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Robyn Webb  
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Dated 29 July 2019



TASMANIA

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## **JUDGES' CONTRIBUTORY PENSIONS ACT 1968**

**No. 73 of 1968**

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## **JUDGES' CONTRIBUTORY PENSIONS ACT 1968**

**No. 73 of 1968**

**An Act to provide for contributory pensions for judges of the Supreme Court appointed before 1 July 1999 and their spouses**

**[Royal Assent 20 December 1968]**

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. Short title**

This Act may be cited as the *Judges' Contributory Pensions Act 1968*.

### **2. Appointed day**

The Governor may by order declare a day to be the appointed day for the purposes of this Act, and the day so declared is in this Act referred to as the appointed day.

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**2A. Interpretation**

In this Act –

*Actuary* has the same meaning as in the  
*Public Sector Superannuation Reform*  
*Act 2016*;

*appropriate judicial salary* means –

- (a) in the case of a pension payable in respect of contributions paid by a person who, immediately before he or she became entitled to a pension under this Act or at his or her death, was the Chief Justice, the salary for the time being required by law to be paid to the Chief Justice; and
- (b) in the case of a pension payable in respect of contributions paid by a person who, immediately before he or she became entitled to a pension under this Act or at his or her death, was the Associate Judge, the salary for the time being required by law to be paid to the Associate Judge; and
- (c) in any other case, the salary for the time being required by law to be paid to a puisne judge;

*complying superannuation scheme* has the same meaning as in the *Superannuation*

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*Industry (Supervision) Act 1993* of the Commonwealth, as amended;

***residual pension*** means a pension payable under this Act after any commutation in accordance with section 11 or 12;

***Secretary*** means the Secretary of the Department;

***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*;

***surcharge liability*** means liability for tax or interest imposed under the law of the Commonwealth arising from an entitlement to a pension under this Act;

**3. Application of Act**

(1) This Act applies only to the following judges:

- (a) a judge who is appointed after the appointed day and before 1 July 1999;
- (b) any other judge who, by notice in writing served on the Minister before the appointed day, has elected that this Act is to apply to him.

(2) This Act also applies to –

- (a) the person who, on the day on which the *Judges' Contributory Pensions*

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*Amendment Act 1995* commences, holds the office of Associate Judge by appointment under section 4(1) of the *Supreme Court Act 1959*; and

- (b) a person who is appointed to the office of Associate Judge under section 4(1) of the *Supreme Court Act 1959* after the day on which the *Judges' Contributory Pensions Amendment Act 1995* commences and before 1 July 1999.

**4. Contributions**

- (1) For the purposes of this Act, a person to whom this Act applies shall pay contributions of amounts equal to 5 per cent of his salary.
- (2) Contributions required to be paid under this section shall be paid to the Minister in such manner and at such times as he may approve.

4A. . . . .

**5. Entitlement to pension**

- (1) A person to whom this Act applies becomes entitled to a pension under this Act in respect of the contributions required to be made by him thereunder –
  - (a) on retirement pursuant to section 6A of the *Supreme Court Act 1887* in the case of a judge or on retirement pursuant to

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section 5(2) of the *Supreme Court Act 1959* in the case of the Associate Judge;

- (b) on retirement after having served as a judge or Associate Judge for not less than 15 years; or
  - (c) on retirement that the Minister certifies to be by reason of disability or infirmity.
- (2) The pension to which a person becomes entitled under this section is a pension at the rate of one-half of the appropriate judicial salary.
- (3) A pension payable under this Act is to be reduced to take into account any commutation of the pension.

**6. Pensions to spouses**

- (1) If a person to whom this Act applies dies in office, that person's spouse becomes entitled to a pension in respect of the contributions required to be made by that person under this Act.
- (2) If a person who has become entitled to a pension under section 5 dies, that person's spouse becomes entitled to a pension in respect of the contributions required to be made by that person under this Act.
- (2A) Subsection (2) does not apply to a person's spouse if –
  - (a) he or she married or entered into a significant relationship, within the meaning of the *Relationships Act 2003*,

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with the deceased person after the date  
on which the deceased person became  
entitled to a pension under section 5; or

(b) . . . . .

- (3) Subject to sections 11 and 12, the pension to which a spouse becomes entitled under this section is a pension at the rate of one-third of the appropriate judicial salary.

