

# Judges' Pensions Act 1953 No 41

[1953-41]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Judges' Pensions Amendment Act 1998 No 42](#) (not commenced)
  - [Courts Legislation Amendment Act 2000 No 31](#) (not commenced)
- **See also**
  - [Courts Legislation Amendment Bill 2001](#)

### Authorisation

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## Contents

<b>Long title</b> .....	3
1 Name of Act and commencement .....	3
2 Definitions .....	3
2A Continuity of judicial office in the Supreme Court .....	4
2B Continuity of judicial office in the District Court .....	4
2C Continuity of office—Workers' Compensation Commission .....	4
3 Pension for certain judges who retired, or retire, at age 72 .....	5
4 Pension to judge retiring voluntarily at or after age 60 .....	6
5 Pension for judge who retires on account of ill-health .....	6
6 Pension for widow or widower of judge or retired judge .....	7
7 Restoration of widow's or widower's pension if lost due to remarriage .....	8
7A Pension in respect of children on death of judge or retired judge .....	9
7B Pension in respect of children on death of widow or widower of judge or retired judge .....	10
7C Pension in respect of certain children where judge or retired judge dies without leaving widow or widower .....	11
7D Payment of pension under section 7B or 7C .....	12
7E Variation of manner of payment of pension in respect of child .....	12
8 Prior judicial service .....	12
9 Dual pensions .....	13
10 Payment of pensions .....	13
11 Payment of pension to legal personal representative in certain cases .....	13
11A Application of Act to and in respect of masters .....	14
12, 13 (Repealed) .....	14

# Judges' Pensions Act 1953 No 41



New South Wales

An Act to make provision for pensions for judges and for the widows and widowers of deceased judges and deceased retired judges; to amend the *Supreme Court and Circuit Courts Act 1900*, the *District Courts Act 1912*, and certain other Acts in certain respects; and for purposes connected therewith.

## 1 Name of Act and commencement

- (1) This Act may be cited as the *Judges' Pensions Act 1953*.
- (2) This Act shall commence on the first day of January, one thousand nine hundred and fifty-four.

## 2 Definitions

- (1) In this Act, unless the context or subject matter otherwise indicates or requires:

**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.

**Judge** means a person holding the office of Chief Justice or puisne judge of the Supreme Court of New South Wales, President of the Court of Appeal or Judge of Appeal, President or other member of the Industrial Commission of New South Wales, Judge of the Industrial Court, judicial member of the Industrial Relations Commission of New South Wales, Judge of the Land and Environment Court, Chief Judge or Judge of the District Court, or Chief Judge or Judge of the Compensation Court of New South

Wales.

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

(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 or her retirement if he or she:

(i) is living at that time, or

(ii) died after he or she retired, or

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

## 2A Continuity of judicial office in the Supreme Court

Each judicial office in the Supreme Court appearing in the First Column of the Table below, as that office was constituted immediately before the commencement of the [Supreme Court Act 1970](#), other than of Part 9 of that Act, shall, for the purposes of this Act, be identical with the office under the [Supreme Court Act 1970](#), named in the Second Column of the Table opposite to the name of the firstmentioned office:

### Table

First Column	Second Column
Chief Justice.	Chief Justice.
President of the Court of Appeal.	President of the Court of Appeal.
Judge of Appeal.	Judge of Appeal.
Additional Judge of Appeal.	Additional Judge of Appeal.
Puisne judge.	Judge.
Acting judge.	Acting judge.

## 2B Continuity of judicial office in the District Court

The office of Chairman of the District Court Judges and of District Court judge under the [District Courts Act 1912](#) shall, for the purposes of this Act, be identical with the office of Chief Judge and of Judge, respectively, under the [District Court Act 1973](#).

## 2C Continuity of office—Workers' Compensation Commission

The office of Chairman of the Workers' Compensation Commission and of member of the Workers' Compensation Commission under the [Workers' Compensation Act 1926](#) (as in

force immediately before the commencement of Schedule 6 (2) to the *Workers' Compensation (Amendment) Act 1984*) shall, for the purposes of this Act, be identical with the office of Chief Judge and of Judge, respectively, of the Compensation Court of New South Wales under the *Compensation Court Act 1984*.

### **3 Pension for certain judges who retired, or retire, at age 72**

(1) This section applies to a retired judge who retired from his or her 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*,
- (d) section 31 (3) (b) of the *Workers' Compensation Act 1926*, or section 9 (3) of the *Compensation Court Act 1984*, or
- (e) section 9 (3) of the *Land and Environment Court Act 1979*,

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

(2) A retired judge to whom this section applies is entitled:

- (a) where he or she retired before the appointed day—during that part of the period of his or her retirement that commenced on the appointed day, or
- (b) where he or she retired on or after the appointed day—during the period of his or her 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 or her 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 14 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 or she served as a judge in his or her judicial office,
- (b) in the case of a retired judge who retired on or after 14 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 or she so served,
- (c) in the case of a retired judge who retired on or after the appointed day after serving as a judge in his or her 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 or she 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 or she 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.

