

# 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**  
[Superannuation Legislation Amendment \(Family Law\) Act 2003 No 77](#) (amended by [Statute Law \(Miscellaneous Provisions\) Act 2011 No 27](#)) (not commenced)

### Responsible Minister

- Attorney General

For full details of Ministerial responsibilities, see the [Administrative Arrangements \(Minns Ministry—Administration of Acts\) Order 2023](#).

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

File last modified 28 November 2018

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## Contents

<b>Long title</b> .....	4
<b>Part 1 Preliminary</b> .....	4
1 Name of Act and commencement .....	4
2 Definitions .....	4
2A Continuity of judicial office in the Supreme Court .....	6
2B Continuity of judicial office in the District Court .....	7
2C Continuity of office—Workers' Compensation Commission .....	7
2D Continuity of office—Industrial Relations Commission and Industrial Court .....	7
<b>Part 2 Pensions</b> .....	8
3 Pension for certain judges who retired, or retire, at mandatory judicial retirement age .....	8
4 Pension for certain judges retiring voluntarily before mandatory judicial retirement age .....	9
5 Pension for judge who retires on account of ill-health .....	10
6 Pension for surviving spouse of judge or retired judge .....	11
7 Restoration of surviving spouse's pension if lost due to remarriage .....	13
7A Pension in respect of children on death of judge or retired judge .....	13
7B Pension in respect of children on death of surviving spouse of judge or retired judge .....	14
7C Pension in respect of certain children where judge or retired judge dies without leaving a surviving spouse .....	15
7D Payment of pension in respect of children .....	16
7E Variation of manner of payment of pension in respect of child .....	16
8 Prior judicial service .....	17

9 Dual pensions .....	17
10 Payment of pensions .....	18
10A Reduction in pensions where lump sum benefit paid .....	18
11, 11A (Renumbered as secs 16, 17) .....	18
11B Provision consequent on enactment of Courts Legislation Amendment Act 2001.....	18
12 Commutation of pensions for payment of superannuation contributions surcharge .....	19
12A Reduction of reversionary pensions .....	19
12B (Renumbered as sec 18).....	20
<b>Part 3 Lump sum benefits .....</b>	<b>20</b>
13 Calculation of lump sum benefits .....	20
14 When lump sum benefit is payable .....	21
15 Judges and acting judges who are qualified for lump sum benefits.....	22
<b>Part 4 Miscellaneous .....</b>	<b>22</b>
16 Payment of pension to legal personal representative in certain cases .....	22
16A Accrued benefit multiples for family law superannuation purposes .....	23
16B Competing claims by surviving spouses for pensions and benefits.....	23
17 Application of Act to and in respect of associate Judges .....	24
18 Regulations.....	25
19 Savings and transitional provisions .....	25
<b>Schedule 1 Savings and transitional provisions .....</b>	<b>25</b>

# Judges' Pensions Act 1953 No 41



New South Wales

An Act to make provision for pensions for judges and for the surviving spouses 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.

## Part 1 Preliminary

### 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:

**Acting judge** means:

- (a) an Acting Judge of the Supreme Court of New South Wales, or
- (b) an acting member of the Industrial Relations Commission of New South Wales, or
- (c) an Acting Judge of the Industrial Court, or
- (d) an acting judicial member of the Industrial Relations Commission of New South Wales, or
- (e) an acting Judge of the Land and Environment Court (under the [Land and Environment Court Act 1979](#)), or
- (f) an Acting Judge of a District Court (under the [District Court Act 1973](#)), or
- (g) an acting Judge of the Compensation Court (under the [Compensation Court Act 1984](#)).

**Appointed day** means the day on which the [Judges' Pensions \(Amendment\) Act 1974](#) commenced.

**Child** includes adopted child.

**de facto partner** of a person means a person who is in a de facto relationship with the other person.

**Note—**

“De facto relationship” is defined in section 21C of the [Interpretation Act 1987](#).

