

Queensland



JUDGES (PENSIONS AND LONG LEAVE) ACT 1957

**Reprinted as in force on 5 January 2000
(includes amendments up to Act No. 74 of 1999)**

Warning—see last endnote for uncommenced amendments

Reprint No. 3A

This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy

Information about this reprint

This Act is reprinted as at 5 January 2000. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in earlier reprints.**

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JUDGES (PENSIONS AND LONG LEAVE) ACT 1957

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JUDGES (PENSIONS AND LONG LEAVE) ACT 1957

[as amended by all amendments that commenced on or before 5 January 2000]

An Act to make provision for pensions and long leave for judges, and pensions for the families of judges

Short title

1. This Act may be cited as the *Judges (Pensions and Long Leave) Act 1957*.

Definitions

2. In this Act—

“judge” means—

- (a) a Supreme Court judge; or
- (b) a District Court judge.

“notional pension”, in relation to a judge who has died, means—

- (a) if the judge died before retirement—the pension to which the judge would be entitled under section 5 if the judge had not died but had retired, because of permanent disability or infirmity, on the day of death; or
- (b) if the judge died after retirement—the pension to which the judge would be entitled under this Act if the judge had not died.

“salary”—

- (a) for a judge who dies or retires after the commencement of the *Judges’ Pensions Act Amendment Act 1984*—means the annual rate of salary and allowances, including any general allowance and

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jurisprudential allowance, that would be payable to the judge or to which the judge could have become entitled, if the judge had not died or retired; and

- (b) for a judge who died or retired before the commencement of the *Judges' Pensions Act Amendment Act 1984*—has the meaning given in section 2B.

Length of service

2A. For the purposes of this Act, in determining the length of service as a judge, service as an acting Supreme Court judge or acting District Court judge is to be counted as service as a judge.

Salary of judges who died or retired before 1984 Amendment Act

2B.(1) This section applies in relation to a judge (a “**pre-1984 judge**”) who died or retired before the commencement of the *Judges' Pensions Act Amendment Act 1984*.

(2) For the purposes of this Act, the salary of a pre-1984 judge is the annual rate of salary that would be payable to the judge if the judge had not died or retired and the judge's annual rate of salary were—

- (a) before 1 July 1992—the judge's 1991 notional salary amount; and
- (b) on and after 1 July 1992—the product of—
- (i) the judge's 1991 notional salary amount; and
- (ii) the judge's notional salary increase factor.

(3) The judge's notional salary increase factor is the number worked out, to 2 decimal places, using the following formula—

$$\frac{\text{latest notional salary package amount}}{\text{1992 notional salary package amount.}}$$

(4) In this section—

“**1991 notional salary amount**”, for a judge, means the annual rate of salary that would have been necessary to be payable to the judge (if the judge had not died or retired) to entitle the judge or the judge's widow

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to continue to receive, or receive, pension at the same annual rate after the commencement of this section, and up to 30 June 1992, as would have been payable if the *Supreme Court of Queensland Act 1991* had not been enacted and amended this Act.

“1992 notional salary package amount”, for a judge, means the judge’s notional salary package amount that applied immediately before 1 July 1992.

“applicable determination”, for a judge, means a determination made by the Tribunal, other than a determination disallowed by the Legislative Assembly.

“determination” means a determination made under the *Judges (Salaries and Allowances) Act 1967*.

“latest notional salary package amount”, for a judge, means the judge’s notional salary package amount under the latest applicable determination.

“notional salary package amount”, for a judge, means the total of the annual rate of salary and allowances, including any general allowance and jurisprudential allowance, that would be payable to the judge or to which the judge could have become entitled, if the judge had not died or retired.

“Tribunal” means the Salaries and Allowances Tribunal.

Minimum benefit payable

2C.(1) Despite any other provision of this Act, a judge who ceases to hold office is entitled to the minimum benefit (if any) decided by an actuary approved by the Minister.

(2) The minimum benefit must be paid to a superannuation or approved deposit fund nominated by the judge.

