

Judicial Superannuation Determination 1996

PURSUANT to sections 12B(2)(a) and 17 of the Higher Salaries Commission Act 1977, the Higher Salaries Commission, after consultation with the Superintendent of the Government Superannuation Fund and the Government Actuary, hereby makes the following determination (to which is appended an explanatory memorandum).

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1 Title and commencement

- (1) This determination may be cited as the Judicial Superannuation Determination 1996.
- (2) This determination comes into force on the 14th day of October 1996.

2 Modification of Government Superannuation Fund Act 1956

The Government Superannuation Fund Act 1956 is hereby modified by inserting, after section 81U (as inserted by section 4 of the Government Superannuation Fund Amendment Act 1989), the following section:

“81UA Election by Solicitor-General to continue to contribute to Judges Superannuation Account after retirement from office

- “(1) In this section, **Solicitor-General** means the person holding office as Solicitor-General on the date on which the Judicial Superannuation Determination 1996 comes into force.
- “(2) Notwithstanding anything contained in this Part of this Act, the Solicitor-General may elect to continue to contribute to the Judges Superannuation Account in accordance with this Part of this Act after resigning office as Solicitor-General, if the Solicitor-General resigns office, whether voluntarily or otherwise, before becoming entitled to a retiring allowance under this Part of this Act.
- “(3) Any election by the Solicitor-General under subsection (2) of this section must be made in writing delivered to the Superintendent before the Solicitor-General resigns office.
- “(4) If the Solicitor-General makes an election under subsection (2) of this section, the Solicitor-General shall continue to be a contributor to the Judges Superannuation Account under this Part of this Act after resigning office until—
- “(a) The date on which the Solicitor-General elects to cease to be a contributor, which, except with the consent of the Superintendent, shall not be more than 3 months after the date of resignation; or
- “(b) The Solicitor-General dies,—
whichever date first occurs; and if the date specified in paragraph (a) of this subsection first occurs it shall be deemed to be the date on which the Solicitor-General resigns office.
- “(5) The period during which the Solicitor-General continues to be a contributor to the Judges Superannuation Account under this section shall be deemed for the purposes of this Part of this Act to be judicial service, and the Solicitor-General shall be deemed to receive during that period such salary as the Superintendent may from time to time determine.
- “(6) The Solicitor-General shall, for the purposes of this Part of this Act, be deemed to have continued to hold office as Solicitor-General during the period specified in subsection (5) of this section.

- “(7) If before becoming entitled to a retiring allowance under this Part of this Act, the Solicitor-General—
- “(a) Satisfies the Governor-General in Council that, if the Solicitor-General were still in office, the Solicitor-General would be incapable of performing the duties of that office by reason of any permanent infirmity or other cause; and
- “(b) Elects to cease to be a contributor under this section to the Judges Superannuation Account,—
- the Solicitor-General shall be deemed to be entitled to a retiring allowance as if the Solicitor-General had complied with section 81H(c) of this Act.
- “(8) The Solicitor-General shall, in respect of the period of judicial service referred to in subsection (5) of this section, pay into the Judges Superannuation Account within the time and in the manner determined by the Superintendent,—
- “(a) The contributions payable under this Part of this Act if the Solicitor-General had continued in office; and
- “(b) The amount by which those contributions are less than the amount certified by the Government Actuary as the total amount of contributions that would require to be so paid if the contributions provided the total cost of the benefits to which the Solicitor-General may become entitled under this Part of this Act or such lesser amount as the Superintendent may determine.
- “(9) Except with the consent of the Superintendent, no part of the amount paid by the Solicitor-General under subsection (8)(b) of this section shall be deemed to form part of the Solicitor-General’s contributions to the Judges Superannuation Account.”

Explanatory memorandum

This determination remedies an anomaly applicable to the present Solicitor-General who took up office in 1989 and was thereupon required by the provisions of Part 5A of the Government Superannuation Fund Act 1956 to contribute to the Judges Superannuation Account as if a Judge.

Part 5A requires, in most circumstances, at least 10 years' judicial service before any entitlement to a retirement allowance can arise.

The anomaly is that, while the Judges have security of tenure as is constitutionally imperative, the Solicitor-General holds office at pleasure.

The remedy consists in making available to the present Solicitor-General an election which has been long been available generally to members of the Fund in Government service contributing under Part 2 or Part 2A of the Government Superannuation Fund Act 1956. Such a member who retires, voluntarily or otherwise, before becoming entitled to a retiring allowance may elect to continue as a contributor for up to 3 months and, with the consent of the Superintendent of the Fund, for a longer period. In respect, however, of the period of deemed contributory service which ensues, the member must pay not only his or her own contributions but also the balance of the total amount payable (as certified by the Government Actuary) to provide the total cost of the benefits to which the member may become entitled.

The scheme established by Part 5A of the Government Superannuation Fund Act 1956 was closed to new members on 30 June 1992, and the anomaly which this determination seeks to redress cannot recur.

Issued under the authority of the Acts and Regulations Publication Act 1989 and section 12B(9) of the Higher Salaries Commission Act 1977.
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