**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.

**increased retirement age day** means the day on which the amendments made to section 44 (Retirement of judicial officers) of the [Judicial Officers Act 1986](#) by the [Justice Legislation Amendment Act \(No 3\) 2018](#) commenced.

**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, Chief Judge or 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.

**mandatory judicial retirement age**, in relation to a judge, means the maximum age at which the judge is required by law to retire.

**Note—**

Before the increased retirement age day, section 44 of the [Judicial Officers Act 1986](#) provided for a maximum retirement age for judges of 72 years.

Section 44 of the [Judicial Officers Act 1986](#) was amended on the increased retirement age day by the [Justice Legislation Amendment Act \(No 3\) 2018](#) to increase the maximum retirement age for judges to 75 years. Clause 9 of Schedule 6 to the [Judicial Officers Act 1986](#) provides that the new retirement age does not apply to judges holding office who were appointed before the increased retirement age day unless they consent to the change applying to them as required by section 55 (2) of the [Constitution Act 1902](#). The retirement age of 72 years continues to apply to judges who do not consent to the increased retirement age applying to them.

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

**spouse** of a person includes a de facto partner.

**Superannuation contributions surcharge** means the superannuation contributions surcharge imposed by the [Superannuation Contributions Tax \(Members of Constitutionally Protected Superannuation Funds\) Imposition Act 1997](#) of the Commonwealth.

**surviving spouse** of a judge, retired judge, former judge or former acting judge who has died (the **deceased person**) means a person who was the spouse of the deceased person at the time of the death of the deceased person.

**Note—**

The [Interpretation Act 1987](#) contains definitions and other provisions that affect the interpretation and application of this Act.

- (1A) For the purposes of this Act, any reference to the period for which a person has served as a judge (however expressed) is taken to exclude any time for which the person has been on leave without pay, whether before or after the commencement of this 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 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.
- (3) Notes included in this Act do not form part of this Act.

## **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**

<b>First Column</b>	<b>Second Column</b>
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](#).

## **2D Continuity of office—Industrial Relations Commission and Industrial Court**

- (1) On and from the abolition of the offices of President of the Industrial Relations Commission (**IRC President**), Vice-President of the Commission (**IRC Vice-President**), Deputy President of the Commission (**IRC Deputy President**) and judicial member of the Commission (**IRC judicial member**):
  - (a) for a retired or deceased IRC President—the office of Chief Judge of the Land and Environment Court (or, if that office is abolished, a comparable judicial office) is to be treated as the judicial office of equivalent status to the office of IRC President in determining the notional judicial salary under this Act for the former IRC President, and
  - (b) for a retired or deceased IRC Vice-President, IRC Deputy President or IRC judicial member (except if the person was also the IRC President)—the office of puisne Judge of the Supreme Court is to be treated as the judicial office of equivalent status to any of those abolished offices in determining the notional judicial salary under this Act for a former holder of any of the abolished offices.

### **Note—**

Part 18 of Schedule 4 to the [Industrial Relations Act 1996](#) (as inserted by the [Industrial Relations Amendment \(Industrial Court\) Act 2016](#)) abolished the Industrial Court and the offices of IRC President, IRC Vice-President, IRC Deputy President and IRC judicial member. It appointed the incumbent IRC President (who was also an IRC judicial member) as a Judge of the Supreme Court and preserved the person's final remuneration as IRC President until the remuneration of a puisne Judge of the Supreme Court exceeded that remuneration. It also provided that the IRC President's service as an IRC judicial member was to count towards his service as a Judge of the Supreme Court for all purposes (including this Act).

- (2) Subsection (1) extends to a retired or deceased former IRC President who was appointed as a Judge of the Supreme Court by Part 18 of Schedule 4 to the *Industrial Relations Act 1996* if that person is entitled at the time of retirement or death to receive remuneration by reference to the person's former office as IRC President instead of as a Judge of the Supreme Court.
- (3) To avoid doubt, any notional judicial salary for a retired or deceased IRC President who was also an IRC judicial member that was determined before the abolition of those offices is taken to have been validly determined for the purposes of this Act if it was determined by reference to the salary payable to a current IRC President rather than to a current IRC judicial member.

