



ANNO VICESIMO TERTIO

ELIZABETHAE II REGINAE

A.D. 1974

No. 72 of 1974

An Act to amend the Judges' Pensions Act, 1971-1972.

[Assented to 17th October, 1974]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

1. (1) This Act may be cited as the "Judges' Pensions Act Amendment Act, 1974". Short titles.

(2) The Judges' Pensions Act, 1971-1972, is hereinafter referred to as "the principal Act".

(3) The principal Act, as amended by this Act, may be cited as the "Judges' Pensions Act, 1971-1974".

2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.

3. Section 4 of the principal Act is amended—

(a) by striking out the definition of "eligible orphan child" and inserting in lieu thereof the following definition:— Amendment of principal Act, s. 4— Definitions.

"eligible child" means the child or adopted child—

(a) of a deceased Judge or deceased former Judge;

or

(b) of the spouse of a deceased Judge or deceased former Judge, not being a child—

(i) born of a pregnancy that commenced after the death of the Judge or former Judge;

or

(ii) adopted after the death of the Judge or former Judge,

who—

(c) has not attained the age of sixteen years;

or

(d) having attained that age, has not attained the age of twenty-five years and is in full time attendance at an educational institution recognized by the Minister for the purposes of this definition;

and

(b) by inserting after the definition of "judicial service" the following definition:—

"notional pension"—

(a) in relation to a deceased Judge, means the pension that would have been payable to that Judge if—

(i) he had retired on the day he died;

(ii) the period elapsing between the day on which he died and the day on which, had he attained the age of retirement, he would have retired was included in his judicial service;

(iii) his salary immediately before he died was his salary immediately before he retired;

and

(iv) he had been in receipt of a pension on the day in relation to which the expression is used;

and

(b) in relation to a deceased former Judge, means the amount of pension that would have been payable to that deceased former Judge if he had been in receipt of a pension on the day in relation to which the expression is used.

Amendment of principal Act, s. 5—
Certain pensions not payable.

4. Section 5 of the principal Act is amended—

(a) by striking out from subsection (2) the passage "4 of the Superannuation Act, 1969-1970," and inserting in lieu thereof the passage "5 of the Superannuation Act, 1974,";

and

(b) by inserting in subsection (2) after the passage "and have effect to and" the word "in".

Amendment of principal Act, s. 6—
Pension on retirement or resignation.

5. Section 6 of the principal Act is amended by striking out from paragraph (b) the word "sixty-five" and inserting in lieu thereof the word "sixty".

Repeal and re-enactment of s. 8 of principal Act—
Death of former Judge.

6. Section 8 of the principal Act is repealed and re-enacted as follows:—

8. Where a Judge dies and is survived by a spouse, that spouse shall be entitled to a pension for life at the rate of two-thirds of the notional pension of that deceased Judge.

Repeal and re-enactment of s. 9 of principal Act—
Death of former Judge.

7. Section 9 of the principal Act is repealed and re-enacted as follows:—

9. Where a former Judge dies and is survived by a spouse who was the spouse of that former Judge while he was a Judge, that spouse shall be entitled to a pension for life at the rate of two-thirds of the notional pension of that deceased former Judge.

8. Section 10 of the principal Act is amended by inserting immediately after subsection (2) the following subsection:—

Amendment of
principal Act,
s. 10—
Orphans.

(3) On the commencement of the Judges' Pensions Act Amendment Act, 1974, a pension payable to a person pursuant to this section shall cease and determine and on or after that commencement no pension shall be payable pursuant to this section.

9. The following sections are enacted and inserted in the principal Act immediately after section 10 thereof:—

Enactment of
ss. 10a, 10b,
10c, 10d, 10e
and 10f of
principal Act—

10a. For the purposes of section 10b and section 10c of this Act the amount of child benefit for each eligible child deriving his entitlement for a child benefit from a Judge or former Judge shall be determined—

Determination
of child
benefit.

(a) on each occasion on which a person becomes entitled to a child benefit derived from that Judge or former Judge;

(b) on the number of persons entitled to a child benefit derived from that Judge or former Judge diminishing;

or

(c) on each occasion on which pensions are adjusted pursuant to section 14a of this Act.

10b. (1) Except as is provided in section 10c of this Act there shall be payable in respect of each person who becomes an eligible child in relation to a deceased Judge or deceased former Judge a child benefit ascertained in the manner provided by subsection (2) of this section.

Child benefit
general.

(2) The child benefit referred to in subsection (1) of this section shall be a fortnightly payment in respect of each such eligible child of an amount—

(a) in the case of one or two eligible children, equal to one-ninth of the notional pension for the time being of the Judge or former Judge from whom the entitlement to a child benefit is derived;

or

(b) in the case of three or more such eligible children, equal to one-third of the notional pension for the time being of the Judge or former Judge from whom the entitlement to a child benefit is derived divided by the number of such children.

10c. (1) There shall be payable in respect of each person who becomes an eligible child in relation to a deceased Judge or deceased former Judge, where a pension deriving from that deceased Judge or deceased former Judge is not payable to the spouse of that Judge or former Judge, a child benefit ascertained in the manner provided by subsection (2) of this section.

Child benefit
where no
spouse's
pension
payable.

(2) The child benefit referred to in subsection (1) of this section shall be a fortnightly payment in respect of each such eligible child of an amount—

(a) in the case of one eligible child, equal to forty-five per centum of the notional pension for the time being of the Judge or former Judge from whom the entitlement to a child benefit is derived;

(b) in the case of two such eligible children, equal to forty per centum of the notional pension for the time being of the Judge or former Judge from whom the entitlement to a child benefit is derived;

(c) in the case of three such eligible children, equal to thirty per centum of the notional pension for the time being of the Judge or former Judge from whom the entitlement to a child benefit is derived;

and

(d) in the case of four or more such eligible children, equal to the notional pension for the time being of the Judge or former Judge from whom the entitlement to a child benefit is derived divided by the number of such children.

