



# **Superannuation (State Public Sector) Act 1990**

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## Queensland

# Superannuation (State Public Sector) Act 1990

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# Superannuation (State Public Sector) Act 1990

**An Act to provide for the operation of an established superannuation scheme for the State public sector and other persons and for related purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Superannuation (State Public Sector) Act 1990*.

### 2 Interpretation

(1) In this Act—

*alternate trustee* means a person holding an appointment as an alternate trustee under this Act.

*board* means the board continued under section 3.

*CEO* see section 6A(1).

*core government employee* means an employee of a unit of the State public sector who is declared, under section 15A, to be a core government employee for this Act.

*deed* means the deed established pursuant to this Act.

*employee*, of a unit of the State public sector, means a person who is a member or employee of, or engaged by, the unit.

*fund*, for part 3AA, division 1, see section 15.

*fund* means the State Public Sector Superannuation Fund established pursuant to section 10.

*officer*, for part 3A, see section 15I(1).

**registered higher education provider** see the *Tertiary Education Quality and Standards Agency Act 2011* (Cwlth), section 5.

**scheme** means the scheme for the provision of superannuation, retirement, provident or other benefits established pursuant to the deed in accordance with this Act.

**SIS Act** means the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

**trustee** means a member of the board.

**unit of the State public sector** means—

- (a) a public sector unit; or
- (b) the Queensland Police Service within the meaning of the *Police Service Administration Act 1990*; or
- (c) the Crime and Corruption Commission; or
- (e) Legal Aid Queensland within the meaning of the *Legal Aid Queensland Act 1997*; or
- (f) the industrial relations commission; or
- (g) every corporate entity (other than a local government) that is constituted by or pursuant to an Act, or that is of a description of entity provided for by an Act, which in either case collects revenues or raises funds under the authority of an Act; or
- (h) every non-corporate entity established or maintained pursuant to an Act, which is funded to any extent with moneys of the Crown, or is assisted in a financial respect by the Crown; or
- (i) the registries and other administrative offices of the courts of the State of whatever jurisdiction; or
- (j) a Magistrates Court; or
- (k) the parliamentary service within the meaning of the *Parliamentary Service Act 1988*; or



- (l) the Governor's official residence (known as 'Government House') and the administrative unit maintained in association therewith; or
- (m) the Legislative Assembly; or
- (n) a registered higher education provider established under an Act or a college of advanced education; or
- (o) an entity declared under section 2A to be a unit of the State public sector; or
- (p) a body corporate that is wholly owned by the State; or
- (q) a wholly-owned subsidiary of a body corporate that is a unit of the State public sector under another paragraph of this definition;

but does not include the Executive Council.

*wholly-owned subsidiary* see the Corporations Act, section 9.

- (2) Where the functions or duties of the Crown are transferred to any department or other instrumentality of the government of the Commonwealth, another State or a Territory of the Commonwealth, the power conferred by subsection (1), definition *unit of the State public sector*, paragraph (o), includes power to declare the department or other instrumentality to be a unit of the State public sector for the purposes of this Act.

## **2A Units of the State public sector**

- (1) The Minister may, by written notice, declare an entity to be a unit of the State public sector.
- (2) Also, if there is any doubt that a person is an employee of a unit of the State public sector, the Minister may, by written notice, declare whether the person is or is not an employee of a unit of the State public sector.
- (3) A notice under subsection (1) or (2) is subordinate legislation.

## Part 2 Board of trustees

### 3 Establishment of board

- (1) The existing board is continued under the name ‘QSuper Board’.
- (2) The board—
  - (a) is a body corporate; and
  - (b) has perpetual succession; and
  - (c) has a common seal; and
  - (d) may sue and be sued in its corporate name.
- (3) The board is not a statutory body under the *Financial Accountability Act 2009*.
- (4) The board is declared to be an excluded matter for the Corporations Act, section 5F, in relation to the provisions of that Act for which a statutory body within the meaning of the *Statutory Bodies Financial Arrangements Act 1982* is declared to be an excluded matter under section 13A of that Act.
- (5) The board represents the State.
- (6) However, for the purposes of the *Corporations Act 2001* (Cwlth), chapter 7 and the SIS Act the board—
  - (a) does not represent the State; and
  - (b) is not an agent or instrumentality of the State; and
  - (c) does not have the immunities and privileges of the State.
- (7) In this section—

*existing board* means the board established under this Act and existing immediately before the commencement of the *Superannuation and Other Legislation Amendment Act 1997*.

### 4 Board’s function

The board’s function is to administer the scheme.

