

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

JUDGES' PENSIONS AMENDMENT BILL 1981

EXPLANATORY MEMORANDUM

(Circulated by authority of the Attorney-General,  
Senator the Honourable P.D. Durack, Q.C.)



## OUTLINE

This Bill makes certain changes to the pensions payable to, or in respect of, retired or deceased Judges for whom the Commonwealth is responsible.

The Bill amends the Judges' Pensions Act 1968 -

- (a) to base pensions and pension entitlements presently based on Australian Industrial Court or Federal Court of Bankruptcy salaries on salaries payable to Judges of the Federal Court of Australia;
- (b) to provide pro rata pensions for Judges who retire on reaching their compulsory retiring age after serving less than 10 years but not less than 6 years;
- (c) to provide adequate pensions for the children of deceased Judges;
- (d) to update references to certain former Papua New Guinea Judges for whose pensions the Commonwealth is responsible; and
- (e) to enable applications to be made to the Administrative Appeals Tribunal for review of certain decisions of the Attorney-General under the Act.

## NOTES ON CLAUSES

### Clause 1 - Short Title, & c.

This clause provides for the citation of the Bill and defines the Principal Act for the purposes of the Bill.

### Clause 2 - Commencement

Sub-clause (1) provides that sections 1 and 2 (the formal provisions of the Act) shall come into operation on the day on which the Act receives the Royal Assent.

Sub-clause (2) provides that sub-section 3(1) (the amendments relating to former Papua New Guinea Judges) shall be deemed to have come into operation on 16 September 1975. This is the date upon which Papua New Guinea attained its independence.

Sub-clause (3) provides that sub-section 3(2) and sections 7, 8, 9 and 10 (the amendments changing the basis of certain pensions and pension entitlements to Federal Court salaries and increasing the pensions payable in respect of the children of deceased Judges) shall be deemed to have come into operation on 1 July 1981. This is the date on which Part IV of the Remuneration and Allowances Amendment Act 1981 came into operation.

Sub-clause (4) provides that the remaining provisions of the Bill (the amendments relating to pro rata pensions and amendments of a machinery nature) shall come into operation on the twenty-eighth day after the day on which the Act receives the Royal Assent.

transferred to the Federal Court of Australia when the Court was created in 1976. The definition of "relevant pension" is used to simplify the drafting of the proposed new sub-sections 7(1), 9(1), 11(1) and 12(1).

#### Clause 4 - Pensions of Judges

This clause makes two amendments of section 6 of the Act.

The first amendment (made by paragraph (a) ) enables a Judge who has retired to apply to the Attorney-General for a certificate that his retirement was due to permanent disability or infirmity so as to entitle the Judge to a full pension under sub-section 6(2) of the Act. Under proposed new paragraph 17A(a) (see clause 13), application may be made to the Administrative Appeals Tribunal for review of a refusal of the Attorney-General on such an application, to so certify.

The second amendment (made by paragraph (b) ) entitles a Judge who retires on reaching compulsory retiring age, after serving less than 10 years but not less than 6 years, to a pro rata pension of 0.5% of the appropriate current judicial salary for each completed month of service as a Judge. As a result of the 1977 Constitution Alteration relating to the retirement of Judges, every Judge appointed, or who takes a new judicial office, after the Constitution Alteration must retire upon reaching the maximum age (presently 65 years for Judges of the Family Court of Australia and

70 years for Judges of other Federal Courts). Under the present Act, a Judge is not entitled to a pension on retirement unless he or she has served as a Judge for not less than 10 years or he or she retires on the ground of ill-health. The amendment will entitle Judges who must retire, without 10 years service as a Judge, because they reach the compulsory retiring age, to a pro rata pension after 6 years service as a Judge.

Clause 5 - Pension to widow or widower on death of Judge

This clause makes a minor change to section 7 of the Act consequentially upon the amendments made by clauses 7 and 8 in relation to the pensions payable in respect of children. The effect of the change is that the rate of pension payable to the widow or widower of a Judge who dies in office is expressed as a percentage ( $62\frac{1}{2}\%$ ), rather than the equivalent fraction ( $5/8$ ths), of the pension that would have been payable to the deceased Judge. The clause also makes minor drafting changes to the section.

Clause 6 - Pension to widow or widower on death of retired Judge

This clause makes a minor change to section 8 of the Act consequentially upon the amendments made by clauses 7 and 8 in relation to the pensions payable in respect of children. The effect of the change is that the rate of pension payable to the widow or widower of a Judge who dies after retirement is expressed as a percentage ( $62\frac{1}{2}\%$ ), rather than the equivalent fraction ( $5/8$ ths), of the pension that would have been payable to the deceased retired Judge.

