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FCFCA Division 2 Judges Death and Disability Scheme Long Term Cost Report 2023

A Report on the Long Term Cost of the FCFCA Division 2 Judges Death and Disability Scheme

Department of Finance

28 June 2024

A business of Marsh McLennan

Contents

Section 1
Executive Summary

We are pleased to present this report on the actuarial investigation of the long term costs of the Federal Circuit and Family Court of Australia (FCFCA) Division 2 Judges Death and Disability Scheme (the Scheme), prepared at the request of the Department of Finance. This report has been carried out based on membership data as at 30 June 2023.

Previous Long Term Cost Report

The previous actuarial investigation into the long term costs of the Scheme was undertaken as at 30 June 2020 by Esther Conway on behalf of Mercer Consulting (Australia) Pty Limited. The outcomes of that investigation are outlined in our report entitled *Federal Circuit Court Judges Death and Disability Scheme Long Term Cost Report 2020,* dated 24 June 2021 (2020 LTCR).

Purpose of the Report

This report estimates the long term cost of providing benefits to members of the Scheme. The costs of the Scheme have been estimated in three ways:

- accrued liability as at 30 June 2023;
- projected net annual outlays; and
- projected future premium costs.

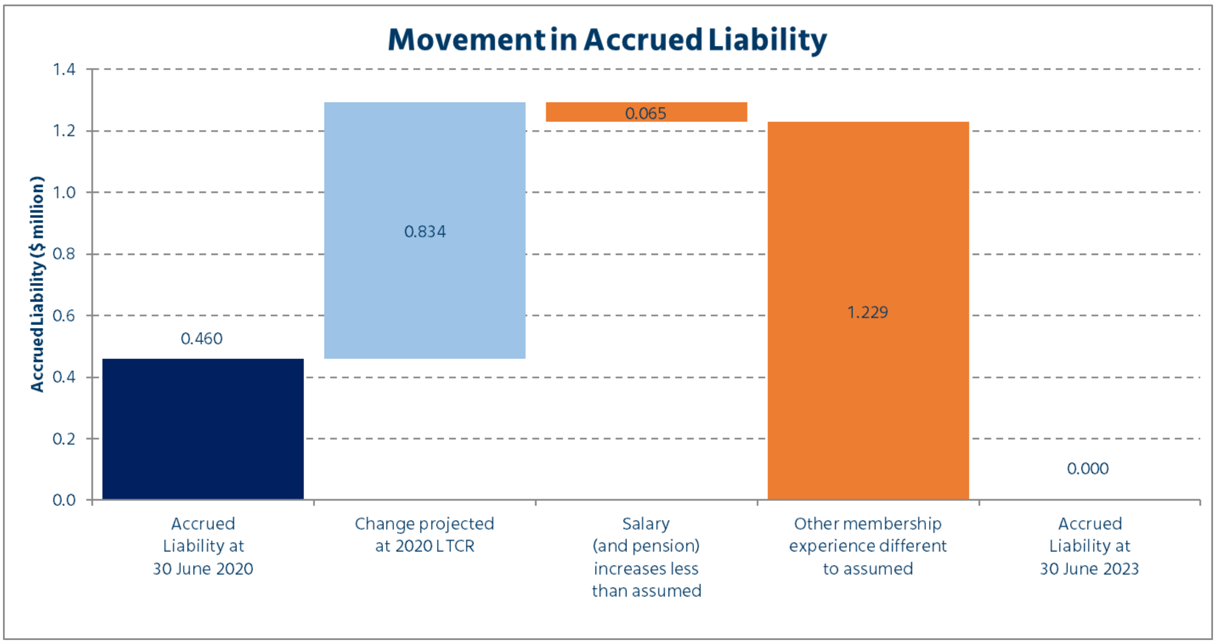
Accrued Liability

The accrued liability represents an estimate of the present value of the benefit entitlements currently in payment. The accrued liability of the Scheme at 30 June 2023 was nil, as there were no benefits in payment. This compares with the accrued liability calculated as at 30 June 2020 of $0.460 million.