## **5 Membership of the board**

- (1) The board consists of the number of trustees prescribed under a regulation.
- (2) The trustees are to be appointed by the Minister in the way prescribed under a regulation.

## **6 Appointment not affected by other laws restricting employment**

- (1) If another Act prohibits or regulates a person's employment, or other engagement in activities, outside of a stated office or position, the Act does not prevent the person from—
  - (a) being appointed to the board; or
  - (b) carrying out the person's functions as a trustee; or
  - (c) being paid a fee or allowance to which the person is entitled because of the appointment.
- (2) In this section—

*trustee* includes an alternate trustee.

### **6A Chief executive officer**

- (1) There is to be a chief executive officer of the board (the *CEO*).
- (2) The CEO is to be employed by the board or an entity ultimately owned or controlled by the board.

### **6B Common seal**

- (1) The CEO has custody of the board's common seal.
- (2) Subject to the board's directions, the CEO may execute a document on the board's behalf by signing the document and attaching the board's common seal.

## **6C Delegation by board**

- (1) The board may delegate its powers under this Act to the CEO, a trustee or an appropriately qualified person.
- (2) A delegation of a power may permit the subdelegation of the power to the CEO, a trustee or an appropriately qualified person.

## **7 Powers of board**

- (1) The board's powers and the exercise of discretion by the board are, except as specified in this Act, to be as set out in the deed.
- (2) Without limiting subsection (1), the board has, for or in connection with the performance of its function, all the powers of an individual, including, for example, the power to—
  - (a) enter into contracts; and
  - (b) acquire, hold, dispose of and deal with property; and
  - (c) employ staff; and
  - (d) appoint attorneys and agents; and
  - (e) engage consultants; and
  - (f) do anything else necessary or convenient to be done for, or in connection with, the performance of its function.
- (3) Also, without limiting subsection (1), the board has the powers conferred on it by this or another Act.

## **8 Protection from liability**

- (1) A person who is or was an official is entitled to be indemnified from the fund for a liability incurred by the person for an act done, or omission made, while acting as an official.
- (2) The liability to which subsection (1) applies—
  - (a) includes an amount of legal costs decided by the board to be reasonable; but

- (b) does not include—
- (i) a liability that arises because the person—
    - (A) fails to act honestly in a matter concerning the fund; or
    - (B) intentionally or recklessly fails to exercise, in relation to a matter affecting the fund, the degree of care and diligence that the official is required to exercise; or
  - (ii) a liability for a monetary penalty under a civil penalty order under the SIS Act.

*Note—*

See the SIS Act, section 57 (Indemnification of directors of trustee from assets of entity).

- (3) The board may effect insurance for liability to which subsection (1) applies and pay the cost of the insurance from the fund.
- (4) In this section—

*official* means a trustee, an alternate trustee, a member of the Parliamentary Benefits Committee, the CEO or a member of the board's staff.

## **9 Remuneration and allowances payable to trustees and alternate trustees**

- (1) A trustee or alternate trustee is entitled to be paid the remuneration and allowances decided by the Minister after consulting the board.
- (2) The costs of the remuneration and allowances may be paid from the fund.

## **Part 3                      Fund and deed**

### **Division 1                The fund**

#### **10            Establishment of fund**

The State Public Sector Superannuation Fund (the *fund*) is continued in existence.

#### **11            Investment of fund**

- (1) The board may, in compliance with the SIS Act, appoint 1 or more investment managers for the fund or parts of the fund.
- (2) The board must, in compliance with the SIS Act, set investment objectives for the fund and establish investment strategies and policies to achieve the objectives.
- (3) An investment objective, strategy or policy under this section may relate to the whole fund, or a particular part of the fund.
- (4) In this section—

*investment manager* see the SIS Act, section 10(1).

### **Division 2                The deed**

#### **12            Deed to establish scheme**

- (1) Not later than 30 days after the commencement of this section, or such longer period as may be approved by the Governor in Council by order in council, there is to be established by deed a scheme for the provision of superannuation, retirement, provident or other similar benefits payable from the fund.
- (2) The deed is subordinate legislation.
- (3) The deed may be amended by regulation.

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- (4) The Governor in Council must not make a regulation amending the deed without the board's consent.
  - (5) Subsection (4) does not apply to an amendment mentioned in the SIS Act, section 60(1)(b) or (c).

## **12A Deed to provide membership categories**

The deed must provide for different categories of members.