## Part 2 Pensions

### 3 Pension for certain judges who retired, or retire, at mandatory judicial retirement age

- (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.

**Note—**

Section 55 (2) of the *Judicial Officers Act 1986* provides for the reference in this section to the *Judges Retirement Act 1918* to be read as a reference to the *Judges Retirement Act 1918* or the *Judicial Officers Act 1986*.

- (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 for certain judges retiring voluntarily before mandatory judicial retirement age**

- (1) A judge appointed before the increased retirement age day who is at least 60 years of age and has served as a judge for not less than 10 years:
  - (a) may retire voluntarily from the judge's judicial office, and
  - (b) on retiring, is entitled to the annual pension to which the judge would have been entitled if the judge had retired from the office in accordance with law at the mandatory judicial retirement age.
- (2) A judge appointed on or after the increased retirement age day who is at least 65 years of age and has served as a judge for not less than 10 years:
  - (a) may retire voluntarily from the judge's judicial office, and
  - (b) on retiring, is entitled to the annual pension to which the judge would have been

entitled if the judge had retired from the office in accordance with law at the mandatory judicial retirement age.

## **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 mandatory judicial retirement age 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 surviving spouse of judge or retired judge**

- (1) Where, before, on or after the appointed day, a retired judge died or dies leaving a surviving spouse who was the judge's spouse at the time of the judge's retirement, or a judge died or dies in office, the surviving spouse 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 spouse'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 spouse'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.

- (1A) If a retired judge dies on or after 29 November 2002 leaving a surviving spouse who became the spouse of the retired judge after the judge retired, and the surviving spouse is an eligible spouse, the surviving spouse is entitled, during the period commencing on the day after the retired judge's death and ending on the spouse's death:
- (a) if the retired judge and surviving spouse had been married or living in the relationship for 3 years or more immediately before the death—to a pension at an annual rate that, at any time during that period, is a percentage, calculated as provided by subsection (4), of the notional judicial salary of the retired judge at that time, or
  - (b) if the retired judge and surviving spouse had been married or living in the relationship for less than 3 years immediately before the death—to a pension as referred to in paragraph (a), but reduced on a pro rata basis according to the proportion that the period of the marriage or relationship bears to 3 years.

- (1B) For the purposes of subsection (1A):

**eligible spouse** of a retired judge means a person who has or had in his or her marriage or relationship with the retired judge a child, being:

- (a) a child of the spouse and the retired judge who was, in the opinion of the Minister, wholly or substantially dependent on the retired judge at any time during the marriage or relationship, or
  - (b) a child of the retired judge who was conceived before and born alive after the death of the retired judge.
- (2) The percentage referred to in subsection (1) is twenty per centum in the case 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 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 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 mandatory judicial retirement age 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 surviving spouse'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 surviving spouse who is living on the appointed day, or

(b) dies on or after the appointed day leaving a surviving spouse,

the surviving spouse 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 surviving spouse or of the judge (other than a child of any remarriage or subsequent relationship of the surviving spouse).

(2) If a surviving spouse of a retired judge referred to in subsection (1) became the spouse of the retired judge:

(a) after retirement of the judge, and

(b) after the retired judge attained the age of 60 years (if appointed before the increased retirement age day) or 65 years (if appointed on or after that day), and

(c) less than 5 years before the judge died,

pension is not payable under subsection (1) in respect of a child of the marriage or relationship or of any other child of the surviving spouse of the retired judge.

#### **7B Pension in respect of children on death of surviving spouse of judge or retired judge**

(1) If the surviving spouse of a judge or retired judge died before, or dies on or after, the appointed day, a pension is payable, on and from the appointed day or the day following the death of the surviving spouse, whichever is the later day, in accordance with section 7D, in respect of each eligible child of the surviving spouse or of the judge or retired judge (other than a child of any remarriage or subsequent relationship of the surviving spouse) 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 surviving spouse of a judge or retired judge (being, in the case of a retired judge, a surviving spouse 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) Despite subsection (1), if a surviving spouse of a retired judge became the spouse of the retired judge:

(a) after retirement of the judge, and

(b) after the retired judge attained the age of 60 years (if appointed before the increased retirement age day) or 65 years (if appointed on or after that day), and

(c) less than 5 years before the judge died,

pension is not payable under subsection (1) in respect of a child of the marriage or relationship or of any other child of the surviving spouse of the retired judge.