The accrued liability was expected to increase during the investigation period as liabilities in respect of new invalidity benefits and notional interest on accrued liabilities were expected to more than outweigh the reduction in liabilities due to the payment of benefits during the period.

The 2020 LTCR projected that the accrued liability would be $1.293 million as at 30 June 2023, $1.293 million more than the current estimate.

The factors contributing to the change in the accrued liability are quantified in the following chart:



Further details are provided in Section 5.

Projected Outlays

The projected outlays of the Scheme for the next three years are as follows:

Year Ending 30 June	Nominal Outlays ($'000s)
2024	158
2025	283
2026	406

Further detail regarding the projected outlays is contained in Section 6.

Projected Premium Costs

Premium costs represent the estimated amount an insurance company would require each year in order to cover the claims that could arise in that year. Premium costs in the next 40 years are estimated to range between 3.2% and 3.6% of total annual salaries.

Further details are provided in Section 7.

Section 2

Scheme Information

The FCFCA was established with effect from 1 September 2021 by the *Federal Circuit and Family Court of Australia Act 2021* (the Act), bringing together the Family Court of Australia and the Federal Circuit Court of Australia. The FCFCA comprises two divisions: Division 1 (a continuation of the Family Court of Australia) and Division 2 (a continuation of the Federal Circuit Court of Australia). Under the Act, FCFCA Division 2 Judges continue to be entitled to the same death and disability benefits as those previously provided under the *Federal Circuit Court of Australia Act 1999* (the previous Act). That is, although the name of the Scheme and the governing legislation has changed, there has been no change to the benefits provided or the group of Judges who are eligible to receive benefits under the Scheme.

A summary of the benefits provided under the Scheme is set out in Appendix A.

The Scheme is open to new members. It is assumed that each member who leaves the Scheme is replaced with a new entrant.

Members do not contribute to the Scheme and the Australian Government meets all of the costs of benefits from Consolidated Revenue as they become due. This is an acceptable method of funding as the Scheme is effectively guaranteed by the Australian Government.

The Scheme is untaxed, although individuals may be required to pay additional tax as a result of their membership of the Scheme. The Scheme is an exempt public sector superannuation scheme under the *Superannuation Industry (Supervision) Act 1993*.

There have been a number of amendments to the legislation governing the Scheme since the 2020 LTCR as noted below, but these have had no material impact on the value of the accrued liability or projected outlays:

- The previous Act was repealed by the *Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021* as a result of the establishment of the FCFCA. In addition, amendments relating to the FCFCA were made to the Family Law Act 1975 and the Federal Court of Australia Act 1976, along with consequential and contingent amendments to several other Acts.
- The Courts and Tribunals Legislation Amendment (2021 Measures No. 1) Act 2022 introduced amendments to the law relating to courts and tribunals, and for related purposes.
- The Statute Law Amendment (Prescribed Forms and Other Updates) Act 2023 updated references to prescribed forms in, and to make minor and technical amendments of, the statute law of the Commonwealth, to repeal certain obsolete Acts, and for related purposes.
- The Family Law Amendment Act 2023 amended legislation relating to family law, and for related purposes.
- The Federal Courts Legislation Amendment (Judicial Immunity) Act 2023 amended the law relating to federal courts, and for related purposes.

Details of the benefits of the Scheme are set out in Appendix A.

Section 3

Membership and Data

This report has been based on data supplied by the Department of Finance which carries out the administration of the Scheme.

We have conducted a range of data validity checks including internal consistency and general reasonableness, and a reconciliation of membership movements, but we have not verified or audited any of the information provided. We are satisfied that the data is sufficiently accurate for the purpose of this report. The Scheme's administrator is ultimately responsible for the validity, accuracy and comprehensiveness of this information.

The membership of the Scheme as at 30 June 2023 is summarised below:

Serving Judges	Headcount	Average Age	Annual Salaries[1]
Males	35	61.5	$14,896,532
Females	44	55.7	$18,617,236
Total	**79**	**58.2**	**$33,513,768**

[1] As at 1 July 2023.