## **14 Contents of deed**

Save as otherwise provided by this Act and in addition to any other provisions which the board considers may be necessary or desirable, the deed may make provision for the following matters—

- (a) definitions to be used in the deed;
- (b) the operation, management and investment of the fund;
- (c) membership of the scheme;
- (d) the liability for the payment of member contributions to the fund;
- (e) the level of member contributions to the fund;
- (f) the level of contribution by a unit of the State public sector in relation to members of the scheme;
- (g) the circumstances whereby, and the level of contributions in relation thereto, members may make additional contributions to the fund;
- (h) conditions for the transfer of members and amounts representing contributions to and from the scheme;
- (i) the keeping of accounts for members of the scheme and the payment of interest on such accounts;
- (j) the level of and conditions relating to the payment of benefits under the scheme to and in respect of a member, including the following—
  - (i) benefits on attaining the age of 55 years or older;

- (ii) benefits for total and permanent incapacity;
- (iii) benefits for permanent but partial incapacity;
- (iv) benefits for short term incapacity;
- (v) benefits on death prior to the age of 55 years;
- (vi) benefits on—
  - (A) compulsory retrenchment from employment; and
  - (B) involuntary termination of employment; and
  - (C) voluntary resignation from employment; and
  - (D) dismissal from employment;
- (vii) benefits on the occurrence of such other eventuality as may be specified;
- (k) the obtaining and use of medical or like evidence in determining the payment of benefits under the scheme;
- (l) a mechanism for a review by a member dissatisfied with the grant or payment of benefits or any other decision under the scheme;
- (m) a method for the preservation of member entitlements in the fund;
- (n) the terms and conditions upon which a pension or annuity may be purchased or paid from the fund;
- (o) the terms and conditions upon which the board is to obtain actuarial advice in relation to the fund;
- (p) the payment of the expenses of operating the scheme from the fund.



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## **Division 3                      General provisions about membership of scheme**

### **14A      Membership open to everyone**

The scheme is open to membership by any person, subject to the requirements about membership in the deed.

### **14B      Minister may declare matters about membership by particular employees**

- (1) The Minister may, by written notice, declare the following about membership of the scheme by an employee of a unit of the State public sector—
  - (a) the membership category or categories for which the employee is eligible;
  - (b) any conditions applying to the employee's membership of the scheme;
  - (c) for an employee other than a core government employee—whether the employee's membership in the scheme is compulsory.
- (2) A notice under subsection (1) is subordinate legislation.

## **Division 4                      Continuation of membership after particular events**

### **14C      Application of division**

This division applies if—

- (a) either of the following things (each a *relevant event*) happens in relation to a person—
  - (i) the person ceases to be an employee of a unit of the State public sector and becomes an employee of another entity that is not a unit of the State public sector;

[s 14D]

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- (ii) the person's employer ceases to be a unit of the State public sector and the person continues to be an employee of the employer; and
- (b) immediately before the relevant event, the person was a member of the scheme; and
- (c) any of the following apply—
  - (i) the relevant event happens under an Act that provides that, on the happening of the relevant event, the person keeps all the person's existing and accruing rights relating to superannuation;
  - (ii) the Minister declares, by gazette notice, that on the happening of the relevant event the person keeps all the person's existing and accruing rights relating to superannuation;
  - (iii) both—
    - (A) the Minister approves the employer for this division by written notice given to the employer; and
    - (B) the employer gives written notice to the board that the employer agrees to the person's continued membership in the scheme.

## **14D Continuation of membership**

- (1) The person's membership in the scheme continues after the relevant event in the same category and subject to the same conditions as applied before the relevant event.
- (2) To remove any doubt, it is declared that—
  - (a) the person's membership in the scheme may end under this Act other than because of the happening of the relevant event; and
  - (b) if subsection (1) applies to a person who is a member in the standard defined benefit category as defined under section 32M—

- (i) the person's membership or entitlement to membership of the standard defined benefit category is unaffected by the happening of the relevant event; and
  - (ii) section 32N does not apply to the person.
- (3) Subsection (2) applies for the circumstances mentioned in section 14C(c)(ii) from when the relevant event happens, even if the gazette notice mentioned in that section is published after the relevant event happens.

#### **14E Employer may not revoke agreement**

An employer who gives a notice under section 14(c)(iii)(B) may not revoke the notice.

#### **14F Minister's power to declare particular matters unaffected**

- (1) Nothing in this division prevents the Minister from—
- (a) declaring the person's employer to be a unit of the State public sector under section 2A; or
  - (b) declaring matters about the person's membership in the scheme under section 14B.
- (2) However, a declaration under section 14B about the person's membership in the scheme must be consistent with section 14D.

