Australian Government
Department of Finance

Judges' Pension Scheme

JPS Handbook | December 2024

Preface

The Department of Finance (Finance) is responsible for the administration and management of the Judges' Pensions Scheme (JPS/the Scheme).

The Scheme is *Judges' Pensions Act 1968* (the Act). This Handbook is intended to provide guidance on the main provisions of the Act.

The Handbook is an illustrative guide only and does not cover all possible situations faced by members of the Scheme. Accordingly, before taking any action or making any elections in relation to the Scheme, members are strongly advised to seek specific information based on their own individual circumstances from Finance and their own financial advisor. Members are advised not to rely solely on the contents of this Handbook when considering such decisions.

Further information about the Scheme may be obtained from Judicial Superannuation Team, via:

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Department of Finance
December 2024

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Part I — About the Judges' Pensions Scheme

The Scheme

1. The Judges' Pensions Scheme (the Scheme) is regulated by the *Judges' Pensions Act 1968* (the Act). The Act outlines the provisions for superannuation benefits to Federal Judges and their families (including same-sex couples).

Membership

2. The Act covers the following office holders: [1]

   (a) Justices of the High Court

   (b) Judges of the Federal Court (other than the Federal Magistrates Court and the Australian Military Court)

   (c) Division 1 Judges of the Federal Circuit and Family Court (but excludes Division 2 Judges)

   (d) Judges of the Family Court of Western Australia who are dually appointed to Division 1 of the Federal Circuit and Family Court

   (e) Persons who, under an Act, have the same status of a Justice, or a Judge, being:

      (i) presidential members of the Administrative Review Tribunal prior to 2005

      (ii) presidential members of Fair Work Australia

      (iii) Solicitors-General appointed before 31 December 1997

   (f) Judges of the Australian Capital Territory Supreme Court appointed before self-government.[2]

3. The Act also makes provision for spouses (including same-sex couples) and eligible children of deceased Judges (see Reversionary benefits).

Administration

4. The responsibility for policy and administration of the Scheme was transferred from the Attorney-General's Department to the Department of Finance (Finance) on 1 January 2010 in accordance with the Government's decision in 2008 to consolidate the governance arrangements for Australian Government Superannuation Schemes.

5. The Trustee of the Scheme, for the purposes of the *Superannuation Contributions Tax (Assessment and Collection) Act 1997,* is the Secretary of the Department of Finance.

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[1] Under the Act, these office holders fall under the definition of "Judge".

[2] Papua New Guinea Judges who were first appointed before 1 December 1973 are also covered by the Act, however, there are no Judges that meet this definition.

Part II — About the Judges' Pension Scheme

Contributions

6. Contributions are not payable by Judges under the Scheme. The Scheme is unfunded and therefore no assets are held in a Fund.

Taxation of contributions

7. Since 1 July 2017, the value of unfunded employer contributions in relation to the Scheme are counted towards the concessional contributions cap, a limit on the amount of contributions that receive concessional tax treatment in a scheme.

8. From 1 July 2024, the concessional contributions cap is $30,000.[3] Where the value of these contributions exceeds the cap, they will not be treated as excess concessional contributions. This is because these contributions are subject to taxation when the member's benefit is paid.

9. Members with combined income and annual defined benefit employer contributions of more than $250,000 in a financial year may have to pay an additional tax known as Division 293 tax. There is no change to the current exemption for certain members of the Scheme in relation to the Division 293 tax. For non-exempt members, the value of their unfunded defined benefit contributions, in respect of the Scheme, will be included as part of that income threshold test.

Period of service

10. In determining the eligibility of a retiring Judge for the Judges' pension entitlement, prior judicial service is to be taken into account. Prior judicial service includes service as a Judge of the Supreme Court of an Australian state or territory.

11. Additionally, in determining the eligibility of a retiring Judge for the Judges' pension, any period in which the person is, or was authorised to make themselves unavailable to perform their duties as a Judge is deemed to be part of the period of the person's service as a Judge.