There are no Judges currently in receipt of an invalidity pension.

Section 4

Assumptions

In order to value the liabilities, it is necessary to make assumptions regarding the incidence, timing and amount of future benefits. These assumptions fall into two broad categories:

- economic assumptions: relating to the general economic environment and not directly to the membership of the Scheme; and
- demographic assumptions: relating to the experience of the membership of the Scheme.

This section sets out the assumptions used in this report and highlights any changes from those used for the 2020 LTCR. The assumptions are detailed in Appendix C.

The combined impact of the changes in financial and demographic assumptions was to decrease the projected outlays and premium costs in the short term. However, in the longer term, the changes in assumption increase projected outlays and premium costs by up to 10%, with the impact of assumed changes in the demographic profile of the membership being partly offset by the impact of lower assumed future salary increases.

The changes in assumptions have no impact on the accrued liability since the accrued liability is nil at 30 June 2023.

Economic Assumptions

Key Economic Assumptions

The key economic assumptions include:

- future increases in salaries, which also determine the level of pension increases; and
- a discount rate.

The relationship between these assumptions has a greater bearing on the long term cost estimates of the Scheme than do the individual assumptions. This is due to the effect of one assumption being used to project the liability into the future (future salary and pension increases) and the other assumption being used to discount that liability to current day values (discount rate).

For the purpose of this LTCR we have not adopted different economic assumptions for the short term and long term. To adopt, for example, short term salary increase assumptions would necessitate the use of short term discount rate assumptions. However, as noted above, it is the relationships or ‘gap’ between the assumptions that determines the value placed on benefit liabilities. Whilst in the short term these rates may vary, in the longer term we expect the relationships to remain stable. Use of short term assumptions may be appropriate for other purposes.

The key economic assumptions have changed from the 2020 LTCR and are set out in the table below:

Assumption as at	30 June 2023	30 June 2020
Salary and pension increase	3.7% per annum	4.0% per annum
Discount rate	5.0% per annum	5.0% per annum

Salary and Pension Increases

The assumed rate for long term future salary and pension increases has been determined having regard to the average expected long term outlook for national wage inflation, with a particular focus on Treasury forecasts for long term wage inflation.

The impact of this change is to reduce future projected outlays and premium costs by 3%-4% in the longer term.

Discount Rate

The discount rate is used to calculate the present value of projected future benefit payments and provide a summary measure of those cash flows. The accrued liability represents the present value of the estimated future benefit payments in respect of service already rendered. In isolation, a lower discount rate leads to a higher estimate of the accrued liability, and vice versa.

The present value does not change the ultimate benefit payments, as these are dictated by actual experience, but does however provide a manageable way to assess and compare the value of expected future cash flows, expressed in today's dollars.

The discount rate assumption is the same as that used for the *PSS and CSS Long Term Cost Report 2023*.

Demographic Assumptions

As the Scheme is relatively small the demographic assumptions are, for the most part, based on the assumptions adopted for the *Judges' Pension Scheme Long Term Cost Report 2023*.

An analysis of recent experience compared with the previous assumptions is set out in Appendix B. Details of the updated demographic assumptions are set out in Appendix C.

Retirement

Assumed rates of retirement have been updated from the 2020 LTCR to reflect emerging experience more closely.

Death

Rates of death are assumed to be the same as the mortality assumptions used in the *PSS and CSS Long Term Cost Report 2023*. These rates are unchanged from the 2020 LTCR.

Invalidity Retirement

Rates of invalidity retirement are assumed to be the same as those used in the *PSS and CSS Long Term Cost Report 2023*, extended to age 70. These rates are unchanged from the 2020 LTCR.

Spouse Assumptions

The assumed proportion of members with a spouse declines with age. The proportions are unchanged from the 2020 LTCR.

