

# **SUPERANNUATION AND OTHER LEGISLATION AMENDMENT BILL 2000**

## **EXPLANATORY NOTES**

### **Short Title**

The short title of the Bill is the *Superannuation and Other Legislation Amendment Bill 2000*.

### **Policy objectives of the Bill and reasons for them**

The Bill provides for the amendment of the *Superannuation (State Public Sector) Act 1990*, the *Statutory Instruments Act 1992*, the *Parliamentary Contributory Superannuation Act 1970*, the *Public Officers' Superannuation Benefits Recovery Act 1988* and various State Acts in the manner outlined below.

The amendments to the *Superannuation (State Public Sector Act) 1990* (“the QSuper Act”) are to:

- alter the current membership provisions by allowing for the continuation of membership for employees who are compulsorily transferred from a “unit of the State public sector” to an organisation outside the State Government where the employees and the new employer are in agreement. Additionally, the amendments will broaden the current eligibility regime by allowing for members who are no longer current employees and also members of other schemes to be declared eligible for membership of QSuper;
- provide a level of indemnification to the Board of Trustees of the State Public Sector Superannuation Scheme (QSuper) that is consistent with Commonwealth Government superannuation laws;
- clarify the commencement date of the *Superannuation (State Public Sector) Notice 2000* as 1 May 2000; and

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- remove redundant provisions within the QSuper Act.

In addition, an objective of the Bill is to amend the *Statutory Instruments Act 1992* (“the SI Act”) to include in schedule 2A of that Act, the *Superannuation (State Public Sector) Deed 1990* (“the QSuper Deed”). This will provide for the perpetual life of the QSuper Deed.

The amendments to the *Parliamentary Contributory Superannuation Act 1970* (“the Parliamentary Act”) are to:

- provide for the recognition of de facto relationships in a similar manner to legally married couples in providing superannuation benefits to former Members of Parliament;
- provide for the continuation of pension benefits where the widow of a former Member of Parliament remarries;
- adjust the manner in which pension and annuity benefits are calculated so that all increases in the Consumer Price Index (CPI) are passed on to former Members in full and that such benefits are protected from decreases in CPI in any one year;
- remove the requirement that a widow be financially dependent upon a former Member in order to be entitled to a pension benefit;
- provide for the preservation of lump sum benefits in the Parliamentary Contributory Superannuation Fund (the Parliamentary Fund) on and from the date of the next polling day; and
- provide for the cessation of both contributions to the Parliamentary Fund and benefit accruals on behalf of a Member, where a member reaches age 70.

The objectives of the amendments to *Public Officers’ Superannuation Benefits Recovery Act 1988* (“the Recovery Act”) are to allow for the out of court recoupment of superannuation monies where an employee is convicted of committing a “prescribed offence”. Additionally, the amendments will provide for the recoupment of such monies where an employee ceases employment rather than only at retirement.

The Bill also amends various other State Acts to remove redundant provisions.

**The way that the Bill achieves the policy objectives and why this approach is reasonable and appropriate**

The Bill will extend the current membership provisions under the QSuper Act in addition to expanding the current level of indemnification to the Board of Trustees.

The Commonwealth Government's *Superannuation Industry (Supervision) Act 1993* ("the SIS Act") provides for the regulation of the superannuation industry. Although under the SIS Act the State's superannuation arrangements are exempt from the provisions of the legislation, the Queensland Government is committed, under a Heads of Government Agreement, to comply with the 'spirit' of the SIS Act. As such, this Bill will amend State Government superannuation legislation to comply with the spirit of the SIS Act in areas such as preservation and age for contributions.

These amendments seek to ensure consistency with the position of other States through the recognition of de facto relationships in a similar manner to legally married couples for the purposes of the Parliamentary Act.

The Bill will assist in more effective recoupment of Government funded superannuation monies from employees who are convicted of "prescribed offences" under the Recovery Act, and will make minor amendments to State legislation to remove redundant provisions.

**Reasonable alternatives for achieving the policy objectives and why the alternatives were not adopted**

There are no alternatives considered appropriate for achieving these policy objectives.

**Administrative cost to the Government in implementing this Bill**

The only cost identified relates to the amendments to the Parliamentary Act and the State Actuary has advised that such cost is not significant. There are no other known costs associated with implementing this Bill.

