

Queensland



ANNO TRICESIMO SEPTIMO

ELIZABETHAE SECUNDAE REGINAE



No. 46 of 1988

An Act to provide for a productivity based superannuation scheme of benefits for persons in Government employment, members of the Police Force and other persons

[ASSENTED TO 3RD MAY, 1988]

BE IT ENACTED by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

PART I—PRELIMINARY

1. Short Title. This Act may be cited as the *Superannuation (Government and Other Employees) Act 1988*.

2. Arrangement. This Act is arranged in Parts as follows:—

PART I—PRELIMINARY (ss. 1-3);

PART II—TRUSTEES (ss. 4-13);

PART III—FUND (ss. 14-21);

PART IV—ADMINISTRATION (ss. 22-32);

PART V—SCHEME (ss. 33-34);

PART VI—MISCELLANEOUS PROVISIONS (ss. 35-36).

3. Interpretation. In this Act, except where a contrary intention appears—

“Articles” means “The Articles of the Government Officers’ Superannuation Scheme”, provided for by section 33, as in force for the time being;

“Board” means the Board of Trustees provided for by section 4;

“fund” means the Government Officers’ Superannuation Fund provided for by section 14;

“Minister” includes any Minister of the Crown for the time being performing the duties of the Minister;

“scheme” means the scheme for the provision of superannuation benefits as provided for by the Articles, as in force for the time being.

PART II—TRUSTEES

4. Board of Trustees. (1) There shall be constituted and maintained a Board of Trustees, which shall by that name be a body corporate, having perpetual succession and an official seal, and shall be capable in law of—

(a) suing and being sued in its corporate name;

(b) acquiring, holding, leasing, letting and disposing of property, real and personal;

and

(c) doing and suffering all such other acts and things as bodies corporate may in law do or suffer.

(2) All courts, judges and persons acting judicially shall take judicial notice of—

- (a) the identity of members of the Board and of the signatures of such members;
- (b) the identity of the executive officer of the Board and of his signature;
- (c) the seal of the Board,

and, until the contrary is proved, shall presume that any such signature or such seal affixed to any document or writing was duly affixed.

(3) In the discharge of its functions and exercise of its powers for the purposes of this Act or the Articles the Board—

- (a) represents the Crown in right of Queensland;
and
- (b) has all the immunities, rights and privileges of the Crown in right of Queensland except where the Governor in Council, by Order in Council, declares to the contrary.

5. Constitution of Board. (1) The Board shall consist of—

- (a) the person for the time being holding the office of Under Treasurer who shall be, *ex officio*, a member of the Board and chairman thereof;
- (b) three persons appointed by the Governor in Council as representatives of the Government of Queensland of whom two at least are persons who upon retirement after 1 July 1988 might become entitled to benefits from the scheme;
and
- (c) four persons appointed by the Governor in Council as representatives of the industrial unions of employees whose members are persons who upon retirement might become entitled to benefits from the scheme, which representatives shall, subject to subsection (2), be nominated by or on behalf of those unions and of whom three at least are persons who upon retirement after 1 July 1988 might become entitled to benefits from the scheme.

(2) If at any time when appointments are to be made under paragraph (c) of subsection (1) there is no person or an insufficient number of persons nominated as required by that paragraph, the Governor in Council may proceed to appoint a person or persons under that paragraph without further reference to the prescribed unions and every person so appointed shall be deemed to have been duly nominated.

(3) The chairman of the Board may from time to time nominate one person to be his deputy in relation to the Board and for as long as the nomination subsists such deputy shall be deemed to be a member of the Board authorized to attend its meetings and to act in accordance with law in the Board's affairs in place of the chairman.

(4) Notification of appointment of members of the Board (including an appointment to fill a casual vacancy) or of nomination by the chairman of his deputy shall be published in the Gazette.

(5) The Board shall be taken to have been duly constituted upon publication in the Gazette of notification of the first appointment of members of the Board.

6. Board membership not to disqualify from office. Where by or under any Act provision is made requiring the holder of an office to devote the whole of his time to the duties of the office, or prohibiting him from engaging in employment outside the duties of the office, such provision shall not operate to disqualify a person from holding that office and an office as member of the Board or deputy for a member or from accepting and retaining any remuneration payable to a member of the Board.

