

JUDICIAL LEGISLATION AMENDMENT BILL 1994

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the legislation

The objectives of the Bill are:

- (i) to remove the current legislative impediment preventing the Salaries and Allowances Tribunal amalgamating into “salary” the currently separate components of salary, general allowance and jurisprudential expenses payable to Supreme and District Court Judges;
- (ii) to ensure that pensions paid in respect of Judges who died or retired prior to 6 February 1984 will continue to be paid on the basis of retirement salary plus increments to salary, and will not reflect the higher increment which amalgamation of salary and allowances would produce; and
- (iii) to empower the Salaries and Allowances Tribunal to set the salary and allowances of Industrial Commissioners and Members of the Land Court.

To achieve these objectives, amendments are made to the following Acts:

- *Industrial Relations Act 1990*
- *Judges (Pensions and Long Leave) Act 1957*
- *Judges (Salaries and Allowances) Act 1967*
- *Land Act 1962*
- *Supreme Court of Queensland Act 1991*

Reasons for the Bill

The Fourteenth Report of the Salaries and Allowances Tribunal recommended amalgamation of the presently separate components of salary, general allowance and jurisprudential expenses paid to the Judges of the Supreme and District Courts. Under the existing law, the Tribunal had no power to amalgamate the salaries and allowances of the Judges of the Court of Appeal, and the Report was accordingly disallowed by the Parliament on 19 November 1993.

The Bill will enable the Tribunal to amalgamate salary and allowances if it considers it appropriate.

Under the existing law, amalgamation of salary and allowances as “salary” would have flow-on effects for pensions paid to some Judges, and for the salary and pensions paid to Industrial Commissioners and Land Court Members, which are linked to “salary”.

The Bill avoids these flow-on effects. In terms of Judges’ pensions, necessary amendments are made which essentially preserve the status quo. In terms of Industrial Commissioners and Land Court Members, the direct link to Judges’ salary is removed, and instead the Tribunal is given power to set their salary and allowances.

Estimated cost for Government implementation

It is not expected that there will be any additional cost for Government.

Consultation

The Department of Justice and Attorney-General, Department of Employment, Vocational Education, Training and Industrial Relations, and the Department of Lands were involved in the preparation of the Bill.

NOTES ON PROVISIONS

Clause 1 States the short title of the Act.

Clause 2 Provides that clauses 6 and 7 of the Bill (amendment of the definition of “salary” under the *Judges (Pensions and Long Leave) Act 1957* for the purpose of calculation of judicial pensions) commence immediately after the commencement of the *Supreme Court of Queensland Act 1991* (that date being 14 December 1991). This retrospective operation of the new definition ratifies and endorses the current means by which judicial pensions are calculated and paid.

Clause 3 States that Part 2 amends the *Industrial Relations Act 1990*.

Clause 4 Omits section 27 of the *Industrial Relations Act 1990* which currently links the remuneration of Industrial Commissioners to the salary and general allowance of a District Court Judge.

The new section 27 provides that the salary and allowances payable to Industrial Commissioners are to be fixed by the Salaries and Allowances Tribunal under the *Judges (Salaries and Allowances) Act 1967*. (That Act is also amended in this Bill to widen the jurisdiction of the Tribunal accordingly—see Part 4.)

Clause 5 States that Part 3 amends the *Judges (Pensions and Long Leave) Act*.

Clause 6 Omits the definition of “salary”. A new definition is inserted by clauses 6 and 7. Clause 6 applies to Judges who retired after the commencement of the *Judges’ Pensions Act Amendment Act 1984* (the commencement date being 6 February 1984). It clarifies and confirms the pension entitlement which those Judges currently receive, in that it provides that “salary” means salary and allowances payable as if the Judge had not died or retired, and continues the current practice of including both the general allowance and the jurisprudential allowance as part of the pension entitlement. Pensions will therefore continue to be calculated on the basis of salary and allowances as they alter from time to time, rather than as they were when the Judge died or retired. This new definition effectively confirms the continuing application of section 8B of the Act, which provided that pension entitlements were to be adjusted in the same nature and to the same extent as adjustments made by the Salaries and Allowances Tribunal to salary and allowances. That section was omitted in 1992,

although its effect was largely preserved by virtue of the *Acts Interpretation Act 1954*.

Clause 7 This clause inserts a new definition for “salary” to be used in the calculation of pensions for those Judges who retired before the commencement of the *Judges’ Pensions Act Amendment Act 1984*. The pension entitlements paid to those Judges (and their widows) have always been based on the salary payable at the time of the Judge’s retirement or death, with increments as prescribed under the Act from time to time (3% per annum from 1972 to 1974, Consumer Price Index increases from 1974 to 1984, and percentage increases granted by the Tribunal after that date). The new definition is needed to effectively preserve the status quo in respect of these pensions.

In order to do this, two changes are made. The first corrects the basis on which salary for the purpose of the pension entitlement is granted. An amendment in 1991 reworded the definition but unintentionally altered the basis of the pension entitlement to be salary as it is paid from time to time, rather than salary at retirement, altered by the increments since the date of retirement. The second ensures that if salary and allowances were amalgamated as “salary”, this will not distort the basis for calculation of these Judges’ pensions.