## **Part 3AA Choice of fund provisions**

### **Division 1 Choice of fund for core government employees**

#### **15 Definition for division**

In this division—

[s 15A]

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*fund* means a superannuation fund, superannuation scheme, approved deposit fund, or RSA, as defined under the *Superannuation Guarantee (Administration) Act 1992* (Cwlth).

### **15A Core government employees**

- (1) The Minister may, by written notice, declare the employees of a unit of the State public sector who are core government employees for this Act.
- (2) A notice under subsection (1) is subordinate legislation.

### **15B Scheme is default fund for core government employees**

Unless a core government employee gives a direction under section 15C, the employee's employer must pay the contributions payable for the employee into the scheme.

### **15C Core government employee may choose another fund**

- (1) A core government employee may, by written notice given to the employee's employer, direct the employee's employer to pay the contributions payable for the employee into a fund other than the scheme.

*Note—*

See the *Superannuation Guarantee (Administration) Act 1992* (Cwlth) for employer obligations relating to an employee's choice of fund.

- (2) This section does not apply in relation to a core government employee's membership in a defined benefit category under the deed.

### **15D Employer contributions if another fund chosen**

- (1) This section applies if, because of a direction under section 15C, a core government employee's employer must pay the contributions payable for the employee into a fund other than the scheme.

- (2) The employer must pay the employer's contributions into the fund at the rate the employer would have paid contributions into the scheme under the deed if the employee were a member of the scheme, having regard to—
  - (a) the category for which the employee is eligible under a declaration under section 14B; and
  - (b) the employee compulsory contributions the employee pays into the fund.

## **Division 2                    Scheme as default fund for particular employees**

### **15E    Scheme is default fund for particular employees**

- (1) This section applies to the following employees—
  - (a) an employee of a unit of the State public sector—
    - (i) whose membership of the scheme is the subject of a declaration under section 14B; and
    - (ii) who is not a core government employee or an employee for whom membership in the scheme is compulsory under a declaration under section 14B(1)(c); and
    - (iii) whose employer has not nominated a fund other than the scheme to be the default fund for the employee;
  - (b) an employee of a unit of the State public sector whose membership of the scheme is not the subject of a declaration under section 14B, or an employee of an entity that is not a unit of the State public sector, whose employer has a written agreement with the board providing that the scheme is the default fund for the employee.
- (2) The scheme is the default fund for the employee.
- (3) In this section—

*default fund*, for an employee, means the fund to which the employee's employer must pay contributions unless the employee gives the employer a written notice stating the employee wants another fund to be the person's chosen fund under the *Superannuation Guarantee (Administration) Act 1992* (Cwlth).

## Part 3A Government superannuation officer

### 15I Appointment

- (1) There is to be a government superannuation officer (the *officer*).
- (2) The officer is to be appointed by the Governor in Council.
- (3) The officer may be appointed under this Act or the *Public Service Act 2008*.

### 15J Functions

- (1) The officer's functions are, as directed by the Minister, to give advice, prepare reports and carry on other activities relating to superannuation and public service employee entitlements.
- (2) Also, the officer's functions include—
  - (a) arranging an independent review of the QSuper default fund arrangements and LGIASuper default fund arrangements, after the day on which both of them have been in operation for at least 5 years; and
  - (b) reporting the outcomes of the review to the Minister.
- (3) In this section—

*LGIASuper default fund arrangements* means the arrangements applying under the *Local Government Act 2009*, section 219.

*QSuper default fund arrangements* means the arrangements applying under part 3AA.

### **15K Staff services from department and board**

- (1) At the officer's request—
  - (a) the chief executive may assign public service employees of the department to perform work for the officer; or
  - (b) the board may assign a member of the board's staff to perform work for the officer.
- (2) A person assigned to perform work for the officer under this section is not subject to the direction of the chief executive or board in relation to the performance of the work.
- (3) In this section—

*board* includes an entity ultimately owned or controlled by the board.

### **15L Delegation**

- (1) The officer may delegate the officer's functions to an appropriately qualified person assigned to perform work for the officer under section 15K.
- (2) In this section—

*functions* includes powers.

### **15M CEO to act as officer while no appointee**

At any time there is no-one holding an appointment as the officer—

- (a) the CEO is to perform the officer's functions; and
- (b) for that purpose, sections 15J to 15L apply as if references in the sections to the officer were references to the CEO.