To whom child benefit payable.

10d. Any amount payable by way of child benefit under this Act shall be payable—

(a) to the spouse, if any, of the deceased Judge or deceased former Judge;

(b) to the eligible child;

or

(c) to some other person,

as the Minister, in his discretion, determines.

Cessation of child benefits.

10e. A child benefit under this Act shall cease to be payable in respect of a person who is an eligible child on that person ceasing to be an eligible child.

Assumed day of becoming eligible child.

10f. Notwithstanding anything in this Act to the contrary an eligible child, in respect of whom a pension referred to in section 10 of this Act was payable immediately before the commencement of the Judges' Pensions Act Amendment Act, 1974, shall be deemed to have become such a child on that commencement.

Amendment of principal Act, s. 12—
Pension under an Act amended by this Act.

10. Section 12 of the principal Act is amended—

(a) by striking out from subsection (2) the passage “who had been married to that person while he was a Judge”;

and

(b) by striking out subsections (3) and (4).

Repeal of s. 14a of principal Act and enactment of section in its place—

11. Section 14a of the principal Act is repealed and the following section is enacted and inserted in its place:—

Adjustment of pensions.

14a. (1) In this section—

“adjustment percentage” in relation to a prescribed pension day, means the adjustment percentage, if any, declared for that prescribed pension day:

“determination day”—

(a) in relation to the pension payable to a former Judge, means the day on which that pension first became payable;

(b) in relation to the pension payable to the spouse of a deceased Judge, means the day on which that pension first became payable;

(c) in relation to the pension payable to the spouse of a deceased former Judge, means the day on which the pension payable to that deceased former Judge first became payable;

(d) in the case of a pension payable to a person referred to in the schedule to this Act, the day of commencement of this Act;

and

(e) in the case of the pension payable pursuant to subsection (2) of section 12 of this Act to a person who is the widow of a person who was a Judge, the day of commencement of this Act:

“June quarter” in relation to a year means the period commencing on and including the first day of April of that year and concluding on and including the thirtieth day of June in that year:

“pension day” means the day on which the payment of a fortnightly instalment pension under this Act is usually made:

“pension fortnight” means the period of fourteen days in relation to which a fortnightly instalment of pension is paid:

“prescribed pension day” means the first pension day in the month of October, 1974, and the first pension day in the month of October in each succeeding year:

“the Index” means the Consumer Price Index (All groups index for Adelaide) published by the Commonwealth Statistician under the *Census and Statistics Act 1905* of the Commonwealth as amended from time to time and includes any Act passed in substitution therefor.

(2) As soon as practicable after the end of the June quarter of 1974 and as soon as practicable after the end of the June quarter in each succeeding year the Public Actuary shall by certificate in writing to the Minister state the percentage calculated to two decimal places by which the Index for that June quarter is greater or less than the Index for the June quarter of the year immediately preceding the year in respect of which the certificate is given.

(3) On receipt of a certificate under subsection (2) of this section, in which it is stated that the percentage is equal to or greater than one per centum, the Minister shall by notice published in the *Gazette* declare the adjustment percentage, for the prescribed pension day next following the June quarter in respect of which the certificate was given, to be the percentage stated in that certificate and the Minister shall state whether the adjustment percentage shall be applied so as to reduce or increase pensions.

(4) Where the percentage stated in the certificate under subsection (2) of this section is less than one per centum no adjustment percentage shall be declared by the Minister for the prescribed pension day next following the June quarter in respect of which the certificate was given.

(5) In any year that next follows a year in respect of which no adjustment percentage was declared, the certificate of the Public Actuary shall state the percentage by which the Index for the June quarter is greater or less than the Index for the June quarter of the year in relation to which an adjustment percentage was last declared and for the purposes of this section such a certificate shall be deemed to be a certificate under subsection (2) of this section.

(6) Subject to subsection (7) of this section, on and from the commencement of the pension fortnight which includes each prescribed pension day the amount of each pension payable pursuant to this Act—

(a) that had a determination day that occurred on or before the thirtieth day of September of the year next preceding the year in which the prescribed pension day occurs, shall be increased, or as the case may be, decreased, by the adjustment percentage declared for that prescribed pension day;

(b) that had a determination day that occurred, on or after the first day of October of the year next preceding the year in which the prescribed pension day occurs and on or before the thirty-first day of December in that year, shall be increased, or as the case may be, decreased, by three-quarters of the adjustment percentage declared for that prescribed pension day;

(c) that had a determination day that occurred on or after the first day of January in the year in which the prescribed pension day occurs and on or before the thirty-first day of March in that year, shall be increased, or as the case may be, decreased, by one-half of the adjustment percentage declared for that prescribed pension day;

and

(d) that had a determination day that occurred on or after the first day of April in the year in which the prescribed pension day occurs and on or before the thirtieth day of June of that year shall be increased, or as the case may be, decreased, by one-quarter of the adjustment percentage declared for that prescribed pension day.

(7) Subsection (6) of this section shall not have effect so as to reduce the amount of any pension that had a determination day that occurred on or before the commencement of the Judges' Pensions Act Amendment Act, 1974, to a fortnightly amount less than the fortnightly amount of—

(a) in the case of the pension payable to a former Judge or a person who was a Judge payable before the commencement of that Act, the pension so payable on the commencement of that Act;

or

- (b) in the case of the pension payable to the spouse of a deceased Judge, of a deceased former Judge or of a person who was a Judge, first payable before the commencement of that Act, the pension so payable on the commencement of that Act.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

W. R. CROCKER, Governor's Deputy