12. A Judge, whose appointment to one office terminates and is followed by a new appointment as a Judge that takes effect immediately after the termination, is not deemed to have retired. Further, a Judge is taken not to have retired so long as they continue to hold any office as a Judge or hold any judicial office in relation to a Territory that is remunerated otherwise than on a part-time basis. Service in multiple offices is deemed for the purposes of the Act as having served only one office.

[3] The concessional contributions cap is determined by the Australian Taxation Office (ATO).

Retirement benefit

13. Judges have a compulsory retirement age of 70 years, except for those appointed to the Fair Work Commission (formerly Fair Work Australia) where the compulsory retirement age is 65 years.

14. The Commonwealth meets all benefit costs, as benefits are paid from the Consolidated Revenue Fund as they become due for payment.

15. Judicial pensions are paid monthly, on the last business day of each month.

Judges with 10 or more years of service

16. Judges who have reached at least 60 years of age and have 10 or more years of service are entitled to a pension of 60% of a Judge's salary, or the salary payable to an equivalent level Judge (whichever is applicable).

Judges who have reached compulsory retirement age with less than 10 but not less than 6 years of service

17. Judges who have reach the age of 70 and have completed less than 10 years of service (but no less than 6 years) are entitled to a pension at the annual rate of 0.5 % of the appropriate judicial salary for each completed month of service.

Judges with less than 6 years of service

18. Judges who do not qualify for a pension at retirement (less than 6 years of service) are entitled to a lump sum benefit at a level sufficient to meet the Superannuation Guarantee requirements, plus interest.

Adjustment of Pension

19. A Scheme pension may be reduced to consider any other retiring allowance or pension payable, in whole or in part, by the Commonwealth, a State or Territory relating to prior judicial service.

Invalidity benefit

20. A Judge who retires on the grounds of permanent disability or infirmity as certified by the Minister for Finance, is entitled to a pension of 60% of a Judge's salary or the salary payable to an equivalent level Judge (whichever is applicable). For further information, please visit the Disability arrangements for Judges webpage.

Taxation of benefits

21. Finance will withhold tax from a Judge's monthly pension, at the marginal tax rate, based only on that pension, unless the retired Judge has requested additional tax to be withheld.

22. As any additional income may affect an individual's income tax rate bracket, Finance recommends consultation with a licensed financial advisor to assess their taxation position.

23. Members in receipt of a pension are eligible for a 10% tax offset from the day they turn 60 years of age. The threshold has been set up to the limit of $118,750 per annum for the 2024-25 financial year. This threshold limit is reduced where a pension is commenced part way through a financial year.

Transfer balance cap

24. The transfer balance cap was introduced on 1 July 2017. It is a lifetime limit on the total amount of superannuation that can be transferred into retirement phase income streams, including most pensions and annuities. Scheme pensions are counted towards a transfer balance cap, currently $1.9 million for the 2024-25 financial year. Where the value of the pension exceeds the transfer balance cap, there may be tax implications for other superannuation interests a pensioner holds. The transfer balance cap applies to those receiving a pension from the Scheme, or when a pension commences to be paid from the Scheme.

25. Finance will calculate a value for a pension being paid from the Scheme and report this to the ATO. A pension will not have a new value calculated each time the pension increases. Generally, only the commencing value (or the value as at 30 June 2017 for existing pensioners) will be reported against the transfer balance cap.

Superannuation contributions surcharge

26. The superannuation surcharge legislation imposed a surcharge on a member's surchargeable contributions, where the member's adjusted taxable income, that is adjusted taxable income plus surchargeable contributions is greater than the surcharge threshold. In 1996-97 the minimum threshold was $70,000 and had risen to $99,710 for the year 2004-05. For 1996-97, the full 15% surcharge only applied where the member's adjusted taxable income was $85,000 or more. The corresponding amount for 2004-05 is $121,075.

27. Judges who commenced service between 20 August 1996 and 30 June 2005 are liable for the superannuation contributions surcharge.

28. The maximum surcharge rates are:[4]

    - 15% from 1996-97 to 2002-03
    - 14.5% in 2003-04
    - 12.5% in 2004-05.

