

No. 5 of 1997.

Judges' Pensions Act 1997.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Judges' Pensions Act 1997,

Being an Act to make provision for pensions for Judges and their families.

1. **INTERPRETATION.**

(1) In this Act, unless the contrary intention appears—

“appropriate current judicial salary”, in relation to a Judge who has retired or died, means salary at the rate that would be payable to the Judge if he or she had not retired or died;

“child” includes an adopted child (by custom or otherwise);

“eligible child” means—

- (a) a child under the age of 18 years; or
- (b) a child who—
 - (i) has attained the age of 18 years but is under the age of twenty-five years; and
 - (ii) is receiving fulltime education at school, college or university;

“Judge” means—

- (a) the Chief Justice, the Deputy Chief Justice, or a Judge of the National Court or the Supreme Court; or
- (b) any other Judge to whom this Act is applied by or under any other Act;

“prior judicial service”, in relation to a Judge, a retired Judge or a Judge who has died, means service, including acting service, as a Judge;

“retired Judge” means a person who has been a Judge and is or has been a Judge and is or has been in receipt of a pension under this Act;

“retires” in relation to a Judge, means ceases to be a Judge otherwise than by death, and “retirement” has a corresponding meaning.

(2) For the purpose of this Act, where a widow of a Judge or retired Judge has re-married and the parties to the re-marriage have adopted a child that was not a child of the widow or of the Judge or retired Judge, the child shall be deemed to be a child of the re-marriage.

2. HOLDING OF TWO OR MORE OFFICES BY JUDGE.

Where, during any period (whether before or after the commencement of this Act, a person has held two or more offices as a Judge, his service during that period shall be taken into account for the purposes of this Act in the same way as if, during that period, he had held one office as a Judge only.

3. RETIREMENT, PENSIONS, ETC.

(1) Where a Judge who has attained the age of 50 years and has served not less than 10 years retires, or a Judge retires on or after attaining the age of 60 years and has served not less than 10 years retires, he or she is entitled to a pension for life at a rate equal to 75% of the appropriate current judicial salary.

(2) Where a Judge who has not attained the age of 50 years and has served not less than 10 years retires, he or she is entitled to a pension for life at a rate equal to 75% of the appropriate current judicial salary upon he or she attaining the age of 50 years.

(3) For the purpose of this Act, where a Judge who has retired under the provisions of Subsection (2) and he or she has not yet attained the age of 50 years dies, the rights of any person, widow or widower, child or eligible child or person who was at that time the wife or husband of that Judge or retired Judge, under the provisions of this Act, shall take effect from the date of death of the retired Judge and not on the date when the retired Judge would have attained the age of 50 years.

(4) Where a Judge who has served not less than 15 years retires, he or she is entitled to a pension for life at a rate equal to 75% of the appropriate current judicial salary irrespective of his or her age at the date of retirement.

(5) Where a Judge who retires at the age of 60 or at any time up to the age of 65, has served not less than 5 years but less than 10 years, he or she is entitled to a pension that is a percentage, calculated as provided by Subsection (6), of the pension that he or she would have received if he or she had served not less than 10 years.

(6) The percentage referred to in Subsection (5) is:—

- (a) in the case of a Judge who has served five years—the sum of 50% of 75% of the current Judicial salary;
- (b) a further 10% of 75% of the current judicial salary for each completed year of service in excess of 5 years up to a maximum of 10 years service.

(7) Where a Judge, not being a Judge to whom Subsections (1), (2), (3), (4), (5) or (6) applied retires, and the Judicial and Legal Services Commission certifies that the retirement is due to permanent disability or infirmity, he or she is entitled to a pension for life at a rate equal to 75% of the appropriate current judicial salary.

(8) For the purpose of this section, where a Judge had prior judicial service, the period of that service shall be added to and be deemed to be part of the period of his or her service as a Judge.

4. JUDGE DIES LEAVING WIDOW OR WIDOWER.

(1) Where a Judge dies leaving a widow or widower, a pension for life shall be paid to the widow or widower at a rate equal to 75% of the rate of the pension that would have been payable to the Judge if the Judge had retired on the date of his or her death.

(2) If a widow or widower in receipt of a pension under this Section re-marries, the pension shall cease.

5. RATE OF PENSIONS WHEN JUDGE DIES.

Where a Judge dies leaving a widow or widower, there shall, in addition to any pension that is payable to a widow or widower under Section 4, be paid to the widow or widower, in respect of each eligible child of the Judge a pension at the annual rate of a sum arrived at by dividing 25% of the rate of the pension that would have been payable to the Judge had he or she retired on the date of his or her death, by the number of eligible children.

6. RETIRED JUDGE DIES LEAVING WIDOW OR WIDOWER.

(1) Where a retired Judge dies leaving a widow or widower, a pension for life shall be paid to the widow or widower at a rate equal to 75% of the rate of the pension that would have been payable to the retired Judge if he or she had not died.

(2) If a widow or widower is in receipt of a pension under this Section re-marries, the pension ceases.