### **Consistency of the Bill with Fundamental Legislative Principles**

The Bill contains some provisions intended for retrospective commencement. Retrospectivity which diminishes rights and liberties of individuals is inconsistent with fundamental legislative principles. The retrospective provisions in the Bill are intended to clarify the commencement date of the *Superannuation (State Public Sector) Notice 2000* and to maintain existing rights for Members of Parliament under the Commonwealth Government's SIS Act. These provisions merely clarify existing arrangements for Members. The amendments to the *Motor Accident Insurance Act 1994* and the *Motor Accident Insurance Amendment Act 2000* will clarify the existing arrangements. No rights or liberties are diminished by these provisions and the Bill is consistent with the fundamental legislative principles.

### **Consultation on the Bill**

Consultation has taken place with the following:

- Board of Trustees of the State Public Sector Superannuation Scheme;
- The Trustees of the Parliamentary Contributory Superannuation Fund;
- Department of the Premier and Cabinet;
- Department of Tourism and Racing;
- Tourism Queensland;
- Department of Justice and Attorney-General;
- Office of the Board of Teacher Registration, Department of Education;
- Department of Health;
- Motor Accident Insurance Commission;
- Office of Queensland Parliamentary Counsel; and
- Crown Law.

## **NOTES ON CLAUSES**

### **PART 1—PRELIMINARY**

*Clause 1* of the Bill sets out the short title of the proposed Act.

*Clause 2* of the Bill provides for the commencement date of the proposed Act. The Bill will commence upon royal assent.

### **PART 2—AMENDMENT OF THE *PARLIAMENTARY CONTRIBUTORY SUPERANNUATION ACT 1970***

*Clause 3* provides that the Bill amends the *Parliamentary Contributory Superannuation Act 1970* (“the Parliamentary Act”).

*Clause 4* removes the current definition of widow and inserts new definitions to assist in the operation of the new methodology of indexation of pensions and annuities under the Parliamentary Act.

*Clause 5* inserts a new meaning of widow. The meaning of widow is being amended in order that de facto relationships are recognised in a similar manner to legally married couples for the purposes of the payment of benefits under the Parliamentary Act.

*Clause 6* inserts a new section that restricts the payment of personal contributions by Members over 70 years. In accordance with Commonwealth Government legislation, members over age 70 cannot make contributions to a superannuation Fund.

*Clause 7* inserts a provision that restricts the payment of a lump sum benefit, where a Member is not entitled to a pension, in accordance with the Commonwealth preservation standards. This will apply to benefits that accrue from the date of the next polling day following commencement of this section. Additionally, this clause includes a reference to new section 20AA which places limitations upon the accrual of benefits when a member reaches age 70. The limitations are in accordance with Commonwealth Government legislation.

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*Clause 8* inserts a new provision that allows for the determination of a Member's superannuation benefit on cessation of membership on or after age 70. This clause provides that where a Member reaches age 70 having completed 8 years or more service as a Member, then the benefit payable on cessation of service at any time after age 70 will be the same amount of pension that the Member would have been entitled to had the Member ceased to be a Member having been defeated at an election on the day before the member turned age 70. The amount of the pension is then increased in line with any increases in the Consumer Price Index between the Members 70<sup>th</sup> birthday and the date of cessation of service in the same manner as if the pension had actually commenced on the day before the members 70<sup>th</sup> birthday.

Where the Member does not complete 8 years of service before turning age 70, this clause provides that the Member will be entitled to the same lump sum benefit that the Member would have been entitled to had the Member ceased on the day before the Member turned age 70 in the same circumstances as on the day the Member actually ceases service. That is, if the person ceases to be a Member voluntarily, then they would receive the same benefit that they would have received on voluntary cessation of service on the day before the Member turned age 70. Equally, if the person ceases service involuntarily, then the lump sum is the same that they would have received had they involuntarily ceased service on the day before their 70<sup>th</sup> birthday. Any lump sum payable in these circumstances is then increased with interest on a compounded basis from the Members 70<sup>th</sup> birthday to the date of cessation of service.

*Clause 9* inserts a provision that provides for the Commonwealth preservation standards to apply to lump sum benefits determined under section 18 of the Parliamentary Act from the date of the next polling day.