## **Part 4 Administration**

### **17 Returns**

- (1) Throughout each year, each unit of the State public sector which employs a person who might become entitled to a benefit from the fund in accordance with the deed is to furnish to the board, in such form and at or within such times as the board directs, returns with respect to such matters as the board directs.
- (2) A person who—
  - (a) is an employee of a unit of the State public sector who might become entitled to a benefit from the fund; or
  - (b) was an employee of a unit of the State public sector who being entitled to a benefit from the fund preserved that entitlement; or
  - (c) is a member of the scheme;is to furnish to the board information with respect to such matters concerning that person as the board may require.
- (3) If a person fails to comply with a requirement under subsection (2) relevant to establishing the person's entitlement to a benefit, the board must withhold the benefit until the entitlement can be established.

### **18 Recovery of overpayments**

- (1) Where a person has received payment of a benefit from the fund in excess of the payment to which that person is entitled under this Act or the deed, the board may recover from that person or that person's estate (if that person has died) in a court of competent jurisdiction as a debt due and owing to the board the difference between the payment received by that person and the payment to which that person was entitled under this Act or the deed.
- (2) Where a person who has received payment of a benefit from the fund in excess of the payment to which that person is



entitled under this Act or the deed, is entitled to a further payment from the fund, that excess may be deducted from the further payment prior to it being paid to that person or that person's estate.

- (3) The board may also deduct interest on the overpayment from the person's entitlement to a further payment from the fund if the overpayment has been made—
  - (a) because the member or person receiving the payment gave false or misleading information to the board; or
  - (b) in circumstances prescribed under the deed.
- (4) However, the board may deduct interest on the overpayment only if the board gives written notice to the person—
  - (a) stating the amount of the overpayment; and
  - (b) requiring the person to pay the amount before a stated date (at least 30 days after receiving the notice); and
  - (c) stating that if the person does not pay the amount before the stated date, the board may deduct the amount together with interest at a stated rate from the person's entitlement to a further payment from the fund.
- (5) The rate of interest is to be decided by the board but must not be more than the rate prescribed under a regulation.
- (6) Interest on the amount is payable from the stated date.
- (7) This section applies subject to a standard prescribed under the SIS Act, section 31.
- (8) In subsection (3)—

***false or misleading information*** means information that the person giving it—

  - (a) knows is false or misleading in a material particular; or
  - (b) has omitted something from it, knowing the omission makes the information misleading in a material particular.

## **19 Recovery of unpaid contributions**

- (1) Any amount (including an amount of contribution to the fund) that is payable to the board under the scheme may be recovered in a court of competent jurisdiction as a debt due and owing to the board.
- (2) Any amount of contributions to the fund unpaid at the time a person ceases to be a member may be deducted from any benefits payable under the scheme before any payment is made to or in respect of that person.

## **20 Reports**

- (1) In each year the board is to make to the Minister a report on the administration of this Act and of the scheme.
- (2) The Minister is to lay a copy of the board's annual report before the Legislative Assembly within 14 sitting days after the Minister receives the report.
- (3) When, and as often as, the Minister may require, the board is to make to the Minister a report on such matters concerning the administration of this Act or the scheme as the Minister may direct.

*Note—*

See also the SIS Act for other provisions about reports.

## **20A Auditing**

- (1) The board must—
  - (a) keep appropriate financial statements about the administration of the scheme; and
  - (b) have the financial statements for each financial year audited by an auditor appointed by the board.
- (2) As soon as practicable after conducting the audit, the auditor must—
  - (a) certify the financial statements and prepare a report about the certified statements; and

- (b) give the certified statements and report to the board.
- (3) The board must give a copy of the certified statements and report to the Minister as soon as practicable after receiving them.
- (4) The board may appoint a person as an auditor for this section only if the board is reasonably satisfied the person satisfies the SIS Act, section 35AC(2)(a) and (b).

*Note—*

See also the SIS Act for other provisions about auditing.

## 21 Protection of expressions associated with scheme

- (1) A person must not do any of the following in connection with selling the right to participate in a superannuation, insurance, provident or other benefit scheme (the *promoted scheme*) unless the promoted scheme is the scheme to which this Act relates—
  - (a) use a declared expression;
  - (b) use a variation of a declared expression in a way that may cause a person to reasonably believe the promoted scheme is or is associated with the scheme to which this Act relates;
  - (c) use any word (either alone or with other words) similar in sight or sound to a declared expression in a way that may cause a person to reasonably believe the promoted scheme is or is associated with the scheme to which this Act relates.

Maximum penalty—40 penalty units.

- (2) In this section—

*declared expression* means an expression, associated with the scheme, declared under a regulation to be an expression to which this section applies.