It takes as a starting point the individual pension entitlements of Judges as at 14 December 1991 as if the amendment to the definition of “salary” had not been made that day, and provides that they are to be altered in accordance with a formula each time the Tribunal makes a new report. That formula, in essence, is that the pension entitlement is to be altered each time by the same amount that the total salary package of Judges changes from the total salary package paid under the Thirteenth Report of the Salaries and Allowances Tribunal. This ensures that like is compared with like.

Clause 8 This clause replaces section 16 (Act not to apply if Judge removed from office). The provision has been reworded in accordance with current legislative drafting practices, but its effect remains the same.

Clause 9 States that Part 4 amends the *Judges (Salaries and Allowances) Act 1967*.

Clause 10 This clause restates the old section 3, relating to salary and allowances of District Court Judges, and further provides that the total of salary and allowances cannot be reduced by a determination of the Tribunal.

This protection has always applied to Supreme Court Judges by virtue of section 17 of the *Constitution Act 1867*.

Clause 11 This clause inserts new sections 3A and 3B, which provide that the salary and allowances payable to the Industrial Commissioners and Land Court Members are to be those fixed by the Tribunal under the *Judges (Salaries and Allowances) Act 1967*. It provides that the total salary and allowances paid to Industrial Commissioners and Land Court Members from time to time is not to be reduced by the Tribunal. A transitional arrangement for payment of salary and allowances is provided.

Clause 12 This clause restates section 4, relating to salary of Magistrates, and further provides that the annual rate of salary cannot be reduced by a determination of the Tribunal. This protection has always applied to Supreme Court Judges by virtue of section 17 of the *Constitution Act 1867*.

Clause 13 This clause inserts a new category of persons who may not be appointed as Tribunal Members, namely, Stipendiary Magistrates. As the Tribunal sets the salary of Stipendiary Magistrates, it would be inappropriate for these persons to be Members.

Clause 14 The amendments to section 12 (Inquiry and report on judicial salaries and allowances) require the Tribunal to inquire and report to the relevant Minister on changes to the salary and allowances of Industrial Commissioners and Land Court Members.

Clause 15 Section 13(2) requires the Tribunal to have regard to particular matters in deciding on changes in salary and allowances. Clause 12 amends this section by making reference to the matters which the Tribunal must consider in determining changes to the salary and allowances of Industrial Commissioners and Land Court Members.

In the case of Industrial Commissioners, direct comparisons solely on the basis of the title “Industrial Commissioner” do not reflect the difference in responsibilities of such office holders in different jurisdictions. For example, Queensland Industrial Commissioners have responsibility for a range of functions performed in the Commonwealth Industrial Relations system by Deputy Presidents who are at a higher level in the Commonwealth structure than Commonwealth Industrial Commissioners, and for some functions of the Industrial Court of Australia itself. Section 13(2)(b) is intended to allow this to be taken into account in making a determination.

Similarly, for Land Court Members, section 13(2)(c) will allow the Tribunal to consider office holders in other states who perform similar functions and have similar responsibilities, whether or not they are termed “Land Court Members” or are at the same level in that state’s structure.

Clause 16 The existing section 16 (Regulations) is replaced with a new section. The provision has been reworded in accordance with current legislative drafting practices, but its effect remains the same.

Clause 17 States that Part 5 amends the *Land Act 1962*.

Clause 18 Omits section 31 of the *Land Act 1962* which currently links the remuneration of Members of the Land Court to certain salaries and allowances of District Court Judges.

The new section 31 provides that the salary and allowances payable to Land Court Members are to be fixed by the Salaries and Allowances Tribunal under the *Judges (Salaries and Allowances) Act 1967*. (Reference has previously been made in these Explanatory Notes to that Act being amended by this Bill to widen the jurisdiction of the Tribunal accordingly—see Part 4.)

Clause 19 The existing section 31A (Leave of absence to members) is omitted and replaced by this clause. Much of the existing section related to Members appointed prior to 1975. As there are no longer any current Members who were appointed prior to 1975, those provisions were redundant and have been removed. The new section restates that Members are entitled to leave of absence under the *Judges (Pensions and Long Leave) Act 1957*.

Clause 20 This clause omits section 31B (Election as to leave of absence). This section was only relevant to those Members appointed prior to 1975, and for the same reason as the above clause, has been removed.

Clause 21 The existing section 31C(1) (Pension benefits to members) is omitted and replaced by this clause. The new section restates that Members are entitled to pension benefits under the *Judges (Pensions and Long Leave) Act 1957*.

Clause 22 States that Part 6 amends the *Supreme Court of Queensland Act 1991*.

Clause 23 Section 102 deals with the judicial entitlements of the first Judges of Appeal which were set by determination of the Governor in Council. This clause amends section 102 to enable the Tribunal to amalgamate the currently separate components of salary, general allowance and jurisprudential expenses. It provides, however, that amalgamation can only occur if a similar amalgamation is made for the other Judges of the Supreme Court.

Clause 24 The existing section 109 (Regulations) is replaced with a new section. The provision has been reworded in accordance with current legislative drafting practices, but its effect remains the same.