



# **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 Definitions

The dictionary in schedule 2 defines particular words used in this Act.

### 3 Meaning of *unit of the State public sector*

- (1) Each of the following entities is a *unit of the State public sector*—
  - (a) an entity mentioned in schedule 1;
  - (b) an entity declared under section 4 to be a unit of the State public sector.
- (2) However, the Executive Council is not a unit of the State public sector.

### 4 Minister may declare 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.

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- (2) The power of the Minister under subsection (1) includes the power—
  - (a) to declare a department or other agency of the Commonwealth or another State on which functions of this State have been conferred to be a unit of the State public sector; and
  - (b) to declare an entity to be a unit of the State public sector only in relation to particular employees.
- (3) However, the Minister may declare an entity to be a unit of the State public sector only if—
  - (a) the entity performs functions for the State, employs public service employees or is otherwise connected to the State; or
  - (b) for a declaration under subsection (2)(b), the entity employs persons whose membership in the scheme is continued under part 3, division 2.
- (4) 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.
- (5) A notice under subsection (1) or (4) is subordinate legislation.

## **Part 2**                      **Public sector superannuation scheme**

### **5**                      **Continuation of scheme**

- (1) The scheme established under this Act and the repealed *Superannuation (State Public Sector) Deed 1990* is continued in existence.
- (2) The scheme continues under subsection (1) despite any change to the scheme's name from time to time.

*Note—*

See also section 65.



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## 6 Deed for scheme

- (1) The 1990 deed continues in existence as the trust deed for the scheme in the form of the instrument prepared under section 54.
- (2) The continuation of the 1990 deed under subsection (1) does not—
  - (a) affect, or purport to affect, the continuation of the scheme or the fund for the scheme; or
  - (b) otherwise resettle or redeclare the scheme or the fund for the scheme.
- (3) Subsections (1) and (2) apply even though the 1990 deed stopped being subordinate legislation on the repeal of the 1990 regulation.
- (4) The trust deed may be amended by the trustee in accordance with this Act and the deed.

*Note—*

See section 26 in relation to amendments of the trust deed relating to government defined benefit categories.

- (5) The amendment of the trust deed by the trustee does not affect the operation of subsections (1) to (3).

## 7 Fund for scheme

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

## 8 Administration of scheme

- (1) The trustee's scheme operations must be based in Queensland.
- (2) For subsection (1), the trustee's scheme operations are based in Queensland only if—
  - (a) the trustee's registered office, and principal place of business, under the Corporations Act is in Queensland; and

- (b) each of the following persons ordinarily reside in Queensland—
    - (i) the trustee’s chief executive officer (however called);
    - (ii) a majority of the trustee’s directors;
    - (iii) a majority of the trustee’s key management personnel who are not mentioned in subparagraph (i) or (ii); and
  - (c) the main office of the majority of the trustee’s business areas for the scheme operations is in Queensland.
- (3) In this section—

*director*, of the trustee, means a director of the trustee within the meaning of the Corporations Act, section 9.

*key management personnel*, of the trustee, means a member of the trustee’s key management personnel within the meaning of the Corporations Act, section 9.

*scheme operations*, of the trustee, means the trustee’s operations relating to the administration of the scheme.

## 9 Membership open to everyone

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

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## **Part 3                      Membership of scheme by State public sector employees**

### **Division 1                      General matters about State public sector employees**

#### **10            Minister may declare matters about membership**

- (1) The Minister may, by written notice, declare the following about membership of the scheme by a State public sector employee—
  - (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) The Minister may declare an employee’s membership in the scheme is compulsory under subsection (1)(c) only if the employee’s employer has given the Minister a written notice requesting the declaration.
- (3) A notice under subsection (1) is subordinate legislation.

### **Division 2                      Continuation of membership after particular events**

#### **11            Application of division**

This division applies if—

- (a) either of the following things (each a *relevant event*) happens in relation to a person—

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- (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;
- (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 includes the employer in a membership declaration; and
    - (B) the employer gives written notice to the board that the employer agrees to the person's continued membership in the scheme.

## 12 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—the person’s membership or entitlement to membership of the standard defined benefit category is unaffected by the happening of the relevant event.
- (3) Subsection (2) applies for the circumstances mentioned in section 11(c)(ii) from when the relevant event happens, even if the gazette notice mentioned in that section is published after the relevant event happens.

