

Queensland



GOVERNORS (SALARY AND PENSIONS) ACT 2003

Act No. 23 of 2003

Queensland



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Queensland



Governors (Salary and Pensions) Act 2003

Act No. 23 of 2003

An Act to provide for the salary payable to a person holding the office of Governor of the State of Queensland, the pensions payable to former Governors and their surviving partners, the ending of entitlements to pensions, and for related purposes

[Assented to 16 May 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Governors (Salary and Pensions) Act 2003*.

2 Dictionary

The dictionary in the schedule defines particular words used in this Act.

PART 2—SALARY

3 Salary of Governor

A salary is payable to the Governor at the rate prescribed under a regulation.

4 Salary of Acting Governor

(1) For the period when a person is an Acting Governor, a salary is payable to the person at the rate payable to the Governor.

(2) However, the amount of the salary payable under subsection (1) to a person is to be reduced, including to zero, by the amount of salary payable for the same period to the person as the Lieutenant-Governor, the Chief Justice or a Supreme Court judge.¹

¹ See the *Constitution of Queensland 2001*, section 41(3) for the persons who must administer the Government of the State as Acting Governor.

PART 3—PENSIONS

Division 1—Introductory

5 Purposes of part

The purposes of this part are to provide for—

- (a) the entitlement of a former Governor to a pension; and
- (b) the entitlement of a surviving partner of a deceased Governor to a pension; and
- (c) the rates of the pensions payable; and
- (d) other matters relevant to the entitlement to pensions and the rate of pensions.

6 Other divisions in this part

(1) Division 2 sets out the entitlement to, and rates of, pensions payable.

(2) Division 3 sets out provisions that may affect the entitlement to, and amounts of, pensions payable.

(3) Division 4 sets out provisions that may result in the ending of an entitlement to a pension.

(4) The provisions in division 2 are subject to the provisions in divisions 3 and 4, and the provisions in division 3 are subject to the provisions in division 4.

Division 2—Entitlements and rates of pensions payable

7 Pension relating to Governor appointed after commencement

(1) This section applies to a person appointed Governor after the commencement of this section who is an Australian citizen at the time of appointment.

(2) When the person ceases to hold the office, a pension is payable to the person for the person's lifetime if—

- (a) the person has held the office for 5 years or more; or

(b) the Minister declares, under section 11,² that the person is entitled to a pension under this subsection.

(3) The rate of the pension is equal to 35% of the rate of salary payable to the person as Governor immediately before the person ceases to hold the office.

(4) If the person dies while holding the office, a pension is payable to the person's surviving partner for the surviving partner's lifetime at the rate equal to five-eighths of the rate of pension that would have been payable to the person if the person—

- (a) ceased to hold the office immediately before the death; and
- (b) had been entitled to a pension on ceasing to hold the office.

(5) If the person dies after ceasing to hold the office and, immediately before the death, a pension is payable under subsection (2) to the person, a pension is payable to the person's surviving partner for the surviving partner's lifetime at a rate equal to five-eighths of the amount of the pension payable to the person immediately before the death.

8 Pension relating to Governor holding office immediately before commencement

(1) This section applies to the person holding the office immediately before the commencement of this section.

(2) When the person ceases to hold the office, a pension is payable to the person for the person's lifetime at a rate equal to 60% of the rate of salary payable to the person as Governor immediately before the person ceases to hold the office.

(3) If the person dies while holding the office, a pension is payable to the person's surviving partner for the surviving partner's lifetime at the rate equal to five-eighths of the rate of pension that would have been payable to the person if the person—

- (a) ceased to hold the office immediately before the death; and
- (b) had been entitled to a pension on ceasing to hold the office.

(4) If the person dies after ceasing to hold the office and, immediately before the death, a pension is payable to the person, a pension is payable to the person's surviving partner for the surviving partner's lifetime at a rate

2 Section 11 (If Governor ceases to hold office within 5 years of appointment)

equal to five-eighths of the amount of the pension payable to the person immediately before the death.

9 Provisions relating to each former Governor to whom a pension is payable before commencement

(1) This section applies to each former Governor to whom a pension is payable immediately before the commencement of this section.

(2) The former Governor continues to be entitled to be paid the pension for the former Governor's lifetime.

(3) The amount of the pension payable continues to be the amount of the pension payable to the former Governor immediately before the commencement.

(4) When the former Governor dies, a pension is payable to the former Governor's surviving partner for the surviving partner's lifetime at a rate equal to five-eighths of the amount of pension payable to the former Governor immediately before the death.

