

[Act 1998 No 42]



New South Wales

Judges' Pensions Amendment Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The objects of this Bill are:

- (a) to enable persons entitled to pensions under the *Judges' Pensions Act 1953* to commute part of their pensions to meet superannuation contributions surcharge liabilities arising under Commonwealth legislation when superannuation entitlements become payable, and
 - (b) to provide for subsequent reductions in pensions payable under that Act, and
 - (c) to make other consequential amendments.
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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Judges' Pensions Act 1953* set out in Schedule 1.

Schedule 1 Amendments

Under the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth, members of constitutionally protected superannuation funds are liable to pay a superannuation contributions surcharge when they become entitled to a lump sum or pension benefit from the fund concerned. The superannuation contributions surcharge is payable within 3 months of the member being notified of the liability.

The pension scheme under the *Judges' Pensions Act 1953* is a constitutionally protected superannuation fund for the purposes of the Commonwealth Acts. The *Judges' Pensions Act 1953* provides for the payment of pensions to judges on retirement and to payment of pensions to their spouses and children if judges die. It does not currently provide for the payment of lump sum type benefits. The amendments will enable the partial commutation of pensions for the purposes of payment of the superannuation contributions surcharge on the retirement or death of a member.

Schedule 1 [3] inserts proposed sections 12, 12A and 12B.

Proposed section 12 enables a retired judge or other person entitled to be paid a pension to elect to have part of the pension commuted for the purposes of payment of a liability for superannuation contributions surcharge. A person other than a judge may make an election in respect of a liability of a judge who has died or a retired judge who died before the original time for making an election ended. An election may relate to the whole or part of any such liability and must be made not later than 2 months after the liability arises, or within such further period as the Minister may allow. The Minister may pay a lump sum on the election of a person other than a judge only if satisfied that the lump sum will be applied towards the payment of the liability concerned.

If a lump sum is paid, the pension payable under the Act is to be reduced and the amount of the reduced pension is to be determined in accordance with the regulations. A pension may be commuted only to the extent necessary to meet the liability for superannuation contributions surcharge. The Minister may delegate certain functions under the proposed section.

Proposed section 12A provides for the reduction of a reversionary pension if the original pension was partly commuted under proposed section 12. The amount of the reduced pension is to be determined in accordance with the regulations.

Proposed section 12B contains a regulation-making power. **Schedule 1 [1]** contains a consequential amendment.

Schedule 1 [2] enables the payment of the lump sums out of the Consolidated Fund, in the same way as pensions are paid.