### **13 Employer may not revoke agreement**

An employer who gives a notice under section 11(c)(iii)(B) may not revoke the notice.

### **14 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 4; or
  - (b) declaring matters about the person’s membership in the scheme under section 10.
- (2) However, a declaration under section 10 about the person’s membership in the scheme must be consistent with section 12.

## **Division 3 Continued membership in standard defined benefit category by State public sector employees**

### **15 Application of division**

This division applies in relation to a member of the scheme in the standard defined benefit category.

*Note—*

On 12 November 2008, the standard defined benefit category was closed to persons who were not already members of the scheme in that category immediately before that day. See—

- (a) part 5B of this Act, as in force before its repeal by the *Superannuation (State Public Sector) (Scheme Administration) Amendment Act 2021*, for the closure of the standard defined benefit category to new members; and
- (b) the *Revenue and Other Legislation Amendment Act (No. 2) 2008*, sections 2(14) and 125 for the commencement of part 5B of this Act as in force before its repeal; and
- (c) section 67 for the continued effect of part 5B of this Act as in force before its repeal.

## 16 Membership taken to continue in particular circumstances

- (1) This section applies if—
  - (a) 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; and
  - (d) the person has not made a withdrawal from the member's accumulation account in relation to a defined benefit credited to the account under the terms of the deed governing the standard defined benefit category.
- (2) The person's membership in the standard defined benefit category continues until it ends under the deed.

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## **Part 4                      Choice of fund provisions**

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

#### **17                      Core government employees**

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

#### **18                      Scheme is default fund for core government employees**

Unless a core government employee gives a direction under section 19, the employee's employer must pay the contributions payable for the employee into the scheme.

#### **19                      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 government defined benefit category.

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

### **20            Scheme is default fund for particular employees**

- (1) This section applies to the following employees—
  - (a) a State public sector employee—
    - (i) whose membership of the scheme is the subject of a membership declaration; 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 10(1)(c); and
    - (iii) whose employer has not nominated a fund other than the scheme to be the default fund for the employee;
  - (b) a State public sector employee whose membership of the scheme is not the subject of a membership declaration, 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.

## **Part 5                                      Compulsory contributions for State public sector employees**

### **21            Application of part**

This part applies in relation to a State public sector employee mentioned in a membership declaration, other than an employee who is a government defined benefit member.



## **22 Meaning of *chosen fund***

A State public sector employee's *chosen fund* is—

- (a) for a core government employee—
  - (i) if the employee has given a notice under section 19—the fund the subject of the notice; or
  - (ii) otherwise—the scheme; or
- (b) for a State public sector employee for whom membership in the scheme is compulsory under a declaration under section 10(1)(c)—the scheme; or
- (c) for another State public sector employee—
  - (i) if the employee has given the employer a written notice stating the employee wants a fund other than the employee's default fund to be the person's chosen fund under the *Superannuation Guarantee (Administration) Act 1992* (Cwlth)—the person's chosen fund under that Act; or
  - (ii) otherwise—the default fund for the employee.

*Note—*

For particular State public sector employees to whom paragraph (c) applies, the employee's default fund is the scheme—see section 20.

## **23 Compulsory contributions by employers and employees**

- (1) A unit of the State public sector must pay contributions for each of its employees into the employee's chosen fund at the rate and frequency prescribed by regulation.
- (2) A State public sector employee must pay contributions into the employee's chosen fund at the rate and frequency prescribed by regulation.

## **24 Deduction of compulsory employee contributions by employer**

- (1) The employer of a State public sector employee may—

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- (a) deduct from the employee's salary the contributions required under section 23(2); and
  - (b) pay the amount deducted under paragraph (a) into the employee's chosen fund on behalf of the employee.
- (2) The employee is taken to have paid the contributions required under section 23(2) into the employee's chosen fund if the contributions are paid into the fund by the employer under subsection (1).

## **Part 6 Government defined benefit categories**

### **25 Application of part**

This part applies in relation to members of the scheme in a government defined benefit category and their rights to superannuation or other benefits attributable to that category.

