

JUDGES' PENSIONS.

No. 65 of 1948.

An Act to make provision for Pensions for Judges of Courts established under laws of the Commonwealth and to make provision for the families of such Judges, and for other purposes.

[Assented to 9th December, 1948.]

BE it enacted by the King'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* 1948. Short title.
2. This Act shall come into operation on the day on which it receives the Royal Assent. Commencement.
3. In this Act, unless the contrary intention appears— Definitions.
 - "Judge" means a Justice or Judge to whom this Act applies;
 - "salary" means salary at the rate payable to a Judge immediately prior to his retirement or to his death before retirement as the case may be;
 - "the Schedule" means the Schedule to this Act.

**Judges to whom
Act applies.**

4. This Act shall apply to Justices of the High Court of Australia, Judges of the Commonwealth Court of Conciliation and Arbitration, Judges of the Federal Court of Bankruptcy, the Judge of the Supreme Court of the Australian Capital Territory and to Judges of the Federal Court of Claims.

**Amendments
of Acts.**

5. The Acts specified in the first column of the Schedule are amended as respectively specified in the second column of the Schedule and, as so amended, may be cited as respectively specified in the third column of the Schedule.

**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 shall, on retiring, be entitled to an annual pension at the rate of twenty-seven and one-half per centum of his salary and at the additional rate of two and one-half per centum of his salary for each completed year of his service in excess of ten years, but so that the rate of his pension shall not exceed forty per centum of his salary.

(2.) Where a Judge retires, and the Minister certifies that his retirement is by reason of permanent disability or infirmity—

- (a) if his retirement occurs during the first five years of his service as a Judge, he shall be entitled, on retiring, to an annual pension at the rate of fifteen per centum of his salary; or^a
- (b) if his retirement occurs after he has served as a Judge for not less than five years, he shall be entitled, on retiring, to an annual pension at the rate of fifteen per centum of his salary and at an additional rate of two and one-half per centum of his salary for each completed year of his service in excess of five years, but so that the rate of his pension shall not exceed forty per centum of his salary.

**Pension to
widow on
death of Judge
before
retirement.**

7. Where a Judge dies before his retirement—

- (a) if his death occurs during the first five years of his service as a Judge, an annual pension shall be paid to his widow at the rate of seven and one-half per centum of his salary; or
- (b) if his death occurs after he has served as a Judge for not less than five years, an annual pension shall be paid to his widow at the rate specified in the last preceding paragraph of this section and at an additional rate, for each completed year of his service in excess of five years, of one and one-quarter per centum of his salary, but so that the rate of her pension shall not exceed twenty per centum of that salary:

Provided that, if the widow re-marries, her pension under this section shall thereupon cease and determine.

8. Upon the death of a retired Judge who is in receipt of a pension under section six of this Act an annual pension shall be paid to his widow, if her marriage to the retired Judge occurred prior to his retirement, at the rate of one-half of the rate of pension payable to that pensioner immediately prior to his death : Pension to widow on death of retired Judge.

Provided that, if the widow re-marries, her pension under this section shall thereupon cease and determine.

9.—(1.) On the death of a person who is a Judge or was, immediately prior to his death, in receipt of a pension under section six of this Act, an allowance at the rate of One pound per week shall be paid in respect of each of his, or of his widow's, children who are under the age of sixteen years and until the age of sixteen years has been attained : Allowances in respect of children of deceased Judge.

Provided that, if the widow re-marries, an allowance under this sub-section shall not be payable in respect of any child of the re-marriage.

(2.) An allowance payable under this section shall be payable—

- (a) to the widow of the deceased person during her own life and, in the event of her death before the child attains the age of sixteen years, to the guardian of the child to be used for the child's support and education ; or
- (b) in the event of the deceased person having been a widower, to the guardian of the child to be used for the child's support and education.

10. Notwithstanding anything contained in the last three preceding sections, where a retired Judge marries after his retirement and predeceases his wife, a pension shall not be payable to his widow, nor shall allowances in respect of the children of the marriage be payable. Marriage after retirement.

11. The pensions and allowances payable under or by virtue of this Act— Payment of pensions and allowances.

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

12. Where a Judge has, prior to his appointment, served in any judicial office under a State— Prior judicial service under a State.