7. ADDITIONAL PENSION.

(1) Subject to this section, where a retired Judge dies leaving a widow or widower, there shall, in addition to any pension that is payable to the widow or widower under Section 6, be paid to the widow or widower, in respect of each eligible child of the widow or widower or of the retired Judge (other than a child of any re-marriage of the widow or widower), a pension at the annual rate of a sum arrived at by dividing 25% of the pension the retired Judge would have been entitled to receive had he or she been alive, by the number of eligible children.

(2) Where a retired Judge married—

(a) after retirement; and

- (b) after the retired Judge attained the age of 60 years; and
- (c) less than five years before the retired Judge dies,

a pension is not. upon the death of the retired Judge, payable under this Section in respect of—

- (d) a child of that marriage; or
- (e) any other child of the widow or widower.

8. PENSION FOR OR IN RESPECT OF ELIGIBLE CHILD OF WIDOW OR WIDOWER.

(1) Subject to Subsection (2), where the widow or widower of a Judge or retired Judge, being a widow or widower who became entitled upon the death of the Judge or retired Judge to a pension under this Act, has died, there shall be paid, in respect of each eligible child of the widow or widower of the Judge or retired Judge (other than a child of any re-marriage of the widow or widower), a pension at an annual rate of 25% of the pension the widow or widower of the Judge would have been entitled to receive under Section 4 and 6 respectively had he or she continued to live.

(2) Notwithstanding Subsection (1), where the number of eligible children exceeds four, the amount payable to each eligible child shall be equal to a sum arrived at by dividing the rate of the pension the widow or widower would have been entitled to receive by the number of eligible children.

9. JUDGE RETIRED OR DIED WITHOUT LEAVING A WIDOW OR WIDOWER.

Where a Judge or retired Judge has died without leaving a widow or widower who became entitled, upon the death of the Judge or retired Judge, to a pension under this Act, there shall be paid, in respect of each eligible child of the Judge or retired Judge or of a person (whether deceased or not) who was at any time the wife of or husband of that Judge or retired Judge, a pension at the same annual rate as payable under Section 4 and 6.

10. PENSION TO GUARDIAN.

A pension in respect of a child under either of the last two preceding sections shall be paid to the guardian of the child for the child's support and education.

11. PENSION PAID OUT OF CONSOLIDATED REVENUE FUND.

The pensions under this Act—

- (a) become due from day to day but are payable, monthly; and
- (b) shall be paid out of the Consolidated Revenue Fund, which is appropriated accordingly; and
- (c) shall be administered by the National Judicial Staff Services.

12. PENSION TO PERSON DIRECTED BY JUDICIAL AND LEGAL SERVICES COMMISSION.

(1) Notwithstanding anything contained in the provisions of this Act, other than this section, where a pension is payable under this Act in respect of an eligible child—

- (a) if the Judicial and Legal Services Commission is of opinion that the child's support and education will be best assured by doing so, it may direct that the pension be paid to a person specified by it; or
- (b) if the Judicial and Legal Services Commission is satisfied that, by reason of special circumstances, it is desirable to do so in the interests of the child, it may direct that the pension be expended for the benefit of the child in a specified manner.

(2) Where a pension referred to in the last preceding subsection is payable to a widow or widower of a Judge or retired Judge, the power of the Judicial and Legal Services Commission to direct payment of the pension to another person applies only where the child is not living with the widow or widower.

13. PENSION IN RESPECT OF PRIOR JUDICIAL SERVICE.

(1) Where—

- (a) a pension under the Act is payable to a person otherwise than in respect of an eligible child, or a pension under this Act is payable in respect of an eligible child; and
- (b) a pension is or becomes payable to that person, or in respect of that eligible child, as the case may be, in respect of prior judicial service of the Judge or retired Judge by reason of whose service as a Judge the pension under this Act became payable, the amount of the pension under the Act that would, but for this section, be payable for any period shall be reduced by the amount of the pension in respect of the prior judicial service that is payable for the period.

(2) In this section, a reference to a pension in respect of prior judicial services shall be read as a reference to a pension or retiring allowance paid or payable, whether by virtue of a law or otherwise payable, out of moneys provided in whole or in part by the State, being a pension or retiring allowance paid or payable by reason of prior judicial service, or of prior judicial service and any other service.

14. ONLY ONE PENSION PAYABLE.

A Judge or retired Judge is entitled to receive only one pension under the provisions of this Act as a Judge.

15. APPLICATION OF CONSTITUTIONAL OFFICE HOLDERS' RETIREMENT BENEFITS ACT.

Except as otherwise expressly provided by this Act, nothing in the *Constitutional Office Holders' Retirement Benefits Act* 1986 applies to or in respect of a pension payable to a Judge or retired Judge or any other person for service as a Judge.

16. PENSION NOT PAYABLE FOR SERVICE OF JUDGE WHEN REMOVED.

Unless the Governor-General otherwise directs, a pension under this Act is not payable by reason of the service of a Judge who has been removed under Section 179 or 180 of the *Constitution*.

Office of Legislative Counsel, PNG