

SUPERANNUATION AND OTHER LEGISLATION AMENDMENT BILL 1997

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The Bill will provide for the merger of the State Public Sector (Q Super), Government Officers' (Gosuper), State Service, Police, and Fires Superannuation Funds and the Trustee Boards of such Funds. The merger will rationalise the operations of the funds, and is being undertaken in accordance with concessions provided under the Income Tax Assessment Act of the Commonwealth.

In addition, various amendments are being made to the *Public Officers' Superannuation Benefits Recovery Act 1988* to clarify that the Crown can access the preserved superannuation benefits of a corrupt public official and also to confirm that recovery can occur despite anti-assignment provisions contained in other superannuation Acts.

Amendments are also being made to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* to define the terms "Queensland Workplace Agreements" and "Australian Workplace Agreements" and to refer to the correct provisions under the *Workplace Relations Act 1997*.

Reasons for the Bill

Currently the provision of superannuation benefits for Queensland state public sector employees is through various superannuation schemes-

Open Schemes

- Q Super the major defined benefit scheme provided to permanent Government employees;

- Gosuper which provides superannuation coverage at the minimum level for all Government employees not covered by a defined benefit scheme;

Closed Schemes

- State Super— the Public Service predecessor of Q Super;
- Police Super— the Police Service predecessor of Q Super; and
- Queensland Fire Service Superannuation Plan.

The five schemes contain different benefit designs and are administered through separate Acts, Funds and Trustee Boards. It is proposed to merge the schemes to achieve more streamlined administration and taxation savings. The merger will classify the current schemes as sub-plans of the State Public Sector Superannuation Scheme (Q Super), with no changes in scheme conditions occurring.

The Bill provides for the amendment of the *Superannuation (State Public Sector) Act 1990*, which will become the principal act governing superannuation for public sector employees. Superannuation Acts covering the Gosuper, State Super and Police Schemes are being repealed with any operative provisions contained within the Q Super legislation. The Acts to be repealed are—

State Super legislation—

*Public Service Superannuation Act 1958 &
State Service Superannuation Act 1972*

Police Super legislation—

*Police Superannuation Act 1968 &
Police Superannuation Act 1974*

Gosuper legislation—

Superannuation (Government and Other Employees) Act 1988

Miscellaneous—

*Superannuation (Part-time Officers) Act 1988
Superannuation (Miscellaneous Acts) Amendment Act 1991*

The Bill specifically allows the provisions in the repealed acts to be translated across to the Deed of the Q Super Scheme, which is itself

approved by regulation. This provision does not amend legislation, but is a machinery amendment to effect the transfer of the words covering conditions and benefits of scheme membership from their existing Acts to the Q Super Deed.

The opportunity has also been taken to repeal the *Commissioner of Police (Vacation of Office) Act 1989*, which provided for the removal from office of the former Police Commissioner, Mr Terence Lewis and the treatment of his superannuation benefit as it is now redundant.

The Act covering Fire officers is being amended only in relation to the abolition of the separate Fire Service Superannuation Fund.

The *Public Officers' Superannuation Benefits Recovery Act 1988* (the Recovery Act) provides for the recovery or forfeiture of the Crown financed portion of superannuation benefits where an officer has been convicted of an indictable offence which involves corruption of their office.

A number of deficiencies have been identified in the Recovery Act and in its operation with the other superannuation legislation. These include a lack of recognition that many superannuation benefits are now preserved, and that provisions exist in other superannuation Acts preventing the assignment of superannuation benefits. The amendments contained in this Bill will address these inadequacies.

Amendments contained in this Bill will also address consequential amendments to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* as a result of the introduction of the *Queensland Workplace Relations Act 1997* and the *Commonwealth Workplace Relations Act 1996*.

Achievement of Objectives

The amendments to the superannuation legislation, if enacted prior to 30 June 1997, will ensure that the merger of the State's superannuation arrangements occur without incurring a capital gains tax liability. The Commonwealth Government has provided concessions in the Income Tax Assessment Act to enable mergers of superannuation funds without capital gains taxation liability arising. These concessions have been provided in light of the rationalisation taking place in the industry brought about by increasing regulation.