7. Deputies for members. In the event of the absence of a member of the Board, other than the chairman, from a meeting of the Board the member may by writing signed by him nominate one person to be his deputy in relation to the Board and for as long as the member's absence continues and the nomination subsists such deputy shall be deemed to be a member of the Board authorized to attend its meetings and to act in accordance with law in the Board's affairs in place of the absent member.

8. Term of appointment. (1) A member of the Board other than the chairman shall be appointed for three years and, subject to subsection (2), is eligible for re-appointment.

(2) Where this Act requires that appointment as a member of the Board shall be of a person nominated, a member of the Board is eligible for re-appointment only if he is duly nominated, unless he is to be duly appointed under section 5 (2).

(3) The term of appointment of the whole number of appointed members of the Board shall commence on the publication of notification of the appointment in the Gazette or on such later date as is therein specified.

9. Casual vacancy in Board's membership. (1) If a casual vacancy occurs in the office of an appointed member of the Board, the Governor in Council may appoint another person to fill the vacancy.

(2) If the vacancy is in an office that this Act requires to be filled by appointment of a nominated member the person appointed to fill the vacancy shall be one duly nominated, unless he is to be duly appointed under section 5 (2).

(3) A person appointed to fill a casual vacancy in the membership of the Board shall hold office for the balance of his predecessor's term of appointment.

10. Vacation of office. (1) A casual vacancy shall be taken to occur in the office of an appointed member of the Board if he dies during his term of appointment or if he—

- (a) is admitted to an hospital as a patient within the meaning of the *Mental Health Services Act 1974-1987*;
 - (b) becomes bankrupt, compounds with his creditors or otherwise takes advantage of the laws in force for the time being relating to bankruptcy;
 - (c) resigns the office by writing signed by him delivered to the Minister;
 - (d) is absent without leave of the Board from four consecutive ordinary meetings of the Board of which due notice has been given to him;
 - (e) is convicted in Queensland of an indictable offence or is convicted elsewhere in respect of an act or omission that, if it had occurred in Queensland, would constitute an indictable offence;
- or
- (f) is removed from the office by the Governor in Council by notification published in the *Gazette*.

(2) Attendance at a time and place appointed for an ordinary meeting of the Board shall constitute presence at an ordinary meeting notwithstanding that, due to lack of a quorum, no meeting is actually held on that day.

11. Board's executive officer. (1) The executive officer of the Board—

- (a) shall be the person who for the time being holds the appointment, manager of the State Service Superannuation Fund;
- and
- (b) may be a member of the Board.

(2) The executive officer shall have, exercise and perform such powers, authorities, duties and functions as are prescribed or as the Board may authorize or direct.

(3) The executive officer shall have custody of the Board's official seal and, subject to the Board, is authorized to execute documents and other writings on behalf of the Board and to affix the Board's seal thereto.

12. Delegation by Board. (1) The Board may, by instrument in writing under its official seal, delegate to any member or officer of the Board, either generally or otherwise as provided in the instrument, all or any of its powers, duties and functions except this power of delegation.

(2) A delegate shall act in accordance with the terms (if any) of the instrument of delegation.

(3) A delegation is revocable at the will of the Board and does not affect the exercise or performance by the Board of its powers, duties or functions.

(4) The Board may make such number of delegations of the same power, duty or function as it thinks fit.

13. Proceedings of Board. (1) The Board shall meet at such times and places and conduct its business in such manner as is prescribed or, in so far as it is not prescribed, as the Board determines.

(2) The chairman shall preside at all meetings of the Board at which he is present.

If the chairman is not present at a meeting his nominee (referred to in section 5 (3)) shall preside at the meeting and act in place of the chairman and, while so acting, shall have all the powers and authorities of the chairman.

If neither the chairman nor his nominee is present at a meeting the Board members present shall elect one of their number who shall preside at the meeting.

(3) A quorum of the Board consists of five members and any duly convened meeting at which a quorum is present shall be competent to transact the business of the Board.

(4) The person presiding at a meeting shall have a deliberative vote only and, in the event of an equality of votes on any matter, the question shall be taken to have been decided in the negative.

