

Queensland



SUPERANNUATION (PUBLIC EMPLOYEES PORTABILITY) ACT 1985

**Reprinted as in force on 6 March 1998
(includes amendments up to Act No. 58 of 1995)**

Reprint No. 2

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Information about this reprint

This Act is reprinted as at 6 March 1998. The reprint shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have also been made to use standard punctuation consistent with current drafting practice (s 27).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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**SUPERANNUATION (PUBLIC
EMPLOYEES PORTABILITY) ACT 1985**

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*Superannuation (Public Employees Portability)
Act 1985*

SUPERANNUATION (PUBLIC EMPLOYEES PORTABILITY) ACT 1985

[as amended by all amendments that commenced on or before 6 March 1998]

An Act to provide for portability of superannuation entitlements of persons engaged in public employment

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Superannuation (Public Employees Portability) Act 1985*.

Meaning of terms

4.(1) In part 2—

“**actuary**” means the person appointed as actuary under the legislation or other rules relevant to a superannuation scheme and includes the person on whom the administrators of such a scheme rely for actuarial advice in respect of the scheme.

“**administrators**” means the person or persons authorised by the legislation or other rules relevant to an approved superannuation scheme or an eligible superannuation scheme to administer the scheme.

“**approved superannuation scheme**” means—

- (a) the superannuation scheme administered by the State Service Superannuation Board constituted under the *State Service Superannuation Act 1972*;

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- (b) the superannuation scheme administered by the Police Superannuation Board constituted under the *Police Superannuation Act 1974*;
- (c) the superannuation scheme administered by the Trustees of the Parliamentary Contributory Superannuation Fund constituted under the *Parliamentary Contributory Superannuation Act 1970*;
- (d) any superannuation scheme established or participated in pursuant to authority conferred by a law of Queensland, established for the benefit of employees in public employment and declared by regulation to be an approved superannuation scheme for the purposes of this Act.

“contributor” means a person who contributes to a superannuation scheme or from whose salary deductions are made and paid to a superannuation scheme.

“contributor’s component” means that portion of a transfer value determined by the person who determined that value to be the portion financed from the contributions made to a superannuation scheme by a contributor and includes interest (if any) earned and determined or accepted by that person to be attributable to those contributions.

“elector” means a person who has duly made an election referred to in section 6(1).

“eligible officer” means an employee in public employment who is contributing to an approved or eligible superannuation scheme.

“eligible superannuation scheme” means a superannuation scheme declared by the Minister under this Act to be an eligible superannuation scheme.

“fund” means the fund or account consisting wholly or partly of contributions paid by contributors to an approved superannuation scheme.

“public employment” means employment on a full-time basis as an employee—

- (a) in the Public Service of the Commonwealth or a prescribed State or Territory; or

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- (b) of a prescribed authority constituted by or under a law of the Commonwealth or a State or Territory; or
- (c) of any other prescribed authority that discharges a public function; and includes service on a full-time basis in the Defence Force of the Commonwealth.

“relict” means a widow or a widower.

“subsidy component” means the difference between a transfer value and the contributor’s component of that transfer value.

“transfer value” means a lump sum that consists of a contributor’s component and a subsidy component payable by an approved superannuation scheme or an eligible superannuation scheme in respect of the entitlements under the scheme of a person at the time of the person ceasing to be a contributor to the scheme by reason of voluntary resignation from employment or by reason of being retrenched or by reason of ceasing to be a member of the Legislative Assembly.

(2) Without limiting the definition “public employment”, paragraph (c), a person or authority (whether corporate or unincorporate) may be treated as discharging a public function if—

- (a) the person or authority is financed for the purpose of discharging any function in whole or substantial part (whether directly or indirectly) by the Commonwealth or a State or Territory; or
- (b) in the case of the person or authority being a corporation—the Commonwealth or a State or Territory has a controlling interest in the corporation.

