



# **Public Officers Superannuation Benefits Recovery Act 1988**

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Queensland

# Public Officers Superannuation Benefits Recovery Act 1988

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# Public Officers Superannuation Benefits Recovery Act 1988

**An Act to provide with respect to entitlements to superannuation or retirement benefits funded to any extent from the consolidated fund of persons convicted of certain offences and for related purposes**

## Part 1 Preliminary

### 1 Short title

This Act may be cited as the *Public Officers Superannuation Benefits Recovery Act 1988*.

### 4 Interpretation

(1) In this Act—

***convicted person*** means a publicly funded superannuant who is convicted of an offence that is a prescribed offence committed by the superannuant while the superannuant held public office, thereby incurring a liability to the Crown as prescribed by section 6(1).

***Crown*** means the Crown in right of Queensland.

***employment*** includes—

- (a) holding office as a member of the Legislative Assembly;
- (b) holding a judicial office;
- (c) holding any office of a public nature.

***interest*** means interest at the rate for the time being prescribed under the *Civil Proceedings Act 2011*, section 59(3) calculated at that rate compound.

***office*** includes any position held by a person at any material time in the person's employment.

***prescribed offence*** means—

- (a) an indictable offence consisting wholly or partly of conduct of the offender—
  - (i) by which the offender—
    - (A) asks for or receives or obtains any property or benefit of any kind for the offender or another person; or
    - (B) agrees or attempts to engage in conduct mentioned in sub-subparagraph (A); and
  - (ii) that is engaged in on the understanding that the offender will be influenced or affected in the exercise of the functions or powers of a public office held by the offender; or
- (b) an indictable offence consisting wholly or partly of conduct of the offender—
  - (i) by which the offender pays or gives, or agrees or attempts to pay or give, to a person any property or benefit of any kind for the person or another person; and
  - (ii) that is engaged in on the understanding that the person or other person will be influenced or affected in the exercise of the functions or powers of a public office held by the person or other person;

and includes an offence against any of the following provisions of the Criminal Code—

- (c) section 87 (Official corruption);
- (d) section 120 (Judicial corruption);

- (e) section 121 (Official corruption not judicial but relating to offences).

**preserved benefits** means superannuation or retirement benefits that, under a superannuation scheme, are payable at a future date.

**publicly funded superannuant** means a person whose superannuation or retirement benefits are funded to any extent from the consolidated fund.

**public office** means an office such that upon the holder thereof retiring therefrom or ceasing to hold the office the holder would become a publicly funded superannuant.

**public trustee** means The Public Trustee of Queensland constituted as a corporation sole by the *Public Trustee Act 1978*.

**superannuation or retirement benefits** includes—

- (a) benefits payable under, or preserved in, a superannuation scheme for a person whose employment has ended; and
- (e) any benefit payable to a person employed under a contract of employment upon termination or non-renewal of the contract, being a benefit in the nature of a superannuation payment and not in the nature of a severance payment.

**superannuation scheme** means a scheme, whether established under an Act or otherwise, for the payment of superannuation or retirement benefits that are funded wholly or partly from the consolidated fund.

**trustees**, of a superannuation scheme, means the trustees or other authority controlling the funds of the scheme.

- (2) In this Act—

**bona fide purchaser for value** means a purchaser who has acquired the property in question in good faith for a consideration that reflects the value of the property at the time of its acquisition by the purchaser, having regard solely to commercial considerations.

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- (3) Where a person has been convicted of any prescribed offence or prescribed offences to which this Act applies, committed within a specified period, but—
- (a) on a date or dates unknown; or
  - (b) on a date or dates unknown as to 1 or more of the offences and on a specified date or specified dates as to another or other of the offences;
- then for the purpose of applying any provision of section 8 in respect of that person it shall be deemed that the person first committed such a prescribed offence—
- (c) in the case referred to in paragraph (a)—on the date on which the specified period terminated; or
  - (d) in the case referred to in paragraph (b)—on the earliest known date on which the person committed such a prescribed offence.
- (4) Notwithstanding any provision of the Criminal Code or any other Act, for the purposes of this Act—
- (a) a person's summary conviction of an indictable offence does not affect the nature of the person's offence as indictable or otherwise prevent the person's offence being a prescribed offence as defined by this Act;
  - (b) a person shall be taken to have been convicted of an offence if the person has pleaded or been found guilty of the offence and a conviction has been recorded by the court, regardless of the nature of any order made in relation to the person in respect of the offence.
- (5) Where for the purposes of this Act the superannuation or retirement benefits of any person are to be assessed as a commutation value, that value shall be taken to be the value of those benefits expressed as a lump sum and shall include—
- (a) in a case where on retirement or cessation of employment the person has received payment of an additional amount (because of the commutation to a lump sum of the whole of the person's benefits under the relevant superannuation scheme) or was entitled to