**7. Calculation of rates of pensions**

- (1) Where under any provision of this Act a person becomes entitled to a pension at the rate of a specified proportion of the appropriate judicial salary the Minister shall pay to that person a pension at a rate that is equivalent to that proportion of what is for the time being the rate of that salary.
- (2) A pension referred to in subsection (1) accrues from day to day and is payable monthly or in such other manner as the Minister, with the consent of the person to whom it is payable, may determine.
- (3) . . . . .

**8. Termination benefit**

- (1) Where a person to whom this Act applies retires or resigns from office and is not entitled, on so retiring or resigning, to a pension under this Act, the Minister must pay to that person a termination benefit equivalent to –

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- (a) that person's contributions under this Act; and
  - (b) interest on those contributions made after 1 April 1987 at a rate determined by the Minister; and
  - (c) an amount representing the prescribed rate of contributions in respect of that person, together with interest on that amount, for each pay period commencing –
    - (i) on or after 1 July 1992; or
    - (ii) on the day when he becomes a person to whom this Act applies –whichever is the later.
- (2) For the purposes of subsection (1), the prescribed amount of contributions is the product of the relevant prescribed rate of contributions set out in the following table and the salary of the person for the relevant period set out in that table:

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<b>Period</b>	<b>Prescribed rate of contributions as a percentage of salary for persons appointed</b>	
	before 1 July 1994	on or after 1 July 1994
1 July 1992 to 31 December 1992	1%	.....
1 January 1993 to 30 June 1995	2%	5%
1 July 1995 to 30 June 1998	3%	6%
1 July 1998 to 30 June 2000	4%	7%
1 July 2000 to 30 June 2002	5%	8%
1 July 2002 onwards	6%	9%

- (3) For the purposes of subsection (1)(c), interest is to be added to the prescribed amount of contributions at a rate determined by the Minister.
- (4) Where a person to whom this Act applies dies while holding office and no other person becomes entitled on that person's death to a pension under section 6(1), the Minister must pay to that person's personal representative a termination benefit calculated under this section.

**9. Supplementary financial provisions**

- (1) The account, called the Judges' Pension Fund, established under this section before the commencement of section 9 of the *Financial Management Act 2016*, is continued as an account, of the same name, in the Public Account.
- (2) Contributions made by persons under this Act shall be credited to the Judges' Pension Fund, and during each financial year there shall be paid into the account in the Public Account the amount standing to the credit of that pension fund at the commencement of that financial year.
- (3) Pensions and other sums required to be paid by the Minister under this Act shall be paid out of the account in the Public Account, which, to the necessary extent, is appropriated accordingly.

**10. Effect on pension rights of appointment of Associate Judge as judge**

If a person who holds or has held office as Associate Judge pursuant to an appointment under section 4(1) of the *Supreme Court Act 1959* becomes a judge—

- (a) the period during which that person held office as Associate Judge is, for the purposes of section 5, to be added to, and is to be taken to be part of, that person's period of service as a judge; and

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- (b) any pension being paid to that person under this Act in relation to his or her service as Associate Judge ceases forthwith to be payable.

**10A. Commutation of pension to lump sum**

- (1) A person to whom this Act applies may elect, by notice in writing given to the Minister, to commute the whole or part of his or her residual pension to a lump sum payment in accordance with the following table:—

(a - b) . . . . .

<b>Date of retirement</b>	<b>Maximum percentage of residual pension to be commuted</b>
between 1 July 1999 and 30 June 2000	20%
between 1 July 2000 and 30 June 2001	40%
between 1 July 2001 and 30 June 2002	60%
between 1 July 2002 and 30 June 2003	80%
from 1 July 2003 onwards	100%

- (2) Subsection (1) also applies to a person to whom this Act applies and who retired from office after 1 July 1999 and before the commencement of

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*the Superannuation (Parliament, Judiciary and Statutory Legal Officers) Reform Act 1999.*

- (3) On receipt of a notice under subsection (1), the Minister must commute the amount requested by the person to a lump sum payment and pay it to him or her after deducting any tax payable.
- (4) The lump sum conversion factors are to be determined by the Minister, on the advice of the Actuary, and are to be specified in a notice published in the *Gazette*.
- (5) A notice under subsection (4) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

**10B. Commutation of pension by spouse on death of judge or Associate Judge in office**

- (1) If a person to whom this Act applies dies in office, his spouse may elect by notice in writing to the Minister, to commute her residual pension payable under section 6 to a lump sum payment in accordance with the following table:

