

SUPERANNUATION (STATE PUBLIC SECTOR) ACT

No. 20 of 1990

ANALYSIS OF CONTENTS

PART I—PRELIMINARY

- 1.1 Short title
- 1.2 Commencement
- 1.3 Interpretation

PART II—BOARD OF TRUSTEES

- 2.1 Board of Trustees
- 2.2 Board's executive officer
- 2.3 Delegation by Board
- 2.4 Proceedings of Board
- 2.5 Powers etc. of Board
- 2.6 Board member indemnified
- 2.7 Remuneration of Board members

PART III—FUND AND DEED

- 3.1 Establishment of fund
- 3.2 Investment of fund
- 3.3 Deed to establish scheme
- 3.4 Membership of scheme
- 3.5 Contents of Deed

PART IV—ADMINISTRATION

- 4.1 Accounts relating to fund
- 4.2 Returns
- 4.3 Recovery of overpayments
- 4.4 Recovery of unpaid contributions
- 4.5 Reports
- 4.6 Name of Scheme
- 4.7 Offender to be punished summarily
- 4.8 Publicity of scheme
- 4.9 Unclaimed benefits
- 4.10 Barring of claims for compensation
- 4.11 Rates or amounts of benefit etc. to be rounded off
- 4.12 False declarations
- 4.13 Exemption from taxation
- 4.14 Appropriation of contribution
- 4.15 Assignment of benefit
- 4.16 Regulations

Queensland



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No. 20 of 1990

An Act to provide the machinery for the establishment of a new Superannuation scheme for the State Public Sector and for related purposes

[ASSENTED TO 13TH JUNE, 1990]

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

1.1 Short title. This Act may be cited as the *Superannuation (State Public Sector) Act 1990*.

1.2 Commencement. (1) Section 1.1 and this section commence on the day this Act is assented to for and on behalf of Her Majesty.

(2) Except as provided in subsection (1), the provisions of this Act, or such of them as are specified, commence on the day or days appointed by Proclamation.

1.3 Interpretation.(1) In this Act, except where a contrary intention appears—

“Board” means the Board of Trustees pursuant to section 2.1;

“Board member” means a member of the Board of Trustees;

“Deed” means the deed established pursuant to this Act;

“fund” means the State Public Sector Superannuation Fund established pursuant to section 3.1;

“Queensland Treasury Corporation” means the corporation constituted within the meaning of the *Queensland Treasury Corporation Act 1988*;

“scheme” means the scheme for the provision of superannuation, retirement, provident or other benefits established pursuant to the Deed in accordance with this Act;

“unit of the State Public Sector” means—

(a) every department of the State within the meaning of the *Public Service Management and Employment Act 1988-1990*;

(b) the Railway Department within the meaning of the *Railways Act 1914-1989*;

(c) the Queensland Police Service within the meaning of the *Police Service Administration Act 1990*;

(d) the Electoral and Administrative Review Commission within the meaning of the *Electoral and Administrative Review Act 1989-1990*;

(e) the Criminal Justice Commission within the meaning of the *Criminal Justice Act 1989-1990*;

(f) the Queensland Corrective Services Commission within the meaning of the *Corrective Services (Administration) Act 1988*;

(g) the Legal Aid Commission of Queensland within the meaning of the *Legal Aid Act 1978-1990*;

(h) the Public Sector Management Commission within the meaning of the *Public Sector Management Commission Act 1990*;

(i) the Industrial Relations Commission of Queensland within the meaning of the *Industrial Relations Act 1990*;

(j) every corporate entity (other than a Local Authority) that is constituted by or pursuant to an Act, or that is of a

- description of entity provided for by an Act, which in either case collects revenues or raises funds under the authority of an Act;
- (k) every non-corporate entity established or maintained pursuant to an Act, which is funded to any extent with moneys of the Crown, or is assisted in a financial respect by the Crown;
 - (l) the registries and other administrative offices of the courts of the State of whatever jurisdiction;
 - (m) the Magistrates Court of Queensland within the meaning of the *Justices Act 1886-1989*;
 - (n) the Parliamentary Service within the meaning of the *Parliamentary Service Act 1988*;
 - (o) the Governor's official residence (known as "Government House") and the administrative unit maintained in association therewith;
 - (p) a university, university college or a college of advanced education;
 - (q) a specified body or corporate person declared under section 1.3 (4) of the *Public Sector Management Commission Act 1990* to be a unit of the public sector;
 - (r) any persons, or class of persons, corporate body, unit or organization declared by Order in Council to be a unit of the State Public Sector;

but does not include—

- (s) the Executive Council;
- (t) the Legislative Assembly;
- (u) any person or body declared by Order in Council not to be a unit of the State Public Sector.

