

NORTHERN TERRITORY OF AUSTRALIA

SUPREME COURT (JUDGES PENSIONS) ACT

As in force at 17 March 2004

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NORTHERN TERRITORY OF AUSTRALIA

As in force at 17 March 2004

SUPREME COURT (JUDGES PENSIONS) ACT

An Act to provide for pensions to Judges

1 Short title

This Act may be cited as the *Supreme Court (Judges Pensions) Act*.

2 Commencement

This Act shall come into operation on a date to be fixed by the Administrator by notice in the *Gazette*.

3 Interpretation

(1) In this Act, unless the contrary intention appears:

acting Judge and **additional Judge** have the meanings ascribed thereto by the *Supreme Court Act*.

appropriate current judicial salary, in relation to a Judge who has retired or died, means salary at the rate that would have been payable to the Judge if he or she had not retired or died.

child includes an adopted child.

eligible child means:

- (a) a child who has not attained the age of 16 years; or
- (b) a child who:
 - (i) has attained the age of 16 years but has not attained the age of 25 years; and
 - (ii) is receiving full-time education at a school, college or university.

Family Law Act means the *Family Law Act 1975* of the Commonwealth and includes regulations made under that Act.

further relationship has the meaning in section 3AB.

Judge does not include an acting Judge or additional Judge.

member spouse, in relation to a superannuation interest, means the person who is the member spouse in relation to that interest under Part VIII B of the Family Law Act.

non-member spouse, in relation to a superannuation interest, means the person who is the non-member spouse in relation to that interest under Part VIII B of the Family Law Act.

prior judicial service, in relation to a Judge or retired Judge means service as a judge of a court constituted by or under the law of another State or Territory or of the Commonwealth (other than service as a Magistrate or a Justice of the Peace) being service prior to the appointment of that person as a Judge.

retired Judge means a person who has been a Judge and is or has been in receipt of a pension under this Act.

retires, in relation to a Judge, means ceases to be a Judge otherwise than by death.

splitting instrument means a superannuation agreement, a flag lifting agreement that provides for a payment split, or a splitting order, each within the meaning of Part VIII B of the Family Law Act.

superannuation contributions surcharge means the superannuation contributions surcharge imposed under the Surcharge Act.

superannuation interest means an interest that a Judge or former Judge has under this Act.

Surcharge Act means the *Superannuation Contributions Tax Imposition Act 1997* of the Commonwealth and includes regulations under that Act.

Surcharge Collection Act means the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* of the Commonwealth and includes regulations under that Act.

surviving partner has the meaning in section 3AA.

- (2) For the purposes of this Act, a period of service by a Judge:
- (a) as an acting Judge;
 - (b) as a Judge of the Supreme Court of the Northern Territory constituted by the *Northern Territory Supreme Court Act 1961* of the Commonwealth; or

(c) being a period of prior judicial service,

(whether or not immediately before a period of service as a Judge) shall be added to and deemed to be part of the period of service as a Judge.

3AA Surviving partners

- (1) For this Act, the surviving partner of a Judge or retired Judge who dies is the surviving spouse or de facto partner of the Judge.
- (2) If a Judge or retired Judge is survived by both a spouse and a de facto partner, the surviving partner is:
 - (a) the de facto partner if:
 - (i) the de facto partner was the de facto partner of the Judge for a continuous period of at least 2 years immediately preceding the Judge's death; and
 - (ii) the spouse had not lived with the Judge at any time during that period; or
 - (b) the spouse if paragraph (a) does not apply.

3AB Further relationships

- (1) For this Act, a surviving partner enters a further relationship if the surviving partner marries or enters a de facto relationship.
- (2) For this Act, if a surviving partner enters a further relationship and the parties to the relationship adopt a child who is not a child of the surviving partner, the child is taken to be a child of the further relationship.

3A Act to be administered so as to comply with superannuation surcharge laws and agreements with Commonwealth

- (1) This Act is to be administered in accordance with:
 - (a) the Surcharge Act and the Surcharge Collection Act; and
 - (b) a written agreement entered into by the Territory and the Commonwealth relating to exempt public sector superannuation schemes within the meaning of section 10 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth.
- (2) If a provision of this Act is inconsistent with a provision of the Surcharge Act or the Surcharge Collection Act, the provision of this

Act is to be taken to have been complied with if the provision of the Surcharge Act or the Surcharge Collection Act, as the case may be, has been complied with.

3B Surcharge debt accounts

- (1) The Treasurer must establish and maintain for the purposes of section 16 of the Surcharge Collection Act a surcharge debt account for each Judge in relation to whom superannuation contributions surcharge is paid or payable by the Treasurer.
- (2) The Treasurer must debit to the surcharge debt account of a Judge:
 - (a) superannuation contributions surcharge paid or payable by the Treasurer in respect of the Judge; and
 - (b) interest payable under the Surcharge Collection Act on the amount by which the account is in debit.
- (3) The Treasurer must credit to the surcharge debt account of a Judge an amount paid under section 3C by the Judge.

