

SOUTH AUSTRALIA

JUDGES' PENSIONS ACT 1971

This Act is reprinted pursuant to the Acts Republication Act 1967 and incorporates all amendments in force as at 1 April 1999.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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APPENDIX LEGISLATIVE HISTORY

JUDGES' PENSIONS ACT 1971

being

Judges' Pensions Act 1971 No. 30 of 1971
[Assented to 22 April 1971]¹

as amended by

Licensing Act Amendment Act 1971 No. 106 of 1971 [Assented to 9 December 1971]
Judges' Pensions Act Amendment Act 1972 No. 69 of 1972 [Assented to 7 September 1972]²
Judges' Pensions Act Amendment Act 1974 No. 72 of 1974 [Assented to 17 October 1974]³
Statutes Amendment (Administration of Courts and Tribunals) Act 1981 No. 34 of 1981 [Assented to 19 March 1981]⁴
Industrial Conciliation and Arbitration Act Amendment Act 1984 No. 19 of 1984 [Assented to 3 May 1984]⁵
Statutes Amendment (Public Actuary) Act 1992 No. 69 of 1992 [Assented to 19 November 1992]⁶
Statutes Amendment (Superannuation) Act 1997 No. 25 of 1997 [Assented to 10 April 1997]⁷
Statutes Amendment (Adjustment of Superannuation Pensions) Act 1998 No. 20 of 1998 [Assented to 2 April 1998]⁸
Judges' Pensions (Preserved Pensions) Amendment Act 1998 No. 69 of 1998 [Assented to 13 November 1998]
Statutes Amendment (Commutation for Superannuation Surcharge) Act 1999 No. 23 of 1999 [Assented to 1 April 1999]

¹ Came into operation 1 May 1971: *Gaz.* 22 April 1971, p. 2186.

² Came into operation 2 August 1973: *Gaz.* 2 August 1973, p. 720.

³ Came into operation 28 November 1974: *Gaz.* 28 November 1974, p. 3372.

⁴ Came into operation 1 July 1981: *Gaz.* 25 June 1981, p. 1896.

⁵ Came into operation 14 May 1984: *Gaz.* 10 May 1984, p. 1090.

⁶ Came into operation 10 December 1992: *Gaz.* 10 December 1992, p. 1752.

⁷ Part 2 (ss. 4 & 5) came into operation 24 April 1997: *Gaz.* 24 April 1997, p. 1618.

⁸ Part 2 (s. 4) came into operation 1 October 1997: s. 2.

NOTE:

- Asterisks indicate repeal or deletion of text.
- Entries appearing in bold type indicate the amendments incorporated since the last reprint.
- For the legislative history of the Act see Appendix.

An Act to make provision for Pensions for Judges and their widows, to amend the Supreme Court Act 1935-1970, the Local and District Criminal Courts Act 1926-1970, the Industrial Code 1967-1970, and for purposes incidental thereto.

The Parliament of South Australia enacts as follows:

**PART 1
PRELIMINARY**

Short title

1. This Act may be cited as the *Judges' Pensions Act 1971*.

Commencement

2. This Act shall come into operation on a day to be fixed by proclamation.

Arrangement of Act

3. This Act is arranged as follows:

PART 1—PRELIMINARY.

PART 2—PENSIONS.

PART 3—AMENDMENT OF THE SUPREME COURT ACT 1935-1970.

PART 4—AMENDMENT OF THE LOCAL AND DISTRICT CRIMINAL COURTS ACT 1926-1970.

PART 5—AMENDMENT OF THE INDUSTRIAL CODE 1967-1970.

Interpretation

4. (1) In this Act, unless the contrary intention appears—

"age of retirement" in relation to a Judge, means the age prescribed as the age of retirement in relation to the Judge by the Act or enactment under which he is or was appointed;

"the Consumer Price Index" means the Consumer Price Index (All groups index for Adelaide);

"eligible child" means the child or adopted child—

- (a) of a deceased Judge or deceased former Judge; or
- (b) of the spouse of a deceased Judge or deceased former Judge, not being a child—
 - (i) born of a pregnancy that commenced after the death of the Judge or former Judge; or
 - (ii) adopted after the death of the Judge or former Judge,

who—

- (c) has not attained the age of sixteen years; or
- (d) having attained that age, has not attained the age of twenty-five years and is in full time attendance at an educational institution recognised by the Minister for the purposes of this definition;

