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Robyn Webb
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Dated 10 September 2021



TASMANIA

SUPREME COURT ACT 1887

No. 36 of 1887

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SUPREME COURT ACT 1887

No. 36 of 1887

An Act to amend the *Supreme Court Act 1831*, and to make provision for the appointment of additional judges of the Supreme Court

[Reserved 8 December 1886]

[Royal Assent 7 February 1887]

Preamble.

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Interpretation

In this Act, unless the contrary intention appears –

Secretary means the Secretary of the Department;

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spouse includes the person with whom a person is, or was at the time of his or her death, in a significant relationship, within the meaning of the *Relationships Act 2003*;

2. Additional puisne judges

In addition to the Chief Justice and the puisne judge of the Supreme Court required to be appointed under the Charter of Justice, the Governor may appoint persons to be additional puisne judges of the Supreme Court, so long as at any one time there are not more than 5 such additional puisne judges.

2A. *State Service Act 2000* not to apply

The *State Service Act 2000* does not apply to the appointment of judges of the Supreme Court.

3. Acting judges

(1) Where the Governor is of opinion that a situation of a temporary nature has arisen, or is likely to arise, in which it is necessary or desirable, in the public interest, that the powers of this section should be exercised, he or she may appoint a qualified person as an acting judge of the Court to act as puisne judge thereof until the happening of such event, or for such period, as the Governor may specify in the instrument of appointment.

(1A) In subsection (1),

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qualified person means a person who –

- (a) is eligible for the office of judge of the Supreme Court; or
 - (ab) has been a judge of the Supreme Court; or
 - (b) is or has been a judge of the Federal Court of Australia; or
 - (c) is or has been a judge of the Supreme Court of another State or a Territory.
- (1B) The Governor may appoint an acting judge to that office on a full-time basis, or a part-time basis, as may be specified in the instrument of appointment.
- (1C) If –
- (a) an acting judge has been appointed to that office until the happening of an event or for a period specified in the instrument of appointment; and
 - (b) that event occurs, or that period expires, after the acting judge has commenced hearing a matter but before the acting judge has determined the matter, including determining any applications for consequential orders in relation to the matter –
- the acting judge is taken to have been appointed to the office of acting judge on a part-time basis,

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or is taken to continue to be appointed to the office of acting judge on a part-time basis, until the acting judge has so determined the matter.

- (2) Subject to this section, an acting judge holding office under this section has the same powers and jurisdiction as a puisne judge of the Supreme Court, and while he or she so holds office shall be deemed to be a puisne judge of the Court.
- (3) If an acting judge is appointed to that office on a full-time basis, the acting judge is entitled to be paid out of the Public Account (which, to the necessary extent, is appropriated accordingly) a salary at the same rate as that payable to a puisne judge.
- (3A) If an acting judge is appointed to that office on a part-time basis, the acting judge is entitled to be paid out of the Public Account (which, to the necessary extent, is appropriated accordingly) a salary at the rate of –
 - (a) for each full sitting day the acting judge serves as an acting judge for the purposes of this Act, 1/230th of the annual salary payable to a puisne judge; or
 - (b) if the acting judge is required to serve as acting judge for less than a full sitting day, a proportion of the rate specified in paragraph (a) for a full sitting day that is equivalent to the proportion of the sitting day so served.
- (4) The *Judges' Contributory Pensions Act 1968* does not apply to a person by reason of that

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person holding office as an acting judge and service as an acting judge is not taken to be service as a judge for the purposes of that Act.

- (5) Section 5 does not apply to the appointment of an acting judge, and section 6A does not apply to the office of acting judge.
- (6) For the avoidance of doubt, an acting judge appointed under this section is not a puisne judge for the purposes of section 2.