29. Scheme members are identified for surcharge purposes by their Tax File Number, and the ATO verifies the information supplied by the Scheme with tax returns lodged by taxpayers. The ATO is responsible for determining the member's adjusted taxable income, calculating the surcharge, and advising the member, as well as the superannuation provider, of any debt amount.

30. Finance maintains a surcharge debt account for each Scheme member, which accumulates all surcharge assessments during the period of membership. Interest, at the 10-year Treasury bond rate is applied to the balance at the end of each financial year.

31. When a benefit becomes payable, the total accrued amount in the surcharge debt account will be paid to the ATO and the member's benefit will be reduced in accordance with provisions of the Act. Alternatively, members may choose to pay any outstanding surcharge liability directly to Finance. In this case, the amount paid will be credited to the member's surcharge debt account and the member advised of the revised balance of their account.

32. A retiring Judge may elect to have their pension entitlement reduced to pay off their surcharge debt. The reduction to the Judge's pension is permanent and is irrevocable, including in relation to any reversionary spouse benefits.

Reversionary benefits

33. The Act establishes provisions for the spouses, including same-sex couples and eligible children of a deceased Judge, regardless of whether the Judge passed away while in office or after retirement.

34. The spouse of a deceased Judge includes a person who had a marital or couple relationship with the Judge at the time of their death.

35. For a retired Judge, a person will qualify as a spouse only if the marital or couple relationship commenced, either:[5]

    - before the Judge retired
    - after the Judge retired but before the Judge reaches 60 years of age
    - at least 5 years prior to the period leading up to the death of the Judge.

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[4] The surcharge was abolished for superannuation accruing after 1 July 2005.

[5] Under the Act, a person is taken to have had a marital or couple relationship with another person if, at the relevant time, the person ordinarily lived with the other person as that person's husband or wife or partner on a permanent and bona fide domestic basis.

36. If a couple are living apart, leading up to, or at the time of death of a former Judge, the Act requires the Minister for Finance to be satisfied that the couple were living together as a couple, except for a period of temporary absence (for example, when the couple are separated by work commitments or absence due to illness or infirmity). Under this situation, additional information and evidence will be required from the spouse for the Minister's consideration before the pension is payable.

37. An eligible child of a deceased Judge includes a child or an adopted child of the deceased Judge:

    - who is under the age of 18 years
    - who has reached the age of 18 years but is under the age of 25 years and is receiving full-time education at school, college or university, and
    - who is a child of a deceased Judge within the meaning of the *Family Law Act 1975*

    OR

    - in the Minister's opinion who is a child who was, or would have been, had the Judge not died, wholly or substantially dependent on the deceased Judge.

Benefits payable on the death of a Judge where there is a spouse but no eligible children

38. Where a Judge dies in service and had a spouse, the spouse is entitled to a reversionary benefit under the Act. The pension payable to the spouse is at the rate of 62.5% of the pension the Judge would have received had the Judge retired either voluntarily or, if not eligible for a voluntary retirement pension, on the grounds of invalidity, as at the date of his or her death.[6]

39. Where a Judge dies after retirement and had a spouse, the spouse will be entitled to 62.5% of the pension entitlement of the retired Judge.

Benefits payable on the death of a Judge where there is a spouse and eligible children

40. Where a Judge dies, either in service or after retirement, leaving a spouse and an eligible child or children, a reversionary benefit is payable to that child or children, in addition to the spouse's pension.

[6] Where a Judge or retired Judge dies leaving more than one spouse, the Minister for Finance has power under the Act to apportion benefits among the spouses, having regard to the respective needs of the spouses and any eligible children.

41. The pension payable is at a rate equal to the applicable percentage rate of the relevant pension in relation to the Judge.

The applicable rates are:	
1 eligible child	12.5%
2 eligible children	25%
3 or more eligible children	37.5%

Benefits payable to eligible children on the death of a spouse or where there is no spouse entitled to a pension

42. Where a spouse receives a reversionary benefit upon the death of a Judge, and the spouse dies, an eligible child or children will be paid a pension at a rate equal to the applicable percentage rate of the relevant pension in relation to the Judge.

