



# **Superannuation (Public Employees Portability) Act 1985**

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Queensland

# Superannuation (Public Employees Portability) Act 1985

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# Superannuation (Public Employees Portability) Act 1985

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

### Part 1 Preliminary

#### 1 Short title

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

#### 4 Meaning of terms

(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 any of the following superannuation schemes—

- (a) the scheme under the *Superannuation (State Public Sector) Act 1990*;
- (b) 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
- (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.

*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

### 5 Approved superannuation schemes to be subject to this part

The provisions of every approved superannuation scheme shall be read and construed subject to this part and as if those provisions provided for so much of the matters prescribed by sections 6 to 11 as are relevant to the scheme.

### 6 Election to forgo benefit other than that prescribed by this part

- (1) A person who—

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- (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 the scheme under the *Superannuation (State Public Sector) Deed 1990*, section 174, ceases to be such a contributor;

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

if it is to have any force and effect.



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

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.

**8 Determination of transfer value and contributor's component**

- (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 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).

## **9 Payment by the Crown**

Where a transfer value is paid in respect of an eligible officer who was contributing to 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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## 10 Receipt and application of transfer values

- (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 *Superannuation (State Public Sector) Act 1990* in relation to a transferring member within the meaning of repealed section 32A of that Act—
  - (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

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ceases to be a member of the Legislative Assembly before attaining the age of 60 years except 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.

## **11 Disposal of transfer values otherwise than in payment of benefits**

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.

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## 12 Declaration of eligible superannuation schemes

- (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 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.

## 13 Regulations

The Governor in Council may make regulations under this Act.