4. Qualification for appointment

- (1) A person is eligible for appointment to the office of judge of the Supreme Court if the person –
 - (a) is an Australian lawyer of no less than 10 years' standing who has attained the age of 35 years; or
 - (b) is, or has been, a judge of –
 - (i) the Federal Court of Australia; or
 - (ii) the Family Court of Australia; or
 - (iii) the Supreme Court of another State or a Territory; or
 - (iv) the High Court of New Zealand; or
 - (v) the Supreme Court of New Zealand; or

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- (c) is, or has been, appointed as a magistrate under the *Magistrates Court Act 1987*.
- (2) An appointment of a person as a judge under this Act, as in force before the commencement of the *Supreme Court Amendment (Judges) Act 2016*, is not invalid by reason only that the person did not hold the qualifications, or had not attained the age, required under this Act as in force at the time of the appointment.
- (3) An appointment of a person as a judge, as referred to in subsection (2), is deemed for the purposes of any Act –
 - (a) to have been validly made on the relevant day; and
 - (b) to have always been validly made on the relevant day; and
 - (c) to have been validly made before the person served as, or performed or exercised a function, duty or power of, a judge under any Act –

and no action taken or omitted to be taken by the person after such an appointment is invalid by reason only that, at the time when the action was taken or omitted to be taken, this section was not in force.

5. Mode of appointment

After the commencement of this Act the nomination and appointment of the judges of the

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Supreme Court by virtue of any power in that behalf enabling shall be by the Governor by letters patent under the Public Seal of the State.

6. Powers and privileges

- (1) Each of the puisne judges of the said Court shall have, hold, exercise, and enjoy all the powers, privileges, and immunities which, by the Charter of Justice and any law, statute, or usage, are conferred upon or made exercisable by the puisne judge of the Supreme Court of Tasmania or any judge of the said Court to and for all intents and purposes whatsoever as fully and effectually as if each of the said puisne judges had been respectively mentioned or referred to in the said Charter and every law or statute relating to the said Court or the practice or procedure thereof in any jurisdiction whatsoever.
- (2) Where in the said Charter or any former Act reference is made to two judges of the said Court, the same shall, after the appointment of an additional puisne judge under this Act, be deemed to refer to the said Chief Justice and the puisne judges hereinbefore mentioned.

6A. Retirement of judges

- (1) Each of the judges of the said Court shall retire from office on attaining the age of 75 years.
- (2) This section does not apply to or in respect of any person holding office as a judge of the said Court at the commencement of this section.

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7. Remuneration of judges

- (1) The Chief Justice is to be paid a salary in respect of a financial year at the rate determined by the Auditor-General under subsection (3) or (3A).
- (2) A puisne judge is to be paid a salary at the rate of 90% of that of the Chief Justice.
- (3) The Auditor-General, as soon as practicable after 31 May in each year and in accordance with this section, must determine the rate that is the average of the rates of salary payable to the Chief Justices in South Australia and Western Australia at the time of the determination, and that rate of salary is to have effect in respect of the financial year commencing on the following 1 July.
- (3A) If the salary of the Chief Justice of South Australia or of the Chief Justice of Western Australia is varied as a consequence of a change in any applicable law relating to the superannuation entitlements of either Chief Justice, the Auditor-General must disregard the amount of that variation that in his or her opinion is attributable to that change in the law.
- (3B) For the purposes of subsection (3A), the Auditor-General may seek advice from –
 - (a) the Secretary of the responsible Department in relation to the *Judges' Contributory Pensions Act 1968*; and
 - (b) a person or organisation appointed as Actuary for the purposes of the *Public*

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Sector Superannuation Reform Act 2016;
and

- (c) any other person or organisation that the Auditor-General considers appropriate.
- (3C) Notwithstanding subsections (1) and (2), a judge may elect, in writing to the Secretary, at any time but not more than once in a period of one year, that the salary determined in accordance with this section may be provided –
- (a) in part by the payment of salary to the judge; and
 - (b) in part by the payment of employer superannuation contributions to an RSA or a complying superannuation scheme, which may include the accumulation scheme.
- (3D) If a judge elects to sacrifice some or all of his or her salary under subsection (3C) –
- (a) the election has effect from the date of the election or from a later date specified in the election for that purpose; and
 - (b) he or she is taken, for any purpose related to superannuation, to have received the salary determined in accordance with this section, notwithstanding the salary sacrifice.
- (4) The Chief Justice and puisne judges are entitled to be paid out of the Public Account.

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(5)

8. Superannuation entitlements of judge appointed after 1 July 1999

(1) This section applies only in respect of a person appointed as a judge after 1 July 1999.

(2) Where a person is appointed as a judge after 1 July 1999, the person is an employee for the purposes of the *Public Sector Superannuation Reform Act 2016*.

(3 - 8)

8A - 8B.

8C. Appropriation

An amount payable by virtue of a judge being an employee for the purposes of the *Public Sector Superannuation Reform Act 2016* is payable out of the Public Account which, to the necessary extent, is appropriated accordingly.

