

Queensland



**SUPERANNUATION
LEGISLATION AMENDMENT
ACT 2003**

Act No. 93 of 2003

Queensland



SUPERANNUATION LEGISLATION AMENDMENT ACT 2003

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**Superannuation Legislation Amendment
Act 2003**

Act No. 93 of 2003

An Act to amend the *Parliamentary Contributory Superannuation Act 1970* and the *Superannuation (State Public Sector) Act 1990*

[Assented to 3 December 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Superannuation Legislation Amendment Act 2003*.

2 Commencement

(1) The following provisions commence on assent—

- part 2, heading
- section 3
- section 4 (to the extent it inserts the definitions “Family Law Act” and “service”)
- section 5A
- section 6 (to the extent it inserts new part 3A heading, new section 25E, other than the definitions “agreement”, “approved deposit fund”, “court order”, “entitled former spouse”, “operative time”, “State Public Sector Superannuation Fund” and “superannuation fund”, and new section 25F, other than subsections (3) and (4)).

(2) The remaining provisions commence on a day to be fixed by proclamation.

PART 2—AMENDMENT OF PARLIAMENTARY CONTRIBUTORY SUPERANNUATION ACT 1970

3 Act amended in pt 2

This part amends the *Parliamentary Contributory Superannuation Act 1970*.

4 Amendment of s 5 (Definitions)

Section 5—

insert—

‘**“agreement”**, for part 3A, see section 25E.

“approved deposit fund”, for part 3A, see section 25E.

“court order”, for part 3A, see section 25E.

“entitled former spouse”, for part 3A, see section 25E.

“Family Law Act”, for part 3A, see section 25E.

“operative time”, for part 3A, see section 25E.

“service”, for part 3A, see section 25E.

“State Public Sector Superannuation Fund”, for part 3A, see section 25E.

“superannuation fund”, for part 3A, see section 25E.’.

5 Insertion of new s 5C

Part 1, after section 5B—

insert—

‘5C Notes in text

‘A note in the text of this Act is part of this Act.’.

5A Amendment of s 25C (Superannuation contributions surcharge)

Section 25C(3)—

omit, insert—

‘**(3)** The maximum amount that the trustees may deduct is the total of the following amounts—

- (a) 15% of the State-financed component of the part of the benefit that accrued after 20 August 1996 and before 1 July 2003;
- (b) 14.5% of the State-financed component of the part of the benefit that accrued after 30 June 2003 and before 1 July 2004;
- (c) 13.5% of the State-financed component of the part of the benefit that accrued after 30 June 2004 and before 1 July 2005;

- (d) 12.5% of the State-financed component of the part of the benefit that accrued after 30 June 2005.’.

6 Insertion of new pt 3A

After section 25D—

insert—

‘PART 3A—AGREEMENTS AND COURT ORDERS UNDER FAMILY LAW ACT

‘25E Definitions for pt 3A

‘In this part—

“agreement” means an agreement mentioned in the definition “entitled former spouse”.

“approved deposit fund” see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10.¹

“court order” means a court order mentioned in the definition “entitled former spouse”.

“entitled former spouse” means a person who is entitled or conditionally entitled under an agreement, or a court order, under the Family Law Act, part VIIIIB,² to payment of an amount from the fund.

“Family Law Act” means the *Family Law Act 1975* (Cwlth).

“operative time”, for an agreement or court order, is the time that is, under the Family Law Act, part VIIIIB, the operative time in relation to the payment split or payment flag under the agreement or order.

“service” means service as a member.

“State Public Sector Superannuation Fund” means the State Public Sector Superannuation Fund under the *Superannuation (State Public Sector) Act 1990*.

1 *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.

2 The Family Law Act, part VIIIIB (Superannuation interests)

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

‘25F Providing information

‘(1) This section applies if an eligible person within the meaning of the Family Law Act, section 90MZB,⁴ applies under that section to the trustees for information about a benefit that is being paid, or may become payable, under this Act.

