

South Australia

Judges' Pensions Act 1971

An Act to make provision for pensions for Judges and their surviving spouses or domestic partners, and for purposes incidental thereto.

Contents

Part 1—Preliminary

- 1 Short title
- 4 Interpretation

Part 2—Pensions

- 5 Certain pensions not payable
- 6 Pension on retirement or resignation
- 6A Preservation of pensions on resignation before 60
- 7 Pension on resignation on ground of invalidity etc
- 8 Death of Judge or former Judge
- 9 Division of benefit where deceased Judge or former Judge is survived by spouse and domestic partner
- 9A Spouse entitlement subject to any Family Law determination
- 10 Orphans
- 10A Determination of child benefit
- 10B Child benefit general
- 10C Child benefit where no spouse or domestic partner pension payable
- 10D To whom child benefit payable
- 10E Cessation of child benefits
- 10F Assumed day of becoming eligible child
- 11 Minimum pensions
- 13 Pension not payable on removal of Judge
- 14 Payment of pensions
- 14A Adjustment of pensions
- 15 Refund of certain contributions
- 16 Declared scheme
- 17A Commutation of pension to pay deferred superannuation contributions surcharge

Part 2A—Family Law Act provisions

- 17B Purpose of this Part
- 17C Interpretation
- 17D Accrued benefit multiple
- 17E Value of interest
- 17F Non-member spouse's entitlement
- 17G Entitlement where pension is in growth phase
- 17H Entitlement where pension is in payment phase

17I	Payment of non-member spouse's entitlement
17J	Reduction in Judge's entitlement
17K	Pension not payable to spouse on death of Judge if split has occurred
17L	Treasurer to comply with Commonwealth requirements
17M	Payment of benefit
17N	Fees
17O	Regulations

Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

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

4—Interpretation

- (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);

domestic partner—

- (a) in relation to a deceased Judge—means a person declared under the *Family Relationships Act 1975* to have been the domestic partner of the Judge as at the date of the Judge's death;
- (b) in relation to a deceased former Judge—means a person declared under the *Family Relationships Act 1975* to have been the domestic partner of the former Judge as at the date of the former Judge's death;

eligible child means the child or adopted child—

- (a) of a deceased Judge or deceased former Judge; or
- (b) of the spouse or domestic partner 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;

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 of the District Court of South Australia but does not include an acting Judge appointed under section 12(3) of the *District Court Act 1991*; or
- (c) a Judge of the Industrial Relations Court of South Australia; or
- (ca) a Presidential Member of the Industrial Relations Commission of South Australia; 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 or domestic partner 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 or domestic partner 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;

spouse—

- (a) in relation to a deceased Judge—means a person who was, as at the date of the Judge's death, legally married to the Judge;
 - (b) in relation to a deceased former Judge—means a person who was, as at the date of the former Judge's death, legally married to the former Judge.
- (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.

Part 2—Pensions

5—Certain pensions not payable

- (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.

6—Pension on retirement or resignation

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.

6A—Preservation of pensions on resignation before 60

- (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 or domestic partner 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.

7—Pension on resignation on ground of invalidity etc

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.

8—Death of Judge or former Judge

If a Judge or former Judge dies and is survived by a spouse or domestic partner, the spouse or domestic partner is entitled to a pension for life at the rate of two-thirds of the notional pension of the deceased Judge or former Judge.