10 Provisions relating to each surviving partner of deceased Governor, to whom a pension is payable before commencement

(1) This section applies to each surviving partner of a deceased Governor if a pension was payable to the surviving partner immediately before the commencement of this section.

(2) The surviving partner continues to be entitled to be paid the pension for the surviving partner's lifetime.

(3) The amount of the pension payable to the surviving partner continues to be the amount of the pension payable to the surviving partner immediately before the commencement.

Division 3—Provisions that may affect pension entitlement or amount of pensions

11 If Governor ceases to hold office within 5 years of appointment

(1) A person who held the office for less than 5 years may apply to the Minister for the payment of a pension under section 7(2) on the ground that

the person was, immediately before ceasing to hold the office, incapable of performing the duties of the office.

(2) The Minister may declare that the person is entitled to a pension under section 7(2) if the Minister is satisfied the person ceased to hold the office because, at the time of ceasing to hold the office, the person was incapable of performing the duties of the office.

(3) If the Minister decides that the person ceased to hold the office for a reason other than the person was incapable of performing the duties of the office, the Minister must give the person written reasons for the decision.

12 Election for lump sum to meet surcharge liability

(1) This section applies to each of the following persons—

- (a) a former Governor to whom a pension is payable;
- (b) a surviving partner of a person who died while holding the office if a pension is payable after the death to the surviving partner.

(2) The person may elect to be paid a lump sum, instead of a part of the pension payable.

(3) The maximum amount that may be paid as a lump sum under the election is the amount of the surcharge liability attributable to holding the office.

(4) The election must be—

- (a) made in writing to the Minister; and
- (b) accompanied by a copy of the surcharge liability notice stating the amount of the surcharge liability.

(5) The Minister must act on the election by reducing the pension by the amount of the lump sum.

(6) The reduction must happen in the way decided by the Minister on the advice of an actuary.

(7) In this section—

“surcharge liability” means the amount a person is liable to pay to the commissioner of taxation, under the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* (Cwlth), section 15.

“**surcharge liability notice**” means a notice given to a person by the commissioner of taxation, under the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* (Cwlth), section 15.

13 Minimum benefit payable

(1) This section applies in relation to each of the following persons—

- (a) a person who ceases to hold the office;
- (b) a person who dies while holding the office.

(2) If an actuary approved by the Minister decides there is an entitlement to a minimum benefit for the person, the minimum benefit must be paid to an approved deposit fund, or a superannuation fund, nominated by or for the person, despite another provision of this Act.

(3) In this section—

“**approved deposit fund**” see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10.³

“**minimum benefit**” means the amount of payment, pension or preserved benefit entitlement that is necessary to ensure a superannuation guarantee charge is not imposed on the State under the *Superannuation Guarantee Charge Act 1992* (Cwlth).

“**superannuation fund**” see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10.⁴

3 *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10—

approved deposit fund means a fund that—

- (a) is an indefinitely continuing fund; and
- (b) is maintained by an approved trustee solely for approved purposes.

4 *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10—

superannuation fund means—

- (a) a fund that:
 - (i) is an indefinitely continuing fund; and
 - (ii) is a provident, benefit, superannuation or retirement fund; or
- (b) a public sector superannuation scheme.

14 Competing claims for pension as surviving partner

(1) This section applies to a pension payable to a surviving partner of a deceased Governor if the appointment as Governor was made on or after 29 July 1997.

(2) If, apart from this subsection, the pension would be payable to more than 1 surviving partner because the deceased Governor left more than 1 surviving partner—

- (a) the pension is payable as decided by the Minister after consultation with the member who is recognised in the Legislative Assembly as the Leader of the Opposition; and
- (b) the total amount of pension payable to the surviving partners at any time must be equal to the amount of the pension that would have been payable if the deceased Governor left only 1 surviving partner.

(3) For subsection (2)(a), the Minister may decide—

- (a) that the pension is not payable to 1 or some, but not all, of the surviving partners; or
- (b) subject to subsection (2)(b), how the amount of the pension is to be apportioned between the surviving partners.

(4) For subsection (3), the Minister must have regard to the needs of each of the surviving partners and other matters the Minister reasonably considers relevant.

15 Indexation

(1) This section applies to a pension payable to a person during a financial year if the pension was payable to the person immediately before the start of the financial year.

