

Queensland



**PUBLIC OFFICERS'
SUPERANNUATION
BENEFITS RECOVERY
AMENDMENT ACT 1993**

Act No. 44 of 1993

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BENEFITS RECOVERY AMENDMENT
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**Public Officers' Superannuation Benefits
Recovery Amendment Act 1993**

Act No. 44 of 1993

**An Act to amend the *Public Officers' Superannuation Benefits
Recovery Act 1988***

[Assented to 7 September 1993]

The Parliament of Queensland enacts—

Short title

1. This Act may be cited as the *Public Officers' Superannuation Benefits Recovery Amendment Act 1993*.

Commencement

2. Section 4(2) is taken to have commenced immediately after the commencement of section 4 of the *Public Officers' Superannuation Benefits Recovery Act 1988*.

Amended Act

3. The *Public Officers' Superannuation Benefits Recovery Act 1988* is amended as set out in this Act.

Amendment of s.4 (Interpretation)

4.(1) Section 4 (definitions “**Minister**” and “**prescribed offence**”)—
omit.

(2) Section 4—

insert—

“**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);’.

(3) Section 4 (definition “**superannuation scheme**”)—

omit ‘Consolidated Revenue Fund’, *insert* ‘Consolidated Fund’.

Amendment of s.8 (Factors relevant to assessment of liability)

5. Section 8(2) and (3)—

omit, insert—

‘(2) The amount of contributions mentioned in subsection (1)(a) includes—

- (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
- (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 established by the *Parliamentary Contributory Superannuation Act 1970*—an amount that is 1 and one-sixth 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 and ending on the day the order is made under section 7(2).’.

Replacement of s.11 (Compulsory commutation of pension benefits)

6. Section 11—

omit, insert—

‘Effect of order on pension benefits

‘11.(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 or other authority (the **“trustees”**) having the control of the funds 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 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).

‘Commutation if benefit would not have accrued to spouse or dependant

‘11A.(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.

‘Commutation if benefit would have accrued to spouse or dependant

‘11B.(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 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.’.

Insertion of new s. 39

7. After section 38—

insert—

‘Transitional

‘39. This Act applies to an application made under section 7 before the enactment of the *Public Officers' Superannuation Benefits Recovery Amendment Act 1993* as if section 4(2) of that Act had not been enacted.’.