3C Advance payments to reduce superannuation contributions surcharge

- (1) A Judge may, on lodging an approved election form with the Treasurer, pay an amount to the Territory for the purpose of reducing the amount by which his or her surcharge debt account is in debit.
- (2) A payment under this section may be made on a periodic or single payment basis.
- (3) An election form lodged under subsection (1) is to specify the amount to be paid and the manner of payment.
- (4) A Judge may, on lodging with the Treasurer, in the approved election form:
 - (a) vary in accordance with the form the amount or manner of payment of periodic payments; or
 - (b) revoke an election under this section.
- (5) In this section, **approved election form** means a form approved by the Treasurer.

3D Repayment of surcharge

The Treasurer may commute part of a pension payable under this Act in relation to a Judge to a lump sum for the purposes of paying to the Territory an amount equal to the balance of the Judge's surcharge debt account.

3E Commutation to pay deferred superannuation contributions surcharge

(1) If:

- (a) a retired Judge or a person is paid a pension under this Act;
- (b) the retired Judge or person has received from the Commissioner of Taxation notice under section 15 of the Surcharge Collection Act that he or she is liable to pay an amount of superannuation contributions surcharge specified in the notice; and
- (c) the superannuation contributions surcharge relates to surchargeable contributions, within the meaning of the Surcharge Collection Act, that were made in relation to the retired Judge or to a Judge, or retired Judge, who has died,

the retired Judge or person may, within a reasonable period after the notice was given, request the Treasurer in writing to commute as much of the pension payable to him or her as is necessary to provide a lump sum equivalent to the amount.

(2) The Treasurer must, if satisfied that the commuted amount will be used to pay the superannuation contributions surcharge, comply with a request under subsection (1).

4 Pensions of Judges

(1) Where a Judge who has attained the age of 60 years retires after serving as a Judge for not less than 10 years, he or she is entitled to a pension at a rate equal to 60 per cent of the appropriate current judicial salary.

(2) Where:

- (a) a Judge, whether by reason of the terms of his or her appointment or otherwise, is to cease to hold office as a Judge upon his or her attaining a particular age;
- (b) he or she ceases to be a Judge upon his or her attaining that age;

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- (c) at the time of his or her so ceasing, he or she had served as a Judge for not less than 6 years; and
 - (d) he or she is not a person to whom subsection (1) applies,
he or she 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 or her period of service as a Judge; or
 - (f) 60% of the appropriate current judicial salary,
whichever results in the lesser pension entitlement.
- (3) Where a Judge, not being a Judge to whom subsection (1) or (2) applies, retires and the Attorney-General certifies that the retirement is due to permanent disability or infirmity, the Judge is entitled to a pension at a rate equal to:
- (a) if, at the time of the Judge's appointment, his or her period of service as a Judge could not exceed 10 years, 0.5% of the appropriate current judicial salary for each complete month:
 - (i) of his or her prior judicial service (if any); and
 - (ii) that the Judge could have potentially served, calculated from his or her appointment as a Judge until the Judge would have ceased to hold office as a Judge upon his or her attaining a particular age; or
 - (b) in all other cases – 60% of the appropriate current judicial salary.

5 Pension to surviving partner on death of Judge

- (1) Where a Judge dies leaving a surviving partner, a pension shall be paid to the surviving partner 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 the Judge's death and (in a case where section 4(1) would not have been applicable in relation to that retirement) the Attorney-General had certified that that retirement was due to permanent disability.
- (2) If a surviving partner in receipt of a pension under this section enters a further relationship, the pension ceases.

6 Pension to surviving partner on death of retired Judge

(1) Where a retired Judge dies leaving a surviving partner who married, or entered a de facto relationship with, the retired Judge:

(a) before the retirement; or

(b) after the retirement but:

(i) before the retired Judge attained the age of 60 years; or

(ii) not less than 5 years before the retired Judge died,

a pension shall be paid to surviving partner at a rate equal to five-eighths of the rate of the pension that would have been payable to the retired Judge if the Judge had not died.

(2) If a surviving partner in receipt of a pension under this section enters a further relationship, the pension ceases.

7 Pension in respect of children on death of Judge

Where a Judge dies leaving a surviving partner there shall, in addition to any pension that is payable to the surviving partner under section 5, be paid to the surviving partner, in respect of each eligible child of the surviving partner or of the Judge (other than a child of any further relationship of the surviving partner) a pension at the rate of \$208 per annum.

8 Pension in respect of children on death of retired Judge

(1) Subject to this section, where a retired Judge dies leaving a surviving partner, there shall, in addition to any pension that is payable to the surviving partner under section 6, be paid to the surviving partner in respect of each eligible child of the surviving partner or of the retired Judge (other than a child of any further relationship of the surviving partner) a pension at the rate of \$208 per annum.