(3) To remove doubt, it is declared that this section does not apply to an acting Supreme Court judge or an acting District Court judge.

(4) In this section—

“minimum benefit” means the amount of payment, pension or preserved benefit entitlement that is determined to avoid payment of the superannuation guarantee charge.

“superannuation guarantee charge” means the charge imposed by the *Superannuation Guarantee Charge Act 1992* (Cwlth).

Pension of judge retiring at 70

3.(1) If a judge retires on reaching 70 after serving as a judge for not less than 5 years, the judge is, subject to subsection (2), entitled to a pension at a rate equal to 6% of the judge’s salary for each completed year of service as a judge.

(2) The maximum pension to which the judge is entitled is the following percentage of the judge’s salary—

- (a) if the judge retired before the enactment of the *Judges’ Pensions Act Amendment Act 1984*—50%;
- (b) in any other case—60%.

Pension of judge retiring voluntarily at or after age 60

4. Where a judge who has attained 60 years of age, but has not attained 70 years of age, retires from office (otherwise than because of permanent disability or infirmity as specified in section 5) after serving as a judge for not less than 10 years, the judge shall, on retiring, be entitled to an annual pension at the rate of 60% of the judge’s salary or, in the case of a judge who has retired before the passing of the *Judges’ Pensions Act Amendment Act 1984*, 50% of the judge’s salary.

Pension of judge retiring on account of ill health

5. Where a judge retires or is retired from office and a prescribed medical practitioner certifies to the Minister that the judge’s retirement is because of permanent disability or infirmity, the judge shall, on retirement, be entitled to an annual pension at a rate consisting of—

- (a) 75% of the maximum pension entitlement that the judge might have had under this Act if the judge had not retired or been retired because of permanent disability or infirmity; and
- (b) where the judge has served as a judge for a period in excess of 5 years—an additional 5% of the maximum pension entitlement

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referred to in paragraph (a) for each year of the judge's service as a judge in excess of 5 years;

but so that the rate of the judge's pension shall not exceed 60% of the judge's salary.

Pension of spouse on death of judge

7. Where a judge dies before retirement, the judge's spouse is entitled until remarriage—

- (a) in the case of a judge whose death occurred before the passing of the *Judges' Pensions Act Amendment Act 1984*—to an annual pension at a rate consisting of 7% of his or her salary and an additional rate of 2% of his or her salary for each complete year of service as a judge in excess of 1 year but so that the rate of annual pension shall not exceed 25% of his or her salary; or
- (b) in the case of any other judge—to an annual pension at a rate that is 50% of the rate of annual pension that would have been payable under section 5 to the judge if the judge had retired on the date of his or her death because of his or her permanent disability or infirmity.

Pension of spouse on death of retired judge

8.(1) If a retired judge dies leaving a spouse whose marriage to the judge happened before the retirement, the spouse is entitled to a pension at a rate equal to 50% of the judge's notional pension.

(2) The pension ceases if the spouse remarries.

Pension for children of deceased judge

8A.(1) In this section—

“child” includes adopted child.

“eligible child” of a judge means—

- (a) a child of the judge; or
- (b) a child who became a child of the judge's spouse before—

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- (i) if the judge died before retirement—the judge died; or
- (ii) if the judge died after retirement—the judge retired;

who is under 16 or, if the child is receiving full-time education at a school, college or university, is under 25.

“spouse” of a judge who has died (whether before or after retirement) means the person (if any) who was the judge’s spouse—

- (a) if the judge died before retirement—on the day that the judge died; or
- (b) if the judge died after retirement—both on the day that the judge retired and on the day that the judge died.

(2) If—

- (a) a judge dies before retirement; or
- (b) a retired judge who is entitled to receive a pension under this Act dies;

pension is payable for each eligible child of the judge for use towards the child’s support and education.