### **26 Preservation of existing entitlements**

- (1) The trustee may amend the deed in a way that affects the rights to superannuation or other benefits of members only if—
- (a) all of the following apply—
    - (i) the trustee, acting on the advice of an actuary, believes the amendment will not affect the Treasurer's contributions under section 31;
    - (ii) the amendment does not affect entitlements to defined benefits, or defined benefit contributions, of the members;
    - (iii) the Minister has been given written notice of the amendment; or
  - (b) the Minister has consented to the amendment.
- (2) In this section—

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*defined benefit contributions* means contributions to the scheme required under the deed by members in relation to their membership in a government defined benefit category.

## **27 No compensation payable for lawful changes**

No member is entitled to any compensation for any change of a superannuation or other benefit payable to the member, under the scheme, to the extent the change is—

- (a) made under section 26; or
- (b) otherwise lawfully made because of an actuarial investigation.

## **28 Investment manager for defined benefit assets**

- (1) The Minister may give the trustee a written notice (an *approval notice*) stating each person who is an approved investment manager for the investment of defined benefit assets.
- (2) The Minister may include a person in an approval notice—
  - (a) only if the person is appropriately qualified; and
  - (b) only after consulting the person and the trustee.
- (3) An approval notice takes effect in relation to a person included in the notice on the day stated in the notice.
- (4) If the Minister has given an approval notice, the trustee—
  - (a) must appoint a defined benefits investment manager; and
  - (b) may appoint only an approved investment manager to be a defined benefits investment manager.
- (5) The defined benefits investment manager must invest defined benefit assets in a way that is consistent with—
  - (a) the deed; and
  - (b) the investment objectives, strategies or policies set by the trustee for the investment of the assets; and

(c) this Act, the *Superannuation Industry (Supervision) Act 1993* (Cwlth) and any other law.

(6) In this section—

***defined benefit assets*** means the assets of the scheme fund attributable to a government defined benefit category.

***defined benefits investment manager*** means the investment manager, within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth), who invests defined benefit assets under the deed.

## 29 Contributions by units

- (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 by regulation.
- (4) Subsection (5) applies if—
  - (a) the amount is paid within the time required under subsection (2); and
  - (b) the trustee 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, 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 by regulation; and
  - (b) for the period in which the amount can not be paid into the account.

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- (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 trustee—to the trustee; or
  - (b) otherwise—to the Treasurer.
- (7) In this section—
- 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 the deed.

### **30 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 33, 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 trustee and the chief executive.
- (4) The government superannuation officer's decision under subsection (2) applies despite any other provision of this Act and anything in the deed.
- (5) Each of the following terms used in this section have the meaning given by the deed—
- annual review date
  - annual review date salary
  - employed member
  - salary
- (6) For part 7, the government superannuation officer's functions include the functions under this section.
- (7) 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.

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*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.

### **31 State's contribution from consolidated fund**

- (1) The Treasurer must make, on behalf of the State, the following contributions to the scheme fund—
  - (a) contributions to satisfy defined benefits that become payable to government defined benefit members under the deed;
  - (b) any other contributions the Treasurer considers necessary for the efficient and effective operation of the scheme in relation to government defined benefit members.
- (2) The amounts of the contributions payable under subsection (1)(a) are the amounts decided by the trustee on the advice of an actuary.
- (3) The amounts of the contributions payable under subsection (1)(b) are the amounts decided by the Treasurer in consultation with the trustee.
- (4) The contributions under subsection (1) in a financial year must be at least the amount required to meet defined benefits under the deed that become payable in the financial year less—
  - (a) any share of the defined benefits satisfied by contributions already made to the scheme fund by the Treasurer under this section or former section 29; and
  - (b) any share of the defined benefits satisfied by—

- (i) contributions already made by the government defined benefit members to whom the defined benefits are payable; and
  - (ii) accumulated interest on the contributions mentioned in subparagraph (i).
- (5) A contribution under subsection (1) must be paid out of the consolidated fund, which is appropriated accordingly.
- (6) In this section—

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

*former section 29* means section 29 of this Act as in force before the commencement.

## **32 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 benefits of government defined benefit members less the value of the scheme fund that is attributed in an actuarial investigation to government defined benefit members.
- (3) For subsection (2), the actuarial value of the accrued benefits of government 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 scheme fund.



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## Part 7 Government superannuation officer

### 33 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 Sector Act 2022*.

### 34 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 scheme default fund arrangements and Brighter Super default fund arrangements at least 10 years after the commencement of part 10, division 2, subdivision 3; and
  - (b) reporting the outcomes of the review to the Minister.
- (3) In this section—

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

*scheme default fund arrangements* means the arrangements applying under part 4.