(2) After the start of the financial year, the Minister must reassess the amount of the pension and either increase it or maintain it at the same level as in the previous financial year, as follows—

- (a) if the June index for the previous financial year is higher than the last adjustment index for the pension, the pension must be increased by the percentage increase between the 2 indexes;
- (b) otherwise, the pension remains the same.

(3) If the pension for the financial year is increased under the reassessment, the pension is payable to the person at the increased level from 1 July in the financial year and increased payments must begin from the first full pay period in August in that financial year.

(4) A percentage increase between 2 indexes under subsection (2)(a) must be calculated to 1 decimal place by increasing the percentage to the next highest single decimal place.

(5) In this section—

“June index”, for a financial year, means the all groups consumer price index for Brisbane, published by the Australian Statistician, for the last quarter of the financial year.

“last adjustment index”, for a pension, means—

- (a) if the pension has ever been increased under this section or repealed section 4, the June index for the financial year immediately before the financial year in which the pension was last increased under this section or repealed section 4; or
- (b) otherwise, the June index for the financial year immediately before the financial year in which the pension began to be payable.

“repealed section 4” means the *Governors’ Pensions Act 1977*, section 4 as in force before the commencement of this section.

16 Reduction of pension payable if other relevant entitlement

(1) This section applies if—

- (a) a pension would, apart from this section, be payable to a former Governor for a financial year; and
- (b) a relevant entitlement is payable to the former Governor for the financial year.

(2) If the amount of the relevant entitlement for the financial year is—

- (a) less than the amount of the pension that would be payable for the financial year, the amount of the pension that would be payable must be reduced for the financial year by the amount of the relevant entitlement; or

- (b) the same as or more than the amount of the pension that would be payable for the financial year, a pension is not payable for the financial year.

(3) In this section—

“relevant entitlement” means a pension or retiring allowance payable, whether under a law or otherwise, out of moneys wholly or partially provided by the State, the Commonwealth or another State in relation to a remunerative activity undertaken by a former Governor before the person held the office, and does not include an amount payable by way of pension, benefit or allowance under—

- (a) the *Veterans’ Entitlements Act 1986* (Cwlth); or
- (b) the *Social Security Act 1991* (Cwlth); or
- (c) another Act of the State, the Commonwealth or another State that is prescribed under a regulation for this section.

Division 4—Provisions that may result in end of entitlements to pensions

17 Definitions for div 4

In this division—

“accountable Governor” means either of the following—

- (a) a former Governor if—
 - (i) the former Governor is entitled to a pension, including a former Governor appointed to the office before the commencement of this section; and
 - (ii) there is a finding of an established tribunal that the former Governor misbehaved in a way that justifies ending the entitlement as mentioned in section 18(2), including misbehaviour before, during or after the appointment to the office;
- (b) a deceased Governor if—
 - (i) the deceased Governor was, immediately before the death, entitled to a pension, including a deceased Governor who was appointed to the office before the commencement of this section; and

- (ii) there was an appointment resolution in relation to the deceased Governor before the death; and
- (iii) there is a finding that the deceased Governor misbehaved in a way that would justify ending the prescribed entitlement as mentioned in section 18(2), including misbehaviour before, during or after the appointment to the office.

“appointment resolution” means a resolution of the Legislative Assembly, appointing the members of an established tribunal.

“established tribunal” means a tribunal established under an Act as mentioned in section 18(3)(a).

“lump sum” means an amount paid in relation to a former Governor—

- (a) under section 12; or
- (b) under the *Governors’ Pensions Act 1977*, section 5A, as in force before the commencement of this section.

“prescribed entitlement” means either of the following but does not include an entitlement to a payment under section 13⁵—

- (a) when used in relation to a former Governor—the former Governor’s entitlement to a pension under this Act;
- (b) when used in relation to a deceased Governor—the entitlement of a surviving partner of the deceased Governor to a pension under this Act.

18 Entitlement to pension may end

(1) A prescribed entitlement ends if the Legislative Assembly resolves that there is proved misbehaviour justifying ending the prescribed entitlement.

(2) Misbehaviour justifying ending a prescribed entitlement is proved only if the Legislative Assembly accepts a finding of an established tribunal, stated in a report of the established tribunal, that, on the balance of probabilities, the accountable Governor misbehaved in a way that justifies ending the prescribed entitlement.

(3) A tribunal relating to a former Governor—

5 Section 13 (Minimum benefit payable)

- (a) is to be established under an Act and has the functions, powers, protection and immunity given under an Act; and
- (b) is to consist of at least 3 members, appointed by appointment resolution.