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- receive payment of an additional amount (if the person had elected for such a commutation) in respect of a benefit that would accrue under the scheme to any spouse or dependant of the person on cessation of a pension benefit under the scheme—the amount of that payment; and
- (b) in a case of a superannuation scheme that provides for a benefit to any spouse or dependant of the person on cessation of a pension benefit under the scheme and to which paragraph (a) does not apply—the commutation value (expressed in accordance with actuarial principles) of the benefit to the spouse or dependant as at the date of retirement or cessation of employment of the person; and
  - (c) the commutation value of any benefits preserved in or paid to a superannuation scheme on account of the person.
- (6) For the purposes of this Act, a period of employment of a person shall be deemed to have continued uninterrupted notwithstanding that—
- (a) being a member of the Legislative Assembly, the person has, in addition to being a member, held an office in the Assembly or an office under the Crown or, at any time or from time to time within that period, the person has not served as a member;
  - (b) being the holder of judicial office, the person has been appointed to any other judicial office or to an additional public office;
  - (c) being an officer of the public service holding an office in a department of government of the State, the person has been appointed or assigned to any other office in that department or to an office in another department;
  - (d) being a police officer of the State of a particular rank and serving in a particular capacity, the person has acquired another rank or has been assigned to serve in another capacity;

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- (e) being an employee in any position in a department of government of the State, the person has been appointed or assigned to any other position in that department or to a position in another department;
- (f) being the holder of a public office other than one hereinbefore referred to, the person has been appointed to an additional public office or any other public office, in either case other than one hereinbefore referred to.

## **5 Application of Act**

For the purposes of the application of this Act it is immaterial whether the prescribed offence in question was committed after the commencement of this Act or at any time before the commencement of this Act.

## **5A Non-application of non-assignment provisions**

To remove any doubt, it is declared that this Act applies despite any other law—

- (a) providing that claims can not be set off against a person's superannuation or retirement benefits; or
- (b) providing that amounts payable out of a superannuation scheme on a person's death are not assets for the payment of the person's debts or liabilities; or
- (c) otherwise prohibiting or regulating the payment or assignment of, or other dealing with, a person's superannuation or retirement benefits.

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## **Part 2**                      **Court orders on convicted persons**

### **6**            **Pecuniary liability upon conviction**

- (1) A publicly funded superannuant who is convicted after the commencement of this Act of an offence that is a prescribed offence committed by the superannuant while the superannuant held a public office thereby incurs a liability to pay to the State—
  - (a) if the Minister and superannuant agree on the amount of the liability—the agreed amount; or
  - (b) otherwise—an amount the superannuant is ordered to pay under section 7(2).
- (2) A liability incurred under subsection (1) no longer exists if, upon appeal, the conviction constituted or deemed to be constituted by the plea or finding of guilty of the offence is quashed but shall revive if the conviction is reinstated upon further appeal.
- (3) An amount agreed on under subsection (1)(a) must not be more than the amount calculated under section 8(1)(a).
- (4) Before agreeing on an amount under subsection (1)(a), the Minister must have regard to the matters mentioned in section 8(1)(b).
- (5) Subsection (4) does not limit the matters to which the Minister may have regard.

### **7**            **Assessment of liability**

- (1) Application may be made by the Minister to a judge of the Supreme Court to assess the quantum of liability incurred by a person under section 6(1).
- (2) If the judge hearing the application is satisfied that—

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- (a) the person convicted of the offence or offences to which the application relates is a publicly funded superannuant; and
- (b) the application relates to 1 or more prescribed offences; and
- (c) the liability incurred under section 6(1) by the person upon conviction of that prescribed offence or those prescribed offences subsists;

the judge shall order the person to pay to the Treasurer on behalf of the Crown a sum, considered by the judge to be just and equitable, assessed by the judge in accordance with section 8.

## **7A Nature of application**

For the *Limitation of Actions Act 1974*, an application under section 7 is not an action to recover a penalty or forfeiture or sum by way of a penalty or forfeiture.

## **8 Factors relevant to assessment of liability**

- (1) In assessing the quantum of liability incurred by a convicted person under section 6(1)—
  - (a) the quantum of liability shall not exceed the difference between—
    - (i) the commutation value of the whole of the convicted person's superannuation or retirement benefits at the time of the person's retirement or cessation of employment (assessed in accordance with the appropriate provisions of the relevant superannuation scheme or, if the relevant superannuation scheme does not include such appropriate provisions, in accordance with actuarial principles), being the benefits that have accrued in respect of the period of the convicted person's employment in which the person was engaged when the person committed the prescribed

offence or offences of which the person has been convicted, together with interest thereon for the prescribed period; and

