

**2006**

**LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY**

**SUPREME COURT (JUDGES PENSIONS) AMENDMENT BILL 2006**

**EXPLANATORY STATEMENT**

**Circulated by the authority of  
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## SUPREME COURT (JUDGES PENSIONS) AMENDMENT BILL 2006

### Explanatory Statement

This explanatory statement relates to the Bill as introduced into the ACT Legislative Assembly.

### Overview of Bill

The Bill removes uncertainty and inequality in the operation of the law that governs superannuation entitlements and allowances for ACT and Federal Court Judges. This Bill replaces section 37U of the *Supreme Court Act 1933* with three new sections. Section 37U deals with resident judges, section 37UA deals with indemnity for the superannuation surcharge levy, and section 37UB deals with the salary of a former President of the Supreme Court.

These amendments will keep ACT Judges indemnified from any surcharge levy demand, on the basis that Federal Court Judges will not be subject to the surcharge levy and will indemnify ACT resident Judges against the risk of double taxation.

### Outline of Provisions

#### CHAPTER 1 Preliminary

##### Clause 1 Name of Act

This clause sets out the name of the Act as the *Supreme Court (Judges Pensions) Amendment Act 2006*.

##### Clause 2 Commencement

The Act will commence on notification.

##### Clause 3 Legislation amended

This clause explains that this Act amends the *Supreme Court Act 1933*.

##### Clause 4 Section 37U

This clause replaces section 37U of the *Supreme Court Act 1933* with three new sections. Section 37U deals with resident Judges, section 37UA deals with indemnity for the superannuation surcharge levy and section 37UB deals with the salary of a former President of the Supreme Court.

A resident Judge is a person whose primary or sole responsibility is to constitute the Supreme Court. Supreme Court resident judges were appointed to both the Supreme and Federal Courts prior to the transfer of administrative responsibility for the Court from the Commonwealth to the Territory in 1992. Resident Judges, therefore, received remuneration and allowances in their capacity as Federal Court Judges.

The Territory in 1997 made the first appointment of a resident Judge to the Supreme Court since assuming responsibility for it. Subsection 73(2) of the *Australia Capital Territory (Self-Government) Act 1988* (Cwlth) provides that specified office holders, including a Judge, are to be paid such remuneration and allowances as are determined or specified by or under an ACT law or, in any other case, as are determined by the Commonwealth Remuneration Tribunal. While a determination may be made by the ACT Remuneration Tribunal under the Remuneration Tribunal Act, the Supreme Court Act does not specifically provide for the setting of remuneration, allowances and entitlements of resident Judges.

Subsections 37U(1) and (2) have the effect of providing that any resident Judge is entitled to the same remuneration, allowances and entitlements to which a Judge of the Federal Court is entitled, including any variations of those matters from time to time. These provisions will not apply to those resident Judges of the Supreme Court who were on the Court at the time of its transfer to the Territory and who hold commissions as Federal Court Judges.

Subsection 37U(3) provides that subsection (2) is subject to subsections (4) to (6) and new sections 37UA and 37UB.

Subsection 37U(4) provides that for the purpose of subsection 37U(2), the *Judges' Pensions Act 1968* (Cwlth) and the *Judges (Long Leave Payments) Act 1979* (Cwlth) as in force from time to time, will apply to resident judges, to the extent that they can, as if they were Territory laws, and as if the relevant persons were Judges of the Federal Court immediately before retirement or death. This section applies the pension entitlements as set out in section 6A of the *Judges' Pensions Act* to resident Judges and clearly disapplies section 6B of the *Judges' Pensions Act*, whether or not the person's surcharge debt account (if any) is in debit when a pension becomes payable to the resident Judge.

Note that the *Judges (Long Leave Payments) Act 1979* (Cwlth) makes provision for lengthy service as a Judge.

### **New section 37UA – Indemnity for superannuation surcharge levy**

This section provides that where a Judge or other person is entitled to be paid a pension and the Commissioner of Taxation has notified the Judge or other person of their liability to pay an amount of superannuation contributions surcharge, and the surcharge relates to surchargeable contributions by the Judge, the Territory must indemnify the Judge or other person against the liability to pay the amount stated in the notice.

### **New section 37UB - Salary of former President**

This section provides that where there is no President or the President is the Chief Justice of the Supreme Court and a relevant tribunal determination has not been made for at least a period of one year, the reference in the *Judges' Pensions Act* to the appropriate current judicial salary will be worked out in accordance with the stated formula as set out in subsection 37UB(2).