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New South Wales

# Judges' Pensions Amendment Bill 1998

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

### Overview of Bill

The objects of this Bill are:

- (a) to enable persons entitled to pensions under the *Judges' Pensions Act 1953* to commute part of their pensions to meet superannuation contributions surcharge liabilities arising under Commonwealth legislation when superannuation entitlements become payable, and
  - (b) to provide for subsequent reductions in pensions payable under that Act, and
  - (c) to make other consequential amendments.
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## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

**Clause 3** is a formal provision giving effect to the amendments to the *Judges' Pensions Act 1953* set out in Schedule 1.

### **Schedule 1 Amendments**

Under the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* and the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth, members of constitutionally protected superannuation funds are liable to pay a superannuation contributions surcharge when they become entitled to a lump sum or pension benefit from the fund concerned. The superannuation contributions surcharge is payable within 3 months of the member being notified of the liability.

The pension scheme under the *Judges' Pensions Act 1953* is a constitutionally protected superannuation fund for the purposes of the Commonwealth Acts. The *Judges' Pensions Act 1953* provides for the payment of pensions to judges on retirement and to payment of pensions to their spouses and children if judges die. It does not currently provide for the payment of lump sum type benefits. The amendments will enable the partial commutation of pensions for the purposes of payment of the superannuation contributions surcharge on the retirement or death of a member.

**Schedule 1 [3]** inserts proposed sections 12, 12A and 12B.

Proposed section 12 enables a retired judge or other person entitled to be paid a pension to elect to have part of the pension commuted for the purposes of payment of a liability for superannuation contributions surcharge. A person other than a judge may make an election in respect of a liability of a judge who has died or a retired judge who died before the original time for making an election ended. An election may relate to the whole or part of any such liability and must be made not later than 2 months after the liability arises, or within such further period as the Minister may allow. The Minister may pay a lump sum on the election of a person other than a judge only if satisfied that the lump sum will be applied towards the payment of the liability concerned.

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If a lump sum is paid, the pension payable under the Act is to be reduced and the amount of the reduced pension is to be determined in accordance with the regulations. A pension may be commuted only to the extent necessary to meet the liability for superannuation contributions surcharge. The Minister may delegate certain functions under the proposed section.

Proposed section 12A provides for the reduction of a reversionary pension if the original pension was partly commuted under proposed section 12. The amount of the reduced pension is to be determined in accordance with the regulations.

Proposed section 12B contains a regulation-making power. **Schedule 1 [1]** contains a consequential amendment.

**Schedule 1 [2]** enables the payment of the lump sums out of the Consolidated Fund, in the same way as pensions are paid.

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New South Wales

## Judges' Pensions Amendment Bill 1998

No. , 1998

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### **A Bill for**

An Act to amend the *Judges' Pensions Act 1953* to provide for the commutation of pensions under that Act for the purposes of payment of superannuation contributions surcharge and the consequent adjustment of pensions; and for other purposes.

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Judges' Pensions Amendment Act 1998*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.            5

**3 Amendment of Judges' Pensions Act 1953 No 41**

The *Judges' Pensions Act 1953* is amended as set out in Schedule 1.

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## Schedule 1 Amendments

(Section 3)

### [1] Section 2 Definitions

Insert in alphabetical order in section 2 (1):

*Superannuation contributions surcharge* means the superannuation contributions surcharge imposed by the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Imposition Act 1997* of the Commonwealth. 5

### [2] Section 10 Payment of pensions and lump sums 10

Insert at the end of section 10:

- (2) A lump sum payable under section 12 is charged on and payable out of the Consolidated Fund.

### [3] Sections 12, 12A and 12B

Insert after section 11A: 15

#### 12 Commutation of pensions for payment of superannuation contributions surcharge

- (1) A retired judge who is entitled to a pension under this Act may elect to have part of the pension commuted to a lump sum for the purposes of payment of a liability for superannuation contributions surcharge arising because of that entitlement. 20

- (2) A person (other than a retired judge) who is entitled to a pension under this Act may elect to have part of the pension commuted to a lump sum for the purposes of payment of a liability for superannuation contributions surcharge arising in relation to: 25

- (a) a judge who has died, or  
(b) a retired judge who died without making an election under subsection (1) and before the period applicable to the retired judge for making such an election ended. 30

- (3) An election:
- (a) may relate to the whole or part of an outstanding liability for superannuation contributions surcharge, and
  - (b) must be made in writing to the Minister not later than 2 months after the liability to pay the amount of the superannuation contributions surcharge arises, or within such further period as the Minister may allow. 5
- (4) If an election is made by a retired judge, the Minister is to cause the amount of the lump sum to be paid to the retired judge. 10
- (5) If an election is made by a person other than a retired judge, the Minister may cause the amount of the lump sum to be paid to the person, but only if satisfied that the lump sum is to be applied towards payment of the superannuation contributions surcharge. 15
- (6) On payment of a lump sum, the pension otherwise payable from time to time under this Act to the person is to be reduced. 20
- (7) The amount of the reduced pension is to be calculated in accordance with the regulations.
- (8) A pension may be commuted only to the extent necessary to meet the liability for superannuation contributions surcharge. 25
- (9) The Minister may, by signed instrument, delegate to a person prescribed by the regulations any of the Minister's functions under subsection (3) or (4).

**12A Reduction of reversionary pensions**

- (1) If part of a pension is commuted under section 12, any subsequent reversionary pension payable from time to time under this Act is to be reduced. 30
- (2) The amount of the reduced reversionary pension is to be calculated in accordance with the regulations.



- (3) In this section:

*reversionary pension* means a pension paid under this Act to a person as a result of a pension being previously paid to another person under this Act (for example, a pension paid to a widow or widower of a retired judge).

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### **12B Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may be made for the purposes of section 12 (7) or 12A (2) only if the Minister has certified in writing that actuarial advice was obtained in relation to the subject-matter of the regulation.

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