#### **4 Pension to judge retiring voluntarily at or after age 60**

A judge who has attained the age of sixty years and has served as a judge for not less than ten years may retire voluntarily from his or her judicial office, and on so retiring shall be entitled to an annual pension in all respects as if he or she had attained the age of 72 years and had retired from that office in accordance with law.

#### **5 Pension for judge who retires on account of ill-health**

- (1) This section applies to a retired judge who retired from his or her judicial office before, on or after the appointed day where his or her retirement was certified by an appropriate authority to have been due to permanent disability or infirmity.
- (2) Where a retired judge to whom this section applies:
  - (a) served as a judge in his or her judicial office for not less than five years before his or her retirement, or
  - (b) retires on or after the day on which Schedule 6 to the *Statute Law (Miscellaneous Provisions) Act 1988* commences and, within the period of 3 months before appointment as a judge, or within the period of 3 months after that appointment, was certified by an appropriate authority not to be suffering from any impairment of health likely to affect capacity for judicial office,

he or she is entitled to the same pension as that to which he or she would have been entitled had he or she not retired when he or she did but had continued to serve as a judge in that judicial office until he or she attained the age of 72 years and had then retired.

- (3) Where a retired judge to whom this section applies retired before he or she had

completed five years' service as a judge in his or her judicial office, he or she is entitled:

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

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

(4) In this section, **appropriate authority**, in relation to a retirement, means:

- (a) where it occurred before 30 April 1973—the Director-General of Public Health,
- (b) where it occurred on or after 30 April 1973, but before the day appointed and notified under section 2 (2) of the [Health Administration Act 1982](#)—the Health Commission of New South Wales, or
- (c) where it occurred on or after the day so appointed and notified under that Act—the Secretary of the Department of Health or a person authorised by the Secretary to be an appropriate authority.

(5) This section, as amended by the provisions of Schedule 1.4 [1] to the [Courts Legislation Amendment Act 1996](#), applies to a retired judge who was appointed as a judge before the commencement of those provisions in the same way as it applies to one who was appointed after that commencement, and so applies as if subsection (2) (b) were amended by omitting the words “3 months”, where secondly occurring, and by inserting instead the words “12 months”.

## **6 Pension for widow or widower of judge or retired judge**

(1) Where, before, on or after the appointed day, a retired judge died or dies leaving a widow or widower who was the judge's spouse at the time of the judge's retirement, or a judge died or dies in office, the widow or widower 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 the widow's or widower's death, or
- (b) where the judge or retired judge dies on or after the appointed day—during the period commencing on the day after the judge's or retired judge's death and ending on the widow's or widower's death,

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 or widower of a judge or retired judge:
  - (a) who died on or after 16 December 1953, and before 9 December 1964, or
  - (b) who died on or after 9 December 1964, and before the appointed day without having completed five years' service as a judge in his or her judicial office.
- (3) The percentage referred to in subsection (1) in the case of a judge or retired judge who died on or after 9 December 1964, and before the appointed day having completed not less than five years' service as a judge in his or her 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 or her judicial office.
- (4) The percentage referred to in subsection (1) is, in the case of the widow or widower of a retired judge who dies on or after the appointed day:
  - (a) where the retired judge had, at the time of his or her retirement, served as a judge in his or her judicial office for less than ten years—twenty-five per centum, or
  - (b) where the retired judge had, at the time of his or her 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 or widower 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 or her judicial office until he or she attained the age of 72 years and had then retired and died.
- (6) The amendment made by the *Judges' Pensions (Amendment) Act 1994* to subsection (1) extends to a person who is lawfully entitled to a pension under this section at the commencement of that Act. Accordingly, the person does not cease to be entitled to it because the person remarries afterwards.
- (7) The amendment made by the *Judges' Pensions (Amendment) Act 1994* to subsection (1) does not apply to a person whose pension ceased to be payable because the person remarried before the commencement of that Act, but the person can apply for the pension to be restored under section 7.

## **7 Restoration of widow's or widower's pension if lost due to remarriage**

- (1) If a person's pension under section 6 ceased to be payable before the commencement day because the person remarried, the person may apply to the



Attorney General for the pension to be restored.