**7C Pension in respect of certain children where judge or retired judge dies without leaving a surviving spouse**

(1) Subject to this section, where a judge or retired judge died before, or dies on or after, the appointed day without leaving a surviving spouse, 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 spouse (including husband or wife) or de facto partner 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 surviving spouse of a judge or retired judge (being, in the case of a retired judge, a surviving spouse 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 or subsequent relationship of a former spouse (including husband or wife) or de facto partner of a judge or retired judge, or
- (b) a child of a spouse of a retired judge who became a spouse of the retired judge:
  - (i) after the retirement of the judge, and
  - (ii) after the retired judge attained the age of 60 years (if appointed before the increased retirement age day) or 65 years (if appointed on or after that day), and
  - (iii) less than 5 years before the retired judge died.

#### **7D Payment of pension in respect of children**

- (1) Only one pension is payable in respect of a child at any one time under section 7A, 7B or 7C. If, but for this subsection, a pension would be payable in respect of a child under 2 or more of those sections, the pension payable in respect of the child is payable in accordance with a determination made by the Minister, and not otherwise.
- (2) A pension payable in respect of a child under section 7B or 7C is to 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 surviving spouse of a judge or retired judge unless the child in respect of whom the pension is payable is not living with the spouse.



## 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 surviving spouse of such an office holder.

## **10 Payment of pensions**

- (1) All pensions payable under or by virtue of this Act:
  - (a) shall accrue from day to day,
  - (b) shall be payable fortnightly,
  - (c) shall be charged upon and payable out of the Consolidated Revenue Fund.
- (2) A lump sum payable under section 12 is charged on and payable out of the Consolidated Fund.

## **10A Reduction in pensions where lump sum benefit paid**

- (1) Despite any other provision of this Act, if a pension is payable under this Act to or in respect of a judge or former judge who has previously been paid a lump sum benefit:
  - (a) under this Act, or
  - (b) under an Act of another State, a Territory or the Commonwealth in respect of any prior judicial service,

the amount of any pension payable from time to time under this Act is to be reduced having regard to the value of the lump sum benefit paid.
- (2) If a pension is reduced under this section, any subsequent reversionary pension payable from time to time under this Act is to be reduced.
- (3) The amount of the reduced pension or reversionary pension is to be determined by the Attorney-General in accordance with actuarial advice.
- (4) In this section:

***prior judicial service*** has the same meaning as it has in section 8.

***reversionary pension*** means a pension paid under this Act to a person as a result of a pension being previously paid to another person under this Act (for example, a pension paid to a surviving spouse of a judge).

## **11, 11A** (Renumbered as secs 16, 17)

## **11B Provision consequent on enactment of [Courts Legislation Amendment Act 2001](#)**

The Chief Judge of the Land and Environment Court is taken from 1 September 1980 to have been a Judge for the purposes of this Act.