The Crown's power to recover superannuation benefits will be extended to include a right of payment to the Crown where there are preserved benefits, as preserved benefits in some circumstances were not envisaged in the Recovery Act in 1988. The amendments will also address the provisions contained in other superannuation Acts preventing the assignment of superannuation benefits thus facilitating the recovery of monies under the Recovery Act.

Estimated Cost for Government Implementation

The amendments to the *Superannuation (State Public Sector) Act 1990* (the Q Super Act) effecting the merger of the State's superannuation arrangements will have no cost impact on the schemes. The State Actuary and the Government Superannuation Office have indicated that there will be taxation savings from the merger of the schemes, although as not all data needed is currently collected, it is difficult to quantify. The merger will allow persons to transfer between schemes without incurring a capital gains tax liability. This arises presently when persons who are provided membership of the minimum benefit Gosuper scheme, elect to join the more highly subsidised Q Super.

Were the amendments not to occur by 30 June 1997, a significant Capital Gains tax liability would be payable in the event of the schemes merging at some time after 30 June 1997.

It is also expected that savings in administration will result in various areas such as from the abolition of four superannuation boards and the reduction in the numbers of financial accounts.

Fundamental Legislative Principles

The Bill complies with fundamental legislative principles.

Consultation

Scheme Trustees of all the affected superannuation funds (which include representatives from key employee associations)

Treasury Department (including the Government Superannuation Office and State Actuary)

Police Department

Department of Emergency Services

Office of Parliamentary Counsel

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 specifies the short title of the Act.

Clause 2 specifies that the majority of the Act commences before the finish of the day on 30 June 1997. Provisions relating to the Recovery legislation and provisions required for transitional purposes will commence on assent.

The provisions relating to the amendments to the *Building and Construction Industry (Portable Long Service Leave) Act 1991* will commence from 27 March 1997 to coincide with the commencement of the *Workplace Relations Act 1997*.

PART 2—AMENDMENT OF SUPERANNUATION (STATE PUBLIC SECTOR) ACT 1990

Clause 3 provides for the amendment of the *Superannuation (State Public Sector) Act 1990*.

Clause 4 replaces the definition of ‘board member’ with ‘trustee’ and defines ‘appointed trustee’ as provided in *Clause 5* in order to remove

confusion between persons who are “members” of the scheme and persons who are “members” of the Board.

The clause also replaces the definition of “Government Superannuation Provision Fund” (the Provision Fund) which is now dealt with in section 10(3) of the Act.

Clause 5 replaces sections 3 to 6 to provide for the establishment, membership, duties and proceedings of the board of trustees.

Currently, the provisions governing the trustee board’s constitution are located in sections 4 to 10 of the *Superannuation (Government and Other Employees) Act 1988* (Gosuper Act). The rationalisation of the various schemes will result in the abolition of the Gosuper Fund and Board. Therefore, the relevant provisions relating to the constitution of the trustee board have been redrafted and placed in the Q Super Act. The proposed section 3 makes it clear that the Board of Trustees of the State Public Sector Superannuation Scheme continues in existence under that name.

The provisions are generally consistent with the previous Gosuper provisions, other than amendments in line with current drafting practice.

Provisions which have slightly changed from the Gosuper legislation include that the criteria to be eligible to be a trustee are consistent with the criteria contained in the Commonwealth’s *Superannuation Industry (Supervision) Act 1993*. In addition, persons who are to be appointed as a deputy for a trustee or as a delegate must be appropriately qualified.

The provisions also cater for the membership composition of the Board of Trustees to be increased from 8 to 10 members. Currently, the Trustee Board is made up of the chief executive, 3 persons representing the Government and 4 persons representing the employees. The increase in Board membership will allow increased representation to take account of the merger in schemes.

Proposed sections 6G to 6J more specifically address the procedure of meetings and decision making.

Clause 6 amends section 7 to clearly set out the powers of the board.

