

TREASURY LEGISLATION AMENDMENT BILL (NO. 2) 2002

EXPLANATORY NOTES

GENERAL OUTLINE

Objectives of the Legislation

The objective of the Bill is to make a number of technical changes to Acts administered by the Treasury Department. These amendments do not involve any significant policy issues.

In particular, the amendments to the *Motor Accident Insurance Act 1994* are to align as much as possible relevant provisions of the Act to the *Personal Injuries Proceedings Act 2002* to achieve more affordable CTP premiums. Further, the amendments are to allow for the different GST treatment of Compulsory Third Party (CTP) insurance for Registered Tax Entities.

The amendment of the *Superannuation (State Public Sector) Act 1990* (QSuper Act) is to implement the Commonwealth amendments to the *Family Law Act* to allow superannuation benefits to be split following marital separation by allowing a member's former spouse to become a member of the State Public Sector Superannuation Scheme (QSuper Fund). Also the amendments are to remove references to the *Financial Administration and Audit Act 1977* (the FA&A Act).

The amendments to the *Public Officers Superannuation Benefits Recovery Act 1988* (Recovery Act) are to ensure the Treasurer may recover amounts under the Recovery Act via an out-of-court settlement.

The amendments to the *Gaming Machine Act 1991* are to allow some flexibility in the maximum number of Commissioners that may be appointed to the Queensland Gaming Commission and to prescribe a fee for appeals to the Commission and for certain applications that require the approval of the Chief Executive.

The amendments to the *Charitable and Non-Profit Gaming Act 1999* are to prescribe a fee for appeals to the Commission.

The amendments to the *Keno Act 1996* are to bring contributions to the Community Investment Fund into line with other gaming legislation where only contributions from taxation collections are made to the Community Investment Fund.

Reasons for the Objectives and how they will be achieved

The Treasury Department approved the implementation of a program of omnibus legislation in order to make a number of technical amendments to Acts administered by the Department on a regular basis. The amendments which will be included in the omnibus Bills will generally be of a technical nature.

Motor Accident Insurance Act 1994

The objectives of the *Motor Accident Insurance Act 1994* amendments are achieved by: -

- introducing thresholds on gratuitous care for CTP claims and requiring costs statements to clearly differentiate between legal fees and disbursements;
- encouraging cooperation at an early stage between the parties by facilitating expressions of regret by defendants;
- providing a legislative basis in relation to the variations in filing and setting of premiums as a result of the expiry of the GST transitional provisions as they apply to CTP insurance; and
- redefining the premium to be used in determining scheme affordability.

Superannuation (State Public Sector) Act 1990

The Commonwealth Government has recently finalised amendments to the *Family Law Act*, which become effective on 28 December 2002. These amendments enable a superannuation benefit to be split following the separation of a married couple. The changes provide that a couple can come to an agreement, or obtain a court order, which is then served on the trustees of a superannuation fund advising them of the value of the superannuation interest which is to be allocated to the member's spouse. To facilitate the new regime, this Bill amends the QSuper Act to allow a member's former spouse to become a member of the QSuper Fund. Spouses of QSuper members are currently permitted to be members of the QSuper Fund.

Complementary amendments are also required to the *Superannuation (State Public Sector) Deed 1990* (QSuper Deed), to allow for the operation of the new regime within the QSuper Fund. The QSuper Board of Trustees approved the drafting of these amendments at its meeting on 18 September 2002.

This Bill also amends the QSuper Act to remove references to the FA&A Act. The Queensland Audit Office has confirmed that the QSuper Fund is out of scope for Whole of Government reporting, and has endorsed the suggestion that the QSuper Act be amended to remove references to the FA&A Act.

Public Officers Superannuation Benefits Recovery Act 1988

The Recovery Act allows the Government to recover the employer-funded portion of a superannuation benefit from a person who has been convicted of certain prescribed offences. The Recovery Act permits the amount to be recovered from the person to be determined by the courts, or to be negotiated between the Treasurer and the person concerned (an out-of-court settlement). However, legal advice obtained by the Government Superannuation Office indicates that under the current provisions of the Recovery Act, it is not possible for the outcomes of an out-of-court settlement to be enforced on a preserved benefit. This Bill also amends the Recovery Act to ensure that the Minister may recover amounts under the Recovery Act via an out-of-court settlement. This seeks to address a drafting anomaly previously inserted to facilitate such action.