## **12 Commutation of pensions for payment of superannuation contributions surcharge**

- (1) A retired judge who is entitled to a pension under this Act may elect to have part of the pension commuted to a lump sum for the purposes of payment of a liability for superannuation contributions surcharge arising because of that entitlement.
- (2) A person (other than a retired judge) who is entitled to a pension under this Act may elect to have part of the pension commuted to a lump sum for the purposes of payment of a liability for superannuation contributions surcharge arising in relation to:
  - (a) a judge who has died, or
  - (b) a retired judge who died without making an election under subsection (1) and before the period applicable to the retired judge for making such an election ended.
- (3) An election:
  - (a) may relate to the whole or part of an outstanding liability for superannuation contributions surcharge, and
  - (b) must be made in writing to the Minister not later than 2 months after the liability to pay the amount of the superannuation contributions surcharge arises, or within such further period as the Minister may allow.
- (4) If an election is made by a retired judge, the Minister is to cause the amount of the lump sum to be paid to the retired judge.
- (5) If an election is made by a person other than a retired judge, the Minister may cause the amount of the lump sum to be paid to the person, but only if satisfied that the lump sum is to be applied towards payment of the superannuation contributions surcharge.
- (6) On payment of a lump sum, the pension otherwise payable from time to time under this Act to the person is to be reduced.
- (7) The amount of the reduced pension is to be calculated in accordance with the regulations.
- (8) A pension may be commuted only to the extent necessary to meet the liability for superannuation contributions surcharge.
- (9) The Minister may, by signed instrument, delegate to a person prescribed by the regulations any of the Minister's functions under subsection (3) or (4).

### **12A Reduction of reversionary pensions**

- (1) If part of a pension is commuted under section 12, any subsequent reversionary pension payable from time to time under this Act is to be reduced.

(2) The amount of the reduced reversionary pension is to be calculated in accordance with the regulations.

(3) In this section:

**reversionary pension** means a pension paid under this Act to a person as a result of a pension being previously paid to another person under this Act (for example, a pension paid to a surviving spouse of a retired judge).

**12B** (Renumbered as sec 18)

## Part 3 Lump sum benefits

### 13 Calculation of lump sum benefits

(1) The lump sum benefit payable under this Act to or in respect of a judge or acting judge qualified under section 15 is an amount calculated as follows:

$$B = S \times F \times Y$$

where:

**B** represents the amount to be ascertained.

**S** represents the superannuation guarantee.

**F** represents the final salary of the judge or acting judge.

**Y** represents the years of service calculated on a daily basis, commencing on or after the appointed day.

(1A) More than one calculation is required under subsection (1) if the superannuation guarantee level changes during the years of service of a judge or acting judge. In such a case, separate calculations are to be made in respect of each such level with Y being limited to the years of service (calculated on a daily basis) of the judge or acting judge during the period when the superannuation guarantee is at that particular level.

(2) In this section:

**attributed salary** of a judge or acting judge at any time means:

(a) if the judge or acting judge is employed on a full-time basis—the salary of the judge or acting judge at that time, or

(b) if the judge or acting judge is employed on a part-time basis—the salary that would be payable to the judge or acting judge at that time if employed on a full-time basis.

**final salary** of a judge or acting judge means the rate of attributed salary paid or payable to the judge or acting judge on the exit date of the judge or acting judge.

**superannuation guarantee** means:

- (a) before 1 July 2013—9%, or
- (b) for any other time—the charge percentage specified at the time in section 19 (2) of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

#### **14 When lump sum benefit is payable**

- (1) A lump sum benefit calculated in accordance with section 13 is payable to or in respect of a judge or acting judge qualified under section 15:
  - (a) if the judge or acting judge dies, or
  - (b) if the judge or acting judge ceases to be employed as a judge or acting judge in the circumstances in which a benefit is payable for the purposes of complying with a relevant Commonwealth superannuation standard, or
  - (c) in any other circumstances in which a benefit is payable to comply with any such standard or may be paid in respect of a member of a regulated superannuation fund under any such standard,and is so payable in accordance with subsections (4) and (5).
- (2) If the whole or part of a lump sum benefit payable to a former judge or former acting judge would be required to be preserved if a relevant Commonwealth superannuation standard applied to the benefit, that amount must, on the election of the former judge or former acting judge, be paid to:
  - (a) a regulated superannuation fund, or
  - (b) an approved deposit fund, or
  - (c) an RSA institution.
- (3) If the former judge or former acting judge does not make an election referred to in subsection (2), the amount is to be paid on behalf of the former judge or former acting judge to a regulated superannuation fund or approved deposit fund approved by the Attorney General.
- (4) The lump sum benefit in respect of a former judge or former acting judge is payable:
  - (a) unless the former judge or former acting judge has died—to the former judge or former acting judge, or
  - (b) if the former judge or former acting judge has died and is survived by a surviving spouse—to the surviving spouse, or