(2) An Order in Council under subsections (1) (r) or 1 (u) is to be treated as if it were a regulation for the purposes of section 28A of the *Acts Interpretation Act 1954-1989* (which requires regulations to be published in the Gazette and laid before the Legislative Assembly as prescribed therein) and is to be dealt with as a regulation is dealt with under that section.

PART II—BOARD OF TRUSTEES

2.1 Board of Trustees. The Board of Trustees constituted in accordance with sections 4 to 10 of the *Superannuation (Government and Other Employees) Act 1988* is to be the Board of Trustees for the purposes of this Act.

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

- (a) is to be the person who for the time being holds the appointment as manager of the State Service Superannuation

Fund preserved, continued in existence and established under the *State Service Superannuation Act 1972-1989*;

and

(b) may be a member of the Board.

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

(3) The executive officer has 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.

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

(2) A delegate is to 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, authorities, duties or functions.

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

2.4 Proceedings of Board. (1) The Board is to 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 presiding officer is to preside at all meetings of the Board at which that person is present.

If the presiding officer is not present at a meeting that person's nominee is to preside at the meeting and act in place of the presiding officer and, while so acting, has all the powers and authorities of the presiding officer.

If neither the presiding officer nor a nominee is present at a meeting the Board members present are to elect one of their number who is to preside at the meeting.

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

(4) The person presiding at a meeting is to have a deliberative vote only.

(5) A decision of the Board requires the affirmative vote of six Board members present and voting.

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

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

2.5 Powers etc. of Board. The powers, authorities, duties or functions of the Board and the exercise of discretion by the Board are, except as specified in this Act, to be as set out in the Deed.

2.6 Board member indemnified. A Board member or the executive officer of the Board or any member of the Board's staff is not to 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 that person purporting to act under the authority of this Act and without negligence.

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

PART III—FUND AND DEED

3.1 Establishment of fund. There is to be established and maintained in the Queensland Treasury a fund under the title "State Public Sector Superannuation Fund".

3.2 Investment of fund. (1) For a period of 5 years as from the commencement of this section, the Queensland Treasury Corporation is appointed as investment manager of the fund and may invest the fund in such manner and in such investments as the Queensland Treasury Corporation is, by law, authorised to invest.

(2) Upon expiry of the appointment under subsection (1), an investment manager for the fund is to be appointed in accordance with the Deed.

3.3 Deed to establish scheme. (1) Not later than 30 days after the commencement of this section, or such longer period as may be approved by the Governor in Council by Order in Council, there is to be established by Deed a scheme for the provision of superannuation, retirement, provident or other similar benefits payable from the fund.

(2) The Deed, and any variation thereof, is to be—

- (a) approved in writing by the Board of Trustees;
- (b) then approved by Order in Council.

(3) The Deed, and any variation thereof, is to be treated as if it were a regulation for the purposes of section 28A of the *Acts Interpretation Act 1954-1989* (which requires regulations to be published in the Gazette

and laid before the Legislative Assembly as prescribed therein) and is to be dealt with as a regulation is dealt with under that section.

3.4 Membership of scheme. (1) The officers, members and employees (howsoever described) of any unit of the State Public Sector are eligible for membership of the scheme.

(2) The Governor in Council may, by Order in Council, declare that any person or class of persons, however defined, who is eligible for membership of the scheme is or is not required to contribute as a member of the scheme upon such conditions as may be specified in the Order in Council.