(3) The rate of pension payable for an eligible child is the following percentage of the judge’s notional pension—

- (a) if a spouse of the judge is entitled to a pension under this Act and—
 - (i) there are less than 5 eligible children—12.5%; or
 - (ii) there are 5 or more eligible children—50% divided by the number of eligible children;
- (b) in any other case—
 - (i) if there is 1 eligible child—45%; or
 - (ii) if there are 2 eligible children—40%; or
 - (iii) if there are 3 eligible children—30%; or
 - (iv) if there are 4 or more eligible children—100% divided by the number of eligible children.

(4) Pension payable under this section for an eligible child is payable to—

- (a) if the child is a minor—
 - (i) the parent or guardian of the child; or
 - (ii) such other person as the Minister directs; or
- (b) in any other case—the child.

Leave of absence of judges

15.(1) A judge who has served as a judge for not less than 7 years is entitled to the following additional leave of absence on full pay—

- (a) for the first 7 years service as a judge—6 months;
- (b) for each subsequent completed year of service— $\frac{6}{7}$ of a month.

(2) The Governor in Council must grant leave of absence to a judge who applies for and is entitled to leave of absence under subsection (1).

(3) A judge must, within 3 years after completing any 7 years of service as a judge, take the leave of absence to which the judge is entitled in relation to the period of 7 years unless the Governor in Council otherwise approves.

(4) If the judge does not take the leave within that period of 3 years or within any further period allowed by the Governor in Council, the judge forfeits all rights in relation to the leave of absence.

(5) A judge who is entitled to not less than 6 months additional leave of absence under subsection (1) may, with the Governor in Council's approval, take the period of additional leave in 2 or more separate periods.

(6) If a judge is unable, or circumstances render it inconvenient for a judge, to take leave of absence to which the judge is entitled, the judge is entitled to receive, either during service as a judge or on retirement, an amount equal to the judge's salary for the period of the leave.

(7) If a judge dies before taking a period of leave of absence to which the judge is entitled, an amount equal to the judge's salary for the period of the leave is payable to the executor or administrator of the judge's estate.

What happens if judge removed from office

16.(1) If a judge is removed from office under an Act, this Act applies only if the reason for the judge's removal is that the judge is unable to

perform the duties of the office because of a permanent disability or infirmity.

(2) However, the Governor in Council may decide that this Act applies to the judge despite subsection (1).

Payment of pensions etc.

17.(1) Pensions under this Act accrue daily and are payable monthly or at such lesser intervals as the Minister directs.

(2) Pensions under this Act, and other amounts payable under this Act, are payable out of the Consolidated Fund, which is appropriated accordingly.

Retired judge serving in judicial office

18. If, after retirement, a judge who is entitled to pension under this Act serves for a period in a judicial office of the Commonwealth or a State or Territory and receives salary for the service, then—

- (a) if the salary is equal to or more than the amount of pension that would, but for this section, be payable for the period—pension is not payable for the period; or
- (b) in any other case—the amount of that pension is reduced by the amount of the salary.

Act subject to Supreme Court of Queensland Act

19. This Act has effect subject to the *Supreme Court of Queensland Act 1991*.

Regulations

20. The Governor in Council may make regulations under this Act.

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Judges' Pensions Act 1957 references

21. In an Act or document, a reference to the *Judges' Pensions Act 1957* is a reference to this Act.

ENDNOTES**1 Index to endnotes**

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 5 January 2000. Future amendments of the Judges (Pensions and Long Leave) Act 1957 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key**Key to abbreviations in list of legislation and annotations**

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 14 of 1992	1 December 1992
2	to Act No. 76 of 1994	22 December 1994
2A	to Act No. 58 of 1995	26 June 1996
2B	to Act No. 79 of 1996	20 February 1997
2C	to Act No. 79 of 1996	14 March 1997
3	to Act No. 79 of 1996	4 June 1999

