

1980-81

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time, 24 September 1981

(Minister representing the Attorney-General)

A BILL

FOR

An Act to amend the *Judges' Pensions Act 1968*

5 BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

Short title, &c.

1. (1) This Act may be cited as the *Judges' Pensions Amendment Act 1981*.

(2) The *Judges' Pensions Act 1968*¹ is in this Act referred to as the Principal Act.

10 **Commencement**

2. (1) Sections 1 and 2 shall come into operation on the day on which this Act receives the Royal Assent.

(2) Sub-section 3 (1) shall be deemed to have come into operation on 16 September 1975.

15 (3) Sub-section 3 (2) and sections 7, 8, 9 and 10 shall be deemed to have come into operation on 1 July 1981.

(4) The remaining provisions of this Act shall come into operation on the twenty-eighth day after the day on which this Act receives the Royal Assent.

Interpretation

3. (1) Section 4 of the Principal Act is amended—

(a) by omitting from paragraph (b) of the definition of “appropriate current judicial salary” in sub-section (1) “or the Chief Justice of the Supreme Court of Papua New Guinea” and substituting “, the Chief Justice of the Supreme Court of Papua New Guinea or the Chief Justice of Papua New Guinea”; 5

(b) by omitting from paragraph (c) of that definition “Senior Puisne Judge of the Supreme Court” and substituting “Deputy Chief Justice”; and

(c) by omitting from paragraph (d) of that definition “Judge, other than the Chief Justice or the Senior Puisne Judge, of the Supreme Court of Papua New Guinea” and substituting “Papua New Guinea Judge, other than a Judge referred to in paragraph (b) or (c)”. 10

(2) Section 4 of the Principal Act is amended—

(a) by omitting paragraph (b) of the definition of “appropriate current judicial salary” in sub-section (1) and substituting the following paragraph: 15

“(b) in the case of a Judge who was—

(i) the Chief Judge of the Commonwealth Court of Conciliation and Arbitration; 20

(ii) the Chief Judge of the Australian Industrial Court;

(iii) the Chief Justice of the Supreme Court of Papua New Guinea; or

(iv) the Chief Justice of Papua New Guinea, the salary for the time being payable to the Chief Judge of the Federal Court of Australia;” 25

(b) by omitting paragraph (d) of that definition and substituting the following paragraph:

“(d) in the case of a Judge who was—

(i) a Judge, other than the Chief Judge, of the Commonwealth Court of Conciliation and Arbitration; 30

(ii) a Judge, other than the Chief Judge, of the Australian Industrial Court;

(iii) a Judge of the Federal Court of Bankruptcy; or

(iv) a Papua New Guinea Judge, other than a Judge referred to in paragraph (b) or (c), 35

the salary for the time being payable to a Judge, other than the Chief Judge, of the Federal Court of Australia.”; and

(c) by inserting in sub-section (1), after the definition of “prior judicial service”, the following definition: 40

“‘relevant pension’, in relation to a Judge who has died, means the pension that would have been payable to the Judge if the Judge had retired on the date of his or her death and, in a

case where sub-section (1) of section 6 would not have been applicable in relation to that retirement, the Attorney-General had certified that that retirement was due to permanent disability;”.

5 **Pensions of Judges**

4. Section 6 of the Principal Act is amended—

(a) by inserting after sub-section (2) the following sub-section:

10 “(2AA) A Judge (not being a Judge to whom sub-section (1) applies) who has retired may apply to the Attorney-General for a certificate under sub-section (2) that his retirement was due to permanent disability or infirmity and, upon receipt of that application, the Attorney-General shall—

15 (a) if he is satisfied that the retirement of the Judge was due to permanent disability or infirmity—so certify under sub-section (2); or

(b) if he is not so satisfied—refuse so to certify.”; and

(b) by inserting after sub-section (2c) the following sub-section:

20 “(2d) Where—

(a) a Judge, whether by reason of the terms of his appointment or otherwise, is to cease to hold office as a Judge upon his attaining a particular age;

(b) he ceases to be a Judge upon his attaining that age;

(c) at the time of his so ceasing, he had served as a Judge for not less than 7 years; and

25 (d) he is not a person to whom sub-section (1), (2), (2A) or (2B) applies,

he is entitled to a pension at a rate equal to—

(e) 0.5% of the appropriate current judicial salary for each completed month of his service as a Judge; or

30 (f) 60% of the appropriate current judicial salary,

whichever is the lesser rate.”.

5 Section 7 of the Principal Act is repealed and the following section substituted:

Pension to widow or widower on death of Judge

35 “7. (1) Where a Judge dies leaving a widow or widower, a pension shall be paid to the widow or widower at a rate equal to 62.5% of the rate of the relevant pension in relation to the Judge.

“(2) If a widow or widower in receipt of a pension under this section re-marries, the pension ceases.”.

40 **Pension to widow or widower on death of retired Judge**

6. Section 8 of the Principal Act is amended by omitting from sub-section (1) “five-eighths” and substituting “62.5%”.

7. Section 9 of the Principal Act is repealed and the following section substituted:

Pension in respect of children on death of Judge

“9. (1) Where a Judge dies leaving a widow or widower, there shall, in addition to any pension that is payable to the widow or widower under section 7, be paid to the widow or widower, in respect of any eligible child, or any eligible children, of the widow or widower or of the Judge (other than a child of any re-marriage of the widow or widower), a pension at a rate equal to the applicable percentage of the rate of the relevant pension in relation to the Judge.

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

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- (a) where there is one eligible child—12.5%;
- (b) where there are 2 eligible children—25%; or
- (c) where there are 3 or more eligible children—37.5%.”.