Clauses 7 and 8 are consequential to the replacement of the term ‘board members’ with ‘trustees’.

Clause 9 This clause defines the amounts to be held in the “Government Superannuation Provision Fund” (the Provision Fund). The Provision

Fund holds moneys for persons who elected under the repealed *State Service Superannuation Act 1972* and the *Police Superannuation Act 1974* to transfer to Q Super. It also provides for amounts previously held in the Gosuper fund to be transferred to the Provision Fund at the commencement of this Act. The Provision Fund is a part of the State Public Sector Superannuation Fund.

Clause 10 inserts a new section 12A which provides for different categories of members to be in existence under the deed of the merged scheme, pursuant to the Q Super Act. The various categories of membership will be made up of the membership of the individual schemes which are being merged under the Q Super Act. The Q Super Deed, which is subordinate legislation, will provide the features of the different membership categories and the rules under which contributions and benefits are to apply to members.

Clause 11 amends section 13(2) to provide for a membership notice to declare the categories of membership established under Clause 10, of which members are eligible.

Clauses 12 to 16 removes provisions referring to a recalculation of benefits for certain members. These provisions are redundant as the recalculations have occurred.

Clause 17 omits section 16 which stated that the accounts of the fund were to be treated as miscellaneous departmental accounts under the *Financial Administration and Audit Act 1977*. This classification was removed from the *Financial Administration and Audit Act* in 1991.

Clause 18 has the effect of more generally providing for the protection of the use of terms in relation to the merged scheme. Previously section 21 provided for the protection of the expression “Q Super”. The incorporation of the additional schemes as sub-plans of the Q Super scheme necessitates the protection of other expressions associated with these schemes. The amendment also provides that the protected expressions will be declared by regulation.

Clause 19 removes the requirement for the trustee board to enlist new scheme members into Q Super. As all Government employees will be in Q Super, the provision is redundant.

Clause 20 omits section 25 which provides for the Board to round off any benefit amount to the nearest dollar. This practice is redundant and does not need to be provided in the legislation.

Clause 21 amends section 28 to include provision for payment of amounts to the Treasurer or the Board where regulations require such payment. Previously, participating employers paid such amounts to the Treasurer in line with the funding arrangements in place for the State's defined benefits schemes. The merger of the schemes will result in some employer money being directed to the Treasurer and other amounts to the trustees to hold in the superannuation fund as is the practice in some of the schemes being merged into Q Super.

Clause 22 inserts new section 30A which provides that judicial notice be taken of the board's seal appearing on a document, the signature of a trustee or the executive officer and the fact that the person holds or has held the relevant office. This provision was similar to the one provided in the Gosuper Act and has been amended in line with current drafting practice. New section 30B provides for any references, or matters relating to, a discontinued scheme in an Act or document to be read (context permitting) as a reference to the merged scheme. This will facilitate the ongoing operation of those Acts or documents.

Clause 23 inserts transitional provisions into the Q Super Act to effect the transfer of existing members and benefit entitlements from the Police, Fires, State Super and Gosuper schemes.

Proposed section 32 defines terms and proposed section 33 details the schemes which, as a result of being merged under the Q Super Act, are to be discontinued. Members of the discontinued schemes are, under section 34 to become members of the applicable membership categories under the Q Super scheme. Section 35 ensures that the entitlements of persons who are members of the discontinued schemes under Clause 33 are unchanged when they commence Q Super membership.

Proposed section 36 provides for the existing members of the Trustee Board who were appointed under the Superannuation (Government and Other Employees) Act to continue to hold office until the completion of their term or earlier cessation. All other persons holding appointment as trustees under the other Acts go out of office. The proposed provision also confirms that there are vacancies in the 2 additional trustee positions created at the commencement of this Bill as a result of the increase in the number of Trustees Board members provided for in proposed section 5.

The individual funds of the discontinued schemes are wound up in the proposed section 37 and any amounts held in those funds become part of the Q Super fund.