- (ii) the amount of contributions paid by the convicted person to the relevant superannuation scheme constituted as required by subsection (2), being the contributions that have been paid in respect of the period of the convicted person's employment in which the person was engaged when the person committed the prescribed offence or offences of which the person has been convicted;
- (b) without limiting the matters that a judge may consider relevant to such assessment of liability, a judge may have regard to the following matters and to such evidence as is before the judge concerning those matters—
- (i) the proportion borne by the length of the convicted person's service in public office before the person first committed an offence by reference to which the person has incurred the liability to the length of the person's total service in public office;
  - (ii) the nature of the offence or offences upon conviction of which the convicted person has incurred the liability and the degree of corruption evidenced by that offence or those offences;
  - (iii) the value of the gain to any person from the offence or offences upon conviction of which the convicted person has incurred the liability;
  - (iv) the degree of hardship likely to be occasioned by the convicted person's complying with an order made under section 7(2) to the convicted person's spouse or dependant (if any) who satisfies the judge that she or he was not aware of the conduct that has resulted in the convicted person's incurring the liability.
- (2) The amount of contributions mentioned in subsection (1)(a) includes—

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- (a) if the superannuation scheme to which the contributions were paid provides for the payment of interest on a refund of contributions—the interest accumulated on the convicted person’s contributions to the day of the convicted person’s retirement or cessation of employment; or
  - (b) subject to paragraph (c), if the superannuation scheme to which the contributions have been paid provides for payment of an amount that exceeds the amount of the contributions if a person ceases to be a contributor (other than because of death) and is not entitled to a pension or other superannuation benefit under the scheme—the amount of the excess; or
  - (c) if the contributions have been paid to the superannuation scheme under the *Superannuation (State Public Sector) Act 1990* in relation to a transferring member within the meaning of repealed section 32A of that Act—an amount that is  $1\frac{1}{6}$  times the amount of the contributions.
- (3) The amount of contributions mentioned in subsection (1)(a) also includes interest for the prescribed period on—
- (a) the amount; and
  - (b) the interest or excess mentioned in subsection (2)(a) or (b); and
  - (c) the amount first mentioned in subsection (2)(c).
- (4) In this section—
- contributions** include deductions made from salary in respect of the convicted person for the purposes of a superannuation scheme.
- hardship** includes—
- (a) hardship to the spouse or dependant of the convicted person during the convicted person’s lifetime; and
  - (b) hardship to the spouse or dependant of the convicted person consisting in the loss of entitlement to

superannuation or retirement benefits to which the spouse or dependant would have been entitled on the convicted person's death if the convicted person had not been convicted of a prescribed offence.

*prescribed period* means the period starting on the day after the day of the convicted person's retirement or cessation of employment and ending on the day the order is made under section 7(2).

## **9 Liability is a judgment debt**

- (1) The quantum of liability assessed by an order made under section 7(2), or as finally determined upon any appeal against that order, and outstanding for the time being shall accumulate and include interest thereon for the period commencing on the day of making the order and terminating on the date of payment of the liability.
- (2) The liability consisting in the quantum thereof referred to in subsection (1), or any part of that quantum, together with interest accrued on that quantum or part as prescribed by that subsection constitutes a judgment debt due to the Crown by the convicted person in respect of whom the quantum of liability is assessed.
- (3) The order made under section 7(2) that creates the judgment debt may be enforced as if it were an order made in civil proceedings in an action for debt instituted by the Crown against the person to whom the order relates.
- (4) The provisions of the *Civil Proceedings Act 2011*, sections 58 and 59 do not apply in respect of proceedings instituted for the purposes of section 7.

## **10 Notification of application—appearance on application**

- (1) If a convicted person in respect of whom an application is made under section 7(1) is known by the applicant to have a spouse or dependant, notification of the making of the application and of the day on which it is to be heard shall be

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given by the applicant to the spouse or dependant, as the case may require, of whom the applicant has knowledge.

- (2) All persons who, in the opinion of the judge hearing an application under section 7(1), have a legitimate interest in the outcome of the application may appear and be heard and adduce evidence upon the application.

## 11 Effect of order on pension benefits

- (1) This section applies if an order under section 7(2) is made against a person who is receiving superannuation or retirement benefits (the *benefits*) that accrued in relation to the period of the person's employment in which the person was engaged when the person committed the prescribed offence concerned and the benefits are received as pension.
- (2) The person's entitlement to future payments of pension ceases.
- (3) The trustees of the superannuation scheme under which the benefits were payable must immediately cause the commutation value of the benefits to be assessed (the *lump sum amount*), as at the date of the order, in accordance with actuarial principles.
- (4) For the purposes of making an assessment under subsection (3), section 4(5)(b) applies as if the reference in the paragraph to the date of retirement or cessation of employment of the person concerned were a reference to the date of the order.
- (5) The person is entitled to the lump sum amount plus interest on the amount for the prescribed period (the *commuted entitlement*) instead of the benefits mentioned in subsection (3).
- (6) The amount of the person's liability under the order plus interest on the amount for the prescribed period (the *liability*) is a charge on the commuted entitlement in the hands of the trustees.
- (7) The trustees must—



- (a) pay the amount of the liability to the extent the amount of the commuted entitlement permits; and
  - (b) commute the balance (if any) of the commuted entitlement in accordance with section 11A or 11B.
- (8) Section 9(1) must be disregarded in interpreting this section, but the subsection applies to the amount of liability of the convicted person so far as the amount exceeds the amount of the commuted entitlement.
- (9) In this section—
- prescribed period* means the period starting on the day on which the order was made and ending on the day on which a payment is made under subsection (7)(a).