Clause 7 - Pension in respect of children on death of Judge

This clause, which amends section 9 of the Act, increases the pension payable in respect of the eligible children of a Judge who dies in office. Under the present Act a pension of \$208 per annum is payable to the widow or widower of a deceased Judge in respect of each eligible child. As a result of the amendment made by the clause the following pension will be payable in respect of the eligible children of a deceased Judge:-

- |   |   |
|---|---|
| (a) where there is 1 eligible child - 12½%                | } of the pension<br>that would have<br>been payable to<br>the deceased<br>Judge |
| (b) where there are 2 eligible children - 25%             |   |
| (c) where there are 3 or more eligible<br>children - 37½% |   |

Clause 8 - Pension in respect of children on death of retired Judge

This clause, which amends section 10 of the Act, makes the same provision as clause 7 in respect of the eligible children of a Judge who dies after retirement.

Clause 9 - Pension in respect of children on death of widow or widower

This clause, which amends section 11 of the Act, increases the pension payable in respect of the children of a deceased Judge upon the death of the widow or widower of the Judge. Under the present Act the pension payable in respect of an orphan child is

- (a) \$520 per annum; or
- (b) \$208 per annum and an amount ascertained by

dividing the annual amount of the pension that would have been payable to the widow or widower of the deceased Judge, by four (or, if the number of eligible children is greater than 4, by the number of those children),

whichever is the greater. As a result of the amendment made by the clause the following pension will be payable in respect of the orphan children of a deceased Judge:

- |  |   |
|--|---|
| (a) where there is 1 eligible child - 45%              | } of the pension<br>that would<br>have been<br>payable to the<br>deceased Judge |
| (b) where there are 2 eligible children - 80%          |   |
| (c) where there are 3 eligible children - 90%          |   |
| (d) where there are 4 or more eligible children - 100% |   |

Clause 10 - Pension in respect of children on death of Judge or retired Judge when widow's pension or widowers' pension not payable

This clause, which amends section 12 of the Act, makes the same provision as clause 9 in respect of the children of a Judge who dies without leaving a widow or widower.

Clause 11 - Payment of orphan's pension

This clause repeals section 13 of the Act and substitutes a new section relating to the payment of orphan's pension. The new section contains the following sub-sections:-

Proposed sub-section (1) - defines orphan's pension for the purposes of the section .

Proposed sub-section (2) - provides that payment of orphan's pension shall be made to the child or children or to such other person or persons as the Attorney-General considers appropriate.

Proposed sub-section (3) - empowers the Attorney-General to apportion a payment of orphan's pension in respect of 2 or more children amongst the children. The one orphan's pension is payable in respect of all the orphan children of a deceased Judge and, in certain circumstances, it may be necessary to pay portions of the pension to different persons, for example, where the children are living with different persons.

Proposed sub-section (4) - provides that a payment of orphan's pension that is made to a person or persons other than the eligible child or children shall be applied for the support, education or other benefit of that eligible child or those eligible children.

Clause 12 - Special provision relating to children's pensions (other than orphan's pensions)

This clause repeals section 15 of the Act and substitutes a new section relating to the payment of children's pensions (other than orphan's pensions). The new section contains the following sub-sections:-

Proposed sub-section (1) - which follows the lines of sub-section (1) of the present section, empowers the Attorney-General to direct, in certain circumstances, that -

- (a) payment of a pension, or a portion of a pension, payable in respect of an eligible child or eligible children is to be made to a specified person; or
- (b) such a pension, or a portion of such a pension, is to be expended for the benefit of the child in a specified manner.

Proposed sub-section (2) - which follows the lines of sub-section (2) of the present section, provides that the power of Attorney-General to direct payment of the pension to a person (other than the widow or widower) applies only where the child is not living with the widow or widower.

Proposed sub-section (3) - provides for application to be made to the Attorney-General for the giving of a direction under sub-section (1). Under proposed new paragraph 17A(d) (see clause 13), application may be made to the Administrative Appeals Tribunal for review of a refusal of the Attorney-General, on such an application, to give a direction under sub-section (1).

Proposed sub-section (4) - provides that a direction shall be in writing. This will enable the direction under sub-section (1) to be revoked or varied by virtue of sub-section 33(3) of the Acts Interpretation Act 1901.

#### Clause 13 - Applications for review

This clause inserts a new section 17A under which applications may be made to the Administrative Appeals Tribunal for review of -

- (a) a refusal of the Attorney-General, on application under sub-section 6(2AA), to certify that the retirement of a Judge was due to permanent disability or infirmity;
- (b) a decision of the Attorney-General under section 13 (a decision relating to the payment of an orphan's pension);

- (c) a direction of the Attorney-General under sub-section 15(1) (a direction that a pension, or a portion of a pension, payable in respect of a child be paid to a person other than the widow or widower of a Judge or be expended in a specified manner); or
- (d) a refusal of the Attorney-General, on application under sub-section 15(3), to give a direction under sub-section 15(1).