<b>Date of person's death</b>	<b>Maximum percentage of residual pension to be commuted</b>
between 1 July 1999 and 30 June 2000	20%
between 1 July 2000 and 30 June 2001	40%
between 1 July 2001 and 30 June 2002	60%

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<b>Date of person's death</b>	<b>Maximum percentage of residual pension to be commuted</b>
between 1 July 2002 and 30 June 2003	80%
from 1 July 2003 onwards	100%

- (2) On receipt of a notice under subsection (1), the Minister must commute the amount requested by the spouse to a lump sum payment and pay it to her after deducting any tax payable.
- (3) The lump sum conversion factors are to be determined by the Minister, on the advice of the Actuary, and are to be specified in a notice published in the *Gazette*.
- (4) A notice under subsection (3) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.

**10C. Commutation of pension on death**

- (1) If a person in receipt of a pension under section 5 dies, his spouse may elect, by notice in writing to the Minister, to commute her residual pension payable under section 6 to a lump sum payment in accordance with the following table:

<b>Date of pensioner's death</b>	<b>Maximum percentage of residual pension to be commuted</b>
between 1 July 1999 and 30 June 2000	20%

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<b>Date of pensioner's death</b>	<b>Maximum percentage of residual pension to be commuted</b>
between 1 July 2000 and 30 June 2001	40%
between 1 July 2001 and 30 June 2002	60%
between 1 July 2002 and 30 June 2003	80%
from 1 July 2003 onwards	100%

- (2) On receipt of a notice under subsection (1), the Minister must commute the amount requested by the spouse to a lump sum payment and pay it to her after deducting any tax payable.
- (3) The lump sum conversion factors are to be determined by the Minister, on the advice of the Actuary, and are to be specified in a notice published in the *Gazette*.
- (4) A notice under subsection (3) is not a statutory rule for the purposes of the *Rules Publication Act 1953*.
- (5) This section does not apply in a case where the death of a person in receipt of a pension under section 5 occurs 10 years or more after the commencement of that pension.

**10D. Effective date of election**

An election under section 10A, 10B or 10C must provide for the commutation to take effect

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within 6 months of the commencement of the pension.

**11. Commutation of pension to lump sum to pay surcharge liability**

- (1) On retirement, a person to whom this Act applies, by notice in writing to the Minister, may elect to commute sufficient of his or her pension under this Act to a lump sum payment in order to discharge his or her surcharge liability.
- (2) On receipt of the notice, the Minister must commute sufficient of the person's pension to a lump sum payment and pay it to that person to enable that person to discharge his or her surcharge liability.
- (3) The Minister must determine the lump sum in accordance with the appropriate age, marital and gender factors specified for a pension in force under the *Public Sector Superannuation Reform Act 2016*.

**12. Death of person with surcharge liability**

If a person to whom this Act applies dies with an outstanding surcharge liability, his spouse may elect to commute her or his pension to a lump sum payment in order to discharge any surcharge liability, in which case section 11 applies to that election as if it were an election under that section.

12A. . . . .

**13. Increases in annual pension**

If part of the pension payable under this Act is commuted, any future increase in the annual pension as a result of an increase in the appropriate judicial salary is to be calculated in accordance with the following formula:

$$P = RP \times (A \div B)$$

where –

*P* is the new pension payable to a person in receipt of a pension under this Act;

*RP* is the pension payable to a person in receipt of a pension under this Act immediately before the increase;

*A* is the current appropriate judicial salary;

*B* is the appropriate judicial salary immediately before the increase.

**13A. Family Law (splitting of superannuation interests)**

(1) A pension payable under this Act –

(a) is to be reduced to take into account any commutation of the pension under section 10A or 10B; and

(b) is subject to Schedule 1 which carries into effect the provisions of the *Family Law Act 1975* of the Commonwealth

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relating to the splitting of superannuation interests, as defined in Part VIII B of that Act.

- (2) A lump sum payment under this Act is subject to Schedule 1.

**13B. Requirement for minimum benefit**

A benefit payable under this Act must contain an employer component that is at least the minimum benefit that satisfies the requirements of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth.

**14. Right to elect to cease to be subject to this Act**

A person to whom this Act applies may elect, in accordance with the regulations, to cease to be subject to this Act.