*Clause 10* inserts a provision that provides for the preservation of benefits. Preserved benefits are those that are payable to a former Member under the Parliamentary Act, but which may not be accessed by the Member until they reach preservation age and are permanently retired from the workforce or die, become totally and permanently disabled or reach preservation age but before reaching that age, retire from the workforce for a reason other than becoming totally and permanently disabled. Essentially, this clause provides for the preservation of lump sum benefits accrued from the date of the next polling day after the commencement of this section,

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except for that amount the member would have been able to access on the day before the next polling

*Clause 11* amends section 19 regarding ill-health benefits to more appropriately refer to lump sums and pensions by inserting the term “benefits”. This clause also makes provision for the calculation of the ill health benefit where a Member reaches age 70 and applies for such a benefit. Essentially, where a Member is more than 70 years and has completed less than 8 years of service before turning age 70, the Member is entitled to receive a lump sum benefit plus compound interest. However, where a Member is more than 70 years and has completed at least 8 years of service upon turning age 70, the Member is entitled to receive the same amount of the pension that the person would have been entitled to had the person ceased being a Member on their 70<sup>th</sup> birthday.

*Clause 12* inserts a new provision that ensures that where a Member receives a benefit due to ill health and is over age 70 and has completed at least 8 years of service upon turning age 70, the Member is only entitled to convert the pension to a lump sum in the same manner as if the Member had retired on their 70<sup>th</sup> birthday.

*Clause 13* provides that a benefit to be paid to a widow of a former Member (other than a continuing member) who reaches age 70 before ceasing to be a Member is calculated with reference to either the pension that became payable to the Member or 40% of the basic salary at the time the Member reached age 70.

*Clause 14* inserts a new provision that allows for the payment of a benefit to the widow of a new Member who dies on or after turning age 70 whilst in service. This section provides that where the Member completes less than 8 years of service before turning age 70, then the widow is entitled to a lump sum benefit in addition to interest earned on this benefit on a compounded basis.

Where a Member completes 8 years or more of service before turning age 70, the widow is entitled to a pension benefit that is the same amount that the Member would have been entitled to had the Member involuntarily retired on the day of the Member’s death as a result of being defeated at an election. If such a member dies before their 75<sup>th</sup> birthday, the widow of the Member is entitled (within 3 months) to convert the pension to a lump sum in the same manner that the Member would have been able to had the member left Parliament on the date of death.

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*Clause 15* provides that where a widow converts a benefit to a pension under section 20A, that pension will now continue even if the widow remarries. However, it also clarifies that the widow of a Member who dies after age 70 and who has completed less than 8 years upon reaching age 70, is not entitled to convert the lump sum benefit to a pension.

*Clause 16* provides that where a widow of a continuing Member converts a benefit to a pension under section 20B, that pension will now continue even if the widow remarries.

*Clause 17* removes section 20C which provides for the recommencement of a pension to a widow who remarries and who again becomes widowed or a remarriage is dissolved, since this clause is now redundant.

*Clause 18* provides that upon the death of a Member who receives a pension under section 17A(3), payment to children under section 21 may occur.

*Clause 19* provides for an endowment benefit determined by the State Actuary to be payable for new Members who were continuing Members, in addition to their entitlements under section 17A(3).

*Clause 20* removes references in section 25(1) to section 20 which is no longer relevant to this section, and includes a reference to new section 17A(3).

*Clause 21* removes the current method of indexation of pensions and inserts a new methodology. This section will provide for all pensions payable under sections 17, 19, 20AA, 20A or 20B to be increased in line with the Consumer Price Index (CPI) where there is any increase in CPI, but for the pensions to remain the same where CPI decreases. Where the CPI increases in the year following a decrease, the increase will be limited to the net increase over the period since it was last increased.

*Clause 22* clarifies that the “repealed Acts specified in schedule 1”, refers to the Acts mentioned in Schedule 1 immediately before Schedule 1 was itself repealed on the commencement of the *Superannuation Legislation Amendment Act 1992*.

*Clause 23* removes the current method of indexation of annuities and inserts a new methodology consistent with that introduced for pensions above. This section will provide for all annuities to be increased in line with



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the Consumer Price Index (CPI) where there is any increase in CPI, but for the annuities to remain the same where CPI decreases. Where the CPI increases in the year following a decrease, the increase will be limited to the net increase over the period since it was last increased.

*Clause 24* provides that where, prior to the commencement of this Act, a widow was not entitled to a pension under the Parliamentary Act because of remarriage, that widow will continue not to be entitled to any further benefit under the Act after the commencement of these amendments. This clause is a savings and transitional provision.

