

SUPERANNUATION LEGISLATION AMENDMENT BILL 1996

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

To amend superannuation legislation to ensure that superannuation benefits of certain Government employees are not affected by a restructuring of their industrial award.

Reasons for the Bill

The Q Super and State Super Schemes are multiple of salary superannuation schemes, with benefits increasing in salary on promotion and general productivity rises. Under industrial agreements negotiated for certain Department of Transport employees between 1993 and 1995, an aggregated salary became payable. The new aggregated salary rolled together the original base salary, a productivity increase and certain allowances. The Q Super and State Service Superannuation schemes do not ordinarily include these allowances in salary for the purpose of determining the level of superannuation entitlement. However, the aggregation of wages has meant that salary for superannuation purposes for 61 employees has automatically included previous allowances, with superannuable salary increased, by up to 85%. In contrast, take home pay, apart from the productivity increase, was barely altered.

Investigations indicate that the salary restructure caused an immediate and substantial accidental increase in the value of superannuation entitlements over and above the productivity increase. Individual benefit increases vary according to salary and fund membership. These benefit increases were never intended and are not able to be funded within the Department of Transport, nor is it considered equitable for a small group of members to receive an accidental windfall gain. Consequently, it is proposed to amend the

superannuation legislation to ensure that this industrial agreement has no effect on past superannuation entitlements (other than the planned productivity increase).

This is the second case in recent times where a restructure of conditions of employment has had a significant, retrospective and unintended impact on superannuable benefits (a similar amendment to maintain superannuation benefits was made in 1995) and further investigations are continuing into unusual salary variations. Whilst the large increases in benefits are of concern to the Government, there have also been instances where salary restructuring has reduced members' benefits, which is clearly not acceptable. In view of the continued restructuring of conditions of employment in the Queensland public sector, it is also proposed to insert a restricted power for the Governor in Council to make adjustments if such instances occur in the future.

Achievement of Objectives

The amendments to the superannuation legislation will be to ensure that the salary restructuring negotiated for Marine Operations and any further instances of restructuring of employment conditions have no effect on past superannuation entitlements. Past dollar benefits will be increased by any productivity increase, but any increase resulting from a restructuring will only apply to future benefits for which the employer and members will be contributing. The Bill provides for the Actuary (who is the State Actuary) to determine these past benefits. The Bill also allows for the recovery of any overpaid superannuation entitlements if this should occur in the same way as other overpayments are recovered under the Acts. (Some Marine Operations people have resigned but their employer benefit is held within the Fund and this component can be adjusted.)

Estimated Cost for Government Implementation

The amendments will have no cost impact on the schemes. Were the amendments not to proceed, the Q Super and State Super schemes may be liable immediately for unfunded benefit increases, in relation to the Department of Transport employees. Further, if a future power is not provided, the schemes will be left exposed to liability for further accidental unfunded superannuation benefit increases (one past potential unfunded liability was in the order of \$11 million).

Fundamental Legislative Principles

The Bill complies with fundamental legislative principles except for the provision of a regulatory power with retrospective application. The use of the retrospective power is restricted to the situation where the Governor in Council is satisfied both that the superannuation effects of an award change were unintended and that the change should not proceed.

This can occur only in the circumstances where a person's past superannuation benefit has been inadvertently altered as a consequence of an old award being varied or substituted by a fresh award and the fresh or varied award alters salary in such a way that inadvertently alters a person's past benefit. The section permits the Governor in Council to apply this declaration to past award variations. The benefits will be altered under section 49A from the date the fresh award applies, such that at that date, the benefits are to be equivalent to those at the date the old award ceased to apply.

There is obviously a need to have a power which can be quickly used rather than overpaying benefits and attempting to recover the overpayment after legislation is passed. As the power is regulatory in nature, it is subject to disallowance by the Legislative Assembly, and as indicated above, the power might equally be applied to protect benefits for employees.

Consultation

Minister for Transport and Main Roads

Department of Transport

Parliamentary Counsel

Commonwealth Insurance and Superannuation Commission

Government Superannuation Office

Scheme Trustees

Australian Maritime Officers' Union

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1. Specifies the short title for the Act.

PART 2—AMENDMENT OF STATE SERVICE SUPERANNUATION ACT 1972

Clause 2. Provides for the amendment of the *State Service Superannuation Act 1972*.

Clause 3. Replaces section 49 in the *State Service Superannuation Act 1972*. The provisions of the existing section 49 have been incorporated into the new sections 49 and 49A.

The proposed section 49 inserts definitions for the division. The definitions identify the persons covered by the division (who, in addition to those persons covered by the existing section 49, are persons employed by the Department of Transport as Regional Harbour Masters, Assistant Harbour Masters (Metropolitan), Senior Marine Pilots, Marine Pilots, Senior Coxswains, Coxswains A and B and Vessel Traffic Service Operators). The definitions also allow further officers to be declared as relevant officers by regulation and extend the meaning of officers to include persons who have ceased to be scheme members. The definitions relating to old awards and fresh awards and their operative dates are the awards applicable to any further officers declared as relevant officers.

The clause also inserts a new section 49A that requires the Actuary to determine, as soon as practicable, benefits under the scheme for the new classes of officers covered by the replacement section 49. The Actuary is to determine benefits for membership until the date of the change of the award that are equivalent to the benefits that these persons had accrued and were entitled to before the award change. For membership of the scheme after the date of the award change, the standard scheme conditions will apply. Where a member's benefit has been overpaid, the new section allows for recovery of the amount overpaid.

New section 49B makes special provision for regulation making powers under the division. The power is narrow and allows for the making of a regulation by the Governor in Council to declare persons as covered by the division. This can occur only in the circumstances where a person's past superannuation benefit has been inadvertently altered as a consequence of an old award being varied or substituted by a fresh award and the fresh or varied award alters salary in such a way that inadvertently alters a person's past benefit. The section permits the Governor in Council to apply this declaration to past award variations. The benefits will be altered under section 49A from the date the fresh award applies, such that at that date, the benefits are to be equivalent to those at the date the old award ceased to apply.

PART 3—AMENDMENT OF SUPERANNUATION (STATE PUBLIC SECTOR) ACT 1990

Clause 4. Provides for the amendment of the *Superannuation (State Public Sector) Act 1990*.

Clause 5. Inserts new division headings.

Clause 6. Replaces section 15 in the *Superannuation (State Public Sector) Act 1990* with a new division. The provisions of the existing section 15 have been incorporated into the division.

The proposed section 15 inserts definitions for the division and is similar to the proposed section 49 of the *State Service Superannuation Act 1972*. The definitions identify the persons covered by the division (who are the persons mentioned above, but further include the crew of the boat "Trigla"). The definitions also allow further employees to be declared as relevant employees by regulation and extend the meaning of employees to include persons who have ceased to be scheme members. The definitions relating to old awards and fresh awards and their operative dates are the awards applicable to any further employees declared as relevant employees.

The clause also inserts a new section 15A that requires the Actuary to determine, as soon as practicable, benefits under the scheme for the new classes of employees covered by the replacement section 15. The Actuary is to determine benefits for membership until the date of the change of the award

that are equivalent to the benefits that these persons had accrued and were entitled to before the award change. For membership of the scheme after the date of the award change, the standard scheme conditions will apply. Where a member's benefit has been overpaid, the new section allows for recovery of the amount overpaid.

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Clause 7. Provides for minor consequential amendments to section 18.