5 List of legislation

Judges (Pensions and Long Leave) Act 1957 6 Eliz 2 No. 38 (prev Judges' Pensions Act 1957)

date of assent 17 December 1957

commenced on date of assent

as amended by—

Judges' Salaries and Pensions Act 1967 No. 40 pt 4

date of assent 14 December 1967

commenced on date of assent

Judges' Pensions Act Amendment Act 1972 No. 11

date of assent 15 December 1972

commenced on date of assent

Judges' Pensions Act Amendment Act 1974 No. 29

date of assent 2 May 1974

for commencement of s 2(1)(a) see s 2(2)

s 3 commenced 1 July 1974 (see s 3(2))

remaining provisions commenced on date of assent

Judges' Salaries and Pensions Act and Another Act Amendment Act 1980 No. 16 pt 3

date of assent 12 May 1980

commenced on date of assent

Judges' Pensions Act Amendment Act 1984 No. 10

date of assent 6 February 1984

commenced on date of assent

Judges' Pensions Act Amendment Act 1984 (No. 2) No. 98

date of assent 6 December 1984

commenced on date of assent

Supreme Court of Queensland Act 1991 No. 68 ss 1–2, 111 sch 2

date of assent 24 October 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 14 December 1991 (see s 2(1) and 1991 SL No. 173)

Judges (Pensions and Long Leave) Amendment Act 1992 No. 14

date of assent 13 May 1992

commenced on date of assent

Judicial Legislation Amendment Act 1994 No. 76 pts 1, 3

date of assent 1 December 1994

ss 6–7 commenced 14 December 1991 (see s 2)

remaining provisions commenced on date of assent

**Justice and Attorney-General (Miscellaneous Provisions) Act 1995 No. 24
pts 1, 5**

date of assent 11 April 1995

commenced on date of assent

Superannuation Legislation Amendment Act 1995 No. 27 pts 1, 3

date of assent 14 June 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1992 (see s 2(3))

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 2

date of assent 28 November 1995

commenced on date of assent

Justice Legislation (Miscellaneous Provisions) Act 1996 No. 79 pts 1, 16

date of assent 12 December 1996

pt 1 commenced on date of assent

remaining provisions commenced 28 February 1997 (1997 SL No. 35)

Justice Legislation (Miscellaneous Provisions) Act 1999 No. 16 s 1 pt 5

date of assent 22 April 1999

commenced on date of assent

Superannuation Legislation Amendment Act 1999 No. 74 pts 1, 3

date of assent 14 December 1999

ss 1–2 commenced on date of assent

remaining provisions not yet proclaimed into force**6 List of annotations****Long title** sub 1992 No. 14 s 2 sch**Short title****s 1** sub 1991 No. 68 s 111 sch 2

Definitions

- s 2** amd 1967 No. 40 s 9
 sub 1991 No. 68 s 111 sch 2
 def “**eligible child**” ins 1999 No. 74 s 8
 def “**judge**” sub 1991 No. 68 s 111 sch 2
 def “**notional pension**” ins 1992 No. 14 s 3
 def “**salary**” amd 1984 No. 10 s 2
 sub 1991 No. 68 s 111 sch 2; 1994 No. 76 s 6
 def “**surcharge liability**” ins 1999 No. 74 s 8
 def “**surcharge liability notice**” ins 1999 No. 74 s 8

Length of service

- s 2A** ins 1991 No. 68 s 111 sch 2

Salary of judges who died or retired before 1984 Amendment Act

- s 2B** ins 1994 No. 76 s 7

Minimum benefit payable

- s 2C** ins 1995 No. 27 s 8
 amd 1999 No. 16 s 14

Pension of judge retiring at 70

- s 3** sub 1967 No. 40 s 10
 amd 1984 No. 10 s 3
 sub 1984 No. 98 s 2
 amd 1991 No. 68 s 111 sch 2
 sub 1992 No. 14 s 2 sch

Pension of judge retiring voluntarily at or after age 60

- s 4** sub 1967 No. 40 s 11
 amd 1984 No. 10 s 4; 1991 No. 68 s 111 sch 2; 1992 No. 14 s 2 sch

Pension of judge retiring on account of ill health

- s 5** sub 1967 No. 40 s 12; 1984 No. 10 s 5
 amd 1992 No. 14 s 2 sch

Pension of judge retiring on account of ill-health after less than 2 years’ service