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"former Judge" means a person who has been a Judge and—

- (a) who is or was entitled to a preserved pension under section 6A; or
- (b) who is or has been in receipt of a pension under this Act not being a pension referred to in section 12;

"Judge" means—

- (a) the Chief Justice and any puisne judge of the Supreme Court but does not include any person appointed pursuant to the *Supreme Court Act 1935*, as amended, to act in the stead of a puisne judge; or
- (ab) a Master of the Supreme Court (not being a person who, immediately before the commencement of the *Statutes Amendment (Administration of Courts and Tribunals) Act 1981*, held office as the master, or a deputy master of that Court); or
- (b) a Judge as defined in section 4 of the *Local and District Criminal Courts Act 1926-1970*, but does not include an Acting Judge as defined in that section; or
- (c) a Judge of the Industrial Court of South Australia; or
- (ca) a Deputy President of the Industrial Commission of South Australia (other than a Deputy President appointed on an acting basis); or
- (d) a chairman or deputy chairman of the Licensing Court of South Australia first appointed as such after the commencement of this Act; or
- (e) a person declared by proclamation to be included in the definition of a Judge for the purposes of this Act;

"judicial service" in relation to a Judge or former Judge, means service, in any of the capacities referred to in paragraphs (a) to (d) inclusive of the definition of **"Judge"** in this section, whether occurring before or after the commencement of this Act and any service while acting in any of those capacities, whether such service occurred before or after the commencement of this Act and includes any other service declared by proclamation to be judicial service for the purposes of this Act;

"notional pension"—

- (a) in relation to a deceased Judge, means the pension that would have been payable to that Judge if—
 - (i) he had retired on the day he died; and
 - (ii) the period elapsing between the day on which he died and the day on which, had he attained the age of retirement, he would have retired was included in his judicial service; and
 - (iii) his salary immediately before he died was his salary immediately before he retired; and
 - (iv) he had been in receipt of a pension on the day in relation to which the expression is used; and

- (b) in relation to a deceased former Judge means—
- (i) in the case of a former Judge whose pension was preserved under section 6A and who was not in receipt of the pension immediately before his or her death—a pension that is equivalent to 60 per cent of the salary payable to the former Judge immediately before he or she resigned adjusted to reflect changes in the Consumer Price Index between the date of resignation and the day on which the spouse pension or child benefit in relation to which the term is used first becomes payable and that in relation to a child benefit is subject to adjustment under section 14A as though the former Judge had survived and been in receipt of the pension;
 - (ii) in any other case—the pension that would have been payable to the deceased former Judge if he or she had been in receipt of a pension on the day on which the spouse pension or child benefit in relation to which the term is used first becomes payable;

"**retires**" in relation to a Judge, means ceases to be a Judge by reason of having attained the age of retirement;

"**resigns**" in relation to a Judge, means ceases to be a Judge otherwise than by retirement or death;

"**salary**" in relation to a Judge who has retired, resigned or died, means the salary payable to that Judge immediately before he so retired, resigned or died.

(2) Where a Judge was on leave without pay immediately before he or she retired, resigned or died, the salary payable to the Judge immediately before he or she retired, resigned or died will be taken for the purposes of this Act to be the salary that would have been payable to the Judge if he or she had not been on leave without pay at that time.

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**PART 2
PENSIONS**

Certain pensions not payable

5. (1) Unless the Governor directs otherwise, a pension under this Act is not payable to or in respect of a Judge who is first appointed such a Judge within the period of five years immediately preceding the day on which he would attain the age of retirement.

(2) If immediately before his appointment as a Judge, a Judge, to or in respect of whom a pension is not payable pursuant to subsection (1) of this section, was a contributor as defined in section 5 of the *Superannuation Act 1974*, then notwithstanding anything in that Act, that Act shall apply and have effect to and in relation to that Judge as if he were an employee as defined in that section and his judicial service were service as such an employee.

