

Judges' Pensions

No. 151 of 1968

An Act to make provision for Pensions for Judges
and their Families.

[Assented to 10 December 1968]

BE it enacted by the Queen's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:—

1. This Act may be cited as the *Judges' Pensions Act* 1968.
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Short title.

2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.

3.—(1.) The following Acts are repealed:— Repeal.

Judges' Pensions Act 1948;

Judges' Pensions Act 1956;

Judges' Pensions Act 1958;

Judges' Pensions Act 1961.

(2.) The repeal effected by the last preceding sub-section does not affect the operation of—

- (a) any amendment made by an Act repealed by that sub-section to an Act that is not so repealed; or
- (b) any provision for the citation of an Act as amended by such an amendment.

4.—(1.) In this Act, unless the contrary intention appears— Interpretation.

“ child ” includes an 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-one years; and
 - (ii) is receiving full-time education at a school, college or university;

“ Judge ” means—

- (a) a Justice or Judge of a federal court or of the Supreme Court of a Territory of the Commonwealth forming part of the Commonwealth; or
- (b) a person who, by virtue of an Act, has the same status as Justice or Judge of a court referred to in the last preceding paragraph;

“ prior judicial service ”, in relation to a Judge or retired Judge, means—

- (a) service as a Judge or acting Judge of a court of a State or of the Supreme Court of the Territory of Papua and New Guinea;
- (b) service, including acting service, in a State office the holder of which may qualify for a pension or retiring allowance under the law of a State relating to pensions or retiring allowances payable to retired Judges;
- (c) service in the office of Coal Industry Tribunal referred to in the *Coal Industry Act 1946–1966*; or
- (d) service before the commencement of the *Northern Territory Supreme Court Act 1961* as the Judge or an acting Judge of the Northern Territory,

being service prior to his appointment as a Judge or, if he has been appointed as a Judge more than once, before the last such appointment, but does not include service as a Justice of the Peace or Magistrate;

“retired Judge” means a person who has been a Judge and is or has been in receipt of a pension under this Act, including a pension under section 18 of this Act;

“retires”, in relation to a Judge, means ceases to be a Judge otherwise than by death, and “retirement” has a corresponding meaning;

“salary”, in relation to a Judge who has retired or died, means salary at the rate payable to the Judge immediately before his retirement or death.

(2.) For the purposes of this Act, where a widow of a Judge or retired Judge has re-married and the parties to the re-marriage have adopted a child that was not a child of the widow or of the Judge or retired Judge, that child shall be deemed to be a child of the re-marriage.

Service in
more than one
judicial office.

5.—(1.) For the purposes of this Act, a Judge shall be taken not to have retired so long as he continues to hold any office as a Judge or any judicial office in relation to a Territory of the Commonwealth.

(2.) Where, during any period (whether before or after the commencement of this Act), a person has held two or more offices as a Judge, his service during that period shall be taken into account for the purposes of this Act in the same way as if, during that period, he had held one office as a Judge only.

Pensions
of Judges.

6.—(1.) Where a Judge who has attained the age of sixty years retires after serving as a Judge for not less than ten years, he is entitled to a pension at a rate equal to fifty per centum of his salary.

(2.) Where a Judge, not being a Judge to whom the last preceding sub-section applies, retires, and the Attorney-General certifies that his retirement is due to permanent disability or infirmity, he is entitled—

(a) if his retirement occurs before he has completed six years' service as a Judge—to a pension at a rate equal to forty per centum of his salary; or

(b) in any other case—to a pension at a rate equal to the sum of—

(i) forty per centum of his salary; and

(ii) two per centum of his salary for each completed year of service other than the first five years,

but so that the rate of his pension shall not exceed fifty per centum of his salary.

(3.) For the purposes of this section, where a Judge had prior judicial service, the period of that service shall be added to, and be deemed to be part of, the period of his service as a Judge.

7.—(1.) Where a Judge dies leaving a widow, a pension shall be paid to the widow at a rate equal to five-eighths of the rate of the pension that would have been payable to the Judge if the Judge had retired on the date of his death and (in a case where sub-section (1.) of the last preceding section would not have been applicable in relation to that retirement) the Attorney-General had certified that that retirement was due to permanent disability.

Pension to widow on death of Judge.

(2.) If a widow in receipt of a pension under this section re-marries, her pension ceases.

8.—(1.) Where a retired Judge dies leaving a widow whose marriage to the retired Judge occurred before his retirement, a pension shall be paid to the widow at a rate equal to five-eighths of the rate of the pension that was payable to the retired Judge immediately before his death.

Pension to widow on death of retired Judge.

(2.) If a widow in receipt of a pension under this section re-marries, her pension ceases.

9. Where a Judge dies leaving a widow, there shall, in addition to any pension that is payable to her under section 7 of this Act, be paid to the widow, in respect of each eligible child of the widow or of the Judge (other than a child of any re-marriage of the widow), a pension at the rate of Two hundred and eight dollars per annum.

Pension in respect of children on death of Judge.

10.—(1.) Subject to this section, where a retired Judge dies leaving a widow, there shall, in addition to any pension that is payable to the widow under section 8 of this Act, be paid to the widow, in respect of each eligible child of the widow or of the retired Judge (other than a child of any re-marriage of the widow), a pension at the rate of Two hundred and eight dollars per annum.

Pension in respect of children on death of retired Judge.

(2.) Where a retired Judge married after retirement, pension is not, upon the death of the retired Judge, payable under this section in respect of—

- (a) a child of that marriage; or
- (b) any other child of the widow.