- (c) if the former judge or former acting judge has died and is not survived by a surviving spouse—to the legal personal representatives of the former judge or former acting judge for payment in respect of any eligible children of the former judge or former acting judge, or
  - (d) if the former judge or former acting judge has died and is not survived by a surviving spouse or any eligible children—to the legal personal representatives of the former judge or former acting judge.
- (5) A lump sum payable under this section is charged on and payable out of the Consolidated Fund.
- (6) For the purposes of this section, an acting judge whose term of appointment as an acting judge ends, and who is appointed for a further consecutive term as an acting judge, is taken not to have ceased to be employed as an acting judge.
- (7) In this section:

**approved deposit fund** has the same meaning as it has in the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth.

**regulated superannuation fund** has the same meaning as it has in the [Superannuation Industry \(Supervision\) Act 1993](#) of the Commonwealth.

**relevant Commonwealth superannuation standard** means a standard that would be applicable if a benefit were payable from a regulated superannuation fund.

**RSA institution** has the same meaning as it has in the [Retirement Savings Accounts Act 1997](#) of the Commonwealth.

## 15 Judges and acting judges who are qualified for lump sum benefits

- (1) A judge or acting judge is qualified for payment of a lump sum benefit payable under this Act if the judge or acting judge is not a person referred to in subsection (2).
- (2) A lump sum benefit is not payable to or in respect of the following persons:
  - (a) a judge who is entitled to payment of a pension under this Act on ceasing to be a judge or in respect of whom such a pension is payable if the judge dies,
  - (b) an acting judge who ceases to be an acting judge because of appointment as a judge.

## Part 4 Miscellaneous

### 16 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 Chapter 3 of the [Succession Act 2006](#) 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.

#### **16A Accrued benefit multiples for family law superannuation purposes**

(1) For the purposes of the family law superannuation legislation, the accrued benefit multiple of a judge or retired judge is the period (in years and parts of years) that the judge or retired judge served as a judge in his or her judicial office.

(2) In this section:

**family law superannuation legislation** means Part VIIIB of the *Family Law Act 1975* of the Commonwealth and the *Family Law (Superannuation) Regulations 2001* of the Commonwealth.

#### **16B Competing claims by surviving spouses for pensions and benefits**

(1) This section applies to the following pensions or lump sum benefits payable under this Act:

(a) a pension payable to the surviving spouse of a deceased judge or retired judge under section 6,

(b) a lump sum benefit payable to the surviving spouse of a deceased former judge or former acting judge under section 14.

(2) If a pension or lump sum benefit to which this section applies would be payable to more than 1 person because a judge, retired judge, former judge or former acting judge (the **deceased person**) has died leaving more than 1 surviving spouse:

(a) the pension or lump sum benefit is payable in accordance with a determination made by the Minister, and not otherwise, and

(b) the total amount of pension or lump sum benefit payable to those persons at any time is not to exceed the amount that would be payable if there were only 1 spouse.

(3) For the purposes of subsection (2) (a), the Minister may determine in relation to a pension or lump sum benefit to which this section applies:

(a) that the pension or lump sum benefit is not payable to such of the persons concerned as the Minister specifies, or

(b) that the amount of the pension or lump sum benefit is to be apportioned between the persons concerned in such manner as the Minister specifies.

