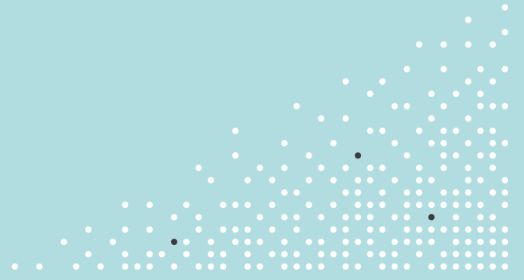




Australian Government
Department of Finance



JUDGES' PENSION SCHEME

HANDBOOK

August 2022

PREFACE

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

The 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 Scheme.

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

Further information about the Scheme may be obtained from:

The Judicial Schemes Administration Team
Funds and Superannuation
Department of Finance
One Canberra Avenue
FORREST ACT 2603

Telephone: (02) 6215 2749

Email: JudicialSchemes@finance.gov.au

Finance requires a minimum three-point identity check and (if applicable) a third-party authorisation in writing, before a member's account details can be accessed.

We are committed to protecting members' privacy. We will only share relevant personal information where necessary to government or regulatory bodies. Members' information will not be otherwise used or disclosed unless required or permitted under law.

Department of Finance
August 2022

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PART I – ABOUT THE SCHEME

GOVERNANCE

1. The Commonwealth legislation governing the Judges' Pensions Scheme (the 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). The Act may be obtained through the following internet link: <http://www.legislation.gov.au/Latest/C2016C00383>

MEMBERSHIP

2. The Act covers the following office holders:

- Justices of the High Court;
- Judges of the Federal Court (other than the Federal Magistrates Court and the Australian Military Court);
- Division 1 Judges of the Federal Circuit and Family Court (but excludes Division 2 Judges);
- Judges of the Family Court of Western Australia who are dually appointed to Division 1 of the Federal Circuit and Family Court;
- 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; and
 - Solicitors-General appointed before 31 December 1997; and
- Judges of the Australian Capital Territory Supreme Court appointed before self-government¹.

Note: Under the Act, these office holders fall under the definition of "Judge".

3. The Act also makes provision for spouses (including same sex partners) and eligible children of deceased Judges (see "Reversionary Benefits").

ADMINISTRATION

4. 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 Scheme was transferred from the Attorney-General's Department to the Department of Finance (Finance) on 1 January 2010.

5. 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

CONTRIBUTIONS

6. Contributions are not payable by Judges under the Scheme. The Scheme is unfunded, therefore no assets are held in a Fund.

TAXATION OF CONTRIBUTIONS

7. Since 1 July 2017, the value of unfunded employer contributions in relation to the Scheme are counted towards the concessional contributions cap, a limit on the amount of contributions that receive concessional tax treatment in a scheme.

¹ **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.

8. From the 2020-21 financial year, the annual concessional contributions cap increased to \$27,500².
9. 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.
10. From 1 July 2017, the threshold at which high-income earners pay Division 293 tax on their concessional contributions was reduced from \$300,000 to \$250,000. There is no change to the current exemption for certain members of the Scheme in relation to Division 293. For non-exempt members, the value of their unfunded defined benefit contributions, in respect of the Scheme, will be included as part of that income threshold test.

PERIOD OF SERVICE

11. 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.
12. 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.

RETIREMENT BENEFIT

13. Judges have a compulsory retirement age of 70 years, except for those appointed to Fair Work Commission (formerly Fair Work Australia) where the compulsory retirement age is 65 years.
14. The Commonwealth meets all benefit costs, as benefits are paid from the Consolidated Revenue Fund as they become due for payment.
15. Pensions are paid monthly, on the last business day of each month.

Judges with 10 or more years of service

16. Judges who have reached at least 60 years of age and have 10 or more years of 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).

Judges with less than 10 but not less than six years of service

17. Judges who have reached the compulsory retirement age and have less than ten, but not less than six, years of 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 of service

18. Judges who do not qualify for a pension at retirement (i.e. have less than six years of service) are entitled to a lump sum benefit at a level sufficient to meet the Superannuation Guarantee requirements, plus interest.

Adjustment of Pension

19. A Scheme pension may be reduced to take into account any other retiring allowance or pension payable, in whole or in part, by the Commonwealth, a State or Territory relating to prior judicial service.

² **Note:** This cap is determined, and maintained by the Australian Taxation Office (ATO).

INVALIDITY BENEFIT

20. A Judge who retires on the grounds of permanent disability or infirmity (which is certified by the Finance Minister), 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). Further information is provided at the following link: [Disability arrangements for Judges.](#)

TAXATION OF BENEFITS

21. Finance will withhold tax from a Judge's monthly pension, at the marginal tax rate, based only on that pension, unless the retired Judge has requested additional tax to be withheld.

22. As any additional income may affect an individual's income tax rate bracket, Finance recommends consultation with a licensed financial advisor to assess their taxation position.

23. From 60 years of age, members in receipt of a pension are eligible for a 10 per cent tax offset (up to the applicable limit of \$106,250 per annum (2021-22)). Noting, the threshold limit is reduced where a pension is commenced part way through a financial year.

TRANSFER BALANCE CAP

24. The transfer balance cap was introduced on 1 July 2017. It is a lifetime limit on the total amount of superannuation that can be transferred into retirement phase income streams, including most pensions and annuities. Scheme pensions are counted towards a transfer balance cap, currently \$1.7 million for the 2021-22 financial year. Where the value of the pension exceeds the transfer balance cap, there may be tax implications for other superannuation interests a pensioner holds. The transfer balance cap applies to those receiving a pension from the Scheme, or when a pension commences to be paid from the Scheme.

25. Finance will calculate a value for a pension being paid from the Scheme and report this to the ATO. 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.

