

JUDGES' PENSIONS (AMENDMENT) ACT.

New South Wales



ANNO VICESIMO TERTIO

ELIZABETHÆ II REGINÆ

Act No. 106, 1974.

An Act to make further provision with respect to the pensions of retired judges, the pensions of widows of judges and retired judges and the like pensions payable to and in respect of masters of the Supreme Court; to provide for pensions in respect of certain children; for these and other purposes to amend the Judges' Pensions Act, 1953, and the Supreme Court Act, 1970; and for purposes connected therewith. [Assented to, 13th December, 1974.]

BE

Judges' Pensions (Amendment).

BE it enacted by the Queen's Most Excellent Majesty, by **No. 106, 1974** 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 "Judges' Pensions Short title. (Amendment) Act, 1974".

2. The Judges' Pensions Act, 1953, is amended— Amendment
of Act No.
41, 1953.

(a) (i) by inserting in section 2 before the definition of "Judge" the following definitions:— Sec. 2.
(Defini-
tions.)

"Appointed day" means the day on which the Judges' Pensions (Amendment) Act, 1974, commenced.

"Child" includes adopted child.

"Eligible child" means—

(a) a child under the age of sixteen years; or

(b) a child who—

(i) has attained the age of sixteen years but is under the age of twenty-five years; and

(ii) is receiving full-time education at a school, university or college.

(ii) by inserting in section 2 after the definition of "Judge" the following definition:—

"Retired judge" means a judge who has retired as referred to in section 3 (1), 4 or 5 (1).

(iii) by omitting from section 2 the definition of "Salary";

(iv)

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(iv) by inserting at the end of section 2 the following subsection :—

(2) For the purposes of this Act, the notional judicial salary of a retired or deceased judge at any time is an amount equal to the salary payable at that time to the holder of a judicial office having a status equivalent to that of the judicial office held by the retired or deceased judge—

(a) immediately before his retirement if he—

- (i) is living at that time; or
- (ii) died after he retired; or

(b) immediately before his death if he died in office.

Sec. 3.

(b) by omitting section 3 and by inserting instead the following section :—

Pension for certain judges who retired, or retire, at age 70.

3. (1) This section applies to a retired judge who retired from his judicial office before, on or after the appointed day pursuant to—

- (a) the Judges Retirement Act, 1918;
- (b) section 14 (2) of the Industrial Arbitration Act, 1940;
- (c) section 4 (2) (c) (iv) of the Crown Employees Appeal Board Act, 1944; or
- (d) section 31 (3) (b) of the Workers' Compensation Act, 1926,

having served as a judge in that judicial office for not less than five years.

(2)

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(2) A retired judge to whom this No. 106, 1974 section applies is entitled—

- (a) where he retired before the appointed day—during that part of the period of his retirement that commenced on the appointed day; or
- (b) where he retired on or after the appointed day—during the period of his retirement,

to a pension at an annual rate that, at any time during that period, is a percentage, calculated as provided by subsection (3), of his notional judicial salary at that time.

(3) The percentage referred to in subsection (2) is—

- (a) in the case of a retired judge who retired before 14th March, 1969—the sum of—
 - (i) twenty-five per centum; and
 - (ii) three and one-half per centum for each completed year of service in excess of five years (disregarding any such excess years above ten in number) that he served as a judge in his judicial office;
- (b) in the case of a retired judge who retired on or after 14th March, 1969, and before the appointed day—the sum of—
 - (i) twenty-five per centum; and
 - (ii) five per centum for each completed year in excess of five years (disregarding any such excess years above seven in number) that he so served;

(c)

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- (c) in the case of a retired judge who retired on or after the appointed day after serving as a judge in his judicial office for less than ten years—
- (i) twenty-five per centum;
 - (ii) five per centum for each completed year in excess of five years that he so served; and
 - (iii) the percentage that bears to five per centum the same proportion as the number of days in any incomplete year that he so served bears to 365; or
- (d) in the case of a retired judge who retired on or after the appointed day having so served for ten years or more—sixty per centum.

Sec. 5.

- (c) by omitting section 5 and by inserting instead the following section :—

Pension for judge who retired, or retires, on account of ill-health.

5. (1) This section applies to a retired judge who retired from his judicial office before, on or after the appointed day where his retirement was certified—

- (a) where it occurred before 30th April, 1973—by the Director-General of Public Health; or
 - (b) where it occurred on or after 30th April, 1973—by the Health Commission of New South Wales,
- to have been due to permanent disability or infirmity.

(2)

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(2) Where a retired judge to whom this No. 106, 1974 section applies—

- (a) served as a judge in his judicial office for not less than five years before his retirement; or
- (b) retired on or after the appointed day and before his retirement and not later than—
 - (i) 30th April, 1975; or
 - (ii) three months after his appointment as a judge,

whichever is the later, was certified by the Health Commission of New South Wales not to be suffering from any impairment of his health likely to affect his capacity to continue in his judicial office,

he is entitled to the same pension as that to which he would have been entitled had he not retired when he did but had continued to serve as a judge in that judicial office until he attained the age of 70 years and had then retired.

