

Judges' Pensions Amendment Regulations 2003 (No. 1) 2003 No. 343

EXPLANATORY STATEMENT

Statutory Rules 2003 No. 343

JUDGES' PENSIONS AMENDMENT REGULATIONS 2003 (NO. 1)

Issued by the Authority of the Attorney-General

Judges' Pensions Act 1968

Subsection 21(1) of the *Judges' Pensions Act 1968* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Subsection 21(2) of the Act provides that the regulations may also prescribe accrued benefit multiples for the purposes of Part VIIIIB of the *Family Law Act 1975* (the Family Law Act) or regulations made under that Act.

The Regulations prescribe the accrued benefit multiples to be used in the formulas in regulations 19 and 26 of the *Family Law (Superannuation) Regulations 2001* (the Family Law Regulations) for the superannuation scheme constituted under the Act (the Judges' Pensions Scheme).

Part VIIIIB of the Family Law Act provides for the division of superannuation on marriage breakdown. That Part provides for certain payments in respect of superannuation interests, called splittable payments, to be allocated between the parties to a marriage, either by agreement or by court order. Superannuation interests include 'percentage-only interests'. Under regulation 9A of the Family Law Regulations, an interest in the Judges' Pensions Scheme has been prescribed as a percentage-only interest.

Under Part VIIIIB of the Family Law Act, payments made in respect of a percentage-only interest can only be split (by agreement or by court order) by one of the following two methods:

- by a specified set percentage that is to apply to all splittable payments in respect of the interest; or
- by a specified percentage of, essentially, so much of each payment as can be considered to have accrued up until the date of the final separation of the parties.

When the second method is to be used under an agreement between the parties, regulation 19 of the Family Law Regulations contains a formula for calculating the amount of a splittable payment that is payable to the non-member spouse. The formula in regulation 26 for splitting a payment in respect of a percentage-only interest under a court order is in similar terms. In both cases, reference is made to the member spouse's 'accrued benefit multiple' as defined in the governing rules of the relevant superannuation plan as at separation and at payment. In the case of the 'superannuation plan' constituted by the Judges' Pensions Scheme, an accrued benefit multiple would represent the part of a judge's pension entitlement that the judge had accrued at the relevant date.

The effect of the Regulations is that a particular judge's accrued benefit multiples will be equal to the number of days that counted towards qualifying for a pension the judge had served at the dates of separation and of payment. In the case of a judge who receives a pension on invalidity grounds, the accrued benefit multiple at payment will instead be equal to the minimum number of days the judge would have had to serve to otherwise qualify for a pension.

Details of the Regulations are as follow.

Regulation 1 is formal, providing that the Regulations are the *Judges' Pensions Amendment Regulations 2003 (No. 1)*.

Regulation 2 provides that the Regulations commence on gazettal.

Regulation 3 provides that Schedule 1 amends the *Judges' Pensions Regulations 1998* (the Principal Regulations).

Item 1 of Schedule 1 adds regulation 5 to the Principal Regulations.

New Regulation 5 of the Principal Regulations

Paragraph 5(1)(a) sets the accrued benefit multiple at separation as the number of days of qualifying service the relevant judge had served when separation occurs.

Paragraph 5(1)(b) sets the accrued benefit multiple at payment by reference to whether or not subsection 6(2) of the Act applies to the judge. That provision entitles a judge to a pension where the judge retires and the Attorney-General certifies that the retirement is due to permanent disability or infirmity.

Subparagraph 5(1)(b)(i) sets the accrued benefit multiple at payment where subsection 6(2) of the Act does not apply as the number of days served at the time the judge qualifies for a pension.

Subparagraph 5(1)(b)(ii) sets the accrued benefit multiple at payment where subsection 6(2) of the Act applies as the minimum number of days the judge would have had to serve to qualify for a pension if that subsection did not apply.

Subregulation 5(2) is a definitional provision.

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