9—Division of benefit where deceased Judge or former Judge is survived by spouse and domestic partner

- (1) If a deceased Judge, or deceased former Judge, is survived by a spouse and a domestic partner, any benefit to which a surviving spouse or domestic partner is entitled under this Act will be divided between them in a ratio determined by reference to the relative length of the periods for which each of them cohabited with the deceased as his or her spouse or domestic partner (as the case may be).
- (2) If a number of periods of cohabitation are to be aggregated for the purpose of determining an aggregate period of cohabitation for the purpose of subsection (1), any separate period of cohabitation of less than 3 months will be disregarded.
- (3) A surviving spouse or domestic partner must, at the request of the Treasurer, furnish the Treasurer with any information that the Treasurer requires for the purposes of making a division under subsection (1).
- (4) If—
 - (a) a deceased Judge, or deceased former Judge, is survived by a spouse and a domestic partner; and
 - (b) a benefit is paid to 1 of them on the assumption that he or she is the sole surviving spouse or domestic partner of the deceased,

the other spouse or domestic partner has no claim on the benefit insofar as it has already been paid unless that spouse or domestic partner gave the Treasurer notice of his or her claim before the date of payment.

9A—Spouse entitlement subject to any Family Law determination

A pension is not payable to a spouse under section 6A(3) or 8 in a case where section 17K applies.

10—Orphans

- (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.

10A—Determination of child benefit

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.

10B—Child benefit general

- (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.
- (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.

10C—Child benefit where no spouse or domestic partner pension payable

- (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 or domestic partner 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.

10D—To whom child benefit payable

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

- (a) to the spouse or domestic partner, 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.

10E—Cessation of child benefits

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.

10F—Assumed day of becoming eligible child

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.

11—Minimum pensions

- (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.

13—Pension not payable on removal of Judge

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*, as amended.

14—Payment of pensions

- (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.
- (2) In this section—

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

14A—Adjustment of pensions

- (1) The Treasurer must adjust the amount of pensions under this Act from the first payment of pension in each adjustment period to reflect—
 - (a) in the case of an April adjustment period—the percentage variation (rounded to two decimal places) between the Consumer Price Index for the immediately preceding December quarter and the Consumer Price Index for the immediately preceding June quarter; and
 - (b) in the case of an October adjustment period—the percentage variation (rounded to two decimal places) between the Consumer Price Index for the immediately preceding June quarter and the Consumer Price Index for the immediately preceding December quarter.
- (2) If on the first day of the relevant adjustment period, the pension has been payable for a period of less than six months, the extent of the adjustment will be reduced to reflect the proportion which the period of payment of the pension bears to six months.
- (3) To avoid a reduction in pensions the Treasurer may direct that subsection (1) does not apply in relation to a particular adjustment period.
- (4) In that event an adjustment in the next adjustment period in relation to which subsection (1) applies will be based on the variation between the Consumer Price Index for the June or December quarter (whichever is applicable) immediately preceding that period and the Consumer Price Index for the June or December quarter (whichever is applicable) immediately preceding the adjustment period in relation to which subsection (1) last applied.
- (5) In this section—

adjustment period means the period of six months commencing at the commencement of 1 April and 1 October in each year;

April adjustment period means an adjustment period commencing at the commencement of 1 April in any year;

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

October adjustment period means an adjustment period commencing at the commencement of 1 October in any year.

15—Refund of certain contributions

- (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 spouse, domestic partner 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).

16—Declared scheme

- (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*.
- (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*, be deemed to be a person liable to make a contribution in respect of a declared scheme.

17A—Commutation of pension to pay deferred superannuation contributions surcharge

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

the Treasurer will, subject to subsection (5) on the application of the spouse or domestic partner, commute so much of the pension of the spouse or domestic partner 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, domestic partner 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 2A—Family Law Act provisions

17B—Purpose of this Part

The purpose of this Part is to facilitate the division under the *Family Law Act 1975* of the Commonwealth of interests between spouses who have separated.