### 35 Staff services from department and trustee

- (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

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- (b) the trustee may assign an officer or employee of the trustee 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 trustee in relation to the performance of the work.
- (3) In this section—
  - trustee* means—
    - (a) the trustee of the scheme under the deed; or
    - (b) an entity ultimately owned or controlled by the trustee of the scheme under the deed.

### **36 Delegation**

- (1) The officer may delegate the officer's functions to an appropriately qualified person assigned to perform work for the officer under section 35.
- (2) In this section—
  - functions* includes powers.

### **37 Chief executive to act as officer while no appointee**

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

- (a) the chief executive is to perform the officer's functions; and
- (b) for that purpose, sections 34 to 36 apply as if references in the sections to the officer were references to the chief executive.

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## Part 8 Miscellaneous provisions

### 38 Nature of benefit payable

- (1) A benefit payable under the scheme in relation to a member of the scheme can not, by operation of law or otherwise, be—
  - (a) assigned, charged, taken in execution, attached or passed to a person other than the member or the member's estate; or
  - (b) used to set off a claim by payment to a person other than the member or the member's estate.
- (2) A benefit payable under the scheme in relation to a member of the scheme on the death of the member is not an asset for the payment of the member's debts or liabilities from the member's estate.
- (3) Any agreement or arrangement relating to, or transfer or other dealing with, a benefit payable under the scheme that is inconsistent with subsection (1) or (2) is void to the extent of the inconsistency.

### 39 Reports to be given to Minister on request

- (1) The Minister may, at any time, ask the trustee to give the Minister a report about the administration of the scheme to the extent that it applies to government defined benefit members.
- (2) The trustee must comply with a request under subsection (1).
- (3) A request or report under this section must not be about, or include information that identifies, an individual government defined benefit member or the member's entitlement.

### 40 No appeal to industrial commission

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

#### **41 Regulation-making power**

The Governor in Council may make regulations under this Act.

## **Part 9 QSuper Board**

### **Division 1 QSuper Board continues**

#### **42 Continuation of QSuper Board**

- (1) QSuper Board is continued in existence.
- (2) The former board provisions continue to apply in relation to QSuper Board until the board becomes a proprietary company under division 2.
- (3) For subsection (2), the former board provisions apply as if they had not been repealed by the *Superannuation (State Public Sector) (Scheme Administration) Amendment Act 2021*.
- (4) However, former section 4 applies in relation to QSuper Board only while the board is the trustee of the scheme.
- (5) In this section—

*former*, for a provision of this Act, means the provision as in force immediately before the commencement.

*former board provisions* means former part 2 and former section 31(2).

### **Division 2 QSuper Board as proprietary company**

#### **43 Definitions for division**

In this division—

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*QSuper Board Pty Ltd* means QSuper Board after its registration as a proprietary company limited by shares under the Corporations Act.

*registration day* see section 44(2)(a).

#### **44 QSuper Board to be registered as proprietary company**

- (1) QSuper Board is a deemed registration company for the purposes of the Corporations Act, section 5H.
- (2) For the Corporations Act, section 5H(1)(b)—
  - (a) QSuper Board is to be taken to be registered on the day (the *registration day*) declared by the Minister under section 45; and
  - (b) QSuper Board is to be registered as a proprietary company limited by shares; and
  - (c) QSuper Board's proposed name is 'QSuper Board Pty Ltd'.

#### **45 Minister may declare registration day**

- (1) The Minister may, by notice published in the gazette, declare the day QSuper Board is to be taken to be registered as a proprietary company limited by shares under the Corporations Act.
- (2) The Minister's power to declare a day under subsection (1) includes the power to declare a day, that is after the notice is published, by reference to the day on which the appointment of a new trustee for the scheme takes effect under an instrument executed by QSuper Board and the new trustee.

#### **46 Constitution, shareholding and other matters about company on registration**

QSuper Board must decide, in consultation with the Minister, the matters the details of which are to be included in the notice lodged under the Corporations Act, section 5H(2).