Pension in respect of children on death of retired Judge

8. Section 10 of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-sections:

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“(1) Subject to this section, where a retired Judge dies leaving a widow or widower, there shall, in addition to any pension that is payable to the widow or widower under section 8, be paid to the widow or widower, in respect of any eligible child, or any eligible children, of the widow or widower or of the retired Judge (other than a child of any re-marriage of the widow or widower), a pension at a rate equal to the applicable percentage of the rate of the pension that would have been payable to the retired Judge if he or she had not died.

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“(1A) For the purposes of sub-section (1), the applicable percentage is—

- (a) where there is one eligible child—12.5%;
- (b) where there are 2 eligible children—25%; or
- (c) where there are 3 or more eligible children—37.5%.”.

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Pension in respect of children on death of widow or widower

9. Section 11 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections:

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“(1) Subject to this section, where the widow or widower of a Judge or retired Judge, being a widow or widower who became entitled upon the death of the Judge or retired Judge to a pension under this Act, has died, there shall be paid, in respect of any eligible child, or any eligible children, of the widow or widower or of the Judge or retired Judge (other than a child of any re-marriage of the widow or widower), a pension at a rate equal to the applicable percentage of the rate of—

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- (a) in the case of the widow or widower of a Judge other than a retired Judge—the relevant pension in relation to the Judge; or

(b) in the case of the widow or widower of a retired Judge—the pension that would have been payable to the retired Judge if he or she had not died.

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

- 5 (a) where there is one eligible child—45%;
- (b) where there are 2 eligible children—80%;
- (c) where there are 3 eligible children—90%; or
- (d) where there are 4 or more eligible children—100%.”.

10 **Pension in respect of children on death of Judge or retired Judge when widow’s pension or widower’s pension not payable**

10. Section 12 of the Principal Act is amended by omitting sub-sections (1) and (2) and substituting the following sub-sections:

15 “(1) Subject to this section, where a Judge or retired Judge has died without leaving a widow or widower who became entitled, upon the death of the Judge or retired Judge, to a pension under this Act, there shall be paid in respect of any eligible child, or any eligible children, 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, a pension at a rate equal to the applicable percentage of the rate of—

- 20 (a) in the case of a Judge other than a retired Judge—the relevant pension in relation to the Judge; or
- (b) in the case of a retired Judge—the pension that would have been payable to the retired Judge if he or she had not died.

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

- 25 (a) where there is one eligible child—45%;
- (b) where there are 2 eligible children—80%;
- (c) where there are 3 eligible children—90%; or
- (d) where there are 4 or more eligible children—100%.”.

30 **11.** Section 13 of the Principal Act is repealed and the following section substituted:

Payment of orphans’ pensions

“13. (1) In this section, ‘orphan’s pension’ means a pension payable in respect of an eligible child, or eligible children, under section 11 or 12.

35 “(2) A payment of an orphan’s pension payable in respect of an eligible child or eligible children shall be made to the child or children or to such other person or persons as the Attorney-General considers appropriate.

40 “(3) Where a payment of orphan’s pension is payable in respect of 2 or more eligible children, the Attorney-General may, having regard to the respective circumstances of the children and to such other matters as he considers appropriate, apportion the amount of the payment amongst the

children in such manner as he thinks fit, and the portion applicable to a particular eligible child or to particular eligible children shall, for the purposes of sub-section (2), be deemed to be a payment of orphan's pension payable in respect of that child or those children.

“(4) A payment of orphan's pension that, under sub-section (2), is made to a person or persons other than the eligible child or eligible children in respect of whom it is payable shall be applied for the support, education or other benefit of that eligible child or those eligible children.”. 5

12. Section 15 of the Principal Act is repealed and the following section substituted: 10

Special provision relating to childrens' pensions (other than orphans' pensions)

“15. (1) Where a pension is payable under this Act to the widow or widower of a Judge or retired Judge in respect of an eligible child or eligible children—

- (a) if the Attorney-General is of opinion that the support and education of the child or any of the children will be best assured by doing so, he may direct that the pension, or such portion of the pension as he thinks fit, be paid to a specified person in respect of the child; or 15
- (b) if the Attorney-General is satisfied that, by reason of special circumstances, it is desirable to do so in the interests of the child or of any of the children, he may direct that the pension, or such portion of the pension as he thinks fit, be expended in a specified manner for the benefit of the child. 20

“(2) The power of the Attorney-General under sub-section (1) to direct payment of a pension, or of a portion of a pension, to a specified person applies only where the child concerned is not living with the widow or widower. 25

“(3) Application may be made to the Attorney-General for the giving of a direction under sub-section (1) in respect of an eligible child and, upon receipt of such an application, the Attorney-General shall—

- (a) if he is satisfied that he should give a direction in respect of the child— give such a direction; or 30
- (b) if he is not so satisfied—refuse to give such a direction.

“(4) A direction under this section shall be in writing.”.

13. After section 17 of the Principal Act the following section is inserted:

Applications for review

“17A. Applications may be made to the Administrative Appeals Tribunal for review of— 35

- (a) a refusal of the Attorney-General, on application under sub-section (2AA) of section 6, to certify, under sub-section (2) of that section, that the retirement of a Judge was due to permanent disability or infirmity;
- (b) a decision of the Attorney-General under section 13; 40

- (c) a direction of the Attorney-General under sub-section (1) of section 15;
or
 - (d) a refusal of the Attorney-General, on application under sub-section (3) of section 15, to give a direction under sub-section (1) of that section.”.
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NOTE

1. No. 151, 1968, as amended. For previous amendments, see No. 47, 1973; No. 216, 1973 (as amended by No. 20, 1974); No. 162, 1974; and No. 88, 1979.