- s 6** sub 1967 No. 40 s 13
 om 1984 No. 10 s 6

Pension of spouse on death of judge

- s 7** sub 1967 No. 40 s 14; 1984 No. 10 s 7
 amd 1992 No. 14 s 2 sch

Pension of spouse on death of retired judge

- s 8** sub 1984 No. 10 s 8; 1992 No. 14 s 2 sch

Pension for children of deceased judge

- s 8A** ins 1967 No. 40 s 15
 sub 1984 No. 10 s 9; 1992 No. 14 s 4

Adjustment of pension entitlement

- s 8B** prev s 8B ins 1972 No. 11 s 2
 amd 1974 No. 29 s 2(1)

sub 1984 No. 10 s 10
 om 1992 No. 14 s 2 sch
 pres s 8B ins 1999 No. 74 s 9

Adjustment of pensions

s 8C ins 1974 No. 29 s 3(1)
 om 1984 No. 10 s 11

Appropriation

s 9 om 1992 No. 14 s 2 sch

Pension etc. not payable where judge removed from office

s 10 amd 1967 No. 40 s 16
 om 1992 No. 14 s 2 sch

Repeal of s 4 of 12 Geo. V. No. 14

s 11 om 1991 No. 68 s 111 sch 2

Repeal of s 5 of 38 Vic. No. 3

s 12 om 1991 No. 68 s 111 sch 2

Amendment of s 6 of 38 Vic. No. 3

s 13 om 1991 No. 68 s 111 sch 2

Operation of s 3 of “The Supreme Court Acts Amendment Act of 1944.”

s 14 om 1991 No. 68 s 111 sch 2

Leave of absence of judges

s 15 sub 1967 No. 40 s 17
 amd 1980 No. 16 s 10; 1991 No. 68 s 111 sch 2; 1992 No. 14 s 2 sch; 1995
 No. 24 s 15; 1996 No. 79 s 50

What happens if judge removed from office

s 16 prev s 16 renum as s 19 1992 No. 14 s 2 sch
 pres s 16 ins 1992 No. 14 s 2 sch
 sub 1994 No. 76 s 8

Payment of pensions etc.

s 17 sub 1992 No. 14 s 2 sch

Retired judge serving in judicial office

s 18 ins 1992 No. 14 s 2 sch

Act subject to Supreme Court of Queensland Act

s 19 (prev s 16) sub 1991 No. 68 s 111 sch 2
 renum 1992 No. 14 s 2 sch

Regulations

s 20 ins 1992 No. 14 s 2 sch
 amd 1995 No. 58 s 4 sch 2

Judges’ Pensions Act 1957 references

s 21 ins 1995 No. 58 s 4 sch 2

7 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Superannuation Legislation Amendment Act 1999 No. 74 ss 8 and 9 read as follows—

Amendment of s 2 (Definitions)

8. Section 2—

insert—

‘**“eligible child”**, of a judge, see section 8A(1).

“surcharge liability” means the amount a person is liable to pay to the commissioner of taxation, under the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* (Cwlth), section 15.

“surcharge liability notice” means a notice given to a person by the commissioner of taxation, under the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* (Cwlth), section 15.’.

Insertion of new s 8B

9. After section 8A—

insert—

‘Election to take part of pension as a lump sum to meet surcharge liability

‘8B.(1) This section applies to the following persons—

- (a) a judge to whom a pension is payable under sections 3 to 5;
- (b) a judge’s spouse to whom a pension is payable under section 7;
- (c) an eligible child of a judge to whom a pension is payable under section 8A, if the rate of pension is decided under

section 8A(3)(b).

‘(2) The person may elect to be paid a lump sum instead of a part of the pension.

‘(3) The maximum amount that may be paid as a lump sum under the election is the amount of the judge’s surcharge liability.

‘(4) The election must be—

- (a) made in writing to the Minister; and
- (b) accompanied by a copy of the surcharge liability notice stating the amount of the judge’s surcharge liability.

‘(5) The Minister must act on the election by reducing the pension by the amount of the lump sum.

‘(6) The reduction must happen in the way decided by the Minister on the advice of an actuary.’.