

Superannuation (Public Employees Portability) Regulation 2019

Explanatory notes for SL 2019 No. 161

made under the

Superannuation (Public Employees Portability) Act 1985

General Outline

Short title

Superannuation (Public Employees Portability) Regulation 2019

Authorising law

Sections 4 and 13 of the *Superannuation (Public Employees Portability) Act 1985*.

Policy objectives and the reasons for them

History of superannuation portability

Historically, Australian public sector employees have received superannuation on retirement that is calculated as a percentage of their retirement salary. Superannuation entitlements of this type are known as defined benefits.

Under Commonwealth and State legislation, public sector employees who transferred between public employers could transfer their defined benefit to the new employer's superannuation scheme. These arrangements, known as defined benefit portability arrangements, ensured public sector employees received a retirement benefit that recognised their total public service.

The *Superannuation (Public Employees Portability) Act 1985* (Act) establishes Queensland's portability arrangements. Under the Act, Queensland's public sector employees, on transferring employment, have been able to transfer their superannuation to their new employer's superannuation scheme. The Act allows for transfers within Queensland and to other jurisdictions.

Superannuation portability today

Australian employers, including public sector employers, have mostly replaced their defined benefit schemes with defined contribution schemes (contributions are invested in an accumulation account). Defined benefits are not offered to new employees anymore and employees' accumulation accounts are easily transferred between schemes under well-established provisions in Commonwealth legislation.

Consequently, the application of Queensland's portability legislation has narrowed considerably since the introduction of the Act in 1985. Most public sector employees have an accumulation account which can be transferred under Commonwealth legislation and most defined benefit schemes are closed to new members.

Nevertheless, some superannuation schemes continue to allow, under certain circumstances, the transfer of a public sector employee's defined benefit when they transfer employment. For example, the Australian Government's pension based defined benefit schemes allow returning Australian Government public servants and defence force employees to recommence their pension based defined benefits. To restart the benefit, the returning employee must transfer back a defined benefit entitlement they had earlier transferred out.

Section 54 of the *Statutory Instruments Act 1992* provides that subordinate legislation expires on 1 September first occurring after the tenth anniversary of the day of its making, unless it is sooner repealed or expires, or a regulation is made exempting it from expiry.

The Act's subordinate legislation is due to expire on 31 August 2019 in accordance with the *Statutory Instruments Act 1992*.

Achievement of policy objectives

The Act's subordinate legislation is being remade into the *Superannuation (Public Employees Portability) Regulation 2019* (Regulation) and the *Superannuation (Public Employees Portability) Notice 2019* (Notice). The remade legislation ensures the continued operation of Queensland's defined benefit portability arrangements.

The Regulation lists the following public employers as participators in Queensland's portability arrangements and the following superannuation schemes as participating schemes (known as approved superannuation schemes¹):

- public employers—
 - the Queensland Government;
 - a local government;
 - a State electricity entity; and
 - a public university,
- approved superannuation schemes—
 - Energy Super; and
 - LGIAsuper.

In addition, the Act establishes the Australian Government as a participating employer and QSuper as an approved superannuation scheme.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy of the authorising law in that the Governor in Council may make regulations under the Act.

¹ The *Superannuation (Public Employees Portability) Notice 2019* lists superannuation schemes that have been declared to be eligible superannuation schemes for the operation of the Act.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

The implementation of the Regulation is cost neutral.

Consistency with fundamental legislative principles

The Regulation is consistent with fundamental legislative principles.

Consultation

The employers and superannuation schemes that participate in Queensland's portability arrangements have been consulted. All parties agree with the Regulation being remade to ensure the continued operation of Queensland's defined benefit portability arrangements.

The Queensland Productivity Commission has been consulted and has advised that no further regulatory impact analysis is required.