*Examples of expressions associated with the scheme—*

- 1 a name given to the scheme
- 2 a name given to a category of member

## 23 Unclaimed benefits

- (1) This section applies if a benefit payable under this Act is not claimed by a person entitled to it (the *beneficiary*) within 6 months after it becomes payable.
- (2) The board must keep the benefit in the fund for the beneficiary.
- (3) The board may pay a person the benefit only if the board is satisfied the person is the beneficiary.
- (4) Payment of a benefit to a person (the *first claimant*) under this section releases the board from the obligation to pay another person (a *subsequent claimant*) a further benefit from the fund in relation to a member.
- (5) Subsection (4) does not prevent the subsequent claimant from claiming the amount of the value of the benefit from the first claimant.
- (6) This section does not apply to a benefit, or any part of a benefit, that is unclaimed money under the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cwlth).
- (7) In this section—  
*benefit* includes interest payable on the benefit at the rate decided by the board.

## 24 Barring of claims for compensation

No member is entitled to any compensation by reason of the alteration of any benefit payable under the scheme which may lawfully be made in consequence of any actuarial investigation or otherwise.

## 26 False declarations

- (1) No person is to—
  - (a) in a certificate, return, declaration, or other document given or sent to, or lodged with, the board by or on behalf of that person for any of the purposes of the

scheme, knowingly furnish information as to age or state of health that is false or misleading; or

- (b) for the purposes of a medical examination required to be undergone under the scheme, knowingly furnish the medical practitioner by whom the examination is made with information as to state of health or medical history that is false or misleading.

Maximum penalty—10 penalty units.

- (2) If a person is convicted of an offence against this section the board may order—
  - (a) in the case of a member—
    - (i) that the person is ineligible, either permanently or for such time as the board may determine, to contribute to the fund; or
    - (ii) if contributions have not commenced—that the person is ineligible to commence to contribute to the fund either permanently or for such time as the board may determine; or
  - (b) in the case of a recipient of a benefit—that the benefit be cancelled forthwith; or
  - (c) in the case of a person other than a member or recipient of a benefit—that that person be ineligible to commence to contribute to the fund either permanently or for such time as the board may determine.
- (3) Where the board makes a determination under this section in respect of a member whereby the member is precluded from contributing to the fund for a time only, any period of employment by the member during that time is to be disregarded in the calculation of a period of employment for the purpose of determining a member's entitlement, or that of a person deriving an entitlement through that member, to benefits under this Act or the scheme.

## **28 Contributions by units**

- (1A) This section applies only in relation to a member of the scheme in a defined benefit category under the deed.
- (1) The Treasurer may require a unit of the State public sector to pay, for each member of the scheme employed by the unit, the amount the Treasurer decides is necessary to provide for the payment of benefits to the member under the scheme.
  - (2) The unit must pay the amount within 1 week after the end of each pay period for the member or, for a payment other than a periodic payment, by the time stated by the Treasurer.
  - (3) If the amount is not paid within the time required under subsection (2), interest accrues on the outstanding amount at the rate prescribed under a regulation.
  - (4) Subsection (5) applies if—
    - (a) the amount is paid within the time required under subsection (2); and
    - (b) the board can not pay the amount or a part of the amount into the member's appropriate account because information received for the member, from the unit of the State public sector in a return mentioned in section 17(1), is not accurate or complete.
  - (5) Interest accrues on the amount that can not be paid into the member's appropriate account—
    - (a) at the rate prescribed under a regulation; and
    - (b) for the period in which the amount can not be paid into the account.
  - (6) The amount mentioned in subsection (1), and interest that accrues under subsection (3) or (5), must be paid—
    - (a) if a regulation requires payment to the board—to the board; or
    - (b) otherwise—to the Treasurer.
  - (7) In this section—

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*member's appropriate account*, in relation to an amount received for a member of the scheme, means the member's account under the scheme into which the amount must be paid under this Act.

## **28A Adjustment of multiples for particular standard defined benefit members**

- (1) This section applies to an employed member or former employed member in the standard defined benefit category if—
  - (a) the member's salary as at an annual review date is higher than the member's previous annual review date salary; and
  - (b) the government superannuation officer appointed under section 15I, on the advice of an actuary, believes the increase in salary is, or includes, an unremunerative increase.
- (2) The government superannuation officer may decide—
  - (a) that a relevant accrued multiple for the member, as at the annual review date, be an amount recommended by an actuary that—
    - (i) excludes the effect of the unremunerative increase; and
    - (ii) does not otherwise affect the member's benefits in the standard defined benefit category at the annual review date; or

*Note—*  
See also the *Superannuation Industry (Supervision) Regulations 1994* (Cwlth), regulation 13.16.

  - (b) not to take any action under this section in relation to the unremunerative increase.
- (3) Before making a decision under subsection (2), the government superannuation officer must consult with the board and the chief executive.