Gaming Machine Act 1991, Charitable and Non-Profit Gaming Act 1999 and the Keno Act 1996

The amendments to the *Gaming Machine Act 1991* and the *Charitable and Non-Profit Gaming Act 1999* are at the suggestion of the Office of the Queensland Parliamentary Council. The amendment to the *Keno Act 1996* is necessary to achieve consistency with other gaming legislation concerning contributions made to the Community Investment Fund.

Alternative Ways of Achieving the Policy Objectives

Motor Accident Insurance Act 1994

Various options were considered for addressing the expiry of the GST transitional provisions including retention of a single premium either with or without the absorption of the increased costs by licensed insurers. The option of requiring the scheme underwriters to subsidise business vehicles by absorbing the additional costs to owners is unacceptable to the scheme's

licensed insurers. The alternative of increasing premiums for all motorists would unnecessarily burden private motorists who would be required to subsidise business motorists' premiums.

An alternative to the provisions aligning aspects of the CTP legislation with the *Personal Injuries Proceedings Act 2002* is to allow the *Motor Accident Insurance Act 1994* to stand in its current form. However, in the absence of good reasons to keep the current form, it would be preferable for personal injury, irrespective of cause, to be treated in a similar manner.

Other amendments

There are no alternative methods for achieving the objectives in relation to the other amendments.

Administrative costs to Government of Implementation

There will be no administrative cost to Government as a result of the amendments in the Bill. In relation to the *Motor Accident Insurance Act 1994* the costs related to the system developments required at Queensland Transport to implement the changes in relation to GST will be funded from the CTP administration fee applied to the insurance component of vehicle registrations.

Consistency with Fundamental Legislative Principles

The Bill is generally consistent with fundamental legislative principles, except in relation to the amendments to the *Motor Accident Insurance Act 1994*. The introduction of thresholds on gratuitous care for CTP claims may be perceived as limiting individual rights in relation to common law claims for damages. However, the threshold is aimed at ensuring an appropriate balance between benefits and the cost of premiums. These issues were already considered prior to the introduction of the thresholds in the *Personal Injuries Proceedings Act*.

Consultation

Consultation has been carried out in relation to the various amendments in the Bill where appropriate. All parties are in agreement with the amendments to the Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 cites the short title of this Act.

Clause 2 provides that the Act is taken to have commenced on a day fixed by proclamation.

PART 2—AMENDMENT OF THE CHARITABLE AND NON-PROFIT GAMING ACT 1999

Clause 3 identifies the *Charitable and Non-Profit Gaming Act 1999* as the legislation to be amended.

Clause 4 amends section 176(1)(a) to provide for a prescribed fee to accompany the notice of appeal filed with the Registrar of the Commission instead of relying on the general regulation making power in the Act.

PART 3—AMENDMENT OF THE GAMING MACHINE ACT 1991

Clause 5 identifies the *Gaming Machine Act 1991* as the legislation to be amended.

Clause 6 amends section 18(1) to provide for a minimum number of five (5) and a maximum number of seven (7) Commissioners that may be appointed to the Queensland Gaming Commission. This amendment will allow for some flexibility in the maximum number of Commissioners that may need to be appointed depending on the workload of the Commission. The next Commission's workload is likely to reduce due to the cap on applications by hotels for gaming machine licences, the likely continuing rationalisation of the club industry and the devolution of responsibility for

all individual employee licensing from the Commission to the Chief Executive.

Clause 7 amends section 25 to provide for the relevant number of Commissioners and a chairperson that would constitute a quorum for a meeting of the Commission, depending on the number of Commissioners appointed to the Commission at a given time and arises out of the amendment to section 18(1) in *clause 6*.

Clause 8 amends section 33(2)(a) to provide for a prescribed fee to accompany the notice of appeal filed with the Registrar of the Commission instead of relying on the general regulation making power in the Act.

Clause 9 amends section 283 to provide for a prescribed fee for an application for approval of the Chief Executive for a club or hotel to change the percentage return to players of gaming machines, instead of relying on the general regulation making power in the Act.