17C—Interpretation

In this Part, unless the contrary intention appears—

Commonwealth regulations means the *Family Law (Superannuation) Regulations 2001* (No. 303 as amended) of the Commonwealth;

eligible person, in relation to an interest of a Judge under this Act, has the same meaning as in section 90MZB of the *Family Law Act 1975* of the Commonwealth;

flag lifting agreement has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth;

growth phase has the same meaning as in the Commonwealth regulations;

Judge includes a former Judge;

member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth;

non-member spouse has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth;

operative time has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth;

payment phase has the same meaning as in the Commonwealth regulations;

payment split has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth;

relevant date has the same meaning as in the Commonwealth regulations;

scheme means the pension scheme for Judges established under this Act;

SIS Act means the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth;

Southern State Superannuation Fund means the fund of that name established under the *Southern State Superannuation Act 1994*;

splitting instrument means—

- (a) a superannuation agreement; or
- (b) a flag lifting agreement that provides for a payment split; or
- (c) a splitting order;

splitting order has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth;

superannuation agreement has the same meaning as in Part VIII B of the *Family Law Act 1975* of the Commonwealth.

17D—Accrued benefit multiple

- (1) For the purposes of the Commonwealth regulations, the *accrued benefit multiple* for a pension payable in respect of an interest of a Judge under this Act is determined as follows:

- (a) if the Judge has not attained the age of 60 years at the prescribed date but will have served for at least 15 years on attaining that age, the accrued benefit multiple is determined in accordance with the following formula:

$$\frac{.60 \times T1}{T2}$$

where—

T1 is the number of days in the period beginning on the day on which the Judge joined the scheme and ending on the prescribed date

T2 is the number of days in the period beginning on the day on which the Judge joined the scheme and ending on the day on which the Judge will attain the age of 60 years;

- (b) if the Judge has not attained the age of 60 years at the prescribed date and will not have served as a Judge for at least 15 years on attaining that age, the accrued benefit multiple is determined in accordance with the following formula:

$$\frac{P \times T1}{T2}$$

where—

P is the pension benefit payable to the Judge on retirement at the age of 60, expressed as a portion of annual salary

T1 is the number of days in the period beginning on the day on which the Judge joined the scheme and ending on the prescribed date

T2 is the number of days in the period beginning on the day on which the Judge joined the scheme and ending on the day on which the Judge will attain the age of 60 years;

- (c) if, at the prescribed date, the Judge has attained the age of 60 years but has not yet attained the age of retirement, the accrued benefit multiple is determined in accordance with the following formula:

$$\frac{P \times T1}{T2}$$

where—

P is the amount of the pension benefit payable to the Judge at age of retirement, expressed as a portion of annual salary

T1 is the number of days in the period beginning on the day on which the Judge joined the scheme and ending on the prescribed date

T2 is the number of days in the period beginning on the day on which the Judge joined the scheme and ending on the day on which the Judge will attain the age of retirement.

- (2) In addition to any other information that may be provided by the Treasurer in connection with this Part, the Treasurer may, on application, provide to an eligible person a statement of the value of an interest of a Judge, as at a particular date specified in the application.
- (3) For the purposes of this section, it will be assumed—
- (a) that a person holding office as a Judge at the prescribed date who has not attained the age of 60 years at that date will continue to serve as a Judge until he or she attains the age of 60 years (and will then retire); and
- (b) that a person holding office as a Judge at the prescribed date who has attained the age of 60 years at that date will continue to serve as a Judge until he or she attains the age of retirement.
- (4) In this section—

prescribed date is the date that is relevant to the determination of an accrued benefit multiple in the particular circumstances.

17E—Value of interest

- (1) For the purposes of this Part (but subject to subsection (2)), the value of any interest will be determined in accordance with Part 5 of the Commonwealth regulations (insofar as those regulations provide a method for determining that value), subject to any modification prescribed by regulation under this Act.

- (2) An approval of the Commonwealth Minister under regulation 38 or 43A of the Commonwealth regulations that relates to an interest under this Act will have effect for the purposes of this Part.