- (3A) The government superannuation officer's decision under subsection (2) applies despite anything in the deed.
- (4) Each of the following terms used in this section have the meaning given by the deed—
- annual review date
  - annual review date salary
  - salary
  - standard defined benefit category.
- (4A) For part 3A, the government superannuation officer's functions include the functions under this section.
- (5) In this section—
- relevant accrued multiple***, for an employed member or former employed member, means a multiple used to work out a voluntary exit benefit for the member at an annual review date.
- total remuneration***, of an employed member or former employed member, means the total remuneration paid for the member's services, including salary and sums paid by way of fees or allowances.
- unremunerative increase***, in relation to an employed member's or former employed member's salary, means an increase in salary that is not related to an increase in the member's total remuneration.
- voluntary exit benefit***, for an employed member or former employed member, means a benefit of the member in the standard defined benefit category under the deed that is—
- (a) a benefit on age retirement for a member who has reached the age of 55 years; or
  - (b) a benefit on withdrawal for a member who is under the age of 55 years.



## 29 Appropriation of contribution

- (1) A contribution to the fund by the Crown in accordance with the deed is to be paid by the Treasurer—
  - (a) at any such time and in such manner as prescribed by the deed; and
  - (b) out of the consolidated fund which is appropriated accordingly.
- (2) The contribution by the Crown under subsection (1) in a financial year must be at least the amount required to meet the defined benefits under the deed that fall due for payment in the financial year less—
  - (a) any share of the defined benefits satisfied by contributions already paid by the Crown; and
  - (b) any share of the defined benefits satisfied by contributions already paid by the defined benefit members to whom the benefits are payable and accumulated interest on the contributions.
- (3) In this section—

*accumulated interest*, on contributions paid by a defined benefit member, means interest credited to the member's account under the deed that is attributable to the amount of the contributions.

*defined benefit members* means members in a defined benefit category under the deed.

*defined benefits* means benefits payable under the deed to defined benefit members.

## 29A State to hold assets in relation to defined benefit liabilities

- (1) The State is to hold assets that are at least equal in value to the accrued liability of the State in relation to defined benefits, measured at least once every 3 years.
- (2) For subsection (1), the accrued liability of the State in relation to defined benefits is the actuarial value of the accrued

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benefits of defined benefit members less the value of the fund that is attributed in an actuarial investigation to defined benefit members.

- (3) For subsection (2), the actuarial value of the accrued benefits of defined benefit members is to be determined using the assumptions that are used in the actuarial investigation mentioned in the subsection to determine recommended contributions to the fund.
- (4) In this section—

*actuarial investigation* means an investigation of the state and sufficiency of the fund carried out by an actuary under the deed.

*defined benefit members* see section 29(3).

*defined benefits* see section 29(3).

### **30 Assignment of benefit**

Subject to part 3, no benefit payable under the scheme is capable of being assigned, charged, taken in execution, attached or passed by operation of law or otherwise howsoever to any person other than the member or the member's estate nor is any claim to be set off against the same and any amount payable out of the fund on the death of the member is not an asset for the payment of the member's debts or liabilities.

### **30A Judicial notice of certain matters**

- (1) 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 proved.
- (2) Judicial notice also must be taken of—
  - (a) the signature of a trustee, an alternate trustee or the CEO; and
  - (b) the fact that the person holds or has held the relevant office.

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### **30B References to discontinued schemes**

(1) In an Act or document, a reference to a discontinued scheme or a matter relating to a discontinued scheme may, if the context permits, be taken as a reference to the scheme established under this Act or the equivalent matter relating to the scheme established under this Act.

(2) In subsection (1)—

*discontinued scheme* means a superannuation scheme previously operated under any of the following Acts—

- the *Fire and Rescue Authority Act 1990*
- the repealed Parliamentary Contributory Superannuation Act 1970
- the repealed Police Superannuation Act 1968
- the repealed Police Superannuation Act 1974
- the repealed Public Service Superannuation Act 1958
- the repealed State Service Superannuation Act 1972
- the repealed Superannuation (Government and Other Employees) Act 1988.

### **30C No appeal to industrial commission**

No appeal lies to the industrial commission in relation to any decision under this Act.

### **31 Regulation-making power**

(1) The Governor in Council may make regulations under this Act.

(2) Without limiting subsection (1), a regulation may be made about any of the following—

- (a) the membership of the board;
- (b) the eligibility requirements for trustees and alternate trustees;



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a member in the standard defined benefit category in relation to that employment.