Future New Entrants

Each departing Judge is assumed to be replaced by a new entrant. The assumed distribution and characteristics of new entrants have been changed from the 2020 LTCR to more closely match the emerging experience. The recent experience is that more females have joined the Scheme than previously assumed.

Section 5

Accrued Liability

The accrued liability represents the discounted present value of the benefit payments currently in payment. The present value represents the amount which would need to be set aside at the valuation date to provide for these benefits at the time they are payable, assuming the valuation assumptions were borne out in practice.

It should be noted that the above measure of accrued liabilities does not include any amount for currently serving Judges. This is consistent with the “insurance premium” approach adopted at the 2020 LTCR and the approach adopted in the Australian Government financial statements.

Valuation Methodology

The valuation method for the liability in respect of currently serving Judges is consistent with an “insurance premium” approach. The cost of providing benefits in any given period is calculated as the expected value of all benefits payable in relation to deaths and invalidities occurring in that period. An insurance company would require this amount (plus a margin to allow for administrative expenses and profit) as the premium to cover claims that could arise in that year, and would then be responsible for any claims that actually arise.

In our view, the “insurance premium”’ approach is an appropriate method of allocating the expected costs associated with this Scheme between different periods. The same methodology was used for the 2020 LTCR.

However, we note that it is different to the standard approach for allocating the cost of death and invalidity benefits of the other Australian Government defined benefit superannuation schemes. Under the standard approach, it is assumed the potential future death and invalidity benefits are accrued uniformly over the period of service to the expected date of death or invalidity. This standard method then evaluates, for each member, expected future benefit payments for each future year multiplied by the probability that the benefit will be payable in that year. The accrued liability would be determined as the part of the total benefit which has accrued to the valuation date – that is, the benefit that would be payable at each future date if the benefit were calculated by reference to service to the valuation date only. The present value of the accrued liability is determined by discounting these expected payments back to the valuation date.

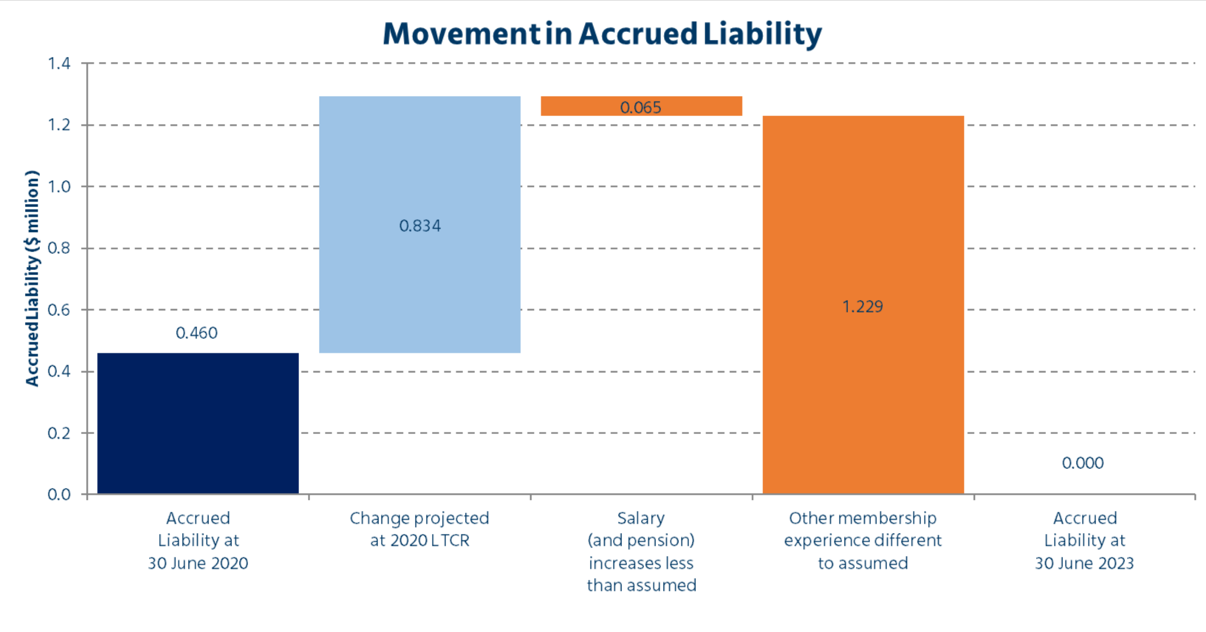
The use of the standard method would result in a greater accrued liability as it would include an amount in respect of currently serving Judges.