Pension on retirement or resignation

6. Where a Judge—

- (a) retires; or
- (b) having had not less than ten years' judicial service and having attained the age of sixty years, resigns;

the Judge shall be entitled to a pension at a rate equal to the sum of—

- (c) forty per centum of his salary; and
- (d) one per centum of his salary for each complete six months of his judicial service other than the first five years of that service,

but so that the rate of his pension shall not exceed sixty per centum of his salary.

Preservation of pensions on resignation before 60

6A. (1) A Judge whose judicial service is 15 years or more and who resigns before reaching the age of 60 years is not entitled to a pension immediately but becomes entitled to a pension—

- (a) when the former Judge reaches the age of 60 years; or
- (b) when the former Judge satisfies the Minister that because of invalidity his or her incapacity for all kinds of work is 60 per cent or more of total incapacity and is likely to be permanent.

(2) The pension to which a former Judge is entitled under subsection (1) is 60 per cent of his or her salary.

(3) The spouse and the eligible child or children (if any) of a former Judge referred to in subsection (1) who has died are entitled to a pension or a child benefit (as the case requires) in accordance with the relevant provisions of this Act.

(4) In this section—

"salary" means the salary payable to the former Judge immediately before he or she resigned adjusted to reflect changes in the Consumer Price Index between the date of resignation and the date on which the pension first becomes payable.

Pension on resignation on ground of invalidity, etc.

7. Where a Judge resigns, and the Minister certifies that his resignation is due to a permanent disability or infirmity, the Judge shall be entitled to a pension calculated on the basis that—

- (a) he had retired on the day his resignation took effect; and
- (b) the period elapsing between the day on which his resignation took effect and the day on which, had he attained the age of retirement, he would have retired was included in his judicial service; and
- (c) his salary immediately before his resignation was his salary immediately before he retired,

but so that the rate of his pension shall not exceed sixty per centum of his salary.

Death of Judge

8. Where a Judge dies and is survived by a spouse, that spouse shall be entitled to a pension for life at the rate of two-thirds of the notional pension of that deceased Judge.

Death of former Judge

9. Where a former Judge dies and is survived by a spouse who was the spouse of that former Judge while he was a Judge, that spouse shall be entitled to a pension for life at the rate of two-thirds of the notional pension of that deceased former Judge.

Orphans

10. (1) There shall be payable in respect of each eligible orphan child of a Judge or former Judge a pension at the rate of three hundred and twelve dollars a year.

(2) A pension payable under subsection (1) of this section may be paid to the guardian of the eligible orphan child and shall be used for the support or education of that child.

(3) On the commencement of the *Judges' Pensions Act Amendment Act 1974*, a pension payable to a person pursuant to this section shall cease and determine and on or after that commencement no pension shall be payable pursuant to this section.

Determination of child benefit

10A. For the purposes of section 10B and section 10C of this Act the amount of child benefit for each eligible child deriving his entitlement for a child benefit from a Judge or former Judge shall be determined—

- (a) on each occasion on which a person becomes entitled to a child benefit derived from that Judge or former Judge; or
- (b) on the number of persons entitled to a child benefit derived from that Judge or former Judge diminishing; or
- (c) on each occasion on which pensions are adjusted pursuant to section 14A of this Act.

Child benefit general

10B. (1) Except as is provided in section 10C of this Act there shall be payable in respect of each person who becomes an eligible child in relation to a deceased Judge or deceased former Judge a child benefit ascertained in the manner provided by subsection (2) of this section.

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(2) The child benefit referred to in subsection (1) of this section shall be a fortnightly payment in respect of each such eligible child of an amount—

- (a) in the case of one or two eligible children, equal to one-ninth of the notional pension for the time being of the Judge or former Judge from whom the entitlement to a child benefit is derived; or
- (b) in the case of three or more such eligible children, equal to one-third of the notional pension for the time being of the Judge or former Judge from whom the entitlement to a child benefit is derived divided by the number of such children.

Child benefit where no spouse's pension payable

10C. (1) There shall be payable in respect of each person who becomes an eligible child in relation to a deceased Judge or deceased former Judge, where a pension deriving from that deceased Judge or deceased former Judge is not payable to the spouse of that Judge or former Judge, a child benefit ascertained in the manner provided by subsection (2) of this section.