- (3) To remove any doubt, it is declared that—
  - (a) subsections (1) and (2) apply despite anything in the deed or other instrument in force under this Act; and
  - (b) subsection (1) prevents a person becoming a member in the standard defined benefit category even if the person was previously in that category (before or after the commencement day); and
  - (c) subsection (2) prevents a person becoming a member in the standard defined benefit category in relation to particular employment even if the person was previously in that category in relation to that employment (before or after the commencement day).
- (4) This section does not apply to a person with approval given under section 32O.

### **32O Approval to join after commencement day in particular circumstances**

- (1) Within 6 months after the commencement day, a person may give a written application to the government superannuation officer (the *officer*) for approval to become a member in the standard defined benefit category in relation to particular employment.
- (2) The person must give the officer the information reasonably required by the officer to decide the application.
- (3) The officer may approve the application if satisfied that, before the commencement day, the applicant—
  - (a) took a step for the purpose of becoming a member in the standard defined benefit category; or

*Example—*

The applicant completed a form required to become a member in the standard defined benefit category but, on the commencement day, the form was with the applicant's employer.

[s 32P]

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- (b) took a step for the purpose of deciding whether to become a member in the standard defined benefit category.

*Example—*

The applicant arranged before the commencement day to obtain financial advice for the purpose of deciding whether to become a member in the standard defined benefit category.

- (4) The officer must decide the application as soon as is practicable.
- (5) The officer must give the applicant written notice of the decision and, if the decision is not to give the approval, the reasons for the decision.
- (6) If the officer decides not to give approval, the applicant may, within 28 days after receiving notice of the decision, give a written application to the chief executive for a review of the decision.
- (7) The chief executive must review the decision as soon as is practicable and either confirm the officer's decision or give the approval.
- (8) The chief executive must give the applicant written notice of the chief executive's decision on the review and, if the decision is to confirm the officer's decision, the reasons for the chief executive's decision.
- (9) For part 3A, the officer's functions include the functions under this section.

### **32P Membership taken to continue in particular circumstances**

- (1) This section applies if—
- (a) on or after the commencement day, a person who is a member of the standard defined benefit category in relation to employment with a particular unit of the State public sector stops being employed by that unit; and

- (b) within 1 month after ceasing the employment mentioned in paragraph (a), the person starts employment with the same or another unit of the State public sector (the *new employment*); and
  - (c) the person is eligible for membership in the standard defined benefit category in relation to the new employment.
- (2) The person's membership in the standard defined benefit category continues until it ends under the deed.

## **Part 6**

# **Transitional and declaratory provisions for Revenue and Other Legislation Amendment Act 2016**

### **33 Change in board's name**

- (1) To remove any doubt, it is declared that the amendment of section 3 by the *Revenue and Other Legislation Amendment Act 2016* has effect only to change the name of the board and does not establish a new board.
- (2) From the commencement, if the context permits, a reference in an instrument to 'Board of Trustees of the State Public Sector Superannuation Scheme' is taken to be a reference to QSuper Board.

### **34 Existing membership and entitlements of State public sector employees**

- (1) The amendment of this Act by the *Revenue and Other Legislation Amendment Act 2016* does not affect—
  - (a) the membership of a current member; or
  - (b) any entitlement the member accrued under this Act before the commencement.
- (2) In this section—

*current member* means a person who, immediately before the commencement, was a member of the scheme.

### **34A Membership by particular employees of existing GOCs**

- (1) This section applies to an employee of an existing GOC if, immediately before the commencement—
  - (a) the employee was not the subject of a notice under former section 13; or
  - (b) the employee's membership in the scheme was discretionary, under a notice under former section 13, and the employee's employer had nominated a fund other than the scheme to be the default fund for the employee.
- (2) The employee can not become a member of the scheme under a default arrangement.
- (3) Subsection (2) does not prevent the employee from continuing to be, or becoming a member of the scheme, other than under a default arrangement.
- (4) In this section—

*default arrangement*, in relation to membership of the scheme, means membership of the scheme by way of—

- (a) a declaration, under section 14B(1)(c), that the employee's membership in the scheme is compulsory; or
- (b) a declaration, under section 15A, that the employee is a core government employee for this Act; or
- (c) the scheme being the employee's default fund.

*default fund*, for an employee, has the meaning given by section 15E.

*existing GOC* means a GOC in existence immediately before the commencement.

*former section 13* means section 13 as in force before the commencement.



**35 Declaration for Acts Interpretation Act 1954, section 20A**

Parts 4A to 5A and 6, as in force before the commencement are declared to be laws to which the *Acts Interpretation Act 1954*, section 20A applies.