The applicable rates are:	
1 eligible child	45%
2 eligible children	80%
3 or more eligible children	90%
4 or more eligible children	100%

43. Where Judge dies, either in service or after retirement, without leaving an eligible spouse, any eligible child or children will be paid a pension at the above percentage rates.

Benefits not payable to ineligible children upon death of spouse in receipt of reversionary pension

44. For a retired Judge, a reversionary pension would not be payable in respect of a child of a marital or couple relationship where the Judge entered that marital or couple relationship:[7]

    - after the Judge retired
    - after the retired Judge reached age 60
    - less than 5 years before the retired Judge died.

[7] The rates for reversionary benefits to a surviving spouse and eligible children are contingent on any superannuation surcharge liability (see paragraphs 50 and 51) that may exist in respect to a Judge's entitlement.

Benefits payable to a personal representative where there is no spouse or eligible children entitled to a pension

45. If a Judge or former Judge dies and did not have a spouse or children who are eligible for a benefit, a lump sum benefit is payable from the Scheme to the Judge's personal representatives at a level sufficient to meet the Superannuation Guarantee requirements, plus interest.

Taxation of reversionary benefits

46. Reversionary pensions are subject to tax at the marginal tax rate, as the pension is unfunded and comprised wholly of a taxable untaxed component.

47. The 10% tax offset is applicable for a spouse aged 60 years and over. This also applies where the deceased member is aged 60 years or older, but the spouse is aged under 60 years.

48. If the deceased member and spouse are both under 60 years of age, no tax offset is applied until the spouse reaches age 60.

Family law and superannuation

49. Family Law legislation allows for superannuation to be treated like property and to be divided on relationship breakdown.

50. The Scheme was amended with effect from 15 March 2013 to provide a new approach for dealing with the splitting of superannuation on relationship breakdown under the Family Law regime. This allows for the former spouse of a member to become entitled to their own superannuation benefit under the Act.

51. Exceptions to this include where the Judge or former Judge's benefit is not able to be split under the Family Law regime (for example, an orphan's pension), where one or both of the parties dies after the agreement or Court Order is made, but before it takes effect, or where the value of the amount to be transferred to the former spouse's account is larger than the value of the amount calculated under the Family Law regime.

52. For a binding agreement or Court Order to be made regarding a superannuation interest, it is necessary to value that superannuation.

53. Couples can seek superannuation information from Finance as the administrators of the Scheme to help them make binding agreements (through a Form 6 Declaration and Superannuation Information Request Form). This information can be used by the couple and the Court to value superannuation as part of a property settlement. A valuation method specific to the Scheme applies to the valuation of benefits for Family Law purposes.

54. When Finance as the administrator of the Scheme is served with a separation agreement or a Court Order, a separate interest will be created for the non-member spouse, with the transfer amount, as determined in the agreement or court order, to be assigned to that interest.

55. Where the relationship breakdown occurs in growth phase, before the member becomes entitled to a benefit, the member's benefit is reduced, and the non-member spouse's interest is created in the Scheme. The non-member spouse's interest will remain deferred until they reach eligibility for the associate pension entitlement. The balance of their interest will be indexed on 30 June every year, in line with the 10-year Treasury bond rate.

56. The non-member spouse's associate pension may become payable from age 60, on written notice to the Secretary of the Department of Finance; at any age, if the non-member is permanently incapacitated (from the day the Secretary considers the non-member spouse became incapacitated; at age 65; or to a legal personal representative on death (in which it is paid as a lump sum).

57. Where the relationship breakdown occurs in payment phase, when the member is in receipt of the pension, their entitlement will be reduced, and the non-member spouse's associate pension will commence.

58. An associate pension is payable for the lifetime of the non-member spouse and is indexed in line with increases in judicial salaries, as determined by the Remuneration Tribunal.

Increases in pensions

59. Remuneration and benefits for judicial offices is governed by the Commonwealth Government's Remuneration Tribunal. From time to time, the Remuneration Tribunal may make a decision to increase the remuneration for judicial offices, and this increase would flow on to the pensions payable to retired judges, or any spouses or eligible children (subject to the disallowance period).

60. The principal Determinations governing judicial and related offices' remuneration and benefits may be obtained from the Judicial & Related Offices webpage.