(3) Where a retired judge to whom this section applies retired before he had completed five years' service as a judge in his judicial office, he is entitled—

- (a) where he retired before the appointed day—during that part of the period of his retirement that commenced on the appointed day; or
- (b) where he retired on or after the appointed day—during the period of his retirement,

to a pension at an annual rate that, at any time during that period, is twenty-five per centum of his notional judicial salary at that time.

(d)

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Sec. 6.

Pension for
widow of
judge or
retired
judge.

(d) by omitting section 6 and by inserting instead the following section : —

6. (1) Where, before, on or after the appointed day, a retired judge died or dies leaving as his widow his wife at the time of his retirement, or a judge died or dies in office, his widow is entitled—

(a) where the judge or retired judge died before the appointed day—during the period commencing on the appointed day and ending on her death or remarriage; or

(b) where the judge or retired judge dies on or after the appointed day—during the period commencing on the day after his death and ending on her death or remarriage,

to a pension at an annual rate that, at any time during that period, is a percentage, calculated as provided by this section, of the notional judicial salary of the judge or retired judge at that time.

(2) The percentage referred to in subsection (1) is twenty per centum in the case of the widow of a judge or retired judge—

(a) who died on or after 16th December, 1953, and before 9th December, 1964; or

(b) who died on or after 9th December, 1964, and before the appointed day without having completed five years' service as a judge in his judicial office.

(3) The percentage referred to in subsection (1) in the case of a judge or retired judge who died on or after 9th December, 1964, and before the appointed

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appointed day having completed not less than five years' service as a judge in his judicial office is the sum of—

- (a) twenty per centum; and
- (b) one per centum for each completed year of service in excess of five years (disregarding any such excess years above ten in number) that the judge or retired judge served as a judge in his judicial office.

(4) The percentage referred to in subsection (1) is, in the case of the widow of a retired judge who dies on or after the appointed day—

- (a) where the retired judge had, at the time of his retirement, served as a judge in his judicial office for less than ten years—twenty-five per centum; or
- (b) where the retired judge had, at the time of his retirement, so served for ten years or more—thirty per centum.

(5) The percentage referred to in subsection (1) is, in the case of the widow of a judge who dies in office on or after the appointed day—the same percentage as would have been applicable under subsection (4) if the judge had continued to serve as a judge in his judicial office until he attained the age of seventy years and had then retired and died.

(e) by omitting section 7;

Sec. 7.
(Pension to widow on death of retired judge.)

(f) by inserting before section 8 the following sections :—

Secs. 7A–7E.

7A. (1) Subject to subsection (2), where a judge or retired judge—

Pension in respect of children on death of judge or retired judge.

- (a) died before the appointed day leaving a widow or widower who is living on the appointed day; or

(b)

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- (b) dies on or after the appointed day leaving a widow or widower,

the widow or widower is entitled, on and from the appointed day or the day following the death of the judge or retired judge, whichever is the later day, to an additional pension at the annual rate of \$208 in respect of each eligible child of the widow or widower or of the judge (other than a child of any remarriage of the widow or widower).

(2) Where a retired judge referred to in subsection (1) married—

- (a) after retirement;
 (b) after attaining the age of sixty years; and
 (c) less than five years before dying.

pension is not payable under subsection (1) in respect of a child of that marriage or any other child of the widow or widower of the retired judge.

Pension in respect of children on death of widow or widower of judge or retired judge.

7B. (1) Subject to this section, where the widow or widower of a judge or retired judge (being, in the case of a retired judge, a widow or widower who married the retired judge before he or she retired) died before, or dies on or after, the appointed day, a pension shall, on and from the appointed day or the day following the death of the widow or widower, whichever is the later day, be paid in accordance with section 7D in respect of each eligible child of the widow or widower or of the judge or retired judge (other than a child of any remarriage of the widow or widower) at the annual rate of—

- (a) \$520; or

(b)

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- (b) an amount calculated in accordance with **No. 106, 1974** subsection (2),

whichever is the higher rate.

(2) The annual rate of pension referred to in subsection (1) (b) is, at any time, the sum of—

- (a) \$208; and
- (b) an amount ascertained by dividing by four (or, if the number of eligible children in respect of whom pension is payable under this section is greater than four, by the number of those children) the annual amount of the pension that by virtue of section 6 would, at that time, have been payable to the widow of a judge or retired judge (being, in the case of a retired judge, a widow who was his wife at the time of his retirement) who—
- (i) had served as a judge for the same period, and in the same judicial office, as the judge or retired judge referred to in subsection (1); and
- (ii) had died or, as the case may be, had retired and died at the same time or times as the judge or retired judge so referred to.