PART 2—PORTABILITY OF ENTITLEMENTS

Approved superannuation schemes to be subject to this part

5. The provisions of every approved superannuation scheme shall be read and construed subject to this part and as if those provisions provided

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for so much of the matters prescribed by sections 6 to 11 as are relevant to the scheme.

Election to forgo benefit other than that prescribed by this part

6.(1) A person who—

- (a) ceases to be a contributor to an approved superannuation scheme by reason of—
 - (i) voluntary resignation from employment; or
 - (ii) being retrenched; or, as the case may be,
 - (iii) ceasing to be a member of the Legislative Assembly;and who within a period of 3 months after the person ceases to be a contributor again becomes an eligible officer; or
- (b) being an eligible officer and being a contributor to an approved superannuation scheme pursuant to the *State Service Superannuation Act 1972*, section 56, ceases to be such a contributor;

is, subject to this section, entitled to elect to forgo all the person's entitlements under the approved superannuation scheme, other than the entitlement prescribed by this part, arising by reason of ceasing to be a contributor to the approved superannuation scheme.

(2) A person shall not be entitled to make an election referred to in subsection (1) if at the time of the occurrence of the event in relation to which the question of the person so electing arises the person has not attained the age of 20 years or, where some other age is prescribed by regulation in respect of the approved superannuation scheme concerned, that age.

(3) An election referred to in subsection (1)—

- (a) shall be made by notice in writing given to the administrators of the approved superannuation scheme concerned; and
- (b) shall be made—
 - (i) in the case of a person described in subsection (1)(a)—
within 3 months after the elector again becomes an eligible

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officer; or

- (ii) in the case of a person described in subsection (1)(b)—
within 3 months after the elector ceases to be a contributor to
the approved superannuation scheme concerned;

if it is to have any force and effect.

Payment of transfer value and advice as to contributor's component

7. As soon as practicable after receipt by them of a duly made election referred to in section 6(1) the administrators of the approved superannuation scheme to which the election relates shall—

- (a) pay a transfer value from the fund administered by them to the administrators of the superannuation scheme to which the elector is a contributor; and
- (b) advise the administrators of the superannuation scheme to which the elector is a contributor of the amount of the transfer value that is the contributor's component.

Determination of transfer value and contributor's component

8.(1) The actuary shall determine the amount of the transfer value to be paid from the fund of the approved superannuation scheme on account of the elector and, having regard to subsection (3), shall make in respect thereof appropriate allowance for any transfer value received by the administrators of the approved superannuation scheme on account of the elector in respect of the elector becoming a contributor to the scheme and shall, having regard to subsection (2), determine and declare in writing to the administrators of the approved superannuation scheme the amount of the transfer value that is the contributor's component.

(2) In no case shall the contributor's component of a transfer value payable from fund of an approved superannuation scheme exceed the amount that the elector would have been entitled to receive under the scheme had the elector not made an election referred to in section 6(1).

(3) Where the administrators of an approved superannuation scheme have received a transfer value that includes a subsidy component that has at

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any time, wholly or in part, been determined by or on behalf of the administrators of the superannuation scheme established under any of the following Acts of the Commonwealth—

- (a) the *Superannuation Act 1922*;
- (b) the *Superannuation Act 1976*;
- (c) the *Defence Forces Retirement Benefits Act 1948*;
- (d) the *Defence Force Retirement and Death Benefits Act 1973*;

the subsidy component (to the extent so determined) of that transfer value shall not be paid from the fund of the approved superannuation scheme pursuant to section 7 unless the superannuation scheme to which the elector has become a contributor is—

- (e) an eligible superannuation scheme under the *Superannuation Act 1922* (Cwlth), section 119R for the purposes of that Act, part 10A, division 3 or under the *Superannuation Act 1976* (Cwlth), section 134 for the purposes of that Act, part 10A, division 3; or
- (f) an approved superannuation scheme under the *Superannuation Act 1922* (Cwlth), section 119ZC(11) for the purposes of that Act, section 119ZC or under the *Superannuation Act 1976* (Cwlth), section 145(11) for the purposes of that Act, section 145; or
- (g) the superannuation scheme established under the *Superannuation Act 1976* (Cwlth).