#### **11A Commutation if benefit would not have accrued to spouse or dependant**

- (1) This section applies if a benefit would not accrue to a spouse or dependant of a person to whom section 11(1) applies on the person's death under the superannuation scheme from which the superannuation or retirement benefits mentioned in section 11(1) were paid (the *relevant superannuation scheme*).
- (2) The balance (if any) of the entitlement mentioned in section 11(7)(b) must be commuted, in accordance with actuarial principles, to a pension payable to the person.
- (3) The pension mentioned in subsection (2) is substituted for the superannuation or retirement benefits mentioned in section 11(1) and is payable from the funds of the relevant superannuation scheme.

#### **11B Commutation if benefit would have accrued to spouse or dependant**

- (1) This section applies if a benefit would accrue to a spouse or dependant of a person to whom section 11(1) applies on the person's death under the superannuation scheme from which the superannuation or retirement benefits mentioned in

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section 11(1) were paid (the *relevant superannuation scheme*).

- (2) The benefit accrues subject to and to the extent provided for by this section.
- (3) The balance (if any) of the entitlement mentioned in section 11(7)(b) must be commuted, in accordance with actuarial principles, to—
  - (a) a pension payable to the person; and
  - (b) a benefit payable to the spouse or dependant of the person on the person's death.
- (4) The pension mentioned in subsection (3)(a) and the benefit mentioned in subsection (3)(b) are—
  - (a) substituted for the superannuation or retirement benefits mentioned in section 11(1) and the benefit mentioned in subsection (1); and
  - (b) payable from the funds of the relevant superannuation scheme.
- (5) A benefit mentioned in subsection (3)(b)—
  - (a) is not payable until the time when the benefit mentioned in subsection (1) that would have accrued to the spouse or dependant of the person under the relevant superannuation scheme would have become payable under the scheme; and
  - (b) must be a benefit of the same type as that benefit.

## **11C Payment of debt from preserved benefits**

- (1) This section applies if—
  - (a) a person owes an amount to the State (the *debt*) consisting of the unpaid part of—
    - (i) a judgment debt under section 9; or
    - (ii) an amount agreed with the Minister under section 6(1)(a); and

- (b) the person has preserved benefits under a superannuation scheme.
- (2) The Minister may, by written notice given to the trustees of the scheme, require the trustees to pay an amount from the scheme in satisfaction, or part satisfaction, of the debt.
- (3) On receiving the notice, the trustees must—
  - (a) calculate, under actuarial principles, the current value of the person's preserved benefits; and
  - (b) pay to the Minister the amount of the debt or the value of the benefits, whichever is the lesser; and
  - (c) if the amount of the debt is less than the value of the benefits—keep the balance in the scheme and deal with it as a preserved benefit.

## **Part 3                      Restraining orders**

### **12      Application for order**

- (1) At any time after the Minister has determined to make an application under section 7(1) or where an application has been made under that section or a judgment debt has been created pursuant to such an application in respect of a convicted person, application may be made by the Minister to a judge of the Supreme Court for a restraining order against—
  - (a) specified property of the convicted person; or
  - (b) all the property of the convicted person including property acquired by the person after the making of the order; or
  - (c) all the property of the convicted person, including property acquired by the person after the making of the order, other than specified property; or

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- (d) specified property of a person other than the convicted person.
- (2) An application may be made under subsection (1) for a restraining order against property in which the convicted person and another or others have any estate, right or interest, jointly or in undivided shares.
- (3) Notification of the making of an application under subsection (1) and of the day on which the application is to be heard shall be given to each person having an estate or interest in property that would be affected by the restraining order and each such person may appear and be heard and adduce evidence upon the application.

### **13 Making of restraining order**

- (1) Upon application under section 12(1) for a restraining order against property, the judge may by order—
  - (a) direct that the property, or such part of the property as is specified in the order, is not to be disposed of, or otherwise dealt with, by any person, except in such manner and in such circumstances (if any) as specified in the order; or
  - (b) if the judge is satisfied that the case requires it—direct the public trustee to take custody and control of the property, or of such part of the property as is specified in the order.
- (2) A restraining order against a person's property may be made subject to such conditions as the judge thinks fit and may make provision for meeting out of the property or a specified part thereof all or any of the following—
  - (a) the person's reasonable living expenses (including the reasonable living expenses of the person's dependants (if any)) and reasonable business expenses;
  - (b) a specified debt incurred in good faith by the person, being a debt to which paragraph (a) does not apply.