(2) Where a retired Judge married, or entered a de facto relationship with, his or her surviving partner:

(a) after his or her retirement;

(b) after he or she attained the age of 60 years; and

(c) less than 5 years before he or she died,

a pension is not, upon the death of the retired Judge, payable under this section in respect of:

- (d) a child of that marriage or de facto relationship; or
- (e) any other child of the surviving partner.

9 Pension in respect of children on death of surviving partner

- (1) Subject to this section, where the surviving partner of a Judge or retired Judge, being a surviving partner 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 each eligible child of the surviving partner of the Judge or retired Judge (other than a child of any further relationship of the surviving partner) a pension at the rate of \$520 per annum or at the rate of such amount per annum as is determined in accordance with subsection (2), whichever is the higher rate.
- (2) The amount to be determined for the purposes of subsection (1) is the sum of \$208 and an amount ascertained by dividing by 4 (or, if the number of eligible children in respect of whom pension is payable under this section is greater than 4, by the number of those children) the annual amount of the pension that, but for the death or any further relationship of the surviving partner, would, by virtue of section 5 or 6, have been payable to the surviving partner.
- (3) Where a retired Judge married, or entered a de facto relationship with, his or her surviving partner:
 - (a) after his or her retirement;
 - (b) after he or she attained the age of 60 years; and
 - (c) less than 5 years before he or she died,

a pension is not, upon the death of the surviving partner of the retired Judge, payable under this section in respect of:

- (d) a child of that marriage or de facto relationship; or
- (e) any other child of the surviving partner.

10 Pension in respect of children when surviving partner's pension not payable

- (1) Subject to this section, where a Judge or retired Judge has died without leaving a surviving partner 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 each eligible child of the Judge or

retired Judge or of a person (whether deceased or not) who was at any time the spouse or de facto partner of that Judge or retired Judge, a pension at the rate of \$520 per annum or at the rate of such amount per annum as is determined in accordance with subsection (2), whichever is the higher rate.

- (2) The amount to be determined for the purposes of subsection (1) is the sum of \$208 and an amount ascertained by dividing by 4 (or, if the number of eligible children in respect of whom pension is payable under this section is greater than 4, by the number of those children) the annual amount of the pension that would, by virtue of section 5, have been payable to a surviving partner of the Judge, or would, by virtue of section 6, have been payable to a surviving partner of the retired Judge who married, or entered a de facto relationship with, the retired Judge before the retirement of the retired Judge.
- (3) This section does not apply in relation to:
- (a) a child of a former spouse or de facto partner of a Judge or retired Judge;
 - (b) a child of a marriage or de facto relationship of a retired Judge that occurred or was entered into:
 - (i) after the retirement of the Judge;
 - (ii) after the retired Judge attained the age of 60 years; and
 - (iii) less than 5 years before the retired Judge died.

11 Payment of orphans pensions

A pension in respect of a child under either section 9 or 10 shall be paid to the guardian of the child for the child's support and education.

12 Accrual of pensions

Pensions under this Act:

- (a) accrue from day to day but are payable monthly; and
- (b) are payable out of the public moneys of the Territory and the Allocation for that purpose is hereby established or increased to the extent necessary.

13 Special provision relating to pensions payable to children

- (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 the opinion that the child's support and education will be best assured by doing so, he or she may direct that the pension be paid to a person specified by him or her; 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 or she may direct that the pension be expended for the benefit of the child in a specified manner.
- (2) Where a pension referred to in subsection (1) is payable to the surviving partner 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 surviving partner.

14 Pension not payable on removal of Judge

Unless the Administrator otherwise directs, a pension under this Act is not payable by reason of the service of a Judge who has been removed from office under section 40 of the *Supreme Court Act*.

15 Adjustment for other pensions

- (1) Where:
- (a) a pension is payable under this Act by reason of the service of a person as a Judge; and
 - (b) a pension is or becomes payable otherwise than under this Act in respect of the prior judicial service of that person,
- the amount of the pension that would, but for this subsection, be payable under this Act in respect of any period shall be reduced by the amount of the pension in respect of the prior judicial service that is payable in respect of that period.
- (2) 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 Territory, a State, the Commonwealth or another Territory, being a pension or retiring allowance paid or payable by reason of prior judicial service or prior judicial service and any other service.