- (2) If the Attorney General is satisfied that:
- (a) the person is in need, or
  - (b) the restoration of the person's pension is otherwise justified,
- the Attorney General may direct in writing that the person's pension is to be restored.
- (3) The Attorney General may direct that the person's pension is to be restored from a day before the application day if satisfied that there are special circumstances that justify restoration of the pension from that earlier day.
- (4) The Attorney General must not specify a day under subsection (3) that is before the commencement day.
- (5) If the Attorney General gives a direction under subsection (2), the person's pension is restored:
- (a) from and including the day specified in the direction, or
  - (b) if no day is specified in the direction, from and including the application day.
- (6) If the Attorney General decides not to restore a person's pension under this section, the Attorney General must give the person written notice of that decision. The notice must include reasons for the decision.
- (7) In this section:

**application day** means the day on which the application under subsection (1) was made.

**commencement day** means the day on which the [Judges' Pensions \(Amendment\) Act 1994](#) commences.

#### **7A Pension in respect of children on death of judge or retired judge**

- (1) Subject to subsection (2), where a judge or retired judge:
- (a) died before the appointed day leaving a widow or widower who is living on the appointed day, or
  - (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.

**7B Pension in respect of children on death of widow or widower of judge or retired judge**

(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) 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 the pension that by virtue of section 6 would, at that time, have been payable to the widow or widower of a judge or retired judge (being, in the case of a retired judge, a widow or widower who was the judge's spouse at the time of the judge's 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 Pension in respect of certain children where judge or retired judge dies without leaving widow or widower**

(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 or widower of a judge or retired judge (being, in the case of a retired judge, a widow or widower who was the judge's spouse at the time of the judge's 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) 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 Payment of pension under section 7B or 7C**

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.

#### **7E Variation of manner of payment of pension in respect of child**

- (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:
  - (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) 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.

#### **8 Prior judicial service**

- (1) In this section:

***prior judicial service***, in relation to a judge or retired judge, means:

- (a) service as a judge within the meaning of this Act, or
- (b) service in an office in a State, the Commonwealth or a Territory the holder of which may qualify for a pension or retiring allowance under a law of the State, Commonwealth or Territory relating to pensions or retiring allowances payable to retiring judges, or
- (c) service as chairman, acting chairman or additional temporary chairman of the Crown Employees Appeal Board,

being a period of service before his or her appointment as a judge (or, if appointed as a judge on more than 1 previous occasion, before his or her last such appointment).

- (2) Any prior judicial service by a judge shall be computed as portion of his or her service as a judge in the judicial office which he or she held immediately before his or her

retirement or his or her death before retirement, as the case may be.

- (3) Any period during which a judge has served as an additional Judge of Appeal, an acting judge of the Supreme Court of New South Wales, an acting member of the Industrial Commission of New South Wales, an Acting Judge of the Industrial Court, an acting judicial member of the Industrial Relations Commission of New South Wales, an acting Judge of the Land and Environment Court (under the *Land and Environment Court Act 1979*), an acting judge of a District Court (under the *District Courts Act 1912*), or an acting Judge of the District Court (under the *District Court Act 1973*), or an acting member of the Workers' Compensation Commission (under the *Workers' Compensation Act 1926* as in force immediately before the commencement of Schedule 6 (2) to the *Workers' Compensation (Amendment) Act 1984*) or an acting Judge of the Compensation Court of New South Wales (under the *Compensation Court Act 1984*) shall be deemed to be prior judicial service by the judge for the purposes of this section.

## **9 Dual pensions**

- (1) A person is not entitled to receive a pension under this Act if the person is receiving a pension under a law of the Commonwealth, or of another State or of a Territory, which provides for the payment of a pension to a person by reason of the person having held an office referred to in section 8 (1) (b).
- (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 or of another State or of a Territory which makes provision for the payment of a pension in respect of a child of the holder of an office referred to in section 8 (1) (b) or the widow or widower of such an office holder.

## **10 Payment of pensions**

All pensions payable under or by virtue of this Act:

- (a) shall accrue from day to day,
- (b) shall be payable monthly,
- (c) shall be charged upon and payable out of the Consolidated Revenue Fund.

## **11 Payment of pension to legal personal representative in certain cases**

If a judge or former judge dies and the Minister is of the opinion that proceedings might be instituted under the *Family Provision Act 1982* in relation to the estate, or notional estate, of the deceased, the Minister may, despite any other provision of this Act, pay to the personal representatives of the deceased any benefit that, but for this section, would have to be paid to some other person.

**11A Application of Act to and in respect of masters**

- (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) a person appointed before, on or after the appointed day to the office of master under section 111 of the *Supreme Court Act 1970*.
- (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 service included a reference to service in 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*.

**12, 13 (Repealed)**