‘(2) The trustees must give to the eligible person the information as required under the Family Law Act.

‘(3) If the information is about a member who has not completed 8 years service, the information may include an accrued benefit multiple for the benefit decided by the trustees on the advice of an actuary.

‘(4) If the information is about a member who has completed at least 8 years service, the information may include the value of the benefit, decided by the trustees on the advice of an actuary, that may become payable to the member.

‘25G Agreement or court order for member with less than 8 years service at the operative time

‘(1) This section applies if—

- (a) the trustees receive an agreement or court order that relates to a benefit payable to a person; and
- (b) at the operative time for the agreement or order, the person is a member who has not completed 8 years service; and
- (c) on ceasing to be a member, the person is entitled to a benefit, other than a pension, under this Act.

3 *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.

4 The Family Law Act, section 90MZB (Trustee to provide information)

‘(2) The trustees must pay to an approved deposit fund, or a superannuation fund, nominated by the entitled former spouse for the agreement or order the amount to which he or she is entitled under the agreement or order.

‘(3) However, if the entitled former spouse does not nominate a fund for subsection (2) within 3 months after the day the person ceases to be a member, the trustees must pay the amount to the State Public Sector Superannuation Fund on behalf of the entitled former spouse.

‘(4) This section does not apply to an agreement or court order if the entitled former spouse makes an election under section 25I in relation to the agreement or order.

‘25H Agreement or court order for member with at least 8 years service at the operative time

‘(1) This section applies if—

- (a) the trustees receive an agreement or court order that relates to a benefit payable to a person; and
- (b) at the operative time for the agreement or order, the person is a member who has completed at least 8 years service.

‘(2) The trustees must pay to an approved deposit fund, or a superannuation fund, nominated by the entitled former spouse for the agreement or order the amount to which he or she is entitled under the agreement or order.

‘(3) However, if the entitled former spouse does not nominate a fund for subsection (2) within 3 months after the day the trustees receive the agreement or order, the trustees must pay the amount to the State Public Sector Superannuation Fund on behalf of the entitled former spouse.

‘25I Agreement or court order for member with at least 8 years service after the operative time

‘(1) This section applies if—

- (a) the trustees receive an agreement or court order that relates to a benefit payable to a person; and
- (b) at the operative time for the agreement or order, the person is a member who has not completed 8 years service; and

(c) the person completes at least 8 years service.

‘(2) The entitled former spouse for the agreement or order may, by written notice given to the trustees, elect to receive an amount under this section.

‘(3) The notice must be given to the trustees within 3 months after the day the member completes 8 years service.

‘(4) Also, the entitled former spouse may, within 3 months after the day the member completes 8 years service, nominate an approved deposit fund, or a superannuation fund, for payment of the amount.

‘(5) If the entitled former spouse makes an election under this section, the trustees must—

(a) calculate the amount, on the advice of an actuary and as at the date the notice of the election is given to the trustees, that the entitled former spouse is to receive; and

(b) pay the amount to—

(i) if the entitled former spouse nominates an approved deposit fund, or a superannuation fund, for payment of the amount—that fund; or

(ii) otherwise—the State Public Sector Superannuation Fund.

‘(6) To help a person decide whether to make an election under this section, the trustees must inform the person of the likely amount to be calculated under subsection (5)(a).

Note—

If an entitled former spouse makes an election under this section in relation to an agreement or court order, sections 25G and 25K do not apply to the agreement or order.

‘25J Effect of agreement or court order on particular benefits

‘(1) The trustees must reduce the benefit that, other than for an agreement or court order to which section 25G, 25H or 25I applies, would be payable from the fund to a person by the amount paid to the entitled former spouse for the agreement or order.

‘(2) The trustees must reduce the benefit in the way decided by the trustees on the advice of an actuary.

‘(3) However, the trustees must reduce each component of the benefit in equal proportions.

