

Queensland



**LOCAL GOVERNMENT
LEGISLATION
AMENDMENT ACT 1995**

Act No. 11 of 1995

Queensland



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Queensland



Local Government Legislation Amendment Act 1995

Act No. 11 of 1995

**An Act to amend legislation about local government, and for other
purposes**

[Assented to 5 April 1995]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Local Government Legislation Amendment Act 1995*.

Commencement

2. This Act (other than Part 3, sections 8, 9, 11, 13 and 15 and Part 5) commences on 1 July 1995.

PART 2—AMENDMENT OF CITY OF BRISBANE ACT 1924

Act amended

3. This Part amends the *City of Brisbane Act 1924*.

Replacement of s 23 (Superannuation benefits for councillors)

4. Section 23—

omit, insert—

‘Superannuation benefits for councillors

‘23.(1) In this section—

“**scheme**” means a superannuation scheme for councillors.

‘(2) The Council may—

(a) establish and amend a scheme; or

(b) join in establishing and amending a scheme; or

(c) take part in a scheme.

‘(3) However, the Council may not establish or take part in a scheme—

(a) under which the Council is required to contribute to the scheme for a person who has ceased to be a councillor; or

(b) that does not meet the requirements of the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

‘(4) If the Council acts under subsection (2), it may pay an amount from the City Fund by way of a subsidy or contribution to the scheme.’.

Replacement of s 25E (Superannuation scheme for employees)

5. Section 25E—

omit, insert—

‘Superannuation scheme for employees

‘25E.(1) In this section—

“**scheme**” means a superannuation scheme for Council employees.

‘(2) The Council may—

(a) establish and amend a scheme; or

(b) join in establishing and amending a scheme; or

(c) take part in a scheme.

‘(3) However, the Council may not establish or take part in a scheme that does not meet the requirements of the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

‘(4) If the Council acts under subsection (2), it may pay an amount from the City Fund by way of a subsidy or contribution to the scheme.’.

PART 3—AMENDMENT OF FIRE SERVICE ACT 1990

Act amended

6. This Part amends the *Fire Service Act 1990*.

Amendment of s 128A (Local government may make and levy certain rates or charges and contribute amounts raised to rural fire brigades)

7. Section 128A(2) and (3)—
omit.

PART 4—AMENDMENT OF LOCAL GOVERNMENT ACT 1993

Act amended

8. This Part amends the *Local Government Act 1993*.

Amendment of s 106 (Implementation of reviewable local government matter)

9.(1) Section 106(2)(d) to (i)—
renumber as section 106(2)(e) to (j).

(2) Section 106(2)—
insert—

‘(d) exempting a local government from the requirement to prepare and adopt a corporate or operational plan, and the application of this Act because of the exemption; or’.

Replacement of s 186 (Superannuation benefits for councillors)**10. Section 186—**

omit, insert—

‘Superannuation benefits for councillors

‘186.(1) In this section—

“audit”, of a superannuation scheme, means an audit required under the Commonwealth Superannuation Act.

“Commonwealth Superannuation Act” means the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

“scheme” means a voluntary superannuation scheme for councillors.

“standard permanent employee” has the meaning given by section 743A.

‘(2) A local government may—

- (a) establish and amend a scheme; or
- (b) join in establishing and amending a scheme; or
- (c) take part in a scheme.

‘(3) However, a local government may not establish or take part in a scheme—

- (a) under which the contribution to the scheme payable by the local government for its councillors (expressed as a percentage of payment in the nature of salary) is more than—
 - (i) for the year starting 1 July 1995—11%; or
 - (ii) for the year starting 1 July 1996—11.5%; or
 - (iii) for each later year—12%;¹ or
- (b) under which the proportion of contribution to the scheme payable by the local government for its councillors is more or less than

¹ The percentages mentioned in the paragraph represent local governments' liability for standard permanent employees under section 743M(2)(b) (Local governments' liability for permanent employees) less standard permanent employees' liability under section 743N(b) (Permanent employees' liability for contributions).

the proportion of contribution to the Local Government Superannuation Scheme payable by the local government for its standard permanent employees; or

- (c) under which the local government is required to contribute to the scheme for a person who has ceased to be a councillor; or
- (d) that does not meet the requirements of the Commonwealth Superannuation Act.

‘(4) If a local government acts under subsection (2), it may pay an amount from its operating fund by way of a subsidy or contribution to the scheme.

‘(5) An audit of a superannuation scheme established by a local government (whether alone or with another local government) must be carried out by the Auditor-General.’.

Amendment of s 406 (Exemptions)

11. Section 406—

insert—

‘(1A) An exemption under subsection (1)(c) may be given subject to conditions.’.