17F—Non-member spouse's entitlement

- (1) Subject to subsection (2), the Treasurer must, on receipt of a splitting instrument, create an interest for the non-member spouse named in the instrument.
- (2) If the member spouse has less than 10 years judicial service at the time of service of the splitting instrument on the Treasurer, the Treasurer will create the interest for the non-member spouse when—
 - (a) the member spouse attains 10 years of judicial service; or
 - (b) the member spouse ceases to be a Judge,whichever first occurs.
- (3) The form of the non-member spouse's interest will be determined on the basis of whether the member spouse's benefit is in the growth phase or the payment phase and by reference to the provisions of the instrument.

17G—Entitlement where pension is in growth phase

- (1) If the Treasurer is served with a splitting instrument in respect of a pension that is in the growth phase, the non-member spouse is not entitled to receive his or her entitlement in the form of a pension commencing at the same time as the member spouse's pension under this Act but is, instead, (subject to section 17F(2)) entitled to have a lump sum determined under this section paid on his or her behalf in accordance with this Part.
- (2) The lump sum to which a non-member spouse is entitled, as at the operative time, will be determined—
 - (a) where the splitting instrument specifies a percentage of the member spouse's benefit for the purposes of the split—by applying that percentage split to the member spouse's interest under this Act based on the relevant accrued benefit multiple and by applying any relevant method or factor that applies under section 17E;
 - (b) subject to subsection (3), where the splitting instrument specifies a lump sum amount for the purposes of the split—by adopting that lump sum.
- (3) The value of a lump sum payable to a non-member spouse under this section must not exceed the value of the member spouse's interest.

17H—Entitlement where pension is in payment phase

- (1) If the Treasurer is served with a splitting instrument in respect of a pension that is in the payment phase, the Treasurer must split the pension between the member spouse and non-member spouse in accordance with the instrument, with effect from the operative time.
- (2) The non-member spouse may—
 - (a) —
 - (i) in accordance with the terms of the splitting instrument; or

- (ii) by notice in writing given to the Treasurer within the prescribed period,
 - elect to have the whole of his or her entitlement determined under subsection (1) converted to (and taken as) a separate pension entitlement (to be referred to as an *associate pension* for the purposes of this Act) for the lifetime of the non-member spouse; or
 - (b) by notice in writing given to the Treasurer within the prescribed period, elect to have the whole of his or her entitlement determined under subsection (1) commuted to a lump sum.
- (3) The following provisions will apply with respect to an associate pension:
- (a) the amount of the pension will be determined by applying the methods and factors prescribed by the regulations;
 - (b) for the avoidance of doubt, the pension will be adjusted in accordance with section 14A;
 - (c) no derivative, reversionary or other rights will arise or continue on account of the entitlement to the pension after the death of the non-member spouse.
- (4) A lump sum under subsection (2)(b) will be determined by applying the methods and factors prescribed by the regulations.
- (5) If the non-member spouse dies while entitled to, or in receipt of, a pension under this section (other than an associate pension), the non-member spouse's legal representative may, by notice in writing given to the Treasurer within the prescribed period, elect to have the pension commuted to a lump sum.
- (6) A lump sum under subsection (5) will be determined by applying the methods and factors prescribed by the regulations to the non-member spouse's entitlement.
- (7) In this section—
- legal representative*, in relation to a deceased non-member spouse, means a person—
- (a) holding office as executor of the will of the deceased non-member spouse where probate of the will has been granted or resealed in South Australia or any other State or a Territory; or
 - (b) holding office in South Australia or any other State or a Territory as administrator of the estate of the deceased non-member spouse.

17I—Payment of non-member spouse's entitlement

- (1) If the interest of a non-member spouse created under this Part after service of a splitting instrument or after the commutation of a pension payable to the non-member spouse is a lump sum, the interest will, according to the election of the non-member spouse—
- (a) be paid out to the extent (if any) that payment can be made in accordance with the SIS Act; or
 - (b) be rolled over to the credit of the non-member spouse in an account (which may need to be established) in the name of the non-member spouse in the Southern State Superannuation Fund; or

