



**Australian Government**  
**Department of Finance**

# **JUDGES’ PENSIONS SCHEME**

## **HANDBOOK**

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Department of Finance

August 2017

## PREFACE

The Department of Finance (Finance) administers the Judges' Pensions Scheme.

The Judges' Pensions Scheme is established under the *Judges' Pensions Act 1968* (the Act). This Handbook is intended to provide a guide to the main provisions of the Act as they apply to members of the Judges' Pensions Scheme.

The Handbook is an illustrative guide only and does not cover the complete range of possible situations faced by members of the Judges' Pensions Scheme. Accordingly, before taking any action or making any elections in relation to the Judges' Pensions Scheme, members are strongly advised to seek specific information from the Department of Finance and to obtain their own financial advice. Members are advised not to rely solely on the contents of the Handbook when considering such decisions.

The Judicial Schemes Administration Team can be contacted on telephone (02) 6215 2749 or email at [JudicialSchemes@finance.gov.au](mailto:JudicialSchemes@finance.gov.au).

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## **Part I            GOVERNANCE, MEMBERSHIP AND ADMINISTRATION**

### **Judges’ Pensions Act 1968**

1. The Commonwealth legislation governing the Judges’ Pensions Scheme is the *Judges’ Pensions Act 1968* (the Act). The Act makes provision for the payment of superannuation benefits to Federal Judges and their families (including same sex partners).

2. The Act may be obtained through the following internet link:

<http://www.legislation.gov.au/Latest/C2016C00383>

### **Judges’ Pensions Scheme Membership**

3. The Act covers the following office holders:

- Justices of the High Court;
- Judges of the Federal Court (other than the Federal Magistrates Court or the Australian Military Court);
- Judges of the Family Court (including the Family Court of Western Australia);
- Persons who, under an Act, have the same status of a Justice, or a Judge, being:
  - presidential members of the Administrative Appeals Tribunal;
  - presidential members of Fair Work Australia;
  - Solicitors-General appointed before 31 December 1997;
- Judges of the Australian Capital Territory Supreme Court appointed before self-government<sup>1</sup>.

Under the Act, these office holders fall under the definition of “Judge”.

4. The Act also makes provision for spouses (including same sex partners) and eligible children of deceased Judges.

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<sup>1</sup> **Note:** Papua New Guinea Judges who were first appointed before 1 December 1973 are also covered by the Act, however, there are no Judges that meet this definition.

## **Judges' Pensions Scheme Administration**

5. In accordance with the Government's decision in 2008 to consolidate the governance arrangements for Australian Government superannuation schemes, responsibility for policy and administration of the Judges' Pensions Scheme transferred from the Attorney-General's Department to the Department of Finance (Finance) on 1 January 2010.
  
6. The Trustee of the Scheme for the purposes of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997* is the Secretary of Finance.

## **Part II           OUTLINE OF THE MAIN PROVISIONS OF THE SCHEME**

### **Judges' Pensions Scheme Funding and Benefits**

#### **Contributions**

7. The Judges' Pensions Scheme is unfunded and no assets are held in a Fund as Judges do not contribute to the Scheme.
8. From 1 July 2017, the value of unfunded employer contributions in relation to the Judges' Pensions Scheme will be counted towards the concessional contributions cap, a limit on the amount of contributions that receive concessional tax treatment in a scheme.
9. From the 2017-18 financial year the annual concessional contributions cap will be lowered to \$25,000.
10. Where the value of these contributions exceed the cap they will not be treated as excess concessional contributions. This is because these contributions are subject to taxation when the member's benefit is paid.
11. From 1 July 2017, the threshold at which high-income earners pay Division 293 tax on their concessional contributions will be reduced from \$300,000 to \$250,000. There is no change to the current exemption for certain members of the Judges' Pensions Scheme in relation to Division 293. For non-exempt members, the value of their unfunded defined benefit contributions in respect of the Judges' Pensions Scheme will be included as part of that income threshold test.

#### **Retirement Benefit**

12. The Commonwealth meets all benefit costs as benefits are paid from the Consolidated Revenue Fund as they become due for payment.
13. Judges have a compulsory retirement age of 70 years except for those appointed to Fair Work Australia where the compulsory retirement age is 65 years.

#### ***Judges with ten or more years service***

14. Judges who have reached at least age 60 and have 10 or more years service are entitled to a pension of 60 per cent of a Judge's salary, or the salary payable to an equivalent level Judge (whichever is applicable).
15. Benefits are paid monthly and appear in member bank accounts on the last business day of each month.

### ***Judges with less than ten, but not less than six, years service***

16. Judges who have reached the mandatory retirement age and have less than ten, but not less than six, years service are entitled to a pension at the annual rate of 0.5 per cent of the appropriate judicial salary for each completed month of service.