This clause also provides that a widow who is in receipt of a pension under section 20C of the Parliamentary Act continues to receive that pension in accordance with that Act despite the commencement of these amendments. This clause is a savings and transitional provision.

*Clause 25* clarifies for reference purposes, the first “last adjustment index” for the new indexation regime applying to pensions and annuities under the Parliamentary Act.

*Clause 26* clarifies that the operation of section 33A does not apply to Members who are aged 70 or more. This clause also clarifies that Members under age 70 making an election under section 33A must do so at the same time that they make an election under section 18. In addition, this clause clarifies that any election made under section 33A is operative not later than the Member’s 70<sup>th</sup> birthday.

**PART 3—AMENDMENT OF *PUBLIC OFFICERS’  
SUPERANNUATION BENEFITS RECOVERY ACT 1988***

*Clause 27* provides that the Bill amends the *Public Officers’ Superannuation Benefits Recovery Act 1988* (“the Recovery Act”).

*Clause 28* amends the current section 4 to provide for the recoupment of publicly funded superannuation monies from employees who cease employment prior to retirement as well as on retirement.

*Clause 29* amends the current section 6 of the Recovery Act to allow for the settlement of cases under this Act to take place out of court. This provision will only take effect where both parties are in agreement with this

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option and in determining an amount to be recouped, the Minister will have regard to the factors outlined in section 8 of that Act. In instances where agreement is not able to be reached to resolve such cases out of court, these cases will continue to be settled by application to the Supreme Court.

*Clause 30* amends the current section 8 to allow for the assessment of a liability under the Act for employees who cease employment prior to retirement as well as at retirement.

*Clause 31* amends the current section 11 to provide that where assessment of the commuted value of any pension being paid to a member who is subject to an order under section 7(2) of the Act is being made, the date of the order is substituted for the date of ceasing employment or retirement, as the case may be.

*Clause 32* amends the existing section 35 to include any superannuation or retirement benefits that would have been payable to a member on cessation of employment as well as on retirement in the amount of benefits which may be declared not to be paid under a regulation.

**PART 4—AMENDMENT OF STATUTORY  
INSTRUMENTS ACT 1992**

*Clause 33* provides that the Bill amends the *Statutory Instruments Act 1992* (“the SI Act”).

*Clause 34* includes the *Superannuation (State Public Sector) Deed 1990* (“the QSuper Deed”) in schedule 2A of the SI Act thereby allowing for the QSuper Deed to continue in perpetuity.

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

*Clause 35* provides that the Bill amends the *Superannuation (State Public Sector) Act 1990* (“the QSuper Act”).

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*Clause 36* removes a reference to the “Government Superannuation Provision Fund” from the definitions of the QSuper Act. As this Fund no longer exists, this definition is no longer required. This clause also inserts a definition of employee and eligible scheme. These definitions are for clarification purposes.

*Clause 37* inserts a new provision that provides greater flexibility in the determination of persons who may be eligible to become members of QSuper.

*Clause 38* amends the current provisions of the QSuper Act that provide for the indemnification of the Board of Trustees, the Executive Officer and staff of the State Public Sector Superannuation Scheme (QSuper). This amendment provides these people with a level of indemnification that is consistent with Commonwealth superannuation laws and, consistent with other State legislation. Any liability would therefore attach to the State.

*Clause 39* amends section 10 to remove references to the “Government Superannuation Provision Fund” which is no longer in existence. Consequently, this clause also renumbers the sub sections.

*Clause 40* amends section 13(1) of the QSuper Act in accordance with the introduction of a definition of employee. Additionally, this clause provides greater flexibility in the determination of persons who may be eligible to become members of QSuper.

*Clause 41* inserts a new section that provides for the continuation of membership for employees who are compulsorily transferred from a “unit of the State public sector” to an organisation outside the State Government. In particular, this section will only operate where the employees are transferred under an authority of Government and where the employer and employee are in agreement with continued membership.

This clause also confirms the eligibility for membership of members who retain benefits in the Fund and who have ceased public service employment (that is, employer contributions are no longer received on behalf of the member).

*Clause 42 and Clause 43* insert a new definition of employee in relation to section 15 for clarification purposes. This clause also removes a reference to the *Workplace Relations Act 1997* and replaces it with a reference to the *Industrial Relations Act 1999*.

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*Clause 44 and Clause 45* amend the Act in a manner consistent with the new definition of employee.