- (c) be rolled over or transferred to some other superannuation fund or scheme approved by the Treasurer.
- (2) The Treasurer must take the action required under subsection (1) within 28 days after receiving the relevant election.
- (3) However, if an election is not made by the non-member spouse before the end of 28 days after the Treasurer gives notice to the non-member spouse in the manner contemplated by the regulations, the Treasurer must, subject to the regulations, roll over the interest to the credit of the non-member spouse under subsection (1)(b).
- (4) If the interest of a non-member spouse created under this Part after service of a splitting instrument is in the form of a pension (and the non-member spouse has not directed that the pension be commuted to a lump sum), the Treasurer must split the relevant pension within the prescribed period after receipt of the splitting instrument (with effect from the relevant date), and begin to make the payments in accordance with the regulations.

17J—Reduction in Judge's entitlement

Despite the other provisions of this Act, if a payment split is payable with respect to the interest of a Judge, there is a corresponding reduction in the entitlement of the Judge under this Act.

17K—Pension not payable to spouse on death of Judge if split has occurred

If a Judge dies and is survived by a spouse who—

- (a) has received, is receiving or is entitled to receive a benefit under a splitting instrument; or
- (b) is, under the terms of a splitting instrument, not entitled to any amount arising out of the Judge's pension interest under this Act (or any proportion of such an interest),

the spouse is not entitled to a benefit under this Act in respect of the deceased Judge (except in accordance with the instrument).

17L—Treasurer to comply with Commonwealth requirements

The Treasurer must comply with the requirements imposed under Part VIII B of the *Family Law Act 1975* of the Commonwealth as if the Treasurer were the trustee of the scheme.

17M—Payment of benefit

- (1) An amount payable under this Part is 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.
- (2) In this section—

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

17N—Fees

- (1) The Treasurer may fix fees in respect of matters in relation to which fees may be charged under regulation 59 of the Commonwealth regulations.

- (2) Any fee fixed under subsection (1) that is payable by a member spouse or non-member spouse and has not been paid within 1 month of the amount becoming payable may be deducted by the Treasurer—
- (a) if the outstanding fee is payable by the non-member spouse—from an interest that is to be rolled over or transferred to a fund for the benefit of the non-member spouse; or
 - (b) in any case—
 - (i) from a pension payable to the person in default under this Act; or
 - (ii) from any other benefit payable to the person in default under this Act.

170—Regulations

- (1) The Governor may make such regulations as are contemplated by this Part or are necessary or expedient for the purposes of this Part.
- (2) Without limiting subsection (1), the regulations may modify the operation of any provision of this Act in prescribed circumstances in order to ensure that this Act operates in a manner that is consistent with, and complementary to, the requirements of the *Family Law Act 1975* of the Commonwealth.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Legislation amended by principal Act

The *Judges' Pensions Act 1971* amended the following:

Industrial Code 1967

Local and District Criminal Courts Act 1926

Supreme Court Act 1935

Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1971	30	<i>Judges' Pensions Act 1971</i>	22.4.1971	1.5.1971 (<i>Gazette 22.4.1971 p2186</i>)
1971	106	<i>Licensing Act Amendment Act 1971</i>	9.12.1971	9.12.1971
1972	69	<i>Judges' Pensions Act Amendment Act 1972</i>	7.9.1972	2.8.1973 (<i>Gazette 2.8.1973 p720</i>)
1974	72	<i>Judges' Pensions Act Amendment Act 1974</i>	17.10.1974	28.11.1974 (<i>Gazette 28.11.1974 p3372</i>)
1981	34	<i>Statutes Amendment (Administration of Courts and Tribunals) Act 1981</i>	19.3.1981	1.7.1981 (<i>Gazette 25.6.1981 p1896</i>)
1984	19	<i>Industrial Conciliation and Arbitration Act Amendment Act 1984</i>	3.5.1984	14.5.1984 (<i>Gazette 10.5.1984 p1090</i>)
1992	69	<i>Statutes Amendment (Public Actuary) Act 1992</i>	19.11.1992	10.12.1992 (<i>Gazette 10.12.1992 p1752</i>)
1997	25	<i>Statutes Amendment (Superannuation) Act 1997</i>	10.4.1997	Pt 2 (ss 4 and 5)—24.4.1997 (<i>Gazette 24.4.1997 p1618</i>)
1998	20	<i>Statutes Amendment (Adjustment of Superannuation Pensions) Act 1998</i>	2.4.1998	Pt 2 (s 4)—1.10.1997: s 2
1998	69	<i>Judges' Pensions (Preserved Pensions) Amendment Act 1998</i>	13.11.1998	13.11.1998
1999	23	<i>Statutes Amendment (Commutation for Superannuation Surcharge) Act 1999</i>	1.4.1999	Pt 2 (s 3)—1.4.1999: s 2
2001	40	<i>Statutes Amendment (Indexation of Superannuation Pensions) Act 2001</i>	3.8.2001	Pt 3 (s 6)—1.1.2002: s 2