Results

The total accrued liability of the Scheme at 30 June 2023 was nil as there are no Judges currently in receipt of an invalidity pension.

Analysis of Change Compared with Previous Report

The 2020 LTCR projected that the accrued liability would be $1.293 million as at 30 June 2023, $1.293 million more than the actual accrued liability. The factors contributing to the change in the accrued liability are quantified in the following chart:



The most significant item is the membership experience: in particular there were no invalidity retirements during the investigation period, compared with approximately one expected based on the assumptions adopted for the 2020 LTCR. The two invalidity pensions in payment at 30 June 2020 ceased during 2021, as expected.

Section 6

Projected Outlays

The projected outlays represent the future cost of Scheme benefits paid each year. The expected nominal outlays each year for the next 40 years are:

Year Ending 30 June	Nominal Outlays ($'000s)	Year Ending 30 June	Nominal Outlays ($'000s)
2024	158	2044	2,307
2025	283	2045	2,442
2026	406	2046	2,467
2027	542	2047	2,630
2028	637	2048	2,758
2029	763	2049	2,900
2030	854	2050	3,027
2031	933	2051	3,083
2032	1,051	2052	3,204
2033	1,178	2053	3,279
2034	1,303	2054	3,420
2035	1,390	2055	3,450
2036	1,492	2056	3,566
2037	1,544	2057	3,609
2038	1,667	2058	3,747
2039	1,783	2059	3,890
2040	1,899	2060	3,940
2041	1,922	2061	4,135
2042	2,034	2062	4,239
2043	2,210	2063	4,457

Section 7

Projected Premium Costs

The projected premium costs represent the estimated amount an insurance company would require each year in order to cover the claims that could arise in that year (excluding any administrative expenses or profit margins). The costs are also shown as a percentage of projected annual salaries.

Year Ending 30 June	Nominal Outlays ($'000s)	Premium Costs (% of Salary)	Year Ending 30 June	Nominal Outlays ($'000s)	Premium Costs (% of Salary)
2024	973	3.3%	2044	2,122	3.5%
2025	990	3.3%	2045	2,235	3.5%
2026	1,042	3.3%	2046	2,285	3.5%
2027	1,067	3.2%	2047	2,409	3.5%
2028	1,097	3.3%	2048	2,464	3.5%
2029	1,182	3.4%	2049	2,523	3.5%
2030	1,227	3.4%	2050	2,608	3.5%
2031	1,300	3.5%	2051	2,692	3.5%
2032	1,356	3.4%	2052	2,775	3.4%
2033	1,397	3.4%	2053	2,861	3.4%
2034	1,449	3.4%	2054	2,947	3.4%
2035	1,484	3.4%	2055	3,035	3.4%
2036	1,568	3.5%	2056	3,193	3.4%
2037	1,610	3.5%	2057	3,265	3.4%
2038	1,708	3.5%	2058	3,457	3.5%
2039	1,756	3.5%	2059	3,658	3.5%
2040	1,861	3.5%	2060	3,762	3.5%
2041	1,910	3.5%	2061	3,989	3.5%
2042	2,021	3.6%	2062	4,141	3.6%
2043	2,071	3.5%	2063	4,288	3.5%

Section 8

Sensitivity Analysis

For this Scheme, the most significant assumptions are the assumed rates of invalidity. These assumptions are also subject to a high degree of uncertainty, particularly at older ages where there is little comparable experience from similar schemes.