*Clause 46* amends the current section 30 of the QSuper Act for readability purposes.

*Clause 47* clarifies 1 May 2000 as the date upon which the *Superannuation (State Public Sector) Notice 2000* commenced.

## **PART 6—OTHER AMENDMENTS OF ACTS**

*Clause 48* provides that the Bill will amend Acts outlined in the schedule to the Bill.

## **SCHEDULE**

### **OTHER AMENDMENTS OF ACTS**

#### ***DIRECTOR OF PUBLIC PROSECUTIONS ACT 1984***

*Clause 1* removes a redundant reference to repealed State superannuation legislation.

#### ***EDUCATION (TEACHER REGISTRATION) ACT 1984***

*Clause 1* removes a section that contains a redundant reference to the State Service Superannuation Fund and the State Service Additional Benefits Fund. These funds no longer exist.

## ***FINANCIAL ADMINISTRATION AND AUDIT ACT 1977***

*Clause 1* removes a reference to the Government Superannuation Provision Fund. This Fund is now closed and therefore, the provision is redundant.

*Clause 2* removes a redundant reference to “other moneys”.

## ***GOVERNMENT OWNED CORPORATIONS ACT 1993***

*Clause 1* removes a reference to the State Service Superannuation Fund. This Fund is now closed and therefore, the reference is redundant.

*Clause 2* removes a reference to the *State Service Superannuation Act 1972*. This Act is repealed and therefore, the reference is redundant.

*Clause 3* amends section 173(3) of this Act for readability purposes.

## ***MOTOR ACCIDENT INSURANCE ACT 1994***

*Clause 1 and 2* clarify the subsections to which the existing penalty is intended to apply.

*Clause 3* renumbers the section.

## ***MOTOR ACCIDENT INSURANCE AMENDMENT ACT 2000***

*Clause 1* removes the definition “assessment period” which is no longer relevant.

*Clause 2* removes the definition “re-assessed period” which is no longer relevant.

## ***NURSING ACT 1992***

*Clause 1* removes a reference to the State Service Superannuation Fund. This Fund is now closed and therefore, the reference is redundant.

*Clause 2* removes a reference to the *State Service Superannuation Act 1972*. This Act is repealed and therefore, the reference is redundant.

*Clause 3* amends section 31(2) of this Act for readability purposes and also removes a redundant reference to the State Service Superannuation Fund.

*Clause 4* removes a reference to the State Service Superannuation Fund. This Fund is now closed and therefore, the reference is redundant.

*Clause 5* removes a reference to the *State Service Superannuation Act 1972*. This Act is repealed and therefore, the reference is redundant. Instead a reference to the current QSuper Scheme has been inserted.

*Clause 6* amends section 42(3) of this Act for readability purposes and also removes a redundant reference to the State Service Superannuation Fund.

## ***PARLIAMENTARY COMMISSIONER ACT 1974***

*Clause 1* removes a section that refers to repealed State superannuation legislation. The conditions outlined in this section will be reflected via the *Superannuation (State Public Sector) Notice 2000*. Therefore, this section will commence upon proclamation.

## ***PARLIAMENTARY SERVICE ACT 1988***

*Clauses 1* omits a redundant section.

*Clause 2* amends section 31(1) of that Act by removing references to the repealed *Public Service Superannuation Act 1958* and the *State Service Superannuation Act 1972* and replaces such references with the *Superannuation (State Public Sector) Act 1990*.

***QUEENSLAND INVESTMENT CORPORATION ACT  
1991***

*Clause 1* removes a redundant reference to the State Service Superannuation Fund.

*Clause 2* amends section 36(a) for readability purposes.

***SUPERANNUATION (PUBLIC EMPLOYEES  
PORTABILITY) ACT 1985***

*Clause 1* amends section 4(1) for readability purposes.

*Clause 2 and 3* removes a redundant reference to the State Service Superannuation Board and the *State Service Superannuation Act 1972* and replaces such references with the current legislation governing the State's superannuation arrangements, the *Superannuation (State Public Sector) Act 1990*.

*Clause 4* amends section 6 for readability purposes.

***TOURISM QUEENSLAND ACT 1979***

*Clause 1 and 2* removes sections that refer to repealed State superannuation legislation. The conditions outlined in these sections will be reflected in the *Superannuation (State Public Sector) Notice 2000*. Therefore, this section will commence upon proclamation.