**15. Regulations**

The Governor may make regulations for the purposes of this Act including, but not limited to, providing for –

- (a) the manner in which persons to whom this Act applies may elect to cease to be subject to this Act; and
- (b) the transfer of entitlements of those persons.

**SCHEDULE 1 – FAMILY LAW (SPLITTING OF  
SUPERANNUATION INTERESTS)**

Section 13A(1)(b) and (2)

**1. Interpretation**

In this Schedule –

*Family Law Act* means the *Family Law Act 1975* of the Commonwealth;

*flag lifting agreement* has the meaning given by section 90MN of the Family Law Act;

*flagging order* means an order mentioned in section 90MU(1) of the Family Law Act;

*member* has the meaning given by section 90MD of the Family Law Act;

*member spouse* has the meaning given by section 90MD of the Family Law Act;

*non-member spouse* has the meaning given by section 90MD of the Family Law Act;

*operative time* has the meaning given by section 90MD of the Family Law Act;

*splittable payment* has a meaning in accordance with section 90ME of the Family Law Act;

*splitting instrument* means a superannuation agreement, a flagging order, a flag lifting agreement or a splitting order;

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*splitting order* means an order mentioned in section 90MT(1) of the Family Law Act;

*spouse* has the meaning given by section 90MD of the Family Law Act;

*superannuation agreement* has the meaning given by section 90MH of the Family Law Act;

*superannuation interest* has the meaning given by section 90MD of the Family Law Act.

**2. Application of this Schedule**

This Schedule applies to –

- (a) any benefit under this Act that is a superannuation interest; and
- (b) any splitting instrument that has an operative time on or after 28 December 2002.

**3. Objects of this Schedule**

- (1) The objects of this Schedule are to carry into effect the provisions of the Family Law Act relating to the splitting of superannuation interests.
- (2) If a provision of this Schedule is inconsistent with a provision of the Family Law Act, the latter provision prevails to the extent of the inconsistency.

**4. Duty of Minister to give effect to splitting instruments under Family Law Act**

- (1) Where a splitting instrument affects an entitlement to a benefit of a member spouse under this Act, the Minister must give effect to that instrument in paying or determining that benefit.
- (2) The Minister is not to make a payment to a non-member spouse under this Act before a splittable payment is payable to, or in respect of, the relevant member spouse.

**5. Commutation of pension on death of non-member spouse**

- (1) Where a share of a pension is payable to a non-member spouse under this Schedule, the Minister is to commute that share to a lump sum if that non-member spouse predeceases the member spouse in respect of whom the pension is being paid.
- (2) For the purposes of subclause (1), the commutation factors are to be determined by the Minister on the advice of the Actuary.
- (3) A share of a pension paid or payable to a non-member spouse under this Schedule does not revert to the widow or widower of that non-member spouse on the death of that non-member spouse.
- (4) A lump sum payment calculated under subclause (1) is to be paid to the legal personal

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representative of the non-member spouse and is to be made in accordance with Part VIII B of the Family Law Act.

- (5) A share of a pension payable to a non-member spouse under this Schedule ceases –
- (a) on the death of the relevant member spouse; or
  - (b) where a reversionary pension is payable in respect of a member spouse, on the cessation of that reversionary pension.

**6. Effect of benefit under splitting instrument**

If a member spouse dies and is survived by a non-member spouse who has received, is receiving or is entitled to receive, a benefit under a splitting instrument in respect of the superannuation interest of the member spouse, that non-member spouse is not entitled to a benefit under this Act in respect of the deceased member spouse except in accordance with that instrument.

**7. Fees for administration of Schedule**

For the purposes of administering this Schedule, the Minister may charge reasonable fees in accordance with the Family Law Act.

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**8. Provision of information by Minister**

Where an eligible person, within the meaning of section 90MZB of the Family Law Act, has applied to the Minister for information in accordance with that section about the superannuation interest of a person entitled to a pension under this Act, the Minister must comply with the requirements of that Act as if he or she were the trustee of a superannuation fund.

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**NOTES**

The foregoing text of the *Judges' Contributory Pensions Act 1968* 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 1 July 2019 are not specifically referred to in the following table of amendments.