(2) The child benefit referred to in subsection (1) of this section shall be a fortnightly payment in respect of each such eligible child of an amount—

- (a) in the case of one eligible child, equal to forty-five per centum of the notional pension for the time being of the Judge or former Judge from whom the entitlement to a child benefit is derived; and
- (b) in the case of two such eligible children, equal to forty per centum of the notional pension for the time being of the Judge or former Judge from whom the entitlement to a child benefit is derived; and
- (c) in the case of three such eligible children, equal to thirty per centum of the notional pension for the time being of the Judge or former Judge from whom the entitlement to a child benefit is derived; and
- (d) in the case of four or more such eligible children, equal to the notional pension for the time being of the Judge or former Judge from whom the entitlement to a child benefit is derived divided by the number of such children.

To whom child benefit payable

10D. Any amount payable by way of child benefit under this Act shall be payable—

- (a) to the spouse, if any, of the deceased Judge or deceased former Judge; or
- (b) to the eligible child; or
- (c) to some other person,

as the Minister, in his discretion, determines.

Cessation of child benefits

10E. A child benefit under this Act shall cease to be payable in respect of a person who is an eligible child on that person ceasing to be an eligible child.

Assumed day of becoming eligible child

10F. Notwithstanding anything in this Act to the contrary an eligible child, in respect of whom a pension referred to in section 10 of this Act was payable immediately before the commencement of the *Judges' Pensions Act Amendment Act 1974*, shall be deemed to have become such a child on that commencement.

Minimum pensions

11. (1) Notwithstanding anything in section 6 or section 7 of this Act, a Judge to whom this section applies shall, if he becomes entitled to a pension pursuant to either of those sections, be entitled to a pension at the rate of not less than fifty per centum of his salary.

(2) Notwithstanding anything in section 8 of this Act, in the application of that section to the widow of a Judge to whom this section applies, the pension that would have been payable to the Judge shall be deemed to be not less than fifty per centum of his salary.

(3) This section applies to a Judge who was in office as such immediately before the commencement of this Act and who retired, resigned or died after that commencement.

Pension under an Act amended by this Act

12. (1) A person whose name is specified in the first column of the schedule to this Act, being a person to whom a pension was payable pursuant to an Act amended by this Act, shall be paid, in lieu of that pension, a pension for life at the rate specified in the second column of that schedule opposite the name of that person.

(2) Where a person referred to in subsection (1) of this section, who was a Judge, dies leaving a widow then that widow shall be entitled to a pension for life equal to fifty per centum of the pension that was payable to her deceased husband immediately before his death.

* * * * *

Pension not payable on removal of Judge

13. Unless the Governor otherwise directs, a pension under this Act is not payable to or in relation to a Judge—

- (a) who has been removed from office pursuant to section 75 of the *Constitution Act 1934*, as amended; or
- (b) who has been removed from office in the manner provided for by the *Industrial Conciliation and Arbitration Act 1972*; or
- (c) who has been removed from office in the manner provided for by the proviso to subsection (4) of section 5 of the *Licensing Act 1967*, as amended; or
- (d) who has been removed from office in the manner provided for by subsection (3) of section 5F of the *Local and District Criminal Courts Act 1926-1969*, as amended.

Payment of pensions

14. (1) Pensions payable under this Act—

- (a) accrue due from day to day but are payable fortnightly; and
- (b) are payable by the Treasurer from the Consolidated Account (which is appropriated to the necessary extent) or from a special deposit account established by the Treasurer for that purpose.

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(2) In this section—

"**special deposit account**" means a special deposit account established under section 8 of the *Public Finance and Audit Act 1987*.

Adjustment of pensions

14A. (1) The Treasurer will adjust the amount of pensions under this Act from the first payment of pension in each adjustment year to reflect the percentage variation (rounded to two decimal places) between the Consumer Price Index for the June quarter immediately preceding the present adjustment year and the Consumer Price Index for the June quarter immediately preceding the previous adjustment year.

(2) If on the first day of the relevant adjustment year, the pension has been payable for less than a year, the extent of the adjustment will be reduced to reflect the proportion which that period bears to one year.

(3) To avoid a reduction in pensions the Treasurer may direct that subsection (1) does not apply in relation to a particular adjustment year.

(4) In that event an adjustment in the next adjustment year in relation to which subsection (1) applies will be based on the variation between the Consumer Price Index for the June quarter immediately preceding that year and the Consumer Price Index for the June quarter immediately preceding the adjustment year in relation to which subsection (1) last applied.