2003	49	<i>Statutes Amendment (Division of Superannuation Interests under Family Law Act) Act 2003</i>	20.11.2003	Pt 2 (ss 4 and 5) and Sch 1—18.12.2003 (<i>Gazette 18.12.2003 p4527</i>)
2004	51	<i>Statutes Amendment (Miscellaneous Superannuation Measures No 2) Act 2004</i>	16.12.2004	Pt 2 (ss 4—8)—13.1.2005 (<i>Gazette 13.1.2005 p69</i>)
2006	43	<i>Statutes Amendment (Domestic Partners) Act 2006</i>	14.12.2006	Pt 48 (ss 132—141)—1.6.2007 (<i>Gazette 26.4.2007 p1352</i>)
2012	37	<i>Statutes Amendment and Repeal (Superannuation) Act 2012</i>	25.10.2012	Pt 2 (ss 4—8)—19.11.2012 (<i>Gazette 15.11.2012 p5007</i>)

Provisions amended since 3 February 1976

- 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.

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Long title	amended under <i>Legislation Revision and Publication Act 2002</i>	18.12.2003
	amended by 43/2006 s 132	1.6.2007
Pt 1		
<i>ss 2 and 3</i>	<i>omitted under Legislation Revision and Publication Act 2002</i>	<i>18.12.2003</i>
s 4		
s 4(1)	s 4 redesignated as s 4(1) by 69/1998 s 2(d)	13.11.1998
the Consumer Price Index	inserted by 69/1998 s 2(a)	13.11.1998
domestic partner	inserted by 43/2006 s 133(1)	1.6.2007
eligible child	amended by 43/2006 s 133(2)	1.6.2007
former Judge	substituted by 69/1998 s 2(b)	13.11.1998
Judge	amended by 34/1981 s 27	1.7.1981
	amended by 19/1984 s 64(a)	14.5.1984
	amended by 51/2004 s 4(1), (2)	13.1.2005
notional pension	amended by 69/1998 s 2(c)	13.11.1998
	amended by 43/2006 s 133(3), (4)	1.6.2007
spouse	inserted by 43/2006 s 133(5)	1.6.2007
s 4(2)	inserted by 69/1998 s 2(d)	13.11.1998
Pt 2		
s 6A	inserted by 69/1998 s 3	13.11.1998
s 6A(3)	amended by 43/2006 s 134	1.6.2007
ss 8 and 9	substituted by 43/2006 s 135	1.6.2007
s 9A	inserted by 49/2003 s 4	18.12.2003
	amended by 43/2006 s 136	1.6.2007