To provide an indication of the sensitivity to variation in invalidity rates, we have measured the effect on the projected outlays and premium costs of varying the invalidity assumption whilst keeping all other assumptions unchanged. The base assumptions have been altered using a multiple of 1.3 for serving Judges under age 60, increasing to a multiple of 5 times the base assumptions at age 69, as per the 2020 LTCR.

Period Ending 30 June	Change in Nominal Outlays ($'000s)		Change in Premium Costs ($'000s)	
	Base case assumptions	Alternative invalidity assumptions	Base case assumptions	Alternative invalidity assumptions
2024	158	+218	973	+915
2025	283	+412	990	+939
2026	406	+583	1,042	+937
2027	541	+782	1,067	+941
2028	637	+810	1,097	+902
2029 – 33	4,780	+4,563	6,462	+5,139
2034 – 38	7,396	+6,392	7,819	+6,419
2039 – 43	9,848	+8,494	9,619	+7,534
2044 – 48	12,604	+8,956	11,515	+8,610
2049 – 53	15,493	+11,544	13,459	+11,283
2054 – 58	17,791	+14,526	15,897	+13,878
2059 – 63	20,662	+17,607	19,838	+15,663

Please note that the alternative results shown above are illustrations only, and show what may occur under assumed future experiences which differ from our baseline assumptions. These scenarios do not, in any way, constitute upper or lower bounds and the results may differ significantly from the ranges shown above, depending on actual future experience.

Sensitivity to Salary and Pension Increases

The projected outlays and premiums costs in the Scheme are also subject to variation with the salary and pension increase assumption. Whilst the salary and pension increase assumption have a direct impact on the monetary value of the projected outlays and premium costs, they have very little impact on premium costs expressed as a percentage of salaries.

Section 9

Actuary's Certification

Professional standards and scope

This report satisfies the requirements of Professional Standard No. 400 of the Institute of Actuaries of Australia. Professional Standard No. 400 relates to the preparation of reports commenting on the financial condition of defined benefit superannuation funds.

Use of report

This investigation report should not be relied upon for any other purpose or by any party other than the Australian Government. Mercer is not responsible for the consequences of any other use. This report should be considered in its entirety and not distributed in parts.

The advice contained in this report is given in the context of Australian law and practice. No allowance has been made for taxation, accountancy or other requirements in any other country.

Actuarial Uncertainty and Assumptions

An actuarial investigation provides a snapshot of a scheme's financial condition at a particular point in time, and projections of a scheme's estimated future financial position based on certain assumptions. It does not provide certainty in relation to a scheme's future financial condition or its ability to pay benefits in the future.

Future funding and actual costs relating to a scheme are primarily driven by a scheme's benefit design, the actual rate of salary inflation and any discretions exercised by the Australian Government. The scheme's actuary does not directly control or influence any of these factors in the context of an actuarial investigation.

A scheme's future financial position and the estimated long term cost depend on a number of factors, including the amount of benefits the scheme pays, the cause and timing of member withdrawals, scheme expenses, the level of taxation and the amount earned on any assets invested to pay the benefits. These amounts and others are uncertain and unknowable at the valuation date, but are predicted to fall within a reasonable range of possibilities.

To prepare this report, assumptions, as described in Section 4 and Appendix C, are used to select a single scenario from the range of possibilities. The results of that single scenario are included in this report.

However, the future is uncertain and a scheme's actual experience will differ from those assumptions; these differences may be significant or material. In addition, different assumptions or scenarios may also be within the reasonable range and results based on those assumptions would be different. For this reason this report also shows the impact on the results of certain changes in assumptions.

Actuarial assumptions may also be changed from one valuation to the next because of mandated requirements, scheme experience, changes in expectations about the future and other factors. We did not perform, and thus do not present, an analysis of the potential range of future possibilities and scenarios.

Because actual scheme experience will differ from the assumptions, decisions about benefit changes, investment policy, funding amounts, benefit security and/or benefit related issues should be made only after careful consideration of alternative future financial conditions and scenarios, and not solely on the basis of a set of results.