Payment by the Crown

9. Where a transfer value is paid in respect of an eligible officer who was contributing to the State Service Superannuation Fund, the Parliamentary Contributory Superannuation Fund or the State Public Sector Superannuation Fund, the Treasurer shall pay such portion of that transfer value as is determined by the actuary to be the subsidy component of that transfer value and to be the liability of the Crown.

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Receipt and application of transfer values

10.(1) The administrators of an approved superannuation scheme shall place to the credit of the fund administered by them every transfer value received by them and thereupon that fund shall become and be liable, to the exclusion of every other fund, in respect of all benefits under the approved superannuation scheme of which it is the fund derived by reason of the payment and receipt of the transfer value.

(2) Subject to subsections (3) and (4), every transfer value credited to the fund of an approved superannuation scheme shall be so regarded and applied as—

- (a) to increase the benefits or rates of benefits that would have been payable under the scheme in respect of the elector on whose account the transfer value was paid had the transfer value not been paid; or
- (b) to vary the method of determining the benefits or rates of benefits payable in respect of the elector on whose account the transfer value was paid so as to increase the benefits or rates of benefits as specified in paragraph (a);

as is determined by the administrators of the approved superannuation scheme after consultation with the actuary.

(3) The total benefits or rates of benefits payable in respect of the elector on whose account the transfer value was paid shall not exceed the maximum benefits or rates of benefits payable to other contributors to the approved superannuation scheme in accordance with the scheme's provisions.

(4) Where a transfer value has been credited to the fund established and kept under the *Parliamentary Contributory Superannuation Act 1970*—

- (a) the amount of the transfer value shall not be taken into account for the purpose of assessing sums payable into the fund by the Treasurer; and
- (b) the transfer value shall not be so regarded or applied as to increase the benefits or vary the method of determining the benefits payable to a member who ceases to be a member of the Legislative Assembly before attaining the age of 60 years except

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where—

- (i) the member ceases to be a member by reason of death; or
- (ii) the member ceases to be a member by reason of ill health and has a pension entitlement under that Act.

Disposal of transfer values otherwise than in payment of benefits

11. Where a person, being an elector on whose account a transfer value has been paid to the administrators of an approved superannuation scheme—

- (a) has ceased to contribute to that scheme by reason of ceasing employment or, as the case may be, ceasing to be a member of the Legislative Assembly; and
- (b) has not thereupon again become an elector;

and the transfer value has not been so regarded and applied as to increase the benefits or rates of benefits as prescribed by section 10, there shall be paid to that person out of the fund of that approved superannuation scheme an amount determined by the actuary and approved by the administrators of the fund, having regard to the amount of benefit entitlement that would have been payable to that person by reason of ceasing to be a contributor to the approved superannuation scheme in which the person has elected under this part to forgo his or her entitlement or the eligible superannuation scheme in which the person has, under an authorisation other than this part, forgone his or her entitlement, if the person had not so elected or had not forgone his or her entitlement, as the case may be, and the transfer value had not been paid to the administrators aforesaid.

Declaration of eligible superannuation schemes

12.(1) The Minister may, by written notice, declare a superannuation scheme that is established for the benefit of employees in public employment and that is not an approved superannuation scheme to be an eligible superannuation scheme if the scheme provides for or its provisions are to be read and construed as providing for—

- (a) the acceptance by the person or persons who administer the

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scheme of a transfer value upon the entry into the scheme of a contributor to the scheme and the application of that transfer value to purchase on behalf of the contributor benefits of a class of benefit available to all other contributors to the scheme; and

- (b) the restriction of benefits that may be purchased with the subsidy component of a transfer value to benefits that are payable only in the event of the contributor's ceasing to contribute to the scheme by reason of having retired upon attaining an age or a time for retirement under the scheme, retrenchment, ill health or death; and
- (c) in relation to a contributor to the scheme who voluntarily resigns employment—
 - (i) the payment to another approved or eligible superannuation scheme of a transfer value; or
 - (ii) the maintenance within the scheme of a deferred benefit (subsidised by the person or authority that was the employer of the contributor before the contributor's resignation) in relation to the contributor's entitlements under the scheme.