(5) No act or proceeding of the Board shall be invalid or be affected by reason only of one or all of the following:—

- (a) the number of members of the Board was not complete at the time of such act or proceeding;
- (b) a defect in the appointment of any member of the Board;
- (c) any member of the Board was disqualified from participating or disentitled to participate in the act or proceeding.

PART III—FUND

14. Establishment of fund. There shall be established and maintained in Queensland Treasury a fund under the name “Government Officers’ Superannuation Fund”.

15. Contributions to fund. (1) The employer of each employee who upon retirement might become entitled to a benefit from the fund in accordance with the Articles shall pay to the Board for payment into the fund in respect of the employee such sums as he is required to pay from time to time in accordance with the Articles.

(2) Contributions payable in accordance with the Articles in respect of employees shall be in the hands of the Board within seven days after the end of the pay period for which those employees are paid salary or wages.

(3) If any contribution is not in the hands of the Board within the time limited by subsection (2) the Board may determine that interest shall accrue on that contribution at a rate determined by the Board while the contribution remains outstanding, and, if the Board does so determine, interest shall so accrue and become payable to the Board and in the hands of the Board shall become part of the fund.

16. Recovery of outstanding moneys. The Board may recover all moneys due and owing to it in accordance with the Articles or pursuant to this Act by way of action for debt in a court of competent jurisdiction.

17. Commencement of employer's obligation. The obligation of an employer to pay contribution to the fund in respect of an employee in accordance with the Articles shall commence on the day that is the first pay-day in July 1988 for that employee.

18. Investment of fund. (1) The Board shall arrange for the investment, in accordance with this Act, of all moneys for the time being standing to the credit of the fund that in the Board's opinion are not immediately required for the payment of benefits in accordance with the Articles or for the purposes of this Act.

(2) Moneys for the time being standing to the credit of the fund shall be invested in a manner approved for the time being by the Governor in Council whose approval may be of a particular investment or of a class of investment.

19. Appointment of investment manager. (1) The Board shall appoint an investment manager or investment managers to act as agent or agents of the Board in the investment of moneys for the time being standing to the credit of the fund that are available for investment.

(2) All investment of moneys by the Board shall be arranged through the investment manager or, as the case may be, the appropriate investment manager.

20. Obligations of investment manager. An investment manager—

- (a) shall comply with all requirements approved by the Governor in Council with respect to the manner in which the Board's moneys may be invested;
- (b) shall operate within the investment strategy and policy as determined for the time being by the Board;
and
- (c) shall report to the Board on the state of the Board's investment and the investment market at such times and in such manner as the Board determines.

21. Payment from fund. There shall be paid from the fund all moneys payable in accordance with the Articles to persons who are entitled to benefits from the fund in accordance with the Articles.

PART IV—ADMINISTRATION

22. Investment strategy and policy. (1) As soon as is practicable after—

- (a) the commencement of this Act;
and
- (b) the Governor in Council has approved of the manner in which the Board's money may be invested,

the Board shall determine an investment strategy and policy and thereafter shall review and, where the Board thinks it necessary or desirable, vary its existing investment strategy and policy.

(2) In determining or reviewing its investment strategy and policy the Board shall consult with—

- (a) such persons or bodies as the Board thinks fit;
and
 - (b) such other persons or bodies as the Minister approves,
- and the Board shall give due regard to advice provided by such persons or bodies.

23. Accounts relating to fund. (1) For the purpose of the application of the provisions of the *Financial Administration and Audit Act 1977-1985* to the accounts relating to the fund the accounts shall be deemed to be miscellaneous departmental accounts within the meaning of that Act.

(2) The Board may appropriate earnings received by it from investment of the fund to its several accounts in such amounts as the Board, in its discretion, thinks fit.

24. Repayment of indebtedness. The Board shall repay to Queensland Treasury in such manner and upon such terms and conditions (including the payment of interest, if agreed) as agreed between them moneys at any time (whether before or after the commencement of this Act) applied by Queensland Treasury on behalf of the Board for the purposes of this Act.

25. Returns. (1) Throughout each year, each employer of an employee who upon retirement might become entitled to a benefit from the fund in accordance with the Articles shall furnish to the Board, in such form and at or within such times as the Board directs, returns with respect to such matters as the Board directs.

