections—

“ (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 per centum of the current judicial salary.

(2b) Where a Judge, not being a Judge to whom subsection (2a) 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 per centum of the current judicial salary; or

(b) in any other case, to a pension at a rate equal to 50 per centum of the current judicial salary and at an additional rate equal to 2 per centum 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 per centum of the current judicial salary. ”.

### **Section 8B amended**

6. Section 8B of the principal Act is amended by inserting after subsection (5) the following subsection—

“ (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 his widow or in respect of any eligible child of his; or

(b) a pension payable under the Second Schedule to the widow or in respect of any eligible child of a Judge who dies prior to his retirement and after the commencement of the 1987 Act. ”.

**Second Schedule amended****7. The Second Schedule to the principal Act is amended—**

- (a) in Part I, in column 2 of Item 3, by deleting “% 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” and substituting the following—

“ If the death occurs—

- (a) before the commencement of the 1987 Act, % of pension to which Judge would have been entitled under subsection (2) of section 6 if he had not died but had on the date of his death retired in terms of that subsection;
- (b) on or after the commencement of the 1987 Act, % of 60 per cent of current judicial salary. ”; and

- (b) in Part II—

- (i) by inserting immediately under the heading “Eligibility and Rate of Benefit, etc.” the following—

“ *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. ”; and

- (ii) by inserting at the end of Part II the following—

“ *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 widow or other person having the care of the child;

“relevant pension” means—

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

Item 1:

(1) Where a Judge or a retired Judge dies leaving a widow, there shall, in addition to any pension that is payable to the widow 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.

(2) For the purposes of sub-item (1), the applicable percentage is—

- (a) where there is one eligible child, 12.5 per cent;
- (b) where there are 2 eligible children, 25 per cent; or
- (c) where there are 3 or more eligible children, 37.5 per cent.

Item 2:

(1) Where—

- (a) the widow of a Judge or retired Judge, being a widow 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 widow 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 per cent;
- (b) where there are 2 eligible children, 50 per cent;
- (c) where there are 3 eligible children, 75 per cent;
- (d) where there are 4 or more eligible children, 100 per cent. ”.

### Consequential amendments to other Acts

8. The Acts referred to in the first column of the Schedule are amended in the manner set out in the second column.

#### SCHEDULE

(s.8)

<i>Short title of Act</i>	<i>Amendment</i>
1. <i>Supreme Court Act 1935</i> [Reprinted as at 25 July 1986 and amended by Acts Nos. 22 and 50 of 1986.]	Section 11B (3b) is repealed.
2. <i>District Court of Western Australia Act 1969</i> [Reprinted as approved 5 September 1980 and amended by Acts Nos. 118 of 1981, 7 of 1982, 52 and 122 of 1984, 74, 98 and 109 of 1985, and 71 of 1986.]	Section 14 (2) is repealed.
3. <i>Family Court Act 1975</i> [Reprinted as approved 17 March 1980 and amended by Acts Nos. 94 of 1981 and 7 of 1982.]	Section 18 (2) and (4) are repealed.
4. <i>Industrial Relations Act 1979</i> [Reprinted as at 12 May 1985 and amended by Acts Nos. 42 and 98 of 1985.]	In section 20, in subsection (12)— (a) in paragraph (a), after “Judge;”, the following is inserted— “ and ”; and (b) “President;” in paragraph (b) and the remainder of the subsection are deleted and the following is substituted— “ President. ”.