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- (2A) A restraining order shall not make provision of a kind referred to in this subsection unless the judge is satisfied that the person in respect of whose property the order is sought can not meet the expense or debt concerned out of property that is not subject to a restraining order.
- (3) An order may be made under subsection (1) in relation to property in which a convicted person and another or others have any estate, right or interest, jointly or in undivided shares.

#### **14 Restriction on making restraining order against property other than that of convicted person**

- (1) A restraining order shall not be made against property of a person other than the convicted person, in connection with whose conviction an application under section 7(1) will be or is made or a judgment debt is created pursuant to such an application, unless the judge is of the opinion that—
- (a) the property is in the effective control of the convicted person whether or not the convicted person has—
- (i) any legal or equitable estate or interest in the property; or
  - (ii) any right, power or privilege enforceable by law in connection with the property; or
- (b) where the property once belonged to the convicted person—the convicted person’s disposal of it was not to a bona fide purchaser for value or, in the case of money, was by way of gift or otherwise than for full and valuable consideration and the property has not since been disposed of to a bona fide purchaser for value or in the case of money, for full and valuable consideration; or
- (c) where the property did not once belong to the convicted person—
- (i) its acquisition was facilitated or assisted by the proceeds of the convicted person’s superannuation

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or retirement benefits and the property has not since been disposed of to a bona fide purchaser for value; or

- (ii) it is the proceeds of the disposal of property, the acquisition of which was facilitated or assisted by those benefits.
- (2) Without limiting the matters that a judge may consider relevant to an assessment of effective control, in assessing whether property is in the effective control of a convicted person, the judge may have regard to—
- (a) shareholdings in, debentures over or directorships of any company that has an interest (direct or indirect) in the property; and
  - (b) any trust that has a relationship to the property; and
  - (c) family, domestic and business relationships, arrangements or understandings (formal or informal) between persons having an interest in the property, or in companies of the kind referred to in paragraph (a) or in trusts of the kind referred to in paragraph (b) and any other persons; and
  - (d) the extent to which persons are sheltering or are seeking to shelter behind the corporate veil.
- (3) In considering whether acquisition of property has been facilitated or assisted by the proceeds of superannuation or retirement benefits, a judge may have regard to whether, but for those proceeds, the acquisition may not or would not have occurred, and to such other matters as the judge thinks relevant to the issue.

## 15 Protection of innocent persons

If it appears to a judge who is about to make a restraining order against any property that a person, other than the relevant convicted person, has genuinely contributed money or money's worth to the acquisition of the property, without intent to obstruct the effective operation of this Act or of any

restraining order that may be made under this Act, the judge may—

- (a) restrict the restraining order to a part of the property; or
- (b) make provision from the property by such means as the judge thinks appropriate, including by ordering a sale of the property and apportionment of the proceeds;

to enable that person to retain property (be it money or money's worth) to the extent of the person's genuine contribution.

## **16 Imposing or varying conditions on restraining order**

Where a restraining order has been made against any property, upon application made to a judge of the Supreme Court by—

- (a) the Minister; or
- (b) a person having an estate or interest in the property; or
- (c) a person aggrieved by any existing conditions to which the order is subject;

the judge may, by order, impose conditions or further conditions on the order or vary or revoke all or any of the conditions to which the order is subject.

## **17 Discharge of restraining order**

Where the conviction consequent upon which a restraining order has been made is quashed a judge of the Supreme Court, on application by the Minister or by the owner of the property against which the order was made, may order that the restraining order be discharged whereupon the restraining order shall no longer have any effect.

## **18 Effect of restraining order**

- (1) While a restraining order is effective against property of a description specified in section 12(1)(d) that property may be taken and sold in execution of an order under section 7(2) as if

that property were the property of the convicted person in connection with whose conviction the order under section 7(2) and the restraining order were made.

- (2) Upon the making of a restraining order against any property there is created, by force of this subsection, a charge on the property to secure payment to the Crown of the judgment debt due by the convicted person in respect of whom the judgment debt was created.
- (3) A charge created by subsection (2) on property of a person ceases to have effect on the property—
  - (a) upon the discharge of the restraining order;
  - (b) upon the discharge of the judgment debt in relation to which the restraining order was made;
  - (c) upon the person becoming a bankrupt;
  - (d) upon the sale or other disposition of the property—
    - (i) by the owner of the property in accordance with the restraining order or with the consent of a judge of the Supreme Court; or
    - (ii) where the restraining order directs the public trustee to take custody and control of the property—by the public trustee;
  - (e) upon the sale of the property to a bona fide purchaser for value who, at the time of purchase, has no notice of the charge;

whichever first occurs.

- (4) A charge created on property by subsection (2)—
  - (a) is subject to every encumbrance on the property that came into existence for full and valuable consideration before the charge and that would, apart from this subsection, have priority over the charge; and
  - (b) has priority over all encumbrances other than one referred to in paragraph (a); and



(c) subject to subsection (3), is not affected by a change in ownership of the property.