3.5 Contents of Deed. Save as otherwise provided by this Act and in addition to any other provisions which the Board considers may be necessary or desirable, the Deed may make provision for the following matters—

- Definitions to be used in the Deed;
- The operation, management and investment of the fund;
- The liability for the payment of member contributions to the fund;
- The level of member contributions to the fund;
- The level of contribution by a unit of the State Public Sector in relation to members of the scheme;
- The circumstances whereby, and the level of contributions in relation thereto, members may make additional contributions to the fund;
- Conditions for the transfer of members and amounts representing contributions to and from the scheme;
- The keeping of accounts for members of the scheme and the payment of interest on such accounts;
- The level of and conditions relating to the payment of benefits under the scheme to and in respect of a member, including—
 - (a) benefits on attaining the age of 55 years or older;
 - (b) benefits for total and permanent incapacity;
 - (c) benefits for permanent but partial incapacity;
 - (d) benefits for short term incapacity;
 - (e) benefits on death prior to the age of 55 years;
 - (f) benefits on—
 - (i) compulsory retrenchment from employment;
 - (ii) involuntary termination of employment;
 - (iii) voluntary resignation from employment;
 - (iv) dismissal from employment;
 - (g) benefits on the occurrence of such other eventuality as may be specified;

- The obtaining and use of medical or like evidence in determining the payment of benefits under the scheme;
- A mechanism for a review by a member dissatisfied with the grant or payment of benefits or any other decision under the scheme;
- A method for the preservation of member entitlements in the fund;
- The terms and conditions upon which a pension or annuity may be purchased or paid from the fund;
- The terms and conditions upon which the Board is to obtain actuarial advice in relation to the fund;
- The payment of the expenses of operating the scheme from the fund.

PART IV—ADMINISTRATION

4.1 Accounts relating to fund. (1) For the purpose of the application of the provisions of the *Financial Administration and Audit Act 1977-1988* to the accounts relating to the fund the accounts are to be treated as 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.

4.2 Returns. (1) Throughout each year, each unit of the State public sector which employs or otherwise engages a person who might become entitled to a benefit from the fund in accordance with the Deed is to 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 of or engaged by a unit of the State Public Sector who might become entitled to a benefit from the fund;

or

(b) was an employee of or engaged by a unit of the State Public Sector who being entitled to a benefit from the fund preserved that entitlement,

is to furnish to the Board information with respect to such matters concerning that person as the Board may require.

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

4.3 Recovery of overpayments. (1) Where a person has received payment of a benefit from the fund in excess of the payment to which

that person is entitled in accordance with the Deed, the Board may recover from that person or that person's estate (if that person has died) in a court of competent jurisdiction as a debt due and owing to the Board the difference between the payment received by that person and the payment to which that person was entitled in accordance with the Deed.

(2) Where a person who has received payment of a benefit from the fund in excess of the payment to which that person is entitled in accordance with the Deed, is entitled to a further payment from the fund, that excess may be deducted from the further payment prior to it being paid to that person or that person's estate.

4.4 Recovery of unpaid contributions. (1) Any amount (including an amount of contribution to the fund) that is payable to the Board under the scheme may be recovered in a court of competent jurisdiction as a debt due and owing to the Board.

(2) Any amount of contributions to the fund unpaid at the time a person ceases to be a member may be deducted from any benefits payable under the scheme before any payment is made to or in respect of that person.

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

The Minister is to lay a copy of the Board's annual report before the Legislative Assembly within 14 sitting days after the Minister receives the report.

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

4.6 Name of Scheme. (1) Notwithstanding the provisions of section 35 of the *Superannuation (Government and Other Employees) Act 1988* the Board may use a variation of the name "Gosuper" in relation to the scheme.

(2) A person is not to—

(a) use the expression, or any variation thereof, used pursuant to subsection (1);

or

(b) use any word (either alone or in conjunction with any other word) similar in sight or sound to any expression used pursuant to subsection (1)

in connexion with selling the right to participate in any superannuation, insurance, provident or other benefit 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 one to which this Act relates;
and
- (d) that person does so on behalf of the Board.

(3) A person who contravenes subsection (1) or (2) commits an offence against this Act.

Penalty: 40 penalty units.