s 10C		
s 10C(1)	amended by 43/2006 s 137	1.6.2007
s 10D	amended by 43/2006 s 138	1.6.2007
s 12	deleted by 51/2004 s 5	13.1.2005
s 13	amended by 19/1984 s 64(b)	14.5.1984
s 14		
s 14(1)	s 14 amended and redesignated as s 14(1) by 25/1997 s 4(a), (b)	24.4.1997
s 14(2)	inserted by 25/1997 s 4(b)	24.4.1997
s 14A	amended by 69/1992 s 17	10.12.1992
	substituted by 20/1998 s 4	1.10.1997
s 14A(1) and (2)	substituted by 40/2001 s 6(a)	1.1.2002
s 14A(3)	amended by 40/2001 s 6(b)	1.1.2002
s 14A(4)	amended by 40/2001 s 6(c), (d)	1.1.2002
s 14A(5)	substituted by 40/2001 s 6(e)	1.1.2002
s 15		
s 15(1)	amended by 43/2006 s 139	1.6.2007
s 15(2)	substituted by 25/1997 s 5	24.4.1997
s 17	deleted by 51/2004 s 6	13.1.2005
s 17A	inserted by 23/1999 s 3	1.4.1999
s 17A(3)	amended by 43/2006 s 140(1), (2)	1.6.2007
s 17A(5)	amended by 43/2006 s 140(3)	1.6.2007
Pt 2A	inserted by 49/2003 s 5	18.12.2003
s 17K	substituted by 51/2004 s 7	13.1.2005
Pt 3	omitted under Legislation Revision and Publication Act 2002	18.12.2003
Pt 4	omitted under Legislation Revision and Publication Act 2002	18.12.2003
Pt 5	omitted under Legislation Revision and Publication Act 2002	18.12.2003
Sch	deleted by 51/2004 s 8	13.1.2005

Transitional etc provisions associated with Act or amendments

Transitional provisions from Statutes Amendment (Division of Superannuation Interests under Family Law Act) Act 2003, Sch 1

1—Interpretation

In this Schedule—

relevant Act means an Act amended by this Act;

relevant authority means—

- (a) the Police Superannuation Board; or
- (b) the South Australian Parliamentary Superannuation Board; or

- (c) the South Australian Superannuation Board; or
- (d) the Treasurer.

2—Prior action

Any step taken by a relevant authority before a section of this Act is brought into operation that corresponds to a step that may be taken by the relevant authority under a relevant Act after this Act is brought into operation will be taken to be valid and effectual for the purposes of a relevant Act as if it had been taken after the commencement of this Act.

3—Instruments

Any splitting instrument, or other instrument, lodged with a relevant authority before the commencement of this Act may take effect for the purposes of a relevant Act after the commencement of this Act.

4—Other matters

- (1) The Governor may, by regulation, make additional provisions of a saving or transitional nature consequent on the enactment of this Act.
- (2) A provision of a regulation under subclause (1) may, if the regulation so provides, take effect from the commencement of this Act or from an earlier day, but not before 28 December 2002.
- (3) To the extent to which a provision takes effect under subclause (2) from a day earlier than the day of the regulation's publication in the Gazette, the provision does not operate to the disadvantage of a person by—
 - (a) decreasing the person's rights; or
 - (b) imposing liabilities on the person.
- (4) The *Acts Interpretation Act 1915* will, except to the extent of any inconsistency with the provisions of this Schedule (or regulations made under this Schedule), apply to any amendment effected by this Act.

Statutes Amendment (Domestic Partners) Act 2006

141—Transitional provision

An amendment made by a provision of this Act to a provision of the *Judges' Pensions Act 1971* that provides for, or relates to, the payment of a pension to a person on the death of a Judge, or former Judge, applies only if the death occurs after the commencement of the amendment.

Historical versions

Reprint No 1—10.5.1984

Reprint No 2—10.12.1992

Reprint No 3—24.4.1997

Reprint No 4—2.4.1998

Reprint No 5—13.11.1998

Reprint No 6—1.4.1999

Judges' Pensions Act 1971—1.6.2007 to 18.11.2012
Legislative history

Reprint No 7—1.1.2002

18.12.2003

13.1.2005