11.—(1.) Subject to this section, where the widow of a Judge or retired Judge, being a widow who became entitled upon his death to a pension under this Act (including a widow specified in the Schedule to this Act), has died, there shall be paid, in respect of each eligible child of the widow or of the Judge or retired Judge (other than a child of any re-marriage of the widow), a pension at the rate of Five hundred and twenty dollars per annum or at the rate of such amount per annum as is determined in accordance with the next succeeding sub-section, whichever is the higher rate.

Pension in respect of children on death of widow.

(2.) The amount to be determined for the purposes of the last preceding sub-section is the sum of Two hundred and eight dollars and 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, but for the death of the widow and but for any re-marriage of the widow, would, by virtue of section 7, section 8 or section 18 of this Act, have been payable to the widow.

(3.) Where a retired Judge married after retirement, pension is not, upon the death of the widow of the retired Judge, payable under this section in respect of—

- (a) a child of that marriage; or
- (b) any other child of the widow.

Pension in respect of children on death of Judge or retired Judge when widows' pension not payable.

12.—(1.) Subject to this section, where a Judge or retired Judge has died without leaving a widow who became entitled, upon his death, to a pension under this Act, there shall be paid, 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 of that Judge or retired Judge, a pension at the rate of Five hundred and twenty dollars per annum or at the rate of such amount per annum as is determined in accordance with the next succeeding sub-section, whichever is the higher rate.

(2.) The amount to be determined for the purposes of the last preceding sub-section is the sum of Two hundred and eight dollars and 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 would, by virtue of section 7 or section 8 of this Act, have been payable to a widow of the Judge, or to a widow of the retired Judge whose marriage to him occurred before his retirement.

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

- (a) a child of a re-marriage of a former wife of the Judge or retired Judge; or
- (b) a child of a marriage of the retired Judge that took place after his retirement.

Payment of orphans' pensions.

13. A pension in respect of a child under either of the last two preceding sections shall be paid to the guardian of the child for the child's support and education.

Payment of pensions.

14. Pensions under this Act—

- (a) grow due from day to day but are payable monthly; and
- (b) shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly.

Special provision relating to children's pensions.

15.—(1.) Notwithstanding anything contained in the provisions of this Act other than this section, where a pension is payable under this Act in respect of an eligible child—

- (a) if the Attorney-General is of opinion that the child's support and education will be best assured by doing so, he may direct that the pension be paid to a person specified by him; or

- (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, he may direct that the pension be expended for the benefit of the child in a specified manner.

(2.) Where a pension referred to in the last preceding sub-section is payable to the widow of a Judge or retired Judge, the power of the Attorney-General to direct payment of the pension to another person applies only where the child is not living with the widow.

16.—(1.) Where—

- (a) a pension under this Act is payable to a person otherwise than in respect of an eligible child, or a pension under this Act is payable in respect of an eligible child; and
- (b) a pension is or becomes payable to that person, or in respect of that eligible child, as the case may be, in respect of prior judicial service of the Judge or retired Judge by reason of whose service as a Judge the pension under this Act became payable,

Adjustment by reason of other pensions.

the amount of the pension under this Act that would, but for this section, be payable for any period shall be reduced by the amount of the pension in respect of the prior judicial service that is payable for that period.

(2.) This section does not apply where—

- (a) the Judge or retired Judge was a Judge immediately before the commencement of this Act; or
- (b) the person to or in respect of whom the pension under this Act is payable is a person specified in the Schedule to this Act or the widow or child of such a person.

(3.) In this section, a reference to a pension in respect of prior judicial service shall be read as a reference to a pension or retiring allowance paid or payable, whether by virtue of a law or otherwise, out of moneys provided in whole or in part by the Commonwealth, a State or a Territory of the Commonwealth, being a pension or retiring allowance paid or payable by reason of prior judicial service, or of prior judicial service and any other service.

17. Unless the Governor-General otherwise directs, a pension under this Act is not payable by reason of the service of a Judge who has been removed under section 72 of the Constitution or under any similar provision in an Act.

Pension not payable on removal of Judge.

18.—(1.) The persons whose names are specified in the first column of the Schedule to this Act, being retired Judges or widows of Judges or retired Judges, shall be paid, in lieu of the pensions they were receiving from the Commonwealth immediately before the commencement of this Act, pensions at the respective rates specified in the second column of that Schedule opposite to the names of those persons.

Pensions payable to persons in receipt of pensions at commencement of Act.

(2.) If a widow in receipt of a pension under this section re-marries, her pension ceases.

(3.) Where a pension would be payable in respect of an eligible child to a widow specified in the Schedule to this Act if the Judge or retired Judge whose widow she is had died immediately after the commencement of this Act and, in the case of a retired Judge, had been in receipt of a pension under this Act, a pension at the rate of the pension that would have been so payable in respect of the child is, from the commencement of this Act, payable to the widow in respect of that child.

THE SCHEDULE

Section 18.

Name	Rate of pension per annum
	\$
Joan Adelaide Ashburner	4,200
Margaret Rea Bridge	4,300
Lady Emma Agnes Clyne	5,300
Sir Owen Dixon	12,000
Ella Wilhelmina Foster	4,400
Lady Marion Florence Fullagar	5,300
Lady Judith Ellen Fayres Kelly	4,100
Edith Marion Kriewaldt	4,200
Sadie Harrison McIntyre	2,500
Sir Edward James Ranembe Morgan	7,000
Mary Agnes O'Mara	2,500
Dorothy Edna Piper	2,700
Margaret Peel Simpson	4,400
Sir William Flood Webb	8,500