9. Rules of Court

The power to make rules and orders under section 16 of the *Australian Courts Act, 1828* may so far as it still exists be exercised by a majority of the judges.

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10.

11. Sittings of the Court

- (1) Sittings of the Court for the trial of civil or criminal issues and assessment of damages and for the exercise of any other jurisdiction conferred upon the Court by law shall be held at such times and at such places as may lawfully be appointed.
- (2) It shall be incumbent upon a judge to attend and preside over such sittings, and to attend to the due despatch of business in Chambers in Launceston as circumstances may from time to time require.
- (3) One of the judges shall attend in Chambers at Launceston at least one day in each week unless previously notified by the Deputy-Sheriff that his attendance is not required; but a judge shall not be obliged to attend at Launceston when his services are necessary in Hobart during term time or for the sittings of the Supreme Court.

12. Short title

This Act may be cited as the *Supreme Court Act 1887*.

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NOTES

The foregoing text of the *Supreme Court Act 1887* comprises those instruments as indicated in the following table. Any reprint changes made under any Act, in force before the commencement of the *Legislation Publication Act 1996*, authorising the reprint of Acts and statutory rules or permitted under the *Legislation Publication Act 1996* and made before 6 September 2021 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Supreme Court Act 1887</i>	No. 36 of 1887	7.2.1887
<i>Statute Law Revision Act 1934 and proclamations thereunder</i>	No. 78 of 1934	13.12.1934
<i>Supreme Court Act 1935</i>	No. 16 of 1935	27.8.1935
<i>Supreme Court Act 1951</i>	No. 18 of 1951	1.5.1951
<i>Judges' Pensions Act 1951</i>	No. 19 of 1951	1.5.1951
<i>Supreme Court Act 1958</i>	No. 30 of 1958	11.7.1958
<i>Supreme Court Act 1959</i>	No. 41 of 1959	30.11.1959
<i>Supreme Court Act 1975</i>	No. 88 of 1975	11.12.1975
<i>Supreme Court Act 1977</i>	No. 50 of 1977	31.8.1977
<i>Supreme Court Amendment Act 1984</i>	No. 37 of 1984	20.6.1984
<i>Tasmanian State Service (Miscellaneous Amendments) Act 1984</i>	No. 29 of 1984	1.12.1985
<i>Statute Law Revision Act 1991</i>	No. 46 of 1991	18.12.1991
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Statutory Salaries Act (Repeal) Act 1996</i>	No. 45 of 1996	26.6.1995
<i>Judges' Contributory Pensions Amendment Act 1995</i>	No. 19 of 1995	24.7.1995
<i>Supreme Court Amendment Act 1998</i>	No. 29 of 1998	26.6.1998
<i>Superannuation (Parliament, Judiciary and Statutory Legal Officers) Reform Act 1999</i>	No. 91 of 1999	15.12.1999
<i>Superannuation (Miscellaneous and Consequential Amendments) Act 2000</i>	No. 103 of 2000	13.12.2000
<i>State Service (Consequential and Miscellaneous Amendments) Act 2000</i>	No. 86 of 2000	1.5.2001
<i>Retirement Benefits (Parliamentary Superannuation Trustee Arrangements and Miscellaneous</i>	No. 52 of 2002	27.11.2002

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Act	Number and year	Date of commencement
<i>Amendments) Act 2002</i>		
<i>Relationships (Consequential Amendments) Act 2003</i>	No. 45 of 2003	1.1.2004
<i>Statutory Officers (Age for Retirement) Act 2005</i>	No. 17 of 2005	10.6.2005
<i>Public Sector Superannuation (Miscellaneous Amendments) Act 2005</i>	No. 65 of 2005	15.12.2005
<i>Justice and Related Legislation (Further Miscellaneous Amendments) Act 2006</i>	No. 43 of 2006	18.12.2006
<i>Legal Profession (Miscellaneous and Consequential Amendments) Act 2007</i>	No. 66 of 2007	31.12.2008
<i>Public Sector Superannuation (Miscellaneous Amendments) Act 2009</i>	No. 60 of 2009	1.10.2010
<i>Public Sector Superannuation (Miscellaneous Amendments) Act 2013</i>	No. 6 of 2013	13.5.2013
<i>Supreme Court Amendment (Judges) Act 2016</i>	No. 9 of 2016	10.6.2016
<i>Public Sector Superannuation Reform (Consequential and Transitional Provisions) Act 2016</i>	No. 54 of 2016	31.3.2017
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019
<i>Justice Miscellaneous (Increasing Judicial Retirement Age) Act 2021</i>	No. 11 of 2021	6.9.2021