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28 June 2024

Appendix A
Summary of Benefits

This report covers liabilities relating to members of the Scheme. Provisions relating to the Scheme are set down in the *Federal Circuit and Family Court of Australia Act 2021*. The provisions of the Scheme are complex. A **summary** of the principal provisions is set out below. This summary should not be used to calculate benefits for individuals.

Member Contributions

Members are not required to contribute to the Scheme. The Australian Government meets the whole cost of the Scheme.

Invalidity Benefit

The benefit payable for a Judge who is certified by the Finance Minister as having retired on the grounds of invalidity, is a pension until the earlier of age 70 or death. The annual pension amount is 60% of the salary currently paid in respect of an equivalent appointment to that of the Judge at the time of invalidity.

Pensioners also receive employer superannuation contributions of 15.4% of their base salary until the age of 65.

Death Benefit

A death benefit payable in respect of a serving Judge if they die before 65. The death benefit is a lump sum equal to the amount of the employer superannuation contributions (at 15.4% of salary) that the Judge would have been entitled to had they not died, in respect of the period from date of death up to age 65. This benefit is also payable in respect of a Judge in receipt of an invalidity pension, if they die before age 65.

Appendix B

Experience of the Scheme

Reconciliation of Serving Judges

	Serving Judges	Invalidity Pensioners
As at 30 June 2020	**67**	**2**
New Members	36	n/a
Leavers	-23	0
Death	-1	0
Ceased	n/a	-2
As at 30 June 2023	**79**	**0**

Salary and Pension Increases

At 1 July 2023, the salary paid to a Federal Circuit Court Judge was $422,084. The equivalent salary at 1 July 2020 was $394,980. This represents an average annual increase of 2.2% per annum, compared to the previously assumed increase of 4.0% per annum. Salaries for other Judges were increased at the same rate (other than minor rounding differences).

Resignation / Retirement Rates

The number of Judges leaving the Scheme due to age retirement, resignation or transferring to other Courts was 23. This is higher than the 7 Judges expected to leave the Scheme.

Invalidity Retirement

There were no invalidity retirements during the period compared with 1.2 assumed.

Mortality

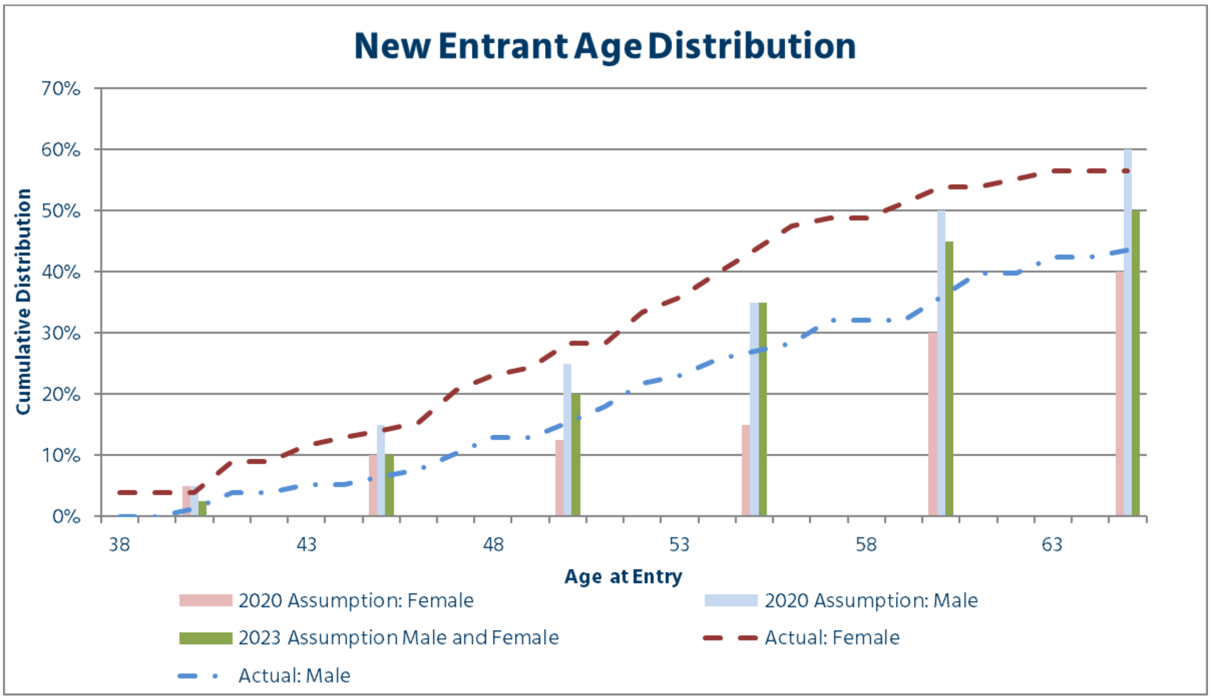
One Judge died in service during the review period compared with 0.4 assumed.