#### **47 Effect of QSuper Board becoming proprietary company**

- (1) QSuper Board Pty Ltd is taken for all purposes to be a continuation of, and the same legal entity as, QSuper Board.
- (2) Without limiting subsection (1), the registration of QSuper Board as a proprietary company limited by shares under the Corporations Act does not—
  - (a) create a new legal entity; or
  - (b) affect QSuper Board's existing assets, rights or liabilities (other than in relation to the members of QSuper Board as provided in section 48); or
  - (c) affect any legal proceedings by or against QSuper Board or its members; or
  - (d) affect the employment, or entitlements as an employee, of a person who was a member of staff of QSuper Board other than the board's chief executive officer, immediately before the registration day.
- (3) Despite subsections (1) and (2), QSuper Board Pty Ltd does not represent the State.
- (4) Subsections (1) and (2) are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally.

#### **48 QSuper Board's members and CEO**

- (1) On the registration day, the members and chief executive officer of QSuper Board go out of office.
- (2) No compensation is payable because of subsection (1).
- (3) To remove any doubt, it is declared that subsection (2) does not limit or otherwise affect a person's right to a benefit or entitlement that had accrued before the commencement.
- (4) Also, nothing in this section prevents a person who was a member or chief executive officer of QSuper Board from becoming an officer or employee of QSuper Board Pty Ltd.

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## Part 10 Transitional and declaratory provisions

### Division 1 Provisions for Revenue and Other Legislation Amendment Act 2016

#### 49 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.

#### 50 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.

#### 51 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.

## 52 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.



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**Division 2**                      **Provisions for Superannuation  
(State Public Sector) (Scheme  
Administration) Amendment Act  
2021**

**Subdivision 1**                **Amendments commencing on  
assent**

**53**            **Contributions for core government employees if another  
fund chosen**

- (1) The requirement for a core government employee to make contributions into a fund, other than the scheme, under section 15DA is taken to have been in effect from the start of 30 June 2017.
- (2) An employer to whom section 15D applied at any time before the commencement is taken to have complied with section 15D(2) if the employer paid the employer's contributions into the fund at the rate taken to have been required by section 15D(2) by the operation of subsection (1) or a higher rate.
- (3) An employee to whom section 15DA is taken to have applied at any time before the commencement is taken to have complied with section 15DA(2) if the employee paid the employee's contributions into the fund at the rate taken to have been required by section 15DA(2) or a higher rate.
- (4) An employee is taken to have paid the employee's contributions for subsection (3) if, under an arrangement with the employee's employer, the contributions were paid into the fund by the employer.

## **Subdivision 2      Provision about repeal of 1990 regulation**

### **54      Instrument restating 1990 deed**

- (1) QSuper Board must prepare an instrument that restates the provisions of the 1990 deed, subject only to—
  - (a) amendments necessary as a consequence of the provisions of the 1990 deed being restated as provisions of an instrument that is not subordinate legislation, including, for example, amendments—
    - (i) to update references to this Act; or
    - (ii) to remove provisions that have been included in this Act or a regulation; or
    - (iii) to add provisions that have been removed from this Act or a regulation; or
    - (iv) to enable the deed to be amended by the trustee; and
  - (b) amendments to correct a minor error or make another change that is not a change of substance.

*Note—*

See section 6 in relation to the instrument prepared under this section continuing as the trust deed for the scheme.

- (2) Any provision of the instrument that is inconsistent with subsection (1) is void to the extent of the inconsistency.

## **Subdivision 3      Provisions about Sunsuper transfer**

### **55      Definition for subdivision**

In this subdivision—

***Sunsuper transfer*** means the transfer of the benefits of all members of Sunsuper Superannuation Fund (ABN 98 503 137 921) to the scheme.

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**56 Amendment of deed to facilitate Sunsuper transfer**

- (1) The trustee must, in accordance with the deed and before the Sunsuper transfer is completed, amend the deed to provide for and facilitate the implementation of the Sunsuper transfer.
- (2) An amendment under subsection (1) must not amend the deed in a way that—
  - (a) adversely affects the rights to superannuation or other benefits of members of the scheme accrued before the amendment; or
  - (b) affects, or purports to affect, the continuation of the scheme or the fund for the scheme; or
  - (c) otherwise resettles or redeclares the scheme or the fund for the scheme.
- (3) An amendment of the deed under subsection (1) that is inconsistent with subsection (2) is void to the extent of the inconsistency.