(4A) In this subsection—

*encumbrance* includes a mortgage in fee or for a less estate or interest, a trust for securing money, a lien and a charge of a portion, annuity or other capital or annual sum.

(5) A charge created by subsection (2) upon the making of a restraining order against property to which section 14(1)(c) applies is effective to secure payment of the judgment debt in relation to which the restraining order was made only to the extent that proceeds of superannuation or retirement benefits of the convicted person in respect of whom the judgment debt was created facilitated or assisted the acquisition of the property.

(6) Upon application under section 12(1) for a restraining order against property to which section 14(1)(c) applies or, where a charge has been created by subsection (2) on property to which that paragraph applies, upon application made to a judge of the Supreme Court by—

- (a) the Minister; or
- (b) a person having an estate or interest in the property; or
- (c) a person aggrieved by the charge;

a judge of the Supreme Court may assess the quantum of the extent to which the charge will be or, as the case may be, is effective pursuant to subsection (5) and until it is revoked or varied upon further application made under this subsection the assessment made therein shall be conclusive evidence of the amount secured by the charge on that property.

## 19 **Contravention of restraining order**

(1) A person who knowingly contravenes a restraining order by disposing of or otherwise dealing with property subject to the order commits an offence against this Act.

Maximum penalty—

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- (a) where the offender is a natural person—170 penalty units or 5 years imprisonment;
  - (b) where the offender is a body corporate—850 penalty units.
- (2) Where—
- (a) property is disposed of or dealt with in contravention of a restraining order made against the property; and
  - (b) the disposition or dealing was not for adequate consideration, having regard to the value of the property, or was in favour of a person who was not acting therein in good faith;
- a judge of the Supreme Court, on application made by the Minister, may order that the disposition or dealing be set aside.
- (3) An order made under subsection (2)—
- (a) may set aside the disposition or dealing as from the day on which the disposition or dealing occurred and, where necessary, may require the parties to the disposition or dealing to taking all steps necessary to restore them to the positions had by them immediately before the disposition or dealing occurred;
  - (b) may set aside the disposition or dealing as from the day on which the order is made, may declare the rights of persons who have acquired interests in the property on or after the day on which the disposition or dealing occurred and before the day on which the order is made and may require all persons affected by the order to take all steps necessary to give effect to the order.

## 20 Registration of orders and charges

- (1) Where a restraining order is made against or a charge is created on property of such a kind that title to, or charges or other particulars affecting that property are recorded in a register, the person having charge of the register relating to that property—

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- (a) on receipt of an appropriate request made by the Minister, and sufficient relevant evidence, shall record in the register relating to that property the existence of the restraining order or, as the case may be, the charge; and
  - (b) on receipt of an appropriate request made by the Minister or the owner of that property, and sufficient relevant evidence, may record in the register relating to that property the discharge of the restraining order or, as the case may be, the cessation of effect of the charge.
- (2) A recording in a register shall be made under subsection (1) notwithstanding that the current grant or certificate or other instrument of title is not delivered up to the person having charge of the register.
  - (3) Where a restraining order has been made against land under the *Land Title Act 1994*, the Minister and the public trustee (where it has taken custody and control of the land) is each entitled, by caveat, to forbid the registration of any instrument affecting the land subject to and in accordance with that Act and, for this purpose, the Minister and the public trustee shall each be deemed to have an interest in the land sufficient to support the caveat.
  - (4) A caveat lodged pursuant to the entitlement conferred by subsection (3) shall not be deemed to have lapsed as provided by the *Land Title Act 1994* but shall continue in force until it is duly removed or cancelled as provided by the that Act.

## Part 4                      Miscellaneous provisions

### 21            Further powers of Supreme Court

- (1) Where the public trustee has taken custody and control of property pursuant to a restraining order the public trustee may make application to a judge of the Supreme Court for orders

or directions in relation to the use and management of the property.

- (2) Upon application under subsection (1) a judge of the Supreme Court may make such orders and give such directions as the judge considers to be necessary or desirable for the prudent use and management of the relevant property in the custody and control of the public trustee.

## **22 Ancillary powers upon applications**

A judge of the Supreme Court who hears an application under any provision of this Act may—

- (a) where the judge makes the order sought by the application—make such further orders as the judge considers appropriate to secure compliance with that order; and
- (b) make such order as to costs therein as the judge considers just.

## **23 Procedure and evidence upon applications**

- (1) Proceedings in respect of an application by the Minister under this Act may be instituted and maintained in the official title of the Minister and shall not be prejudiced by any change in the identity of the Minister.
- (2) Where, upon an application made under this Act, it is relevant to prove a commutation value, an amount of contributions, the value of superannuation or retirement benefits paid or payable in respect of any person, or any other amount of whatever nature, a certificate purporting to be that of the chief executive of the department certifying the value or amount shall be accepted in the proceedings relating to the application as evidence, and, in the absence of evidence to the contrary, conclusive evidence, of the matters contained therein.

