

SUPERANNUATION LEGISLATION AMENDMENT BILL 1999

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The Bill will provide for the amendment of the *Superannuation (State Public Sector) Act 1990*, the *Parliamentary Contributory Superannuation Act 1970*, the *Judges (Pensions and Long Leave) Act 1957* and the *Governors' Pensions Act 1977* to provide for the implementation of the Commonwealth Government's Superannuation Contributions Tax ("surcharge").

Reasons for the Bill

In August 1996, the Commonwealth Government announced that a surcharge would apply on employer contributions paid to a superannuation fund on behalf of high income earners.

The Queensland Government operates two superannuation funds, the State Public Sector Superannuation Fund (QSuper), the Parliamentary Contributory Superannuation Fund (Parliamentary Fund), as well as the Judges' and the Governors' Pensions Schemes. Both QSuper and the Parliamentary Fund are assessable for taxation and as such the surcharge applies directly to these funds. The Judges' and Governors' Pension Schemes are "constitutionally protected" from taxation, therefore, the surcharge is a personal taxation matter for members of these Schemes.

Achievement of Objectives

The amendments to the superannuation legislation provide for the application of the Commonwealth Government's Superannuation Contribution Tax ("surcharge") to members of QSuper, the Parliamentary Fund, the Judges' Pension Scheme and the Governors' Pension Scheme by amending the relevant legislation (with the amendments in relation to the latter two Schemes having effect from a date to be proclaimed).

The objectives of the legislation are as follows:

- Pass the cost of the surcharge to members of the QSuper and Parliamentary Scheme to ensure that the State is not burdened with the tax liability;
- Ensure that the surcharge applies at a maximum of the announced rate of 15% in those State schemes where, due to their peculiar benefit design, the surcharge would apply at a significantly higher rate; and
- Provide for the commutation of pension benefits from the Judges' and Governors' Schemes to meet the cost of the surcharge.

The amendments provided for in the attached Bill are necessary to ensure that the surcharge is passed onto members of the QSuper and Parliamentary Funds and that the surcharge applies from its commencement date of 20 August 1996. As the QSuper and Parliamentary Funds are assessable for fund taxation, the surcharge will be imposed directly upon these funds. In such funds there must be a conscious decision to pass the cost on to members otherwise the State would be required to meet the liability. It would be difficult to argue that it would be reasonable for the State to accept the surcharge liability on either cost or equity grounds.

The Judges' and Governors' Pension Schemes however are not funds and thus are constitutionally protected from Commonwealth Government taxation. As a result, the Commonwealth Government does not have the ability to impose the surcharge upon those Schemes. To counter this, the Commonwealth Government passed specific legislation that imposes the surcharge directly upon members of schemes of this nature.

Estimated Cost for Government Implementation

The administration of the surcharge is extremely onerous, requiring funds to collect tax file numbers and to report substantial information on all members who have received employer contributions (whether or not high-income earners). Estimates reveal that the cost of implementing the required systems to administer the surcharge in Queensland will be approximately \$1 million. On an ongoing basis, the compliance and administration costs have been estimated at \$365,000. This is consistent with proportionate costs throughout the industry.

Fundamental Legislative Principles

The Bill complies with fundamental legislative principles.

Consultation

- QSuper Board of Trustees (which includes representatives from key employee associations);
- Trustees of the Parliamentary Fund;
- Treasury Department (including the Government Superannuation Office and State Actuary);
- Department of Premier and Cabinet
- Department of Employment, Training and Industrial Relations
- Department of Environment and Heritage and Natural Resources;
- Department of Attorney-General and Justice
- Office of Parliamentary Counsel; and
- Crown Solicitor.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 specifies the short title of the Act.

Clause 2 outlines that parts 2 and 3 of the Bill are to commence on a day to be fixed by proclamation and that the automatic commencement provisions of the *Acts Interpretation Act 1954* do not apply to parts 2 and 3.

PART 2—AMENDMENT OF *GOVERNORS' PENSIONS ACT 1977*

Clause 3 provides for the amendment of the *Governors' Pensions Act 1977*.

Clause 4 amends the section to provide that the rate of pension payable to a former Governor is subject to any adjustments in relation to a Governor's surcharge liability.

Clause 5 inserts a new provision which will enable a former Governor, or the surviving spouse of a former Governor, to take part of the pension payable under this Act as a lump sum to meet the former Governor's surcharge liability.

