

JUDGES' SALARIES AND PENSIONS AMENDMENT BILL 2007

EXPLANATORY MEMORANDUM

Under the *Judges Salaries and Pensions Act 1950* (the Act), Judges become entitled to a full judicial pension (60% of the current judicial salary from time to time) on retirement if they are over 60 years of age and have served at least 10 years as a Judge. Currently, however, a person who is appointed as a Judge after they have turned 60 years of age does not become eligible for any form of judicial pension.

For example, recently, Judge Richard Keen was appointed to the District Court at the age of 60. As matters currently stand, he will have served as a Judge for over 9 years when he reaches to compulsory retiring age of 70, but will not be eligible for a judicial pension at all.

In every other Australian jurisdiction some form of pro-rata pension or equivalent payment is provided in these circumstances.

In order to overcome this anomaly and at the same time expand the pool of persons who may be considered for judicial appointment to include persons over 60 years of age, the Bill will amend section 6 of the Act to provide that anyone who was over 60 years of age at the time they were appointed as a Judge should receive a pro-rata pension upon retirement at the statutory retiring age of 70.

Clause notes:

- Clause 1** sets out the short title to the Act.
- Clause 2** establishes the commencement dates for the provisions of the Act.
- Clause 3** identifies the Act to be amended.
- Clause 4** amends section 6 of the Act by inserting a new subsection (2ab) which provides that a Judge who was over 60 years of age when appointed and retires at the statutory retiring age of 70 years is entitled during his or her retirement to a pro-rata judicial pension. The new subsection sets out the formula for calculating the pension payable. It will result in the Judge receiving a pension that is the proportion of the rate of pension that would have been payable to the Judge if he or she had served 10 years as a Judge that is equal to the proportion of 10 years that was actually served by him or her as a Judge.

For example, if the Judge has served 7 years and 6 months at the time of retirement, the Judge would be entitled to a pension at a rate that is 75% of the rate of pension available to a Judge who has served the full 10 years.

A Judge will only become entitled to the pension under this provision if he or she has worked right through to the statutory retiring age of 70 years, unless forced to retire earlier due to permanent disability or infirmity.

This clause also inserts a new subsection (2ba) which provides for the payment of the pro-rata pension where the Minister certifies that the Judge has been forced to retire early due to permanent disability or infirmity.

The amendments will apply whether the Judge was appointed before or after the Act comes into operation.