(4) The payment of any pension or lump sum benefit to which this section applies is to be withheld, if the Minister so directs:

- (a) until 30 days after the death of the person as a consequence of which the pension or lump sum benefit is payable, or
  - (b) if an application has been made for the pension or lump sum benefit by more than 1 person purporting to be the spouse of a deceased person, until the Minister is satisfied as to the 1 person to whom the pension or lump sum benefit is payable or until a determination is made in relation to the matter by the Minister.
- (5) If, after 30 days from the death of a person, a pension or lump sum benefit to which this section applies is paid in respect of any period to the spouse of the deceased person, a pension or lump sum benefit to which this section applies is not payable to any other spouse of the deceased person in respect of that period, unless the Minister has made a determination to apportion the pension or lump sum benefit under subsection (3) (b).
- (6) If, after 30 days from the death of a person, part of a pension is commuted by a surviving spouse under section 12, so much of the pension as is equal to the amount of the pension so commuted is not payable to any other spouse of the deceased person.
- (7) For the purposes of subsections (5) and (6), an amount paid in good faith to a person purporting to be the spouse of a deceased person is taken to have been paid to such a spouse.
- (8) If, after 30 days from the death of a person, any amount is paid under this Act to the person's personal representatives or to such other persons as the Minister may determine, any pension or lump sum benefit to which this section applies payable to the spouse of the deceased person is to be reduced by the amount so paid.

## **17 Application of Act to and in respect of associate Judges**

- (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](#), as in force before the abolition of that office by the [Courts Legislation Amendment Act 2005](#), and
  - (c) a person appointed, on or after the abolition of the office of master of the Supreme Court by the [Courts Legislation Amendment Act 2005](#), to the office of associate Judge 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 includes a reference to the following:
  - (i) service in the offices of Master in Equity and Acting Master in Equity constituted under the [Equity Act 1901](#) before its repeal,
  - (ii) service in the office of master or acting master of the Supreme Court under section 111 of the [Supreme Court Act 1970](#) before the abolition of the offices of master and acting master of the Supreme Court by the [Courts Legislation Amendment Act 2005](#),
  - (iii) service in the office of acting associate Judge of the Supreme Court under section 111 (2) of the [Supreme Court Act 1970](#).

## **18 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may be made for the purposes of section 12 (7) or 12A (2) only if the Minister has certified in writing that actuarial advice was obtained in relation to the subject-matter of the regulation.

## **19 Savings and transitional provisions**

Schedule 1 has effect.

## **Schedule 1 Savings and transitional provisions**

(Section 19)

### **1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **2 Past service to be taken into account**

For the purposes of calculating a lump sum benefit payable under this Act to a judge or acting judge, any period of service as a judge or acting judge on or after 1 July 1992 is to be taken into account, whether or not the period of service was continuous.

## **3 Lump sum benefit payments to acting judges or retired judges**

The lump sum benefit payable under this Act is payable to or in respect of a former judge or former acting judge who would have qualified for the benefit if Schedule 7 to the [Courts Legislation Amendment Act 2000](#) had commenced on 1 July 1992 (the date of commencement of the [Superannuation Guarantee \(Administration\) Act 1992](#) of the Commonwealth) instead of 26 October 2001.

## **4 Application of de facto partner eligibility provisions**

- (1) The de facto partner amendments have effect as if they had commenced on the de facto partner eligibility date.
- (2) Those amendments apply in the case of a judge, retired judge, former judge or former acting judge who dies on or after the de facto partner eligibility date but do not apply in respect of a judge, retired judge, former judge or former acting judge who died before the de facto partner eligibility date.
- (3) Accordingly, a reference in this Act to a **spouse** of a judge, retired judge, former judge or former acting judge does not include a de facto partner of the judge, retired judge, former judge or former acting judge if the judge, retired judge, former judge or former acting judge died before the de facto partner eligibility date.
- (4) In this clause:

**de facto partner amendments** means:

- (a) the amendments made to this Act by Schedule 5 to the [Courts Legislation Amendment Act 2005](#) (except Schedule 5 [24] and [25]), and
- (b) the amendment made to the [Director of Public Prosecutions Act 1986](#) by Schedule 14.1 to the [Courts Legislation Amendment Act 2005](#).

***de facto partner eligibility date*** means 1 May 2005.

**5 Change of maximum judicial retirement age does not affect existing beneficiaries**

This Act, as in force before its amendment by the [Justice Legislation Amendment Act \(No 3\) 2018](#), continues to apply in respect of judges and acting judges who retired or died before the increased retirement age day (and their spouses and children).