(2) A notice under subsection (1) is subordinate legislation.

Regulations

13. The Governor in Council may make regulations under this Act.

ENDNOTES

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2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 6 March 1998. Future amendments of the Superannuation (Public Employees Portability) Act 1985 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

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3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only]

Reprint No.	Amendments included	Reprint date
1	to Act No. 27 of 1995	15 September 1995
1A	to Act No. 58 of 1995	23 September 1996

5 Tables in earlier reprints

TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Obsolete and redundant provisions	1
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6 List of legislation

Superannuation (Public Employees Portability) Act 1985 No. 35 (prev Superannuation (Public Employees Portability and Acts Amendment) Act 1985)

date of assent 17 April 1985

ss 1–2 commenced on date of assent (see s 2)

remaining provisions commenced 4 May 1985 (proc pubd gaz 4 May 1985 p 307)

as amended by—

Statute Law (Miscellaneous Provisions) Act 1990 No. 88 s 3 sch

date of assent 6 December 1990

commenced on date of assent

Superannuation (Miscellaneous Acts) Amendment Act 1991 No. 11 pts 1, 9

date of assent 15 April 1991

s 9.1 commenced on date of assent (see s 1.2(1))

remaining provision commenced 11 May 1991 (proc pubd gaz 4 May 1991 p 73)

Superannuation Legislation Amendment Act 1993 No. 11 s 1, pt 7

date of assent 28 May 1993

commenced on date of assent

Superannuation Legislation Amendment Act 1995 No. 27 pts 1, 10

date of assent 14 June 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 18 August 1995 (1995 SL No. 229)

Statute Law Revision Act (No. 2) 1995 No. 58 ss 1–2, 4 sch 1

date of assent 28 November 1995

commenced on date of assent

7 List of annotations

Long title amd R1 (see RA s 40)

Short title

s 1 sub 1995 No. 27 s 59

Commencement

s 2 om R1 (see RA s 37)

Arrangement

s 3 om R1 (see RA s 36)

Meaning of terms

s 4 amd 1993 No. 11 s 41(4)

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def “**approved superannuation scheme**” amd 1990 No. 88 s 3 sch; 1993 No. 11 s 41(2)

def “**eligible officer**” sub 1993 No. 11 s 41(1), (3)

def “**Minister**” om 1993 No. 11 s 41(1)

Election to forgo benefit other than that prescribed by this part

s 6 amd 1990 No. 88 s 3 sch; 1993 No. 11 s 42

Payment by the Crown

s 9 sub 1991 No. 11 s 9.2

Declaration of eligible superannuation schemes

s 12 amd 1993 No. 11 s 43

Regulations

s 13 sub 1993 No. 11 s 44
amd 1995 No. 58 s 4 sch 1

Saving of existing orders in council

s 13A ins 1993 No. 11 s 44
om 1995 No. 58 s 4 sch 1

**PART III—AMENDMENT OF STATE SERVICE SUPERANNUATION
ACT 1972–1984**

pt 3 (ss 14–26) om R1 (see RA s 40)

**PART IV—AMENDMENT OF PUBLIC SERVICE SUPERANNUATION
ACT 1958–1984**

pt 4 (ss 27–32) om R1 (see RA s 40)

PART V—AMENDMENT OF POLICE SUPERANNUATION ACT 1974–1984

pt 5 (ss 33–49) om R1 (see RA s 40)

PART VI—AMENDMENT OF POLICE SUPERANNUATION ACT 1968–1984

pt 6 (ss 50–56) om R1 (see RA s 40)

**PART VII—AMENDMENT OF PARLIAMENTARY CONTRIBUTORY
SUPERANNUATION ACT**

pt 7 (ss 57–65) om R1 (see RA s 40)