SUPERANNUATION SURCHARGE

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

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

28. The superannuation surcharge legislation imposes a surcharge where the Scheme member's adjusted taxable income was 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.

29. The maximum surcharge rates were:

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

30. Scheme members are identified for surcharge purposes by their Tax File Number, and the ATO verifies the information supplied by the Scheme with tax returns lodged by taxpayers. The ATO is responsible for determining the member's adjusted taxable income, calculating the surcharge, and advising the member, as well as the superannuation provider, of any debt amount.

31. Finance maintains a surcharge debt account for each Scheme member, which accumulates all surcharge assessments during the period of membership. Interest, at the 10-year Treasury bond rate, is applied to the balance at the end of each financial year.

32. 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 outstanding surcharge liability 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.

33. A retiring Judge may elect to have their pension entitlement reduced to pay off their surcharge debt, using one of two methods as outlined in **Attachment A**. The reduction to the Judge's pension is permanent and is irrevocable, including in relation to any reversionary spouse benefits.

REVERSIONARY BENEFITS

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

35. 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.

36. 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.

37. If a couple are living apart in the lead up to, or at the time of death of a former Judge, the Act requires the Minister for Finance to be satisfied that the couple would have been living together as a couple, except for a period of temporary absence (for example, when the couple are separated by work commitments or absence due to illness or infirmity). Under this situation, additional information will be required from the spouse for the Minister's consideration, prior to the spouse pension being payable.

38. An eligible child of a deceased Judge includes a child or an adopted child of the deceased Judge:

- who is under the age of 18 years;
- who has reached the age of 18 years but is under the age of 25 years and is receiving full-time education at school, college or university;
- who is a child of a deceased Judge within the meaning of the *Family Law Act 1975*; or
- who is 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

39. 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.

Note: Where a Judge or retired Judge dies leaving more than one spouse, the Finance 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 on the death of a Judge where there is a spouse and eligible children

40. 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.

41. The pension payable is at a rate equal to the applicable percentage 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%

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

42. Where a spouse receives a reversionary benefit upon the death of a Judge, and the spouse dies, an eligible child or children will be paid a pension at a rate equal to the applicable percentage rate of the relevant pension in relation to the Judge. The applicable rates are:

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

43. Where a Judge or a retired Judge has died without leaving an eligible spouse, any eligible child or children will be paid a pension at the above percentage rates.

Benefits not payable to ineligible children

44. For a retired Judge, a reversionary pension would not be payable in respect of a child where the Judge entered into a marital or couple relationship:

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

Note: The rates for reversionary benefits to a surviving spouse and eligible children are contingent on any superannuation surcharge liability (see paragraphs 50 and 51) that may exist in respect to a Judge's entitlement.

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

45. If a Judge or former Judge dies 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.

TAXATION OF REVERSIONARY BENEFITS

46. Reversionary pensions are subject to tax at the marginal tax rate, as the pension is unfunded and comprised wholly of a taxable untaxed component.

47. The 10 per cent tax offset is applicable for a spouse age 60 years and over. This also applies where the deceased member is aged 60 years or older but the spouse is aged under 60 years.

48. If the deceased member and spouse are under 60 years of age, no tax offset is applied until the spouse reaches age 60.

SUPERANNUATION SURCHARGE – REVERSIONARY BENEFITS

49. 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

outlined in **Attachment A** (this includes where a spouse is receiving an additional pension component in respect of eligible children).

50. 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 in **Attachment A**.

FAMILY LAW

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

52. 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.

53. Exceptions to this include where the Judge or former Judge's benefit is not able to be split 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.

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

55. Couples can seek superannuation information from the Scheme's administrators to help them make binding agreements (through a Form 6 Declaration and Superannuation Information Request Form). 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.

56. When the administrator of the Scheme is served with a separation agreement or a Court Order, a separate interest will be created for the non-member spouse, with the transfer amount, as determined in the agreement or court order, to be assigned to that interest.

57. Where the relationship breakdown occurs in growth phase, before the member becomes entitled to a benefit, the member's benefit is reduced and the non-member spouse's interest is set up. The non-member spouse's interest will remain deferred until they reach eligibility for the associate pension entitlement. The balance of their interest will be indexed on 30 June every year, in line with the 10-year Treasury bond rate.

58. The non-member spouse's associate pension may become payable from age 60, on written request to the Secretary; at any age, if the non-member is permanently incapacitated; at age 65; or to a legal personal representative on death (in which it is paid as a lump sum).

59. Where the relationship breakdown occurs in payment phase, when the member is in receipt of the pension, their entitlement will be reduced and the non-member spouse's associate pension will commence.

60. An associate pension is payable for the lifetime of the non-member spouse, and is indexed in line with increases in judicial salaries, as determined by the Remuneration Tribunal.

INCREASES IN PENSIONS

61. 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 (subject to the disallowance period).

62. The principal Determinations governing judicial and related offices' remuneration and benefits may be obtained from the following link: www.remtribunal.gov.au/judicial-related-offices.

ADJUSTMENT OF PENSION DUE TO A SURCHARGE DEBT

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 Act.
- 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, otherwise the Scheme pension may be reduced to take into account the surcharge debt in accordance with sections 6B or 6C of the Act, as outlined below.

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 Act 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 Act.
 - (b) If the Judge does have an exempt period of service, the pension is calculated under paragraph 6B(2)(b) of the Act. This paragraph applies a different formula to take account of the period of exempt service.

Commutation

1. Alternatively, section 6C of the Act 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 Finance within a period of two months of his or her retirement electing for the pension to be calculated under section 6C of the Act.
3. Under section 6C, the method determines a reduction percentage which takes account of the amount of the surcharge debt and an age factor at the time of the Judges' retirement.