- (a) the period of his service in that office ; or
- (b) the period of ten years,

whichever is the less, shall, for the purposes of sections six and seven of this Act, be added to, and be deemed to be part of, his service as a Judge.

13.—(1.) The provisions of sections six to eleven (inclusive) of this Act shall apply to and in relation to every Judge who is appointed after the commencement of this Act. Application of pension, &c., provisions.

(2.) The provisions of sections six to eleven (inclusive) of this Act shall not apply to or in relation to any Judge who is serving as a Judge at the date of the commencement of this Act unless, by notice in writing to the Minister within six months after the commencement of this Act, he elects to come within the application of those provisions.

(3.) A Judge to and in relation to whom the provisions of sections six to eleven (inclusive) of this Act apply by virtue of an election in pursuance of the last preceding sub-section shall, as on and from the date of his election, have the rights and benefits provided by those provisions in substitution for any right to pension to which he would have been entitled under any provision of an Act specified in the first column of the Schedule if the Act so specified had not been amended as provided in this Act.

(4.) A Judge who is serving as such at the date of the commencement of this Act and who does not make an election in pursuance of sub-section (2.) of this section shall retain any right to pension to which he was entitled, immediately prior to the commencement of this Act, under any provision of an Act specified in the first column of the Schedule, and that provision shall continue to apply to and in relation to that Judge as if the Act so specified had not been amended as provided in this Act.

(5.) Notwithstanding anything contained in the foregoing provisions of this section, the provisions of section twelve of this Act shall apply to every Judge, whether appointed before or after the commencement of this Act.

Persons in receipt of pensions at commencement of this Act.

14.—(1.) Where, immediately prior to the commencement of this Act, a person, having retired from the office of Judge, is in receipt of a pension under any provision of an Act specified in the first column of the Schedule, that person shall, subject to this section, continue to receive that pension as if this Act had not been passed.

(2.) The salary, in relation to which the pension of any person to whom the last preceding sub-section applies is calculated, shall be deemed to be salary at the rate payable, at the date of the commencement of this Act, to a holder of the office which that person held immediately prior to his retirement.

(3.) If a person to whom sub-section (1.) of this section applies elects, by notice in writing to the Minister within three months after the commencement of this Act, to come within the application of sections six, eight, nine and ten of this Act, that person shall, as on and from the date of his election, have the rights and benefits provided by those sections in substitution for his right to pension under sub-sections (1.) and (2.) of this section.

Pension, &c., not payable on removal of Judge.

15. A pension or allowance under this Act shall not, unless the Governor-General otherwise decides, be payable to a Judge, or to the widow and children of a Judge, who has been removed under section seventy-two of the Constitution.

THE SCHEDULE.

First Column.	Second Column.	Third Column.
<i>Judiciary Act 1903-1947</i> <i>Commonwealth Concilia-</i> <i>tion and Arbitration</i> <i>Act 1904-1947</i> <i>Bankruptcy Act 1924-</i> <i>1947</i>	Section forty-eight A is repealed Section twenty-two is repealed Omit sub-sections (2.) to (5.) (inclusive) of section eighteen BB Omit from sub-section (6.) of section eighteen BB the words "and pensions" Omit from sub-section (1.) of section eighteen C all words from and including the words "and on retirement" Omit from sub-section (2.) of section eighteen C the words "and pension"	<i>Judiciary Act 1903-1948</i> <i>Commonwealth Concilia-</i> <i>tion and Arbitration</i> <i>Act 1904-1948</i> <i>Bankruptcy Act 1924-</i> <i>1948</i>
<i>Seat of Government</i> <i>Supreme Court Act</i> <i>1933-1947</i>	Omit sub-sections (3.) to (6.) (inclusive) of section eight B Omit from sub-section (7.) of section eight B the words "and pensions"	<i>Seat of Government</i> <i>Supreme Court Act</i> <i>1933-1948</i>
<i>Banking Act 1947</i> ..	Section thirty is repealed .. Omit from section thirty-one the words "and pensions"	<i>Banking Act 1947-1948</i>