16 Act to be administered so as to comply with Family Law Act provisions in relation to superannuation

- (1) This section applies despite any other provision of this Act.
- (2) This Act is to be administered in accordance with the provisions of the Family Law Act relating to superannuation.
- (3) Subject to the provisions of the Family Law Act relating to superannuation, this Act is to be administered in relation to a person in accordance with the provisions of a splitting instrument, if any, that applies in relation to the person.
- (4) The Treasurer may prepare written administrative instructions that are necessary or convenient to give effect to:
 - (a) the provisions of the Family Law Act relating to superannuation;
 - (b) splitting instruments; and
 - (c) Acts of the Commonwealth relating to superannuation and regulations under those Acts.
- (5) Without limiting the generality of subsection (4), administrative instructions for the purposes of that subsection may include, but are not limited to, the following:
 - (a) the methods of calculating and paying a superannuation interest to member spouses and non-member spouses, including calculations that may reduce the superannuation interest of a member spouse;
 - (b) the establishing of interests and accounts, including accounts under the *Superannuation Act*, for non-member spouses.
- (6) An administrative instruction prepared under subsection (4) takes effect on the date specified in the instruction.
- (7) If a provision of this Act or the administrative instructions made under this section is inconsistent with:
 - (a) a provision of the Family Law Act relating to superannuation; or
 - (b) a splitting instrument,

the provision of this Act or the administrative instructions is taken to have been complied with if the provision of the Family Law Act or a splitting instrument, as the case may be, has been complied with.

17 Treasurer may charge fees for additional services

The Treasurer may charge a person the reasonable cost of performing on behalf of the person a service in relation to this Act that the Treasurer undertakes at the request of the person.

ENDNOTES
1**KEY**

Key to abbreviations

amd = amended
app = appendix
bl = by-law
ch = Chapter
cl = clause
div = Division
exp = expires/expired
f = forms
Gaz = Gazette
hdg = heading
ins = inserted
lt = long title
nc = not commenced

od = order
om = omitted
pt = Part
r = regulation/rule
rem = remainder
renum = renumbered
rep = repealed
s = section
sch = Schedule
sdiv = Subdivision
SL = Subordinate Legislation
sub = substituted

2**LIST OF LEGISLATION*****Supreme Court (Judges Pensions) Act 1980 (Act No. 52, 1980)***

Assent date 4 June 1980
 Commenced 2 April 1982 (*Gaz* G13, 2 April 1982, p 4)

Supreme Court (Judges Pensions) Amendment Act 1985 (Act No. 19, 1985)

Assent date 23 May 1985
 Commenced 3 July 1985 (*Gaz* G26, 3 July 1985, p 5)

Statute Law (Miscellaneous Amendments) Act 1991 (Act No. 77, 1991)

Assent date 16 December 1991
 Commenced s 10: 2 April 1982; rem: 16 December 1991 (s 10(2), s 2
Supreme Court (Judges Pensions) Act 1980 (Act No. 52, 1980) and *Gaz* G13, 2 April 1982, p 4)

Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)

Assent date 21 March 1995
 Commenced 1 April 1995 (s 2, s 2 *Financial Management Act 1992 (Act No. 4, 1995)* and *Gaz* S13, 31 March 1995)

Supreme Court (Judges Pensions) Amendment Act 1998 (Act No. 68, 1998)

Assent date 23 September 1998
 Commenced 20 October 1998 (*Gaz* S41, 20 October 1998)

Supreme Court (Judges Pensions) Amendment Act 1999 (Act No. 62, 1999)

Assent date 14 December 1999
 Commenced 14 December 1999

Supreme Court (Judges Pensions) Amendment Act 2003 (Act No. 9, 2003)

Assent date 18 March 2003
 Commenced 28 May 2003 (*Gaz* G21, 28 May 2003, p 3)

Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)

Assent date 7 January 2004

Commenced 17 March 2004 (*Gaz G11*, 17 March 2004, p 8)

3 SAVINGS AND TRANSITIONAL PROVISIONS

s 5 *Supreme Court (Judges Pensions) Amendment Act 1985* (Act No. 29, 1985)

s 61 *Law Reform (Gender, Sexuality and De Facto Relationships Act 2003* (Act No. 1, 2004)

4. LIST OF AMENDMENTS

s 3 amd No. 77, 1991, s 10; No. 68, 1998, s 4; No. 9, 2003, s 4; No. 1, 2004, s 52
ss 3AA – 3AB ins No. 1, 2004, s 53
ss 3A – 3D ins No. 68, 1998, s 5
s 3E ins No. 62, 1999, s 2
s 4 amd No. 19, 1985, s 4; No. 68, 1998, s 6
s 5 amd No. 68, 1998, s 6; No. 1, 2004, s 54
s 6 amd No. 68, 1998, s 6; No. 1, 2004, s 55
s 8 amd No. 68, 1998, s 6; No. 1, 2004, s 57
s 9 amd No. 68, 1998, s 6; No. 1, 2004, s 58
s 10 amd No. 1, 2004, s 59
s 12 amd No. 5, 1995, s 19
s 13 amd No. 68, 1998, s 6; No. 1, 2004, s 60
ss 16 – 17 ins No. 9, 2003, s 5