### ***Judges with less than six years service***

17. Judges who have less than six years service are entitled to a lump sum benefit at a level sufficient to meet the Superannuation Guarantee requirements, plus interest.

### ***Transfer balance cap***

18. Judges' Pensions Scheme pensions are counted towards the transfer balance cap. The transfer balance cap is \$1.6 million for the 2017-18 financial year. Where the value of the pension exceeds the transfer balance cap the availability of a 10 per cent tax offset applicable after age 60 may be restricted. The transfer balance cap will apply from 1 July 2017 to those receiving a pension from the Judges' Pensions Scheme, or when a pension commences to be paid from the scheme.

### ***Value of pension***

19. The Department of Finance will calculate a value for a pension being paid from the Judges' Pensions Scheme and report this to the Australian Taxation Office. A pension will not have a new value calculated each time the pension increases. Generally, only the commencing value (or the value at 30 June 2017 for existing pensioners) will be reported against the transfer balance cap.

### ***Taxation of pension***

20. As a member must be at least 60 years of age to be eligible for a Judges' Pensions Scheme pension, the first \$100,000 per annum of the pension will attract a 10 per cent tax offset. However, the 10 per cent offset will not apply to the amount of a pension over \$100,000.

21. This tax outcome is in place of pension members of the Judges' Pensions Scheme having to remove amounts from the scheme to reduce an excess transfer balance. This is because a capped defined benefit pension such as a Judges' Pensions Scheme pension cannot result in an excess transfer balance.

22. The \$100,000 threshold is reduced where a pension is commenced part way through a financial year.

## Invalidity benefit

23. A Judge who retires on the grounds of permanent disability or infirmity (which is certified by the Finance Minister in consultation with the Attorney-General), is entitled to a pension of 60 per cent of the Judge's salary or the salary payable to an equivalent level Judge (whichever is applicable).

## Death benefits

24. The Act makes provision for spouses (including same sex partners) and eligible children of a deceased Judge, whether the Judge dies while in service or after retirement.

25. The spouse of a deceased Judge includes a person who had a marital or couple relationship with the Judge at the time of his or her death (including same sex partners).

26. For a retired Judge, a person will qualify as a spouse only if the marital or couple relationship commenced:

- before the Judge retired; or
- after the Judge retired but before the Judge reached age 60; or
- at least five years prior to the period leading up to the death of the Judge.

**Note:** Under the Act, a person is taken to have had a marital or couple relationship with another person if, at the relevant time, the person ordinarily lived with the other person as that person's husband or wife or partner on a permanent and bona fide domestic basis.

27. An eligible child of a deceased Judge includes:

- a child or an adopted child of the deceased Judge:
  - who is under the age of 16 years; or
  - who:
    - has reached the age of 16 years but is under the age of 25 years; and
    - is receiving full-time education at school, college or university;
- a child of a deceased Judge within the meaning of the *Family Law Act 1975*.

An eligible child may also include a child who was, or would have been had the Judge not died, wholly or substantially dependent on the deceased Judge.

***Benefits payable on the death of a Judge where there is a spouse but no eligible children***

28. Where a Judge dies in service and had a spouse, the spouse is entitled to a reversionary benefit under the Act. The pension payable to the spouse is at the rate of 62.5 per cent of the pension the Judge would have received had the Judge retired either voluntarily or, if not eligible for a voluntary retirement pension, on the grounds of invalidity, as at the date of his or her death.

29. Where a Judge dies after retirement and had a spouse, the spouse will be entitled to 62.5 per cent of the pension entitlement of the retired Judge. Note that, in this case, the marital or couple relationship must have commenced either:

- before the Judge retired; or
- after the Judge retired but before the Judge reached age 60; or
- at least five years prior to the period leading up to the death of the Judge.

***Benefits payable on the death of a Judge where there is a spouse and eligible children***

30. Where a Judge dies, either in service or after retirement, leaving a spouse and an eligible child or children, a reversionary benefit is payable to that child or children, in addition to the spouse's pension.

31. The pension payable is at a rate equal to the applicable percentage of the rate of the relevant pension in relation to the Judge. The applicable rates are:

- one eligible child – 12.5%
- two eligible children – 25%
- three or more eligible children – 37.5%

32. A reversionary pension would not be payable, however, in respect of a child of the relationship where the Judge entered into the marital or couple relationship:

- after the Judge retired; and
- after the Judge retired and after the Judge reached age 60; and
- less than five years before the retired Judge died.

**Note:** Where a Judge or retired Judge dies leaving more than one spouse, the Minister has power under the Act to apportion benefits among the spouses, having regard to the respective needs of the spouses and any eligible children.