Currently, no portion of a former Governor's pension may be commuted to a lump sum. However, given that a lump sum surcharge debt will be applied personally to members of the Governors' Pension Scheme, allowing a portion of the pension to be taken as a lump sum will assist the recipient to fund the cost of the surcharge.

In order to ensure that the original intention of the Act (ie. to provide pension entitlements to former Governors and spouses) remains intact, the amendments restrict the amount of the pension which can be commuted in respect of a former Governor to that required to meet the surcharge liability.

Before a portion of a former Governors' pension can be commuted to a lump sum for the purposes of extinguishing a Governors' surcharge liability, a written application must be made to the Minister accompanied by the notice issued by the Commissioner of Taxation stating the amount of the former Governor's surcharge liability. Upon receipt of the written application accompanied by the notice the Minister can authorise the commutation of that part of the pension (on a basis determined by the Queensland Government Actuary) required to extinguish the former Governor's surcharge liability.

The provision also inserts a number of definitions essential for the operation of the proposed amendments. The definitions derive their meaning from the Commonwealth Government's *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

Clause 6 inserts a new provision which ensures that where part of a pension is commuted to a lump sum to meet the former Governor's surcharge liability the amount shall be paid from the consolidated fund.

PART 3—AMENDMENT OF *JUDGES' (PENSIONS AND LONG LEAVE) ACT 1957*

Clause 7 provides for the amendment of the *Judges' (Pensions and Long Leave) Act 1957*.

Clause 8 inserts a number of definitions essential for the operation of the proposed amendments. The definitions derive their meaning from the Commonwealth Government's *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

Clause 9 inserts a new provision which will enable a former judge or a judge's dependant, to commute part of the pension payable under this Act to a lump sum to meet the judge's surcharge liability. Under the Commonwealth Government's legislation the surcharge applies to judges appointed after 7 December 1997 and from 20 August 1996 for other recipients of entitlements under this Act.

Currently, no portion of a judge's pension may be commuted to a lump sum. However, given that a lump sum surcharge debt will be applied personally to members of the Judges' Pension Scheme, allowing a portion of the pension to be taken as a lump sum will assist the recipient to fund the cost of the surcharge.

In order to ensure that the original intention of the Act (ie. to provide pension entitlements to judges and their dependants) remains intact, the amendments restrict the amount of the pension which can be commuted in respect of a judge to that required to meet the surcharge liability.

Before a portion of a judge's pension can be commuted to a lump sum for the purposes of extinguishing a judge's surcharge liability, a written application must be made to the Minister accompanied by the notice issued by the Commissioner of Taxation stating the amount of the judge's surcharge liability. Upon receipt of the written application accompanied by the notice the Minister can authorise the commutation of that part of the pension (on a basis determined by the Queensland Government Actuary) required to extinguish the judge's surcharge liability.

PART 4 –AMENDMENT OF PARLIAMENTARY CONTRIBUTORY SUPERANNUATION ACT 1970

Clause 10 provides for the amendment of the *Parliamentary Contributory Superannuation Act 1970*.

Clause 11 inserts a new section 25C which specifies that the section has application when a benefit becomes payable to a member or some other person (such as a member's spouse) who has an entitlement to a benefit under the Fund.

The proposed amendments ensure that the surcharge applies to members of the Parliamentary Fund in a manner provided for in the Commonwealth Government's *Superannuation Contributions Tax (Assessment and Collection) Act 1997*. Under the Commonwealth's legislation, for superannuation funds such as the Parliamentary Fund, the surcharge is a liability on the Fund and a conscious decision must be made by the Trustees

to recoup the liability from members. So as to ensure that the Fund is not burdened with the additional liability of meeting an individual's surcharge debt, the proposed amendments provide for the Trustees to deduct the amount standing in that member's surcharge debt account from a member's end benefit prior to payment.

The proposed provision ensures that the surcharge applies to all members who have a surcharge debt account at the time they receive a benefit from the Scheme. It is possible under the benefit design of the Parliamentary Fund, for the final surcharge amount to exceed the announced maximum of 15%. The amendments work to ensure that the surcharge applies in a manner consistent with the announced intention of the Commonwealth's legislation by imposing the surcharge at a maximum of 15% of the State-financed portion of the benefit that has accrued since the date of commencement of the surcharge initiative. The phrase "State-financed component of that part of the benefit that accrued after 20 August 1996" is a term consistent with that used in legislation enacted in other jurisdictions to describe the increase in the employer part of a member's benefit since the date of commencement of the surcharge policy.