Act	Number and year	Date of commencement
<i>Judges' Contributory Pensions Act 1968</i>	No. 73 of 1968	1.3.1969
<i>Statute Law Revision Act 1994</i>	No. 68 of 1994	25.11.1994
<i>Judges' Contributory Pensions Amendment Act 1995</i>	No. 19 of 1995	24.7.1995
<i>Superannuation (Commonwealth Surcharge and Miscellaneous Amendments) Act 1999</i>	No. 18 of 1999	14.5.1999
<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>Public Sector Superannuation (Splitting of Superannuation Interests) Act 2003</i>	No. 55 of 2003	25.9.2003
<i>Relationships (Consequential Amendments) Act 2003</i>	No. 45 of 2003	1.1.2004
<i>Public Sector Superannuation (Miscellaneous Amendments) Act 2004</i>	No. 5 of 2004	9.6.2004
<i>Public Sector Superannuation (Miscellaneous Amendments) Act 2005</i>	No. 65 of 2005	15.12.2005
<i>Supreme Court Amendment Act 2007</i>	No. 55 of 2007	1.3.2008
<i>Public Sector Superannuation (Miscellaneous Amendments) Act 2009</i>	No. 60 of 2009	1.10.2010
<i>Public Sector Superannuation Reform (Consequential and Transitional Provisions) Act 2016</i>	No. 54 of 2016	31.3.2017

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Act	Number and year	Date of commencement
<i>Financial Management (Consequential and Transitional Provisions) Act 2017</i>	No. 4 of 2017	1.7.2019

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**TABLE OF AMENDMENTS**

Provision affected	How affected
The long title	Amended by No. 91 of 1999, s. 21 and No. 45 of 2003, Sched. 1
Section 2A	Inserted by No. 18 of 1999, s. 11 Amended by No. 91 of 1999, s. 22, No. 45 of 2003, Sched. 1, No. 55 of 2007, Sched. 1 and No. 54 of 2016, s. 57
Section 3	Amended by No. 19 of 1995, s. 4, No. 18 of 1999, Sched. 1, No. 91 of 1999, s. 23 and No. 55 of 2007, Sched. 1
Section 4	Amended by No. 19 of 1995, s. 5 and No. 18 of 1999, Sched. 1
Section 4A	Inserted by No. 91 of 1999, s. 24 Amended by No. 60 of 2009, s. 9 Repealed by No. 54 of 2016, s. 58
Section 5	Amended by No. 19 of 1995, s. 6, No. 18 of 1999, s. 12, No. 91 of 1999, s. 25 and No. 55 of 2007, Sched. 1
Section 6	Substituted by No. 19 of 1995, s. 7 Amended by No. 18 of 1999, s. 13 and No. 45 of 2003, Sched. 1
Section 7	Amended by No. 19 of 1995, s. 8 and No. 18 of 1999, s. 14
Section 8	Amended by No. 19 of 1995, s. 9, No. 18 of 1999, Sched. 1 Substituted by No. 91 of 1999, s. 26
Section 9	Amended by No. 68 of 1994, s. 3 and Sched. 1, No. 19 of 1995, s. 10, No. 18 of 1999, Sched. 1 and No. 4 of 2017, Sched. 1
Section 10	Inserted by No. 19 of 1995, s. 11 Amended by No. 55 of 2007, Sched. 1
Section 10A	Inserted by No. 91 of 1999, s. 27 Amended by No. 103 of 2000, Sched. 1
Section 10B	Inserted by No. 91 of 1999, s. 27 Amended by No. 103 of 2000, Sched. 1 and No. 45 of 2003, Sched. 1
Section 10C	Inserted by No. 91 of 1999, s. 27 Amended by No. 103 of 2000, Sched. 1 and No. 45 of 2003, Sched. 1
Section 10D	Inserted by No. 103 of 2000, Sched. 1
Section 11	Inserted by No. 18 of 1999, s. 15 Amended by No. 54 of 2016, s. 59
Section 12	Inserted by No. 18 of 1999, s. 15 Amended by No. 45 of 2003, Sched. 1

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Provision affected	How affected
Section 12A	Inserted by No. 91 of 1999, s. 28 Amended by No. 45 of 2003 Repealed by No. 54 of 2016, s. 60
Section 13	Inserted by No. 18 of 1999, s. 15 Amended by No. 91 of 1999, s. 29
Section 13A	Inserted by No. 55 of 2003, s. 7
Section 13B	Inserted by No. 65 of 2005, Sched. 1
Section 14	Inserted by No. 91 of 1999, s. 30
Section 15	Inserted by No. 91 of 1999, s. 30
Schedule 1	Inserted by No. 55 of 2003, s. 8 Amended by No. 5 of 2004, Sched. 1