(5) In this section—

"**adjustment year**" means a period of 12 months commencing at the commencement of 1 October in each year;

"**the Consumer Price Index**" means the Consumer Price Index (All groups index for Adelaide).

Refund of certain contributions

15. (1) Where on or after the commencement of this Act, a Judge, who has made a contribution for a pension pursuant to an Act amended by this Act—

(a) resigns or is removed from office and is not entitled to a pension under this Act, that Judge shall be entitled to be paid an amount equal to the amount of his contributions for that pension; or

(b) dies without leaving a widow or eligible orphan child entitled to a pension under this Act, there shall be paid to the legal personal representative of that Judge an amount equal to the amount of his contributions for that pension.

(2) Amounts referred to in subsection (1) are payable by the Treasurer out of the Consolidated Account (which is appropriated to the necessary extent).

"Declared scheme"

16. (1) The provision of pensions under this Act shall be deemed to be "a declared scheme" for the purposes of section 26 of the *Superannuation Act 1969-1970*.

(2) A person who becomes a Judge, other than a Judge to or in respect of whom pursuant to section 5 of this Act a pension is not payable, shall for the purposes of section 26 of the *Superannuation Act 1969-1970*, be deemed to be a person liable to make a contribution in respect of a declared scheme.

Judge Johnston—special provisions

17. (1) If upon the commencement of this Act Judge Laurence Frederick John Johnston is in office as chairman of the Licensing Court of South Australia he may, within the period of one month next following that commencement, execute a request in writing to the South Australian Superannuation Fund Board to pay to the Treasurer in aid of the general revenue of the State an amount equal to the amount of the contributions that the said Judge Laurence Frederick John Johnston has made to the South Australian Superannuation Fund under any Act for the time being in force relating to such contributions.

(2) On and from the day upon which a request referred to in subsection (1) of this section is executed—

(a) this Act shall apply and have effect to and in relation to the said Judge Laurence Frederick John Johnston in all respects as if—

(i) he were a Judge as defined in section 4 of this Act; and

(ii) his judicial service as such a Judge commenced on the twelfth day of April, 1958; and

(b) no pension or other benefit shall be payable under the *Superannuation Act 1969-1970* to or in relation to the said Judge Laurence Frederick John Johnston.

(3) Notwithstanding anything in the *Superannuation Act 1969-1970*, on receiving a request referred to in subsection (1) of this section, the South Australian Superannuation Fund Board—

(a) shall pay out of the South Australian Superannuation Fund to the Treasurer the amount referred to in that subsection; and

(b) shall not be liable to pay any amount to the said Judge Laurence Frederick John Johnston by way of any refund of his contributions under the *Superannuation Act 1969-1970* or any Act repealed by that Act.

Commutation of pension to pay deferred superannuation contributions surcharge

17A. (1) The Treasurer will, on the application of a former Judge who is entitled to a pension and who is liable for a deferred superannuation contributions surcharge, commute so much of the pension as is required to provide a lump sum equivalent to the amount of the surcharge.

(2) An application under subsection (1) must be made in writing to the Treasurer before the expiration of the period of three months immediately following the date on which the notice given to the former Judge by the Commissioner of Taxation under section 15(7) of the Commonwealth Act was issued.

(3) Where—

(a) —

(i) a Judge, or former Judge, who is liable for a deferred superannuation contributions surcharge dies before notice by the Commissioner of Taxation under section 15(7) of the Commonwealth Act is issued; or

(ii) a former Judge who is liable for a deferred superannuation contributions surcharge dies within three months after the issue of such a notice without having commuted his or her pension under subsection (1); and

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- (b) the Judge is survived by a spouse who is entitled to a pension as the Judge's spouse under this Act,

the Treasurer will, subject to subsection (5) on the application of the spouse, commute so much of the spouse's pension as is required to provide a lump sum equivalent to the amount of the surcharge.

(4) An application under subsection (3) must be made in writing to the Treasurer before the expiration of the period of six months immediately following the Judge's death or the issue of the notice under section 15(7) of the Commonwealth Act, whichever is the later.