Insertion of new Ch 12A

12. After Chapter 12—

insert—

‘CHAPTER 12A—SUPERANNUATION

‘PART 1—INTERPRETATION

‘Definitions

‘743A. In this Chapter—

“**approved scheme**” see section 743U.

“audit”, of a superannuation scheme, means an audit required under the Commonwealth Superannuation Act.

“Board” means the Queensland Local Government Superannuation Board.

“Commonwealth Superannuation Act” means the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

“contributory member”, of the scheme, means a member who is required to make contributions for membership of the scheme.

“election notice”, for an employee of a local government, means a written notice given to the local government and Board by the employee electing to become a permanent employee for this Chapter.

“eligible member” see section 743L(1).

“employees’ scheme” means the Local Government Employees’ Superannuation Scheme under the repealed Act.

“local government” includes a local government entity.

“local government entity” means an entity—

- (a) that—
 - (i) under an Act, exercises a power similar to a local government power; or
 - (ii) under an Act, exclusively performs a function in relation to the system of local government in Queensland; or
 - (iii) exclusively exercises a local government power for a local government; and
- (b) that is prescribed under the regulations to be a local government entity for this Chapter.

“local government power” means a power that may be exercised by a local government in exercising its jurisdiction of local government.

“member” means a member of the scheme.

“non-contributory member”, of the scheme, means a member who is not required to make contributions for membership of the scheme.

“permanent employee”, of a local government, see section 743B.

“prescribed number”, of directors, see section 743I(1).

“relevant person” means a person (other than an eligible member) who—

- (a) works for, or provides a service to, a local government; and
- (b) is prescribed under the regulations as a relevant person.

“relevant persons scheme” means a superannuation scheme providing superannuation, retirement or other similar benefits for relevant persons.

“repealed Act” means the *Local Government Superannuation Act 1985*.

“salary”, of an employee, means the employee’s salary under the trust deed.

“scheme” means the Local Government Superannuation Scheme.

“special permanent employee”, of a local government, means a permanent employee who, immediately before the commencement, was required under the repealed Act to make contributions for membership of the employees’ scheme at the rate of 5% of the employee’s salary.

“standard permanent employee”, of a local government, means a permanent employee who—

- (a) immediately before the commencement, was required under the repealed Act to make contributions for membership of the employees’ scheme at the rate of 6% of the employee’s salary; or
- (b) starts employment after the commencement.

“trust deed” see section 743K(2).

‘Meaning of “permanent employee”

‘743B.(1) A **“permanent employee”** of a local government (other than a local government entity) is an employee of the local government who—

- (a) has been continuously employed by the local government, or the local government and other local governments consecutively, for at least 1 year; or
- (b) has—
 - (i) been continuously employed by the local government, or the local government and other local governments

consecutively, for less than 1 year; and

(ii) given an election notice to the local government and Board.

‘(2) However, if an employee is solely employed by a local government to carry out work on a particular job or project and the employee’s employment is dependent on the time taken to carry out the job or project, the employee is not a permanent employee.

‘(3) For subsection (1), an employee is not continuously employed if—

- (a) the employee’s employment is broken by at least 60 consecutive days when the employee was not employed, and is not in a position to accept an offer of employment, by a local government; or
- (b) the Board is satisfied the employee is no longer employed by a local government and has no intention of taking up employment with a local government.

‘(4) An employee of a local government entity is also a permanent employee if the entity declares the employee to be a permanent employee for this Chapter by written notice given to the Board.

‘PART 2—QUEENSLAND LOCAL GOVERNMENT SUPERANNUATION BOARD

‘Division 1—Establishment, functions and powers of Board

‘Establishment of Board

‘743C. The board established under the repealed Act is continued in existence under the name, Queensland Local Government Superannuation Board.

‘Legal status of Board

‘743D.(1) The Board—

- (a) is a body corporate; and
- (b) has a seal; and
- (c) may sue and be sued in its corporate name.

‘(2) Judicial notice must be taken of the imprint of the Board’s seal appearing on a document and the document must be presumed to have been properly sealed unless the contrary is established.

‘Board’s functions

‘743E. The Board’s functions are—

- (a) to act as trustee of the scheme; and
- (b) to manage approved schemes; and
- (c) to act as trustee of, and establish and act as trustee of, relevant persons schemes.

‘Board’s powers

‘743F.(1) The Board may do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

‘(2) Without limiting subsection (1), the Board—

- (a) has the powers given to it by this Chapter; and
- (b) has, in the performance of its functions, all the powers of an individual.

‘(3) It may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with and dispose of property.