Pensioner Mortality and Marital Status

The number of pensioners in the Scheme in the past has been too small to conduct any meaningful analysis of pensioner mortality or marital status.

New Entrant Age distribution

The age at which the current cohort of Judges joined the Scheme has been analysed, as can be seen in the graph below. The age and gender distribution of the new entrants assumption has been amended to better fit with the experience that more females have joined the Scheme than previously assumed.



Appendix C

Details of Actuarial Assumptions

Economic Assumptions

The key long term economic assumptions adopted are shown in the table below:

Assumption as at	30 June 2023
Salary and pension increase	3.7% per annum
Discount rate	5.0% per annum

Taxation

In determining the projected outlays, no adjustment is made for any tax payable by members on receipt of a benefit.

Demographic Assumptions

Future New Entrants

Each Judge exiting the Scheme is assumed to be replaced by a new entrant. The ages at which new entrants are assumed to join are based on the following distribution:

Age	2020		2023	
	Male	Female	Male	Female
40	5.00%	5.00%	2.50%	2.50%
45	10.00%	5.00%	7.50%	7.50%
50	10.00%	2.50%	10.00%	10.00%
55	10.00%	2.50%	15.00%	15.00%
60	15.00%	15.00%	10.00%	10.00%
65	10.00%	10.00%	5.00%	5.00%
Total	**60.00%**	**40.00%**	**50.00%**	**50.00%**

Resignation/Retirement Rates

Age	Resignation/ Retirement	Age	Resignation/ Retirement
<50	5.00%	61	10.00%
51	10.00%	62	10.00%
52	10.00%	63	10.00%
53	10.00%	64	10.00%
54	10.00%	65	10.00%
55	10.00%	66	10.00%
56	10.00%	67	10.00%
57	10.00%	68	10.00%
58	10.00%	69	10.00%
59	10.00%	70	100.00%
60	10.00%		

Death and Invalidity Retirement Rates

	Death		Invalidity	
Age	Male	Female	Male	Female
50	0.088%	0.060%	0.213%	0.268%
55	0.124%	0.097%	0.336%	0.447%
60	0.183%	0.166%	0.625%	0.646%
65	0.274%	0.249%	0.732%	0.894%
66	0.298%	0.271%	0.744%	0.943%
67	0.323%	0.294%	0.755%	0.991%
68	0.350%	0.318%	0.767%	1.041%
69	0.379%	0.345%	0.778%	1.090%
70	0.411%	0.374%	-	-

Invalidity Pensioner Mortality Rates

Age	Male	Female
50	0.51%	0.32%
55	0.75%	0.46%
60	1.12%	0.65%
65	1.63%	0.98%

Proportion Married

Age	Male	Female
45	92.50%	93.00%
50	92.50%	90.50%
55	92.50%	87.00%
60	92.50%	83.50%
70	92.50%	75.50%

The above rates include allowance for same sex marriages.

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