(4) A person may be appointed to the established tribunal relating to a former Governor only if—

- (a) the person is a former judge or justice of a State or Federal superior court in Australia; and
- (b) the person and the former Governor were not members of the same court at the same time.

(5) The established tribunal must report to the Legislative Assembly whether, on the balance of probabilities, the accountable Governor misbehaved in a way that justifies ending the prescribed entitlement.

(6) For this section, each of the following is not relevant—

- (a) when an accountable Governor was appointed to the office;
- (b) when the misbehaviour took place;
- (c) the death of a person who, immediately before the death, was a former Governor to whom an appointment resolution related.

Example for subsection (6)—

A tribunal may be established about a former Governor appointed before this section commenced relating to the former Governor's behaviour that took place before, during or after the person held the office. The established tribunal may make a report about the former Governor even though the former Governor dies before the established tribunal makes its report.

19 Amounts previously paid as pension or lump sum if accountable Governor's entitlement ends

(1) Either or both of the following may include a provision about recovering all or a stated part of an amount paid to or for an accountable Governor as a pension or as a lump sum—

- (a) a resolution of the Legislative Assembly under section 18(1);
- (b) a report of an established tribunal under section 18(5).

(2) If a resolution under section 18(1) provides that a stated amount is to be recovered, that amount is a debt due to the State and may be recovered in a way prescribed under a regulation.

PART 4—MISCELLANEOUS MATTERS

20 Accrual and payment of pensions

A pension accrues daily and is payable fortnightly or, subject to the Treasurer's approval, at other intervals.

21 Appropriation

(1) This section applies to amounts payable—

- (a) under part 2 as salary; and
- (b) under part 3 as a pension, lump sum stated in an election under section 12⁶ or other form of payment.

(2) The amounts are payable out of the consolidated fund, which is appropriated to the extent necessary.

22 Minister is manager for Commonwealth Act

(1) This section applies for the *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997* (Cwlth), section 38, definition “trustee” in relation to the scheme as a constitutionally protected superannuation fund under the Commonwealth Act.

(2) The Minister is taken to manage the scheme.

(3) In this section—

“**scheme**” means the scheme established by this Act for providing pensions to former Governors and the surviving partners of deceased Governors.

23 Regulation-making power

The Governor in Council may make regulations under this Act.

6 Section 12 (Election for lump sum to meet surcharge liability)

PART 5—TRANSITIONAL PROVISIONS

24 Salary payable to Governor immediately before commencement

(1) This section applies to the person who holds the office immediately before the commencement of this section.

(2) The salary payable to the person immediately before the commencement continues to be the salary payable to the person as Governor, despite section 3.⁷

25 No entitlement to pension if no pension payable under the Governors' Pensions Act 1977

If, immediately before the commencement of this section, a pension under the *Governors' Pensions Act 1977* was not payable to a former Governor or a surviving partner of a deceased Governor, a pension does not become payable to the former Governor or surviving partner on the commencement.

PART 6—REPEALS

26 Repeal of Acts

The following Acts are repealed—

- *Governors' Pensions Act 1977* No. 1
- *Governor's Salary Act 1872* 36 Vic No. 9.

⁷ Section 3 (Salary of Governor)

SCHEDULE

DICTIONARY

section 2

“accountable Governor”, for part 3, division 4, see section 17.

“actuary” means a person with actuarial knowledge and experience.

“appointment resolution”, for part 3, division 4, see section 17.

“cease to hold the office” does not including dying while holding the office.

“deceased Governor” means—

- (a) a person who died while holding the office; or
- (b) a person who died after the person ceased to hold the office.

“established tribunal”, for part 3, division 4, see section 17.

“former Governor” means a person who held the office but who is not deceased.

“Governor” means the person holding the office.

“lump sum” see section 17.

“office” means the office of Governor of the State of Queensland.

“payable”, relating to a pension, means payable under this Act, including continuing to be payable under this Act.

“prescribed entitlement”, for part 3, division 4, see section 17.

“surviving partner” means the following—

- (a) a person who was married to a deceased Governor at the time of the deceased Governor’s death;
- (b) a defacto partner of a deceased Governor if before the death of the deceased Governor—
 - (i) the defacto partner and the Governor or former Governor had a defacto relationship for a continuous period of at least 2 years ending on the death; or

SCHEDULE (continued)

- (ii) the defacto partner and the Governor or former Governor had a defacto relationship for a shorter period ending on the death but the circumstances of the defacto relationship evidenced a clear intention that the relationship be a long term, committed relationship.