As some benefits under the Scheme are payable as a pension, the amendments provide for the Trustees to reduce the pension payable to a member by the amount representing the member's surcharge liability. This provision will ensure that a member's surcharge liability continues to rest with the member and is not passed to the Scheme where benefits are paid as a pension. The manner in which the pension will be reduced will be determined by the Minister upon receiving advice from the Queensland Government Actuary.

Under the Parliamentary Act, a pension is payable to the children of a deceased member in certain circumstances. Where a member is survived by a spouse, a pension is payable to the member's children at a rate specified in this Act. There is no surcharge amount payable in relation to this benefit as the required surcharge debt will be recouped from the benefit payable to the spouse of the deceased member.

However, where the member dies with a child or children but without a spouse, a pension benefit is paid for the child or children. The amount of the pension benefit payable varies depending on the childrens' ages, the number of children and education undertaken. The Trustees also have discretionary powers over the total benefit amount.

For these reasons, there is considerable difficulty in applying the surcharge to such benefits, as the value of a child's pension cannot be determined in advance. Attempts to estimate the likely benefit, which may be received, may result in the child's benefit being significantly reduced to fund the surcharge. Given these issues, and the expectation that there are few potential cases, the Bill provides for childrens' benefits to be protected from any decrease in respect of the surcharge.

The provision inserts a definition of surcharge debt account which is essential for the operation of the amendments. The definition derives its meaning from the Commonwealth Government's *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

PART 5—AMENDMENT OF SUPERANNUATION (STATE PUBLIC SECTOR) ACT 1990

Clause 12 provides for the amendment of the *Superannuation (State Public Sector) Act 1990*.

Clause 13 inserts a number of definitions essential for the operation of the amendments. The definitions derive their meaning from the Commonwealth Government's *Superannuation Contributions Tax (Assessment and Collection) Act 1997*. Additionally, a definition has been inserted to specifically identify police 74 and State 72 members for the purposes of quarantining the impact of the surcharge where a particular benefit is received.

Clause 14 inserts a new Part into the Act to cater for the application of the Superannuation Contributions Tax Surcharge.

New Section 15E acts to clarify that a reference to a benefit payable under the deed to a member includes a reference to a benefit payable to someone else who has derived an entitlement to the benefit through the member (eg. a spouse or estate).

It is possible under the benefit design of the police 74 and State 72 categories of membership, for a member who receives a “refund of contributions” upon resigning, for the final surcharge amount to exceed the announced maximum of 15%. The amendments work to ensure that the surcharge applies in a manner consistent with the announced intention of the Commonwealth’s legislation by imposing the surcharge at a maximum of 15% of the State-financed portion of the benefit that has accrued since the date of commencement of the surcharge initiative. The phrase “State-financed component of that part of the benefit that accrued after 20 August 1996” is a term consistent with that used in legislation enacted in other jurisdictions to describe the increase in the employer part of a member’s benefit since the date of commencement of the surcharge policy.

To ensure that the liability for the surcharge is passed onto members where a benefit is paid in the form of a pension, specific provision has been made requiring the Trustee Board to reduce the pension payable by the amount of member’s surcharge debt account. The reduction is determined by the Minister on the advice of the Queensland Government Actuary.

Under the Trust Deed of the State Public Sector Superannuation Scheme, a pension is payable to the children of a deceased member in certain circumstances. Where a member is survived by a spouse, a pension is payable to the member’s children at a rate specified in the Trust Deed. There is no surcharge amount payable in relation to this benefit, as the required surcharge debt will be recouped from the benefit payable to the spouse of the deceased member.

However, where the member dies with a child or children but without a spouse, a pension benefit is paid for the child or children. The amount of the pension benefit payable varies depending on the childrens’ ages, the number of children and education undertaken. The Trustees also have discretionary powers over the total benefit amount.

For these reasons, there is considerable difficulty in applying the surcharge to such benefits as the value of a child's pension cannot be determined in advance. Attempts to estimate the likely benefit which may be received may result in the child's benefit being significantly reduced to fund the surcharge. Given these issues, and the expectation that there are few potential cases, the Bill provides for childrens' benefits to be protected from any decrease in respect of the surcharge.