***Benefits payable to eligible children on death of spouse or where there is no spouse entitled to a pension***

33. Where a spouse who became entitled to a reversionary benefit upon the death of the Judge or retired Judge dies, an eligible child or children will be paid a pension at the rate equal to the applicable percentage rate of the relevant pension. The applicable rates are:

- one eligible child – 45%
- two eligible children – 80%
- three eligible children – 90%
- four or more eligible children – 100%

34. Where a Judge or a retired Judge has died without leaving a spouse who became entitled to a reversionary benefit upon the Judge's death, any eligible child or children will be paid a pension at the above percentage rates.

**Note:** The rates for reversionary benefits to a surviving spouse and eligible children are contingent on any superannuation surcharge liability (see paragraphs 38 and 39) that may exist in respect to a Judge's entitlement.

35. The taxation of a reversionary pension in relation to the 10 per cent tax offset is the same as for a non-reversionary pension (refer above for taxation) where the member died aged 60 years or older, or the dependant is aged 60 years or older. This taxation treatment also applies where the deceased member is aged 60 years or older but the dependant is aged under 60 years.

36. If the member died aged less than 60 years, and the dependant is also aged under 60 years then the pension is assessable income of the dependant beneficiary with no offset.

***Benefits payable to personal representative where there is no spouse or eligible children entitled to a pension***

37. Where a Judge or former Judge dies on or after 1 July 2006 and did not have a spouse or children who are eligible for a benefit, a lump sum benefit is payable from the Scheme to the Judge's personal representatives at a level sufficient to meet the Superannuation Guarantee requirements, plus interest.

## **Period of Service, Consecutive Appointments and Service in More than One Judicial Office**

38. In determining the eligibility of a retiring Judge for the Judges' pension, any period in which the person is or was authorised to make themselves unavailable to perform their duties as a Judge is deemed to be part of the period of the person's service as a Judge.

39. A Judge whose appointment to one office terminates and is followed by a new appointment as a Judge that takes effect immediately after the termination, is not deemed to have retired. Further, a Judge is taken not to have retired so long as they continue to hold any office as a Judge or hold any judicial office in relation to a Territory that is remunerated otherwise than on a part-time basis. Service in multiple offices is deemed for the purposes of the Act as having served only one office.

## **Family Law and the Judges' Pensions Scheme**

40. Family Law legislation allows for superannuation to be treated like property and to be divided on relationship breakdown.

41. The Scheme was amended with effect from 15 March 2013 to provide a new approach for dealing with the splitting of superannuation on relationship breakdown under the Family Law regime. This allows for the former spouse of a member to become entitled to their own superannuation benefit under the Act.

42. Exceptions to this include where the Judge or former Judge's benefit is not a splittable benefit under the Family Law regime (for example, an orphan's pension), where one or both of the parties dies after the agreement or Court Order is made, but before it takes effect, or where the value of the amount to be transferred to the former spouse's account is larger than the value of the amount calculated under the Family Law regime.

### ***Valuing Superannuation***

43. For a binding agreement or Court Order to be made regarding a superannuation interest it is necessary to value that superannuation.

44. Couples can seek superannuation information from the scheme administrators to help them make binding agreements. This information can be used by the couple and the Court to value superannuation as part of a property settlement. A valuation method specific to the Scheme applies to the valuation of benefits for Family Law purposes.

45. When the administrator of the Scheme is served with an agreement by the separating parties, or a Court Order, a separate interest will be created for the former spouse, and an amount will be transferred to the former spouse's account to give effect to the agreement or Court Order. A member in receipt of a pension will have their benefit reduced accordingly.

46. Where the relationship breakdown occurs before the member becomes entitled to a benefit, an amount is transferred from the member's account to an account in the name of the former spouse and will be indexed by the 10 year Treasury bond rate until it becomes payable. The member's final benefit is reduced to take account of this transfer.

47. The former spouse's benefit may become payable from age 60 on request; if the non-member is permanently incapacitated; at age 65; or to a legal personal representative on death.

48. Where the former spouse's account is created after the member has become entitled to a pension, the former spouse's benefit becomes payable immediately and the former member's pension will be reduced. The former spouse's benefit is payable for the lifetime of the former spouse and is indexed in the same way and at the same time as the member's benefit.

### **Superannuation Surcharge**

49. Judges who commenced service between 20 August 1996 and 30 June 2005 are liable for the Superannuation Contributions Surcharge.

50. The superannuation surcharge legislation imposes a surcharge where the Scheme member's adjusted taxable income is greater than the surcharge threshold. In 1996-97, the minimum threshold was \$70,000. This threshold rose to \$99,710 for the year 2004-05. For 1996-97, the full 15% surcharge only applied where the member's adjusted taxable income was \$85,000 or more. The corresponding amount for 2004-05 is \$121,075.