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## **24 Use of evidence before court of trial**

- (2) Where an application under section 7(1) is made in respect of a convicted person, the registrar of the court before which the convicted person was convicted shall cause to be made and furnished to the registrar of the Supreme Court, for use by the judge hearing the application, a transcript of the shorthand notes or record of evidence or statements of fact adduced or made to the court before which the convicted person was convicted.
- (3) A document purporting to be the transcript referred to in subsection (2) shall be, in the proceedings upon the application under section 7(1), evidence and, in the absence of evidence to the contrary, conclusive evidence of all matters contained therein.

## **25 Authority of public trustee**

- (1) Where a restraining order directs the public trustee to take custody and control of property—
  - (a) the order is lawful authority for the public trustee, by its agents and servants—
    - (i) to enter upon and take possession of the property and of all books of account and records relating to the property; and
    - (ii) subject to subsection (2)—to do all acts and things necessary or desirable for the prudent use and management of the property, for the benefit of the owner thereof (including the selling, charging or disposing thereof) as fully and effectually as if it were the duly appointed attorney of the owner empowered to do all such acts and things; and
  - (b) the public trustee is authorised and empowered to do all acts and things necessary or desirable to comply with or give effect to orders and directions of a judge of the Supreme Court made or given in relation to the property upon application under section 21.

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- (2) Authority conferred on the public trustee by a restraining order does not extend to selling or disposing of property that is not trading stock in a business without—
  - (a) the consent of the owner of the property; or
  - (b) an order of a judge of the Supreme Court.
- (3) The power to make regulations under the *Public Trustee Act 1978* includes power to make regulations providing for and fixing fees for services rendered by the public trustee and charges in connection with the custody and control of property pursuant to a restraining order.
- (4) A certificate purporting to be a certificate of the public trustee and—
  - (a) certifying that a restraining order is in force against the property (generally or as specified therein) of a person specified therein; or
  - (b) stating that the public trustee has taken custody and control of property specified therein pursuant to a restraining order; or
  - (c) stating any particulars of a restraining order;is for all purposes evidence and, in the absence of evidence to the contrary, conclusive evidence of the matters contained therein.

## **26 Liability for public trustee's fees**

- (1) The owner of property in the custody and control of the public trustee pursuant to a restraining order is liable to the public trustee for all fees and charges that the public trustee is authorised to charge and does charge for collecting and managing the property and for all expenses reasonably incurred by the public trustee in collecting and managing the property, and, if there be more owners than 1, they are so liable jointly and severally.
- (2) Where an owner who has paid an amount of fees or charges pursuant to subsection (1) is not the convicted person in

relation to whom the relevant property is in the custody and control of the public trustee pursuant to a restraining order, that owner may recover the amount as a debt due and owing to the owner by the convicted person by action in a court of competent jurisdiction.

## **27 Exclusion of liability generally**

- (1) No liability shall be incurred by the Crown, the Minister, the public trustee or any other person on account of loss suffered by any person because of the existence or consequences of a restraining order against any property.
- (2) The public trustee shall not be taken to be subject to the duty of care of a trustee in relation to its custody and control of property pursuant to a restraining order.
- (3) The public trustee and its agents and servants shall not incur liability on account of loss suffered by any person because of anything done or omitted, bona fide and without negligence, in complying with an order or direction of a judge of the Supreme Court or otherwise in connection with the use and management of property taken into the custody and control of the public trustee pursuant to a restraining order.

## **28 Minister or delegate may require information**

- (1) The Minister or the Minister's delegate duly authorised by the Minister in writing may require any person—
  - (a) to furnish to a person nominated in the requisition (the *nominated person*) within a time specified in the requisition such information of a kind specified by the person making the requisition as, in the nominated person's opinion, is relevant to—
    - (i) establishing dealings with or tracing the dispositions of moneys being part of superannuation or retirement benefits of a publicly funded superannuant who is a convicted person; or

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- (ii) establishing what relationships, arrangements, or understandings (formal or informal) exist between a convicted person and any other person or any trust; or
  - (iii) establishing the degree of control had by a convicted person in respect of any property; or
  - (iv) identifying property as having been acquired, to any extent, with assistance from the proceeds of superannuation or retirement benefits of a publicly funded superannuant who is a convicted person;
- (b) to produce or exhibit to the nominated person such books of account and records as, in the nominated person's opinion, might be relevant to a purpose referred to in paragraph (a).
- (2) A requisition under subsection (1) may require information sought to be given orally or in writing and on oath or by statutory declaration and for that purpose the person making the requisition or the nominated person or a justice may administer an oath or take a declaration.
- (3) A nominated person is authorised to enter any premises or place for the purpose of taking possession of or examining information, books of account or records sought by requisition under subsection (1), to make copies of or extracts from such information, books of account or records and to remain on the premises or in the place for as long as is necessary for the purpose.

