



ANNO VICESIMO

# ELIZABETHAE II REGINAE

A.D. 1971

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## No. 30 of 1971

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

[Assented to 22nd April, 1971]

BE IT ENACTED by the Governor of the State of South Australia, with the advice and consent of the Parliament thereof, as follows:

### PART I

#### PRELIMINARY

1. This Act may be cited as the "Judges' Pensions Act, 1971". Short title.
  
2. This Act shall come into operation on a day to be fixed by proclamation. Commencement.
  
3. This Act is arranged as follows:— Arrangement of Act.
  - PART I—PRELIMINARY.
  - PART II—PENSIONS.
  - PART III—AMENDMENT OF THE SUPREME COURT ACT, 1935-1970.
  - PART IV—AMENDMENT OF THE LOCAL AND DISTRICT CRIMINAL COURTS ACT, 1926-1970.

PART V—AMENDMENT OF THE INDUSTRIAL CODE,  
1967-1970.

Definitions.

4. 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:

“eligible orphan child” in relation to a Judge or former Judge, means an orphan child of that Judge or former Judge, not being the orphan child of a marriage of that Judge or former Judge entered into after he ceased to be a Judge, being a child—

(a) who is under the age of sixteen years;

or

(b) who—

(i) has attained the age of sixteen years but is under the age of twenty-one years;

and

(ii) is receiving full-time education at an institution approved of by the Minister:

“former Judge” means a person who has been a Judge and is or has been in receipt of a pension under this Act not being a pension referred to in section 12 of this Act:

“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;

(b) a Judge as defined in section 4 of the Local and District Criminal Courts Act, 1926-1970, but does not include an Acting Judge as defined in that section;

(c) a Judge of the Industrial Court of South Australia;

(d) the chairman of the Licensing Court of South Australia first appointed such a chairman on or 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:

“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.

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

Certain pensions  
not payable.

(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 4 of the Superannuation Act, 1969-1970, then notwithstanding anything in that Act, that Act shall apply and have effect to and 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. Where a Judge—

(a) retires;

or

(b) having had not less than ten years' judicial service and having attained the age of sixty-five 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.

Pension on  
retirement or  
resignation.

Pension  
resignation  
on ground of  
invalidity, etc.

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

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

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

Death of a  
Judge.

8. Where a Judge dies leaving a widow his widow shall be entitled to a pension for life at the rate of sixty-five per centum of the pension that would have been payable to the Judge calculated on the basis that—

- (a) he had retired on the day he died;
  - (b) 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
- (c) his salary immediately before he died was his salary immediately before he retired,

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

Death of a  
former Judge.

9. Where a former Judge dies leaving a widow who had been married to that former Judge while he was a Judge, that widow shall be entitled to a pension for life at the rate of sixty-five per centum of the pension that was payable to that former Judge immediately before he died.

Orphans.

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

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

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

(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.

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

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

(3) Subject to subsection (4) of this section, the Governor may from time to time by proclamation direct that on and from a day specified therein any rate of pension provided for by this section shall be varied and on and from the day specified therein this section shall apply and have effect as if the rate as varied were substituted for the rate provided for by this section.

(4) A proclamation referred to in subsection (3) of this section—

(a) may provide for different rates of pension for widows referred to in subsection (2) of this section;

and

(b) shall not be made if it would have the effect of reducing the rate of any pension referred to in this section to a rate less than the rate of that pension provided for by this section on the commencement of this Act.

Pension not payable on removal of Judge.

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

- (a) who has been removed from office pursuant to section 75 of the Constitution Act, 1934, as amended;
  - (b) who has been removed from office in the manner provided for by section 10 of the Industrial Code, 1967, as amended;
  - (c) who has been removed from office in the manner provided for by the proviso to subsection (4) of section 5 of the Licensing Act, 1967, as amended;
- or
- (d) who has been removed from office in the manner provided for by subsection (3) of section 5f of the Local and District Criminal Courts Act, 1926-1969, as amended.

Payment of pensions.

**14.** Pensions payable under this Act—

- (a) accrue due from day to day but are payable fortnightly; and
- (b) shall be paid by the Treasurer out of the general revenue of the State on the warrant of the Governor which the Governor is hereby authorized and required to issue from time to time.

Refund of certain contributions.

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

- (a) resigns or is removed from office and is not entitled to a pension under this Act, that Judge shall be entitled to be paid an amount equal to the amount of his contributions for that pension;
- or
- (b) dies without leaving a widow or eligible orphan child entitled to a pension under this Act, there shall be paid to the legal personal representative of that Judge an amount equal to the amount of his contributions for that pension.

(2) The moneys required for the purposes of subsection (1) of this section shall be paid by the Treasurer out of the general revenue of the State on the warrant of the Governor which the Governor is hereby authorized and required to issue from time to time.

"Declared scheme".

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

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

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

Judge  
Johnston—  
special  
provisions

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

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

- (i) he were a Judge as defined in section 4 of this Act; and
- (ii) his judicial service as such a Judge commenced on the twelfth day of April, 1958;

and

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

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

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

and

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

## PART III

AMENDMENT OF THE SUPREME COURT ACT,  
1935-1970

Short titles

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

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

Repeal of  
ss. 13b, 13c,  
13d, 13e, 13ea,  
13eb, 13ec, 13f  
and 13g of  
principal Act.

19. Sections 13b, 13c, 13d, 13e, 13ea, 13eb, 13ec, 13f and 13g of the principal Act are repealed.

## PART IV

AMENDMENT OF THE LOCAL AND DISTRICT CRIMINAL  
COURTS ACT, 1926-1970

Short titles.

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

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

Repeal of  
ss. 5g, 5h, 5i  
and 5j of  
principal Act.

21. Sections 5g, 5h, 5i and 5j of the principal Act are repealed.

## PART V

AMENDMENT OF THE INDUSTRIAL CODE,  
1967-1970

Short titles.

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

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

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

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



## THE SCHEDULE

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

In the name and on behalf of Her Majesty, I hereby assent  
to this Bill.

J. W. HARRISON, Governor.