‘Division 2—Board of directors

‘Board of directors

‘743G. There is a board of directors of the Board.

‘Role of the board of directors

‘743H.(1) The board of directors is responsible for how the Board performs its functions and exercises its powers.

‘(2) Without limiting subsection (1), it is the role of the board of directors to ensure the Board performs its functions in a proper, effective and efficient way.

‘Composition of board of directors

‘743I.(1) In this section—

“prescribed number” of directors means 3 or, if another number is prescribed under the regulations, the other number.

‘(2) The board of directors is to consist of—

- (a) the prescribed number of directors appointed on the nomination of the Local Government Association; and
- (b) the prescribed number of directors appointed on the nomination of members of the scheme; and
- (c) if the trust deed provides for the appointment of an additional independent director and an independent director is appointed—the appointed independent director.

‘(3) The directors must be appointed under rules established to comply with the Commonwealth Superannuation Act.²

‘Division 3—General**‘Delegation of Board’s powers**

‘743J. The Board may delegate its powers to an employee of the Board.

² See sections 107 (Duty of trustee of employer-sponsored fund to establish procedure for appointing member representatives) and 108 (Duty of trustee of employer-sponsored fund to establish procedure for appointing independent trustee or independent member of board of directors of corporate trustee).

‘PART 3—LOCAL GOVERNMENT SUPERANNUATION SCHEME

‘Division 1—Continuation and membership of scheme

‘Scheme continued

‘743K.(1) The Local Government Employees’ Superannuation Scheme established under the repealed Act is continued in existence under the name, Local Government Superannuation Scheme.

‘(2) Rules governing the operation of the scheme must be set out in a trust deed made by the Board (the **“trust deed”**).

‘(3) Without limiting subsection (2), the trust deed must contain provision about matters that, under the Commonwealth Superannuation Act, must be contained in the governing rules of regulated funds within the meaning of that Act.

‘Membership of scheme

‘743L.(1) The following persons are eligible to be members of the scheme (**“eligible members”**)—

- (a) a councillor of a local government;
- (b) an employee of a local government or the Board;
- (c) a contractor of a local government;
- (d) a member of the governing body of a local government entity;
- (e) another person for whom a local government or the Board is required under the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) to contribute to a superannuation scheme;
- (f) another person prescribed under the regulations.

‘(2) An employee of a local government (other than a local government entity) or the Board must be a member of the scheme.

‘Division 2—Contributions for permanent employees**‘Local governments’ liability for permanent employees**

‘743M.(1) A local government that employs a permanent employee must pay to the scheme yearly contributions for the employee within the time stated in the trust deed.

‘(2) The yearly contributions for the employee are calculated at the following rates—

- (a) if the employee is a special permanent employee—
 - (i) for the year starting 1 July 1995—15% of the employee’s salary; or
 - (ii) for the year starting 1 July 1996—15.5% of the employee’s salary; or
 - (iii) for each later year—16% of the employee’s salary;
- (b) if the employee is a standard permanent employee—
 - (i) for the year starting 1 July 1995—17% of the employee’s salary; or
 - (ii) for the year starting 1 July 1996—17.5% of the employee’s salary; or
 - (iii) for each later year—18% of the employee’s salary.

‘(3) The yearly contributions include contributions required to be paid to the scheme for the member under an industrial agreement or award.

‘Permanent employees’ liability for contributions

‘743N. A permanent employee of a local government for whom the local government is required to pay yearly contributions to the scheme must pay to the local government yearly contributions calculated at the following rate—

- (a) if the employee is a special permanent employee—5% of the employee’s salary;

- (b) if the employee is a standard permanent employee—6% of the employee's salary.

‘Additional contributions to scheme

‘743O.(1) A member, or local government for a member, may make additional contributions to the scheme to secure additional benefits under the trust deed.

‘(2) Subsection (1) has effect subject to section 186.³

‘Contributions may be deducted from employees’ salaries

‘743P.(1) A local government may deduct the amount of an employee's contributions or any part of them from the employee's salary or other amount owing to it by the employee.

‘(2) Subsection (1) applies despite any other Act.

‘Adjustment of contributions because of change in salary

‘743Q.(1) The Board may, by written notice given to a local government, require the local government to give the Board the salary details for each of the local government's permanent employees as at 1 January or 1 July in a stated year.

‘(2) The local government must comply with the notice.

‘(3) If a permanent employee's salary has changed, the Board must—

- (a) calculate the yearly contributions payable for the employee based on the employee's new salary; and
- (b) give written notice of the amount of contributions payable for the employee to the local government.

‘(4) The contributions stated in the notice become payable for the employee from the time stated in the notice.