‘(4) In this section—

“**component**”, of a benefit, means—

- (a) the cashable amount, or preserved amount, of the benefit within the meaning of section 18A; or
- (b) the non-preserved transfer amount of the benefit.

“**non-preserved transfer amount**”, of a benefit, means an amount received by the trustees under section 33B.

‘**25K Agreement or court order—pensions**

‘(1) This section applies if the trustees receive an agreement or court order that relates to—

- (a) a benefit that, at the operative time for the agreement or order, is a pension being paid to a former member under section 17(1) or 19; or
- (b) a benefit payable to a person who—
 - (i) at the operative time for the agreement or order, is a member who has not completed 8 years service; and
 - (ii) on ceasing to be a member is entitled to a pension under section 17(1) or 19.

‘(2) Subject to subsection (4), the trustees must pay the entitled former spouse for the agreement or order the proportion, stated in the agreement or order, of the splittable payment to which he or she is entitled under the agreement or order (the “**spousal amount**”).

‘(3) The trustees must reduce the splittable payment that, other than for the agreement or order, would be payable from the fund to a person by the spousal amount.

‘(4) The trustees must pay the entitled former spouse a pension for his or her lifetime (a “**lifetime pension**”) if the entitled former spouse elects, by written notice given to the trustees, to be paid a lifetime pension.

‘(5) The notice must be given to the trustees—

- (a) for an agreement or court order for a benefit mentioned in subsection (1)(a)—within 3 months after the day the trustees receive the agreement or order; or

- (b) for an agreement or court order for a benefit mentioned in subsection (1)(b)—
- (i) if the person entitled to the benefit elects to convert the whole or a part of the benefit to a lump sum payment under section 18(1)—within 3 months after the day the trustees receive the notice of the election under that subsection; or
 - (ii) otherwise—within 6 months after the day the benefit becomes payable.

‘(6) If an entitled former spouse elects to be paid a lifetime pension, the amount of the pension must be calculated in the way decided by the trustees on the advice of an actuary.

‘(7) This section does not apply to an agreement or court order if the entitled former spouse makes an election under section 25I in relation to the agreement or order.

‘(8) In this section—

“**splittable payment**” see the Family Law Act, section 90ME.⁵

‘25L Effect of agreement or court order on other benefits

‘Despite section 20, 20AA, 20A or 27,⁶ an entitled former spouse is not entitled to receive a benefit under any of the provisions.

‘25M Trustees to inform entitled former spouse

‘If the trustees receive an agreement or court order from a person other than the entitled former spouse for the agreement or order, the trustees must as soon as practicable inform the entitled former spouse of the receipt of the agreement or order.

5 The Family Law Act, section 90ME (Splittable payments)

6 Section 20 (Benefit of widows of members other than continuing members), 20AA (Benefits payable to a widow of a new member who died on or after the new member’s 70th birthday), 20A (Widow’s right to substitute pension for entitlement) or 27 (Annuity to widow’s and female dependents payable or to become payable under repealed provisions)

‘25N Trustees may charge reasonable fee

‘The trustees may, in relation to an agreement or court order, charge a reasonable fee for a matter for which the trustees are allowed to charge a fee under a regulation under the Family Law Act, section 90MY.⁷’.

7 Amendment of s 33 (Pensions)

Section 33—

insert—

‘(2) Subsection (1) is subject to part 3A.⁸’.

**PART 3—AMENDMENT OF SUPERANNUATION
(STATE PUBLIC SECTOR) ACT 1990****8 Act amended in pt 3**

This part amends the *Superannuation (State Public Sector) Act 1990*.

9 Amendment of s 13 (Membership of scheme)

Section 13(6)—

insert—

‘(c) a person for whom an amount is paid to the fund under the Parliamentary Contributory Superannuation Act 1970, part 3A.⁹’.

7 The Family Law Act, section 90MY (Fees payable to trustee)

8 Part 3A (Agreements and court orders under Family Law Act)

9 *Parliamentary Contributory Superannuation Act 1970*, part 3A (Agreements and court orders under Family Law Act)

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