**57 MySuper products**

- (1) This section applies if, when the Sunsuper transfer is completed, more than 1 MySuper products are offered for the scheme.
- (2) A regulation may prescribe matters about the eligibility of members of the scheme to hold each of the MySuper products.
- (3) Without limiting subsection (2), a regulation under the subsection may, to the extent permitted by the *Superannuation Industry (Supervision) Act 1993* (Cwlth), prescribe—
  - (a) the members of the scheme who are eligible for a stated MySuper product; or
  - (b) conditions applying to a member's eligibility for a stated MySuper product.
- (4) In this section—

*MySuper product* see the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 10(1).

## **Subdivision 4 Provisions about trustee changeover**

### **58 Definitions for subdivision**

In this subdivision—

*new trustee* means the trustee of the scheme immediately after the trustee changeover.

*trustee changeover* means the time at which the appointment of a new trustee of the scheme takes effect under an instrument executed by QSuper Board and the new trustee.

### **59 Existing standard employer-sponsors**

- (1) This section applies in relation to a standard employer-sponsor arrangement in effect immediately before the trustee changeover.
- (2) From the trustee changeover, the standard employer-sponsor arrangement and any agreement relating to the arrangement is taken to have been entered into by the new trustee in its capacity as trustee of the scheme.
- (3) In this section—

*standard employer-sponsor arrangement* means an arrangement between QSuper Board and an entity under which the entity becomes a standard employer-sponsor within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cwlth), section 16(2).

### **60 Protection from liability**

- (1) This section applies in relation to a person who, at any time before the trustee changeover, was an official.

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- (2) The person is entitled to be indemnified from the scheme fund for a liability incurred by the person for an act done, or omission made, while acting as an official.
  - (3) The liability to which subsection (2) applies—
    - (a) includes an amount of legal costs decided by the trustee to be reasonable; but
    - (b) does not include a liability—
      - (i) of a kind to which former section 8 did not apply; or
      - (ii) that the person cannot be indemnified for, from the scheme fund, under the *Superannuation Industry (Supervision) Act 1993* (Cwlth).
  - (4) The costs incurred by QSuper Board or the new trustee for effecting insurance for liability to which subsection (2) applies may be paid out of the scheme fund.
  - (5) In this section—

*former section 8* means section 8 of this Act as in force immediately before the commencement.

*official* means official within the meaning of former section 8.

*QSuper Board* includes QSuper Board after it becomes QSuper Board Pty Ltd.

## 61 Application of Act until trustee changeover

- (1) Until the trustee changeover, a reference in this Act to the trustee is taken to be a reference to QSuper Board in its capacity as trustee of the scheme.
- (2) However, section 8 does not apply to QSuper Board even while it is the trustee of the scheme.

**62 Residence requirement for trustee’s chief executive officer (however called)**

Section 8(2)(b)(i) does not apply in relation to the trustee of the scheme after the trustee changeover until—

- (a) if a regulation prescribes a day earlier than 3 years after the commencement—the prescribed day; or
- (b) otherwise—3 years after the commencement.

**Subdivision 5 Matters about membership and entitlements**

**63 Existing membership and entitlements**

(1) The amendment of this Act by the *Superannuation (State Public Sector) (Scheme Administration) Amendment Act 2021* 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 was a member of the scheme immediately before the commencement.

**64 Compulsory contributions for particular State public sector employees**

(1) This section applies—

- (a) in relation to a State public sector employee if—
  - (i) the employee is a core government employee; or
  - (ii) the employee’s chosen fund is the scheme; and
- (b) if, on the commencement, a regulation has not been made under section 23.

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- (2) A unit of the State public sector must pay contributions for each of its employees into the employee's chosen fund at the rate and frequency at which the employer was required to pay contributions under this Act or the 1990 deed immediately before the commencement.
  - (3) A State public sector employee must pay contributions into the employee's chosen fund at the rate and frequency at which the employee was required to pay contributions under this Act or the 1990 deed immediately before the commencement.
  - (4) A State public sector employee is taken to comply with subsection (3) if, under an arrangement with the employee's employer, the contributions are paid into the fund by the employer.
  - (5) This section stops applying on the earlier of the following—
    - (a) a regulation under section 23 comes into force;
    - (b) 1 year after the commencement.