‘(5) However, if the employee's salary has decreased and the employee gives written notice to the Board that the employee wants to pay

³ Section 186 (Superannuation benefits for councillors)

contributions as if the employee's salary had not decreased, the Board must calculate the yearly contributions payable for the employee based on the employee's former salary.

'(6) The employee's notice must be given within the time stated in the trust deed.

'Division 3—Contributions for non-contributory members

'Local governments' liability for non-contributory members

'743R.(1) A local government that employs a non-contributory member must pay to the scheme all superannuation contributions required to be paid to the scheme for the member under an industrial agreement or award.

'(2) A local government (other than a local government entity) that employs a non-contributory member must pay to the scheme all superannuation contributions required to be paid for the member under an Act of the State or Commonwealth.

'Division 4—General

'Interest payable on outstanding contributions

'743S.(1) If a local government does not pay an amount to the scheme within the time stated under the trust deed, interest is payable on the amount by the local government to the scheme.

'(2) Interest is payable at the rate prescribed under the regulations and calculated on a daily basis.

'(3) However, the Board may waive the payment of interest.

‘PART 4—MISCELLANEOUS

‘Prohibition on local governments establishing certain superannuation schemes

‘743T.(1) A local government must not establish or join in establishing a superannuation scheme for the benefit of its employees.⁴

‘(2) Subsection (1) does not apply to a local government entity.

‘Management of other superannuation schemes

‘743U. With the Governor in Council’s approval, the Board may manage another superannuation scheme (an **“approved scheme”**) for the scheme’s trustee.

‘Relevant persons superannuation schemes

‘743V. With the Governor in Council’s approval, the Board may—

- (a) act as trustee of a relevant persons scheme; or
- (b) establish, and act as trustee of, a relevant persons scheme.

‘Auditor-General’s role

‘743W. An audit of a superannuation scheme for which the Board acts as trustee must be carried out by the Auditor-General.

‘Application of Chapter to Board’s employees

‘743X. For eligible members who are Board employees, this Chapter applies to the Board with all necessary changes and any changes prescribed under the regulations.’.

⁴ For superannuation schemes for councillors, see section 186 (Superannuation benefits for councillors).

Replacement of s 773 (Corporate and operational plans)**13.** Section 773—*omit, insert—***‘Corporate and operational plans****‘773.(1)** In this section—**“new local government”** means a local government for a new local government area created under—

- (a) the *Local Government (Albert, Beaudesert and Gold Coast) Regulation 1994*; or
- (b) the *Local Government (Brisbane, Esk, Ipswich, Logan and Moreton) Regulation 1994*; or
- (c) the *Local Government (Cairns, Douglas, Mareeba and Mulgrave) Regulation 1994*.

‘(2) Despite Chapter 7, Part 2,⁵ a new local government is not required to prepare and adopt a corporate or operational plan for the year ending 30 June 1996.**‘(3)** Sections 433(1) and (2) and 449⁶ do not apply to a new local government.**‘(4)** Subsections (1) to (3) are laws to which section 20A of the *Acts Interpretation Act 1954* applies.**‘(5)** This section expires on 1 July 1995.’.**Insertion of new Ch 14, Pt 1, Div 11A****14.** After Chapter 14, Part 1, Division 11 —*insert—*

⁵ Chapter 7 (Financial operation and accountability of local governments), Part 2 (Corporate and operational plans)

⁶ Sections 433 (Requirements of budgets) and 449 (Content of report about implementing corporate and operational plans)

‘Division 11A—Local Government Superannuation***‘Subdivision A—Interpretation*****‘Definition**

‘798A. In this Division—

“relevant persons plan” means the Local Government Superannuation (Relevant Persons) Plan established under the repealed Act.

‘Meaning of expressions used in Ch 12A

‘798B. An expression that is not defined in this Division, but is defined in Chapter 12A, has the meaning given in Chapter 12A.

‘Subdivision B—Local Government Superannuation Board**‘First board of directors**

‘798C. The appointment, under Part 5 of the repealed Act, of the first board of directors of the Board starts on the commencement.

‘Assets and liabilities of Board

‘798D. The assets and liabilities of the Board immediately before the commencement continue to be the assets and liabilities of the Board.

‘Board’s employees

‘798E. The continuation of the Board under Chapter 12A does not affect—

- (a) the continuity of employment of a person who, immediately before the commencement, was an employee of the Board and who continues to be an employee of the Board; and
- (b) the person’s entitlements as an employee.

‘Continuation of Board does not affect legal personality etc.