(5) The Treasurer must not commute a pension under subsection (3) unless he or she is satisfied that the resulting lump sum will be applied in payment of the surcharge or be used to reimburse the deceased Judge's estate or the spouse or other person who has paid the surcharge on behalf of the estate.

(6) The commutation factors to be applied in the commutation of a pension under this section will be determined by the Treasurer on the recommendation of an actuary.

- (7) In this section—

"**actuary**" means a Fellow or Accredited Member of the Institute of Actuaries of Australia;

"**the Commonwealth Act**" means the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*;

"**deferred superannuation contributions surcharge**" in relation to a former Judge means the amount that the former Judge is liable to pay to the Commissioner under section 15(6) of the Commonwealth Act.

PART 3
AMENDMENT OF THE SUPREME COURT ACT 1935-1970

Short titles

18. (1) The *Supreme Court Act 1935-1970*, as amended by this Act, may be cited as the *Supreme Court Act 1935-1971*.

(2) The *Supreme Court Act 1935-1970* is in this Part referred to as "the principal Act".

Repeal of ss. 13B, 13C, 13D, 13E, 13EA, 13EB, 13EC, 13F and 13G of principal Act

19. Sections 13B, 13C, 13D, 13E, 13EA, 13EB, 13EC, 13F and 13G of the principal Act are repealed.

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**PART 4
AMENDMENT OF THE LOCAL AND DISTRICT CRIMINAL COURTS
ACT 1926-1970**

Short titles

20. (1) The *Local and District Criminal Courts Act 1926- 1970*, as amended by this Act, may be cited as the *Local and District Criminal Courts Act 1926-1971*.

(2) The *Local and District Criminal Courts Act 1926-1970* is in this Part referred to as "the principal Act".

Repeal of ss. 5G, 5H, 5I and 5J of principal Act

21. Sections 5G, 5H, 5I and 5J of the principal Act are repealed.

PART 5
AMENDMENT OF THE INDUSTRIAL CODE 1967-1970

Short titles

22. (1) The *Industrial Code 1967-1970*, as amended by this Act, may be cited as the *Industrial Code 1967-1971*.

(2) The *Industrial Code 1967-1970* is in this Part referred to as "the principal Act".

Repeal of ss. 13, 14, 15, 16, 17 and 17A of principal Act

23. Sections 13, 14, 15, 16, 17 and 17A of the principal Act are repealed.

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THE SCHEDULE

First Column	Second Column Annual Rate of Pension \$
The Honourable Sir Herbert Mayo	7 415.13
The Honourable Sir John Mellis Napier	8 984.75
The Honourable Sir Dudley Bruce Ross	6 765.63
The Honourable John Leo Travers	9 012.50
Lynette Brazel	3 382.81
Lady Edith Emily Ligertwood	3 382.81
Grace Lily Millhouse	3 382.81
Joyce Gertrude Piper	3 382.81
Lady Kathleen Jennie Reed	3 382.81
Ray Lillian Pellew	3 281.27

APPENDIX

LEGISLATIVE HISTORY

- Legislative history prior to 3 February 1976 appears in marginal notes and footnotes included in the consolidation of this Act contained in Volume 5 of The Public General Acts of South Australia 1837-1975 at page 280.
- Legislative history since 3 February 1976 (**entries in bold type indicate amendments incorporated since the last reprint**) is as follows:

Section 4:	redesignated as s. 4(1) by 69, 1998, s. 2(d) definition of "the Consumer Price Index" inserted by 69, 1998, s. 2(a) definition of "former Judge" substituted by 69, 1998, s. 2(b) definition of "Judge" amended by 34, 1981, s. 27; 19, 1984, s. 64(a) definition of "notional pension" amended by 69, 1998, s. 2(c)
Section 4(2):	inserted by 69, 1998, s. 2(d)
Section 6A:	inserted by 69, 1998, s. 3
Section 13:	amended by 19, 1984, s. 64(b)
Section 14:	amended and redesignated as s. 14(1) by 25, 1997, s. 4(a), (b)
Section 14(2):	inserted by 25, 1997, s. 4(b)
Section 14A:	amended by 69, 1992, s. 17; substituted by 20, 1998, s. 4
Section 15(2):	substituted by 25, 1997, s. 5
Section 17A:	inserted by 23, 1999, s. 3