## **29 Offences arising from s 28**

- (1) A person who—
  - (a) fails to comply with a requisition directed to the person under section 28(1); or
  - (b) obstructs or attempts to obstruct an exercise of authority conferred by section 28(3);commits an offence against this Act.



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Maximum penalty—10 penalty units or 3 months imprisonment.

- (2) An offence consisting in failure to comply with a requisition shall be deemed to continue for as long as the requisition is not complied with, notwithstanding that the time within which it was to be complied with has elapsed, and—
  - (a) the offender may be prosecuted and penalised from time to time in respect of the failure until the requisition is complied with but shall not be so prosecuted more than once in respect of the same period;
  - (b) the court by which the offender is convicted of the offence may, in addition to any penalty imposed under subsection (1), order the offender to pay a penalty not exceeding 1 penalty unit for each day on which the offence is deemed to have continued to the date of conviction.
- (3) The court that convicts a person of an offence consisting in failure to comply with a requisition may, in addition to any penalty imposed pursuant to subsection (1) or (2) and notwithstanding that the time within which the requisition was to be complied with has elapsed, order the offender to comply with the requisition and may therein specify a time within which the order is to be complied with.
- (4) A person who fails to comply with an order made pursuant to subsection (3) commits an offence against this Act.

Maximum penalty—35 penalty units or 6 months imprisonment.

### **30 Prosecution of offenders**

- (1) A person who commits an offence against this Act may be prosecuted therefor in a summary manner under the *Justices Act 1886* on the complaint of a person authorised by the Minister in that behalf.
- (2) In any prosecution proceedings a statement in the complaint that the complainant is duly authorised by the Minister to lay

the complaint shall be sufficient evidence thereof in the absence of evidence to the contrary.

## **Part 5**                      **Deferred retirements and resignations**

### **32**      **Interpretation**

In this part—

*officer on suspension* means a person who is suspended from duty as the holder of a public office—

- (a) on the ground of the person's conduct that constitutes a prescribed offence; or
- (b) on a ground that has a connection with conduct that constitutes a prescribed offence, whether or not that conduct can be attributed to a specific person.

### **33**      **Officer on suspension can not retire or resign**

It is not competent to an officer on suspension to retire or resign from public office unless—

- (a) the retirement or resignation is approved by the Governor in Council; and
- (b) the retirement or resignation is effected in accordance with the conditions (if any) to which the approval of the Governor in Council is subject.

### **34**      **Approval of Governor in Council**

- (1) If the Governor in Council approves of the retirement or resignation of an officer on suspension the approval may be made subject to such conditions in relation to the manner in which the officer shall elect to take or deal with the officer's

entitlements to superannuation or retirement benefits as the Governor in Council thinks fit.

- (2) Where an officer on suspension has given directions that accord with the conditions of an approval by the Governor in Council of the officer's retirement or resignation any further directions that purport to countermand or vary those directions shall be of no force or effect to the extent that the further directions are not in accord with such conditions.

### **35 Effect of certain dismissals on superannuation or retirement benefits**

- (1) If the employment of a holder of a public office is to be terminated by the holder's dismissal from office in circumstances such that the holder would, but for this provision, be entitled to be paid the whole of the superannuation or retirement benefits provided under the relevant superannuation scheme for a contributor upon retirement or cessation of employment, a regulation may declare that the whole or part of the benefits shall not be paid to or on account of the dismissed person but shall be held in escrow by a person nominated in the regulation upon the conditions of escrow declared by the regulation.
- (2) If the declaration is made, the dismissed person's entitlement to have the superannuation or retirement benefits paid to him or her or on his or her account shall be subject to and dependent upon such declaration and the fulfilment of the conditions of escrow so declared, notwithstanding the provisions of any other Act or any agreement.

### **36 Effective date of certain retirements**

Notwithstanding the provisions of any other Act, a notice of retirement from public office furnished by a person who is an officer on suspension at any time before the person became an officer on suspension has never taken effect of its own force as a retirement and shall not take effect as a retirement unless the

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retirement thereby notified is approved by the Governor in Council.

### **37 Requirement for compulsory retirement suspended**

While, pursuant to this part—

- (a) it is not competent to an officer on suspension to retire or resign from public office; or
- (b) a notice of retirement is ineffective;

a provision of any Act or law that requires the holder of an office to retire upon attaining a particular age or to resign for any reason does not apply to that officer on suspension.

### **38 Retirement deemed effective in particular case**

If the death of an officer on suspension occurs while, pursuant to this part, his or her notice of retirement is not effective, it shall be deemed for the purpose of establishing his or her entitlement to superannuation or retirement benefits that his or her retirement became effective immediately before his or her death.

### **39 Regulation-making power**

The Governor in Council may make regulations under this Act.

### **40 References to Public Officers' Superannuation Benefits Recovery Act**

In an Act or document, a reference to the *Public Officers' Superannuation Benefits Recovery Act 1988* is a reference to this Act.