‘798F.(1) The change of name and continuation of the Board under Chapter 12A does not—

- (a) affect the legal personality or identity of the Board; or
- (b) affect rights or obligations of the Board or anyone else; or
- (c) make legal proceedings by or against the Board defective.

‘(2) If a legal proceeding might have been continued or started by or against the Board before the commencement, the proceeding may be continued or started by or against the Board after the commencement.

‘Subdivision C—Local Government Employee’s Superannuation Scheme and relevant persons plan

‘Assets and liabilities of scheme

‘798G. The assets and liabilities of the scheme immediately before the commencement continue to be the assets and liabilities of the scheme.

‘Trust deed

‘798H. On the commencement, the trust deed made under Part 5 of the repealed Act is the trust deed for the scheme.

‘Continuation of scheme does not affect members’ entitlements

‘798I. The change of name and continuation of the scheme under Chapter 12A does not affect members’ entitlements accrued under the scheme.

‘Members of relevant persons plan become members of scheme

‘798J. On the commencement, a person who, immediately before the commencement, was a member of the relevant persons plan—

- (a) ceases to have any entitlement under the plan; and
- (b) becomes a member of the scheme, with all the entitlements

accrued under the plan immediately before the commencement continuing to be the member's entitlements under the scheme.

'Assets and liabilities of relevant persons plan

'798K. On the commencement—

- (a) the assets and liabilities of the relevant persons plan become assets and liabilities of the scheme; and
- (b) all rights, entitlements and obligations of the relevant persons plan under contracts and arrangements between the Board and other persons become the rights, entitlements and obligations of the scheme.

'Subdivision D—Miscellaneous

'Local government entities

'798L. An entity declared under section 6 of the repealed Act to be a local government for the repealed Act is taken to be a local government entity.

'Expiry of Division

'798M. This Division expires the day after the commencement.'

Amendment of s 800 (Transitional regulations)

15. Section 800(1)(a), after 'operation of'—

insert—

'the *Local Government Superannuation Act 1985* (whether before or after its repeal) or'.

PART 5—AMENDMENT OF LOCAL GOVERNMENT SUPERANNUATION ACT 1985

Act amended

16. This Part amends the *Local Government Superannuation Act 1985*.

Insertion of new Pt 5

17. After Part 4—

insert—

‘PART 5—BOARD’S DUTIES IN RELATION TO EXPANDED SUPERANNUATION SCHEME

‘Definitions

‘69. In this Part—

“Commonwealth Superannuation Act” means the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

“continuing Board” means the Local Government Superannuation Board under the new legislation.

“existing schemes” means the Scheme and the Local Government Superannuation (Relevant Persons) Plan established under this Act.

“expanded scheme” means the Scheme expanded under the new legislation to include members of the relevant persons plan as members.

“new legislation” means Chapter 12A of the *Local Government Act 1993*.

“member representatives” has the meaning given under the Commonwealth Superannuation Act.

“relevant persons plan” means the Local Government Superannuation (Relevant Persons) Plan established under this Act.

“transfer day” means 1 July 1995.

‘Board to make trust deed for expanded scheme

‘**70.(1)** Within 30 days after the commencement, the Board must make a trust deed for the expanded scheme to operate from the transfer day.

‘**(2)** The trust deed must—

- (a) comply with the new legislation; and
- (b) contain provisions about matters that, under the Commonwealth Superannuation Act, must be contained in the governing rules of regulated funds within the meaning of that Act.

‘**(3)** Under the trust deed, the entitlements of members accrued under the existing schemes must continue to be their entitlements under the expanded scheme.

‘**(4)** The trust deed must establish rules for the appointment and removal of the member representatives of the first board of directors of the continuing Board.

‘**(5)** The rules must comply with section 107 of the Commonwealth Superannuation Act.⁷

‘**(6)** To remove any doubt, it is declared that nothing in this section prevents the Board from amending the trust deed before the transfer day.

‘Appointment of board of directors

‘**71.(1)** For bringing the expanded scheme into operation on the transfer day, the Board must ensure the first board of directors of the continuing Board is appointed before the transfer day for effect from that day.

‘**(2)** The appointment of the first board of directors does not confer a right, or impose a liability, on the directors before the transfer day.’.

⁷ Section 107 (Duty of trustee of employer-sponsored fund to establish procedure for appointing member representatives)

PART 6—REPEALS

Acts repealed

18. The following Acts are repealed—

- Local Government Superannuation Act 1985 No. 98
- Local Government Superannuation Act Amendment Act 1987 No. 81
- Local Government Superannuation Act Amendment Act 1989 No. 48
- Local Government Superannuation Amendment Act 1992 No. 30
- Local Government Superannuation Amendment Act (No. 2) 1992 No. 51.