## Subdivision 6 Other matters

### 65 Declaration about continuation of scheme and fund

- (1) To remove any doubt, it is declared that the amendment of this Act by the *Superannuation (State Public Sector) (Scheme Administration) Amendment Act 2021* (the **amendment Act**)—
  - (a) did not establish a new scheme or new fund for the scheme; and
  - (b) is not intended to—
    - (i) affect, or purport to affect, the continuation of the scheme or the fund for the scheme; or
    - (ii) otherwise resettle or redeclare the scheme or the fund for the scheme.
- (2) Also, to remove any doubt, it is declared that the declaration under subsection (1) applies despite—

- (a) the provisions of the 1990 deed being continued as the trust deed for the scheme in the form of the instrument prepared under section 54; and
- (b) the Sunsuper transfer within the meaning of section 55, including—
  - (i) the amendment of the deed under section 56 relating to the Sunsuper transfer; and
  - (ii) any change to the scheme's name arising from the Sunsuper transfer; and
- (c) the appointment of a new trustee of the scheme under an instrument executed by QSuper Board and the new trustee; and
- (d) any other changes affecting the operation or management of the scheme or scheme fund arising from the amendment of this Act by the amendment Act.

## **66 Continued application of s 51**

From the commencement, section 51 applies as if—

- (a) the reference in subsection (4), definition *default arrangement*, paragraph (a) to section 14B(1)(c) were a reference to section 10(1)(c); and
- (b) the reference in subsection (4), definition *default arrangement*, paragraph (b) to section 15A were a reference to section 17; and
- (c) the reference in subsection (4), definition *default fund*, to section 15E were a reference to schedule 2.

## **67 Declaration for Acts Interpretation Act 1954, s 20A**

Section 30B and part 5B as in force before the commencement are declared to be laws to which the *Acts Interpretation Act 1954*, section 20A applies.



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## Schedule 1      Units of the State public sector

## section 3(1)(a)

- 1 a public sector unit
- 2 the Queensland Police Service under the *Police Service Administration Act 1990*
- 3 the Crime and Corruption Commission
- 4 Legal Aid Queensland established under the *Legal Aid Queensland Act 1997*, section 41
- 5 the industrial relations commission
- 6 the Queensland Audit Office established under the *Auditor-General Act 2009*
- 7 a corporate entity (other than a local government) constituted, or otherwise provided for, under an Act that collects revenues or raises funds under the authority of an Act
- 8 a non-corporate entity established, or otherwise provided for, under an Act that is funded or financially assisted to any extent by the State
- 9 a registry or other administrative office of a court of the State
- 10 a Magistrates Court
- 11 the parliamentary service under the *Parliamentary Service Act 1988*
- 12 the Governor's official residence (known as 'Government House') and its associated administrative unit
- 13 the Legislative Assembly
- 14 a registered higher education provider, within the meaning of the *Tertiary Education Quality and Standards Agency Act 2011* (Cwlth), that is established under an Act
- 15 a body corporate wholly owned by the State

- 16 a wholly-owned subsidiary, within the meaning of the Corporations Act, section 9, of a body corporate that is a unit of the State public sector under another item of this schedule

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## Schedule 2 Dictionary

## section 2

**1990 deed** means the deed under the 1990 regulation.

**1990 regulation** means the repealed *Superannuation (State Public Sector) Deed 1990* as in force immediately before its repeal.

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

**chosen fund**, for a State public sector employee, see section 22.

**core government employee** means a State public sector employee who is declared, under section 17, to be a core government employee for this Act.

**deed** means the trust deed for the scheme under section 6.

**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).

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

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

**government defined benefit category** means each of the following categories under the 1990 deed—

- standard defined benefit category

- State 58 category
- State 72 category
- police 68 category
- police 74 category
- fire category
- parliament 70 category.

**government defined benefit member** means a member of the scheme in a government defined benefit category.

**membership declaration** means a declaration under section 10.

**officer**, for part 7, see section 33(1).

**QSuper Board** means the board continued under section 3 of this Act as in force immediately before the commencement.

*Note—*

See section 42 for the continuation of QSuper Board from the commencement.

**QSuper Board Pty Ltd** see section 43.

**registration day**, for part 9, division 2, see section 44(2)(a).

**scheme** means the scheme mentioned in section 5.

**scheme fund** see section 7.

**standard defined benefit category** means the defined benefit category of that name under the 1990 deed.

**State public sector employee** means an employee of a unit of the State public sector.

**trustee** means the company, within the meaning of the Corporations Act, that is the trustee of the scheme under the deed.

**unit of the State public sector** see section 3.