(2) A person who—

- (a) is an employee who upon retirement might become entitled to a benefit from the fund;

or

(b) was an employee who upon retirement might become entitled to a benefit from the fund and has preserved that entitlement, shall furnish to the Board information with respect to such matters concerning himself as the Board may require of him.

(3) If a person referred to in subsection (2) fails to comply with a requisition for information such as is referred to in subsection (2) directed to him by the Board, a benefit from the fund to which he has become entitled shall be withheld until the requisition is complied with.

26. Recovery of overpayments. Where a person has received payment of a benefit from the fund in excess of the payment to which he is entitled in accordance with the Articles, the Board may recover from that person or his estate (if he has died) in a court of competent jurisdiction as a debt due and owing to the Board the difference between the payment received by him and the payment to which he was entitled in accordance with the Articles.

27. Consultation with actuary. (1) In its administration of the scheme the Board—

(a) may consult with the actuary on such actuarial matters as the Board thinks fit;

and

(b) shall consult with the actuary on such actuarial matters as the Minister may direct.

(2) In subsection (1) the expression “the actuary” means the person who for the time being holds the appointment as actuary under the *State Service Superannuation Act 1972-1987*.

28. Reports. (1) In each year the Board shall make to the Minister a report on the administration of this Act and of the scheme.

The Minister shall lay a copy of the Board’s annual report before the Legislative Assembly within 14 sitting days after he receives the report.

(2) When and as often as the Minister may require, the Board shall make to the Minister a report on such matters concerning the administration of this Act or the scheme as the Minister may direct.

29. Board members indemnified. A member or the executive officer of the Board or any member of the Board’s staff shall not incur liability at law on account of loss or damage sustained by reason of any act done or omission made under the authority of this Act or done or made in good faith by him purporting to act under the authority of this Act and without negligence.

30. Remuneration of Board members. A member of the Board shall be entitled to such remuneration as may be approved for the time being by the Governor in Council.

31. Expenses of scheme. Expenses that are identified as having been incurred in the administration of this Act or the scheme shall be borne by the fund.

32. Regulations. The Governor in Council may make regulations, not inconsistent with this Act, providing for all matters necessary or desirable to be provided for the administration of this Act or to achieve the objects and purposes of this Act.

PART V—SCHEME

33. Articles governing scheme. (1) The terms, conditions, obligations, benefits and rules of the scheme and for its administration shall be as contained for the time being in a document to be called “The Articles of the Government Officers’ Superannuation Scheme”.

(2) The Articles shall have no effect until approved by Order in Council, which shall set out the Articles.

34. Variation of Articles. (1) The Articles may be amended from time to time by the Board.

(2) An amendment of the Articles shall have no effect until approved by Order in Council, which shall set out the amendment.

PART VI—MISCELLANEOUS PROVISIONS

35. Protection of scheme’s name. (1) A person shall not use the expression “Gosuper” in connexion with selling the right to participate in any superannuation, insurance or provident scheme unless—

(a) the scheme is that to which this Act relates;

and

(b) he does so on behalf of the Board.

(2) A person shall not—

(a) use any variation of the expression “Gosuper”;

or

(b) use any word (either alone or in conjunction with any other word) similar in sight or sound to the expression “Gosuper”, in connexion with selling the right to participate in any superannuation, insurance or provident scheme, being, in either case, a use likely to afford reasonable grounds for believing the scheme is or is associated with the scheme to which this Act relates, unless—

(c) the scheme in question is that to which this Act relates;

and

(d) he does so on behalf of the Board.

(3) A person who contravenes subsection (1) or (2) commits an offence against this Act and is liable to a penalty of 40 penalty units.

36. Offender to be punished summarily. (1) A person who commits an offence against this Act may be prosecuted therefor in a summary

way under the *Justices Act 1886-1987* on the complaint of the executive officer of the Board or of any person authorized by the Board.

(2) In any proceeding authority of the complainant to lay the complaint shall be presumed in the absence of evidence to the contrary.

(3) Proceedings in respect of an offence against this Act may be commenced at any time within one year from the time when the matter of complaint arose or within six months after the offence comes to the knowledge of the complainant, whichever period is the later to expire.