4.7 Offender to be punished summarily. (1) A person who commits an offence against this Act may be prosecuted in a summary way under the *Justices Act 1886-1989* on the complaint of the executive officer of the Board or of any person authorized by the Board.

(2) In any proceeding the authority of the complainant to lay the complaint is to 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.

4.8 Publicity of scheme. The Board is to take all reasonable steps—

- (a) to ensure that all persons eligible for membership of the scheme are made aware of the benefits that arise from membership of the scheme;
and
- (b) to enlist new members in the scheme.

4.9 Unclaimed benefits. (1) Where a member has not, within six months of becoming entitled to a benefit under the scheme, claimed such benefit the Board is to transfer the value of that benefit to an Unclaimed Benefit Account to be kept in the fund.

(2) At any time within six years after a transfer in accordance with subsection (1) a member may claim any unclaimed benefit and the Board, upon such proof as the Board considers necessary, may authorize payment from the Unclaimed Benefit Account to that member.

(3) Where no claim is made in accordance with subsection (2) within a period of six years of a transfer to the Unclaimed Benefit Account, the value of that benefit is then to form part of the fund and the member then ceases to have any claim or title to that benefit.

(4) The Board may, where it is satisfied that special circumstances exist, authorize the payment from the fund of the value of a benefit notwithstanding the lapse of a period greater than six years from when the member became entitled to the benefit.

(5) If any moneys paid to a person in accordance with this section are afterwards claimed by any other person, the Board is not responsible

for the payment of such moneys but such person may have recourse against the person to whom the Board has paid the moneys.

4.10 Barring of claims for compensation. No member is entitled to any compensation by reason of the alteration of any benefit payable under the scheme which may lawfully be made in consequence of any actuarial investigation or otherwise.

4.11 Rates or amounts of benefit etc. to be rounded off. Where the rate or amount of any benefit under the scheme, when expressed in dollars and cents, leaves a number of cents remaining, the Board may round off that rate or amount to the nearest dollar and the benefit is payable in terms of that rate or amount as so rounded off.

4.12 False declarations. (1) No person is to—

(a) in a certificate, return, declaration, or other document given or sent to, or lodged with, the Board by or on behalf of that person for any of the purposes of the scheme, knowingly furnish information as to age or state of health that is false or misleading;

or

(b) for the purposes of a medical examination required to be undergone under the scheme, knowingly furnish the medical practitioner by whom the examination is made with information as to state of health or medical history that is false or misleading.

Penalty: 10 penalty units.

(2) If a person is convicted of an offence against this section the Board may order—

(a) in the case of a member,

(i) that the person is ineligible, either permanently or for such time as the Board may determine, to contribute to the fund;

or

(ii) if contributions have not commenced, that the person is ineligible to commence to contribute to the fund either permanently or for such time as the Board may determine;

or

(b) in the case of a recipient of a benefit that the benefit be cancelled forthwith;

or

(c) in the case of a person other than a member or recipient of a benefit, that that person be ineligible to commence to contribute to the fund either permanently or for such time as the Board may determine.

(3) Where the Board makes a determination under this section in respect of a member whereby the member is precluded from contributing to the fund for a time only, any period of employment by the member

during that time is to be disregarded in the calculation of a period of employment for the purpose of determining a member's entitlement, or that of a person deriving an entitlement through that member, to benefits under this Act or the scheme.

4.13 Exemption from taxation. Except as may be specifically provided the Board and the fund are not liable to any taxation imposed under a law of Queensland.

4.14 Appropriation of contribution. A contribution to the fund by the Crown in accordance with the Deed is to be paid by the Treasurer—

- (a) at any such time and in such manner as prescribed by the Deed;
- (b) out of the Consolidated Revenue or such other fund as the Treasurer may determine which is appropriated accordingly.

4.15 Assignment of benefit. No benefit payable under the scheme is capable of being assigned, charged, taken in execution, attached or passed by operation of law or otherwise howsoever to any person other than the member or the member's estate nor is any claim to be set off against the same and any moneys payable out of the fund on the death of the member is not assets for the payment of the member's debts or liabilities.

4.16 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.