51. The maximum surcharge rates are:

- 15% from 1996-97 to 2002-03
- 14.5% in 2003-04
- 12.5% in 2004-05

52. The surcharge was abolished for superannuation accruing after 1 July 2005.

53. Scheme members are identified for surcharge purposes by their Tax File Number (TFN) and the Australian Taxation Office (ATO) cross matches the information supplied by Finance with tax returns lodged by taxpayers. The ATO determines the member's adjusted taxable income, calculates a surcharge (if applicable), advises the member directly and forwards a report to the superannuation provider (ie the scheme).

54. Finance maintains a surcharge debt account for each scheme member, which accumulates all surcharge assessments during the member's period of membership. Interest at the ten year Treasury bond rate is also applied to the balance of this account at the end of each financial year.

55. When a benefit becomes payable, the total accrued amount in the surcharge debt account will be paid to the ATO and the member's benefit will be reduced in accordance with provisions of the Act. Alternatively, members may choose to pay any surcharge liability as it accrues by cheque or cash direct to Finance. In this case, the amount paid will be credited to the member's surcharge debt account and the member advised of the revised balance of their account.

56. Surcharge assessments can be issued after a scheme member's retirement or death. This happens because of the reporting timeframes associated with the surcharge process. These assessments are given directly to the former member by the ATO or, where the former member has died, to the reversionary beneficiaries of the former member.

57. Retired Judges with a surcharge debt may elect to pay off this debt outright by converting part of their pension to a lump sum to pay the surcharge debt. Alternatively a retiring Judge may elect to have their monthly pension entitlement reduced to pay off the debt over time. Judges can elect to have their pension with a surcharge debt reduction component in one of two methods as outlined at Attachment A.

58. Members issued with a surcharge assessment from the ATO after retirement can pay the amount of the assessment from their own resources and keep their pensions intact.

#### ***Superannuation surcharge – reversionary benefits***

59. Where a serving or retired Judge dies with a surcharge debt and a surviving eligible spouse commences a reversionary benefit, that debt is accounted for in the surviving spouse's reversionary benefit. Spouses can elect to have their pension with a surcharge debt reduction component calculated in the same manner as demonstrated in the diagram on page 12 (this includes where a spouse is receiving an additional pension component in respect of eligible children).

60. In respect of a benefit payable to eligible children upon the death of a Judge and the spouse, the Finance Minister determines to whom the pension is payable, and that person elects to have the pension with a surcharge debt reduction component calculated in the same manner as outlined at Attachment A.

#### ***Taxation Withholding***

61. Finance will withhold tax from a Judge's monthly pension based only on that pension and will not take into consideration any other source of income a Judge may have during any financial year.

62. Any additional income may impact on individual income tax rate brackets for any given financial year, and therefore final tax assessments. Finance recommends retiring Judges consult a licensed financial adviser to assess their taxation position. It is possible for Finance to take additional tax from Judges' pensions following a written request.

### **Increases in Pensions**

63. Remuneration and benefits for Judicial offices is governed by the Commonwealth Government's Remuneration Tribunal. From time to time, the Remuneration Tribunal may make a decision to increase the remuneration for judicial offices, and this increase would flow on to the pensions payable to retired judges, or any spouses or eligible children.

64. The principal Determinations governing judicial and related offices' remuneration and benefits may be obtained from the following link:

<http://www.remtribunal.gov.au/judicialRelatedOffices>

## **Calculation Methodology of Annual Rate of Pension for retiring Judges**

The steps for calculating the annual rate of pension for a retiring Judge differ depending upon whether a Judge has a surcharge debt at the time of his or her retirement.

Where the Judge does **not** have a surcharge debt, the pension is calculated under section 6A of the *Judges' Pensions Act 1968* (JPA).

Where the Judge does have a surcharge debt, payment of the surcharge debt to the ATO must be made within one month of the Judge's retirement.

### ***No commutation***

1. The default position is that the Judge's benefit is not commuted to take account of the surcharge debt and section 6B of the JPA applies.
2. Under section 6B, the calculation is based on the rate of the contributions surcharge that applies to the Judge in each relevant financial year and the number of relevant financial years for the Judge.
3. The formula for calculating the pension will depend on whether the Judge has any exempt period(s) of service.
  - (a) If there is no exempt period of service, the pension is calculated under paragraph 6B(2)(a) of the JPA.
  - (b) If the Judge does have an exempt period of service, the pension is calculated under paragraph 6B(2)(b) of the JPA. This paragraph applies a different formula to take account of the period of exempt service.

### ***Commutation***

1. Alternatively, section 6C of the JPA allows a Judge to commute his or her pension to pay his or her surcharge debt.
2. A Judge can write to the Secretary of the Department within a period of 2 months of his or her retirement electing for the pension to be calculated under section 6C of the JPA.
3. If the Judge makes such an election, the pension is calculated under section 6C of the JPA.
4. Under section 6C the method determines a reduction percentage, which takes account of the amount of the surcharge debt and an age factor age at the time of the Judges' retirement.