The transitional arrangements in the new section 38 provides for any agreements and legal proceedings which are currently the responsibility of the trustees of the discontinued schemes to become the responsibility of the Q Super trustee board. Similarly, the proposed section 39 provides for any asset or liability of the trustees of the discontinued schemes to become an asset or liability of the Q Super trustee board.

A new section 40 provides that the person holding appointment as the Q Super executive officer will continue to do so under the proposed section 6D until the cessation of that appointment.

Section 41 provides for the Q Super board to report on the discontinued schemes for the year ended 30 June 1997 pursuant to section 20 of the Act.

Section 42 empowers the Q Super board of trustees to finalise obligations of the discontinued schemes for the 1996/97 financial year in relation to a law which would have applied to a discontinued board had it still existed after the commencement of this Act.

Section 43 is to ensure that no state tax is payable due to the merger effected under the transitional part.

A new section 44 will allow the relocation, to the Q Super deed, of the provisions in the repealed Acts of the discontinued schemes specified under the proposed section 33. To clarify doubt, it is specified that this provision does not amend legislation, but is a machinery amendment to effect the transfer of the words covering the conditions and benefits of scheme membership from the Acts being repealed to the Q Super Deed.

Section 45 of the Act provides for the expiry of the transitional provisions after one year.

PART 3—AMENDMENT OF FIRE AND RESCUE AUTHORITY ACT 1990

Clause 24 cites the Act that is amended as the *Fire and Rescue Authority Act 1990*.

Clauses 25 and 26 omits those provisions relating to superannuation from the *Fire and Rescue Authority Act 1990* (the Fire Act). The

superannuation arrangements of Fire Service employees will be provided under the Q Super Act.

Clause 27 amends Schedule 4 of the Fire Act to remove references to the Fire Service Superannuation Scheme which is now redundant.

PART 4—AMENDMENT OF THE PUBLIC OFFICERS’ SUPERANNUATION BENEFITS RECOVERY ACT 1988

Clause 28 cites the Act that is amended as the *Public Officers’ Superannuation Benefits Recovery Act 1988*.

Clause 29 provides for amendments to the definition section. The term ‘superannuation or retirement benefit’s is to be extended to include preserved benefits arising in any instance from cessation of employment. Preserved benefits in some circumstances were not envisaged in the *Public Officers’ Superannuation Benefits Recovery Act 1988* (Recovery Act) in 1988.

The definition of ‘trustees’ has been moved from section 11 of the Act. A definition of ‘preserved benefits’ has been inserted to define that these are benefits payable at a later date.

Clause 30 provides for the power to recover superannuation benefits in this Act to override other superannuation Acts preventing the assignment of superannuation benefits.

Clause 31 clarifies that the Limitation of Actions Act does not apply as a recovery action is not an action imposing a penalty or forfeiture.

Clause 32 is consequential to the relocation of a definition to the definition clause.

Clause 33 inserts section 11C to enable the Minister to seek payment of a liability order from a superannuation scheme that is holding a preserved amount.

**PART 5—AMENDMENT OF BUILDING AND
CONSTRUCTION INDUSTRY (PORTABLE LONG
SERVICE LEAVE) ACT 1991**

Clause 34 provides that the *Building and Construction Industry (Portable Long Service Leave) Act 1991* is the principal Act to be amended.

Clause 35 adjusts existing definitions and provides new definitions to reflect the industrial instruments including Australian and Queensland Workplace Agreements as defined in the *Workplace Relations Act 1996 (Cwlth)* and the *Workplace Relations Act 1997*.

Clauses 36 to 38 omit where appropriate, references to the repealed *Industrial Relations Act 1990* and insert references to the correct chapter, part and section under the new *Workplace Relations Act 1997*.

PART 6—REPEALS

Clause 39 provides for the repeal of the Acts which are no longer necessary following the merger of the schemes.

Additionally, the *Commissioner of Police (Vacation of Office) Act 1989*, which provided for the removal from office of the former Police Commissioner, Mr Terence Lewis and the treatment of his superannuation benefit is repealed as it no longer is of effect.