TABLE OF AMENDMENTS

Provision affected	How affected
Long Title	Amended by 26 Geo. V No. 16, s. 7 and No. 30 of 1958, s. 5
Preamble	Repealed by 26 Geo. V No. 16, s. 7
Section 1	Amended by 26 Geo. V No. 16, s. 7, No. 68 of 1994, s. 3 and Sched. 1 Substituted by No. 91 of 1999, s. 75 Amended by No. 103 of 2000, Sched. 1, No. 45 of 2003, Sched. 1, No. 65 of 2005, Sched. 1, No. 66 of 2007, Sched. 1, No. 9 of 2016, s. 5 and No. 54 of 2016, s. 108
Section 2	Amended by 26 Geo. V No. 16, s. 7, No. 18 of 1951, s. 2 and No. 30 of 1958, 2

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Section 2A	Substituted by No. 88 of 1975, s. 2 Amended by No. 37 of 1984, s. 4 and No. 9 of 2016, s. 6 Inserted by No. 29 of 1984, s. 3 and Sched. 1 Renumbered by No. 46 of 1991, s. 5 and Sched. 3
Section 3	Amended by No. 86 of 2000, Sched. 1 Amended by 26 Geo. V No. 16, s. 7 Repealed by No. 19 of 1951, s. 10 Inserted by No. 88 of 1975, s. 2
Section 4	Amended by No. 19 of 1995, s. 12, No. 29 of 1998, s. 4, No. 43 of 2006, s. 58, No. 9 of 2016, s. 7 and No. 4 of 2017, Sched. 1 Amended by 26 Geo. V No. 16, s. 7 Subsection (2) added by 26 Geo. V No. 16, s. 7 Amended by No. 68 of 1994, s. 3 and Sched. 1, No. 66 of 2007, Sched. 1
Section 5	Substituted by No. 9 of 2016, s. 8
Section 6	Amended by 26 Geo. V No. 16, s. 7
Section 6A	Amended by 26 Geo. V No. 16, s. 7 Inserted by No. 18 of 1951, s. 3
Section 7	Amended by No. 17 of 2005, Sched. 1 and No. 11 of 2021, s. 7 Repealed by No. 41 of 1959, s. 2 and Sched. Inserted by No. 45 of 1996, s. 8 Amended by No. 91 of 1999, s. 76, No. 103 of 2000, Sched. 1, No. 52 of 2002, s. 24, No. 65 of 2005, Sched. 1, No. 54 of 2016, s. 109 and No. 4 of 2017, Sched. 1
Section 8	Amended by 26 Geo. V No. 16, s. 7 Repealed by No. 41 of 1959, s. 2 and Sched. Inserted by No. 91 of 1999, s. 77 Amended by No. 103 of 2000, Sched. 1, No. 65 of 2005, Sched. 1, No. 6 of 2013, s. 16 and No. 54 of 2016, s. 110
Section 8A	Inserted by No. 91 of 1999, s. 77 Amended by No. 60 of 2009, s. 89 Repealed by No. 54 of 2016, s. 111
Section 8B	Inserted by No. 91 of 1999, s. 77 Amended by No. 45 of 2003, Sched. 1 Repealed by No. 54 of 2016, s. 111
Section 8C	Inserted by No. 91 of 1999, s. 77 Amended by No. 54 of 2016, s. 112 and No. 4 of 2017, Sched. 1
Section 9	Repealed by 26 Geo. V No. 16, s. 7 Inserted by No. 30 of 1958, s. 4 Amended by No. 37 of 1984, s. 5
Section 10	Substituted by 26 Geo. V No. 16, s. 7 Amended by No. 30 of 1958, s. 3 Repealed by No. 41 of 1959, s. 2 and Sched.
Section 11	Amended by 26 Geo. V No. 16, s. 7 and No. 50 of 1977, s.

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Provision affected	How affected
Section 12	11 Substituted by 26 Geo. V No. 16, s. 7