(3) Where a retired judge referred to in subsection (1) married—

- (a) after retirement;
- (b) after attaining the age of sixty years; and
- (c) less than five years before dying,

pension is not payable under subsection (1) in respect of a child of that marriage or any other child of the widow or widower of the retired judge.

7c.

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Pension in respect of certain children where judge or retired judge dies without leaving widow or widower.

7c. (1) Subject to this section, where a judge or retired judge died before, or dies on or after, the appointed day without leaving a widow or widower, a pension shall, on and from the appointed day or the day following the death of the judge or retired judge, whichever is the later day, be paid in accordance with section 7D in respect of each eligible child of the judge or retired judge, or of a person (whether deceased or not) who was at any time the wife or husband of the judge or retired judge, at the annual rate of—

- (a) \$520; or
- (b) an amount calculated in accordance with subsection (2),

whichever is the higher rate.

(2) The annual rate of pension referred to in subsection (1) (b) is, at any time, the sum of—

- (a) \$208; and
- (b) an amount ascertained by dividing by four (or, if the number of eligible children in respect of whom pension is payable under this section is greater than four, by the number of those children) the annual amount of pension that by virtue of section 6 would, at that time, have been payable to the widow of a judge or retired judge (being, in the case of a retired judge, a widow who was his wife at the time of his retirement) who—
 - (i) had served as a judge for the same period, and in the same judicial office, as the judge or retired judge referred to in subsection (1); and

(ii)

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- (ii) had died or, as the case may be, No. 106, 1974 had retired and died, at the same time or times as the judge or retired judge so referred to.

(3) This section does not apply in relation to—

- (a) a child of a remarriage of a former wife or husband of a judge or retired judge; or
- (b) a child of a marriage of a retired judge that occurred—
- (i) after the retirement of the judge;
 - (ii) after the retired judge attained the age of sixty years; and
 - (iii) less than five years before the retired judge died.

7D. A pension in respect of a child under section 7B or 7C shall be paid to the guardian of the child for the support and education of the child. Payment of pension under section 7B or 7C.

7E. (1) Subject to subsections (2) and (3) but notwithstanding anything in any provision of this Act other than this section, a pension payable under this Act in respect of an eligible child shall, if the Minister so directs by order in writing— Variation of manner of payment of pension in respect of child.

- (a) be paid to a specified person; or
- (b) be expended in a specified manner.

(2) The powers conferred on the Minister by subsection (1) are not exercisable unless the Minister is satisfied, on the recommendation of the Chief Justice—

- (a) in the case of a direction referred to in subsection (1) (a)—that the support and education of the child would be best assured by giving that direction; or

(b)

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(b) in the case of a direction referred to in subsection (1) (b)—that by reason of special circumstances it is desirable in the interests of the child to give the direction.

(3) The powers conferred on the Minister by subsection (1) are not exercisable in the case of a pension payable to a widow or widower unless the child in respect of whom the pension is payable is not living with the widow or widower.

Sec. 9.
(Dual
pensions.)

(g) by inserting at the end of section 9 the following subsection :—

(2) A person is not entitled to receive a pension under this Act in respect of a child if a pension is being paid in respect of the child under a law of the Commonwealth which makes provision for the payment of a pension in respect of a child of the holder of an office referred to in subsection (1) or the widow or widower of such an office holder.

Sec. 11.
(Application
of Act.)

(h) by omitting section 11 ;

Sec. 11A.

(i) by omitting section 11A and by inserting instead the following section :—

Application
of Act to
and in
respect of
masters.

11A. (1) This section applies to and in respect of—

(a) the person who held the office of Master in Equity constituted under the Equity Act, 1901, before its repeal and was appointed to the office of master by section 14 (1) of the Supreme Court Act, 1970; and

(b)

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- (b) a person appointed before, on or after the appointed day to the office of master under section 111 of the Supreme Court Act, 1970. No. 106, 1974

(2) This Act applies to and in respect of a person referred to in subsection (1) in the same way as it applies to and in respect of a judge and a retired judge and it so applies as if—

- (a) a reference to a judge included a reference to a person referred to in subsection (1);
- (b) a reference to a retired judge included a reference to a person referred to in subsection (1) who has retired pursuant to section 115 (2) of the Supreme Court Act, 1970;
- (c) an office referred to in subsection (1) were a judicial office; and
- (d) a reference in section 8 to prior judicial office included a reference to the offices of Master in Equity and Acting Master in Equity constituted under the Equity Act, 1901, before its repeal and the office of acting master constituted under section 111 (2) of the Supreme Court Act, 1970.

- (j) by omitting section 12.

Sec. 12.
(Persons in receipt of pensions at commencement of Act.)

3. The Supreme Court Act, 1970, is amended by omitting section 14 (3).

Amendment of Act No. 52, 1970.
Sec. 14.
(Masters.)