PART 4—AMENDMENT OF KENO ACT 1996

Clause 10 identifies the *Keno Act 1996* as the legislation to be amended.

Clause 11 amends section 113(1) to omit the reference to ‘keno licence fees’. This amendment is intended to ensure that the prescribed amount of 8.5% paid into the Community Investment Fund from all amounts received by the Chief Executive for the previous month, will only apply to keno tax and is not intended to include any percentage of licence fees.

PART 5—AMENDMENT OF MOTOR ACCIDENT INSURANCE ACT 1994

Clause 12 – Act amended in pt 5

This clause identifies the *Motor Accident Insurance Act 1994* as the legislation to be amended.

Clause 13 – Amendment of s4 (Definitions)

The term “expression of regret” is defined.

Clause 14 – Amendment of s 13 (The insurer’s premium)

The clause identifies policies of insurance which after 30 June 2003 are subject to a different tax treatment under *A New Tax System (Goods and Services Tax) Act 1999 (Cwlth)* and provides for the adjustment of premiums set under the section by insurance class and/or insurer as prescribed by regulation. The term “input tax credit” is defined.

Clause 15 - Amendment of s 13A (Premium rates)

Clause 15 clarifies and better defines some of the references to various premiums mentioned in the section including those premiums to be advised by the Commission in notices to the insurers and transport administration.

Clause 16 - Amendment of s 15 (Report and recommendation when costs of insurance exceed the affordability index)

The clause further defines the insurance premium to be used in the calculation of affordability under the section.

Clause 17 - Amendment of s 21 (Selection of insurer)

The clause provides a technical amendment to the definition of “appropriate insurance premium”.

Clause 18 – Insertion of new pt 4, div 3A

The clause inserts a new division in relation to expressions of regret and new sections which will allow an individual to express regret for an incident without concern that such an expression may be used as an admission of liability or negligence. The new sections are based on sections 44, 45 and 46 of the *Personal Injuries Proceedings Act 2002*.

Clause 19 - Amendment to s 51B (Procedure at conference)

This clause extends the procedure in relation to cost statements to ensure that statements of costs clearly differentiate costs that are legal fees and costs that are disbursements. The amendments replicate provisions contained in the *Personal Injuries Proceedings Act 2002*.

Clause 20 – Replacement of s 55B (Discount rate to be applied in calculating the present value of future loss)

This clause extends the discount rate of 5% to damages awarded for the present value of future loss to also include awards for gratuitous services. The amendments replicate provisions contained in the *Personal Injuries Proceedings Act 2002*.

Clause 21 - Amendment to s 55D (Damages for gratuitous services)

The clause introduces thresholds in relation to awards for gratuitous services. The amendments replicate provisions contained in the *Personal Injuries Proceedings Act 2002*.

Clause 22 – Insertion of new pt 7, div 4

The clause inserts a new heading and provides a transitional provision which authorises actions taken prior to 1 July 2003 to facilitate premium filings (inclusive of additional premium for tax registered entities) for the quarter commencing 1 July 2003.

PART 6—AMENDMENT OF PUBLIC OFFICERS SUPERANNUATION BENEFITS RECOVERY ACT 1988

Clause 23 provides that the Bill amends the *Public Officers Superannuation Benefits Recovery Act 1988*.

Clause 24 inserts a new heading for s.11C of the Act. The clause also inserts a new s.11C(1), which applies if a person with a preserved superannuation benefit owes a ‘debt’ to the State, regardless of whether the quantum of the ‘debt’ is determined via a court order, or via an out-of-court settlement. The clause also substitutes the term ‘debt’ for ‘judgement debt’ throughout s.11C, to reflect the fact that amounts are now also recoverable by way of out-of-court settlement.

PART 7—AMENDMENT OF SUPERANNUATION (STATE PUBLIC SECTOR) ACT 1990

Clause 25 provides that the Bill amends the *Superannuation (State Public Sector) Act 1990*.

Clause 26 inserts the words ‘is not’ in s.3(3) of the Act. This ensures that the Board of Trustees of the State Public Sector Superannuation Scheme is not a statutory body under the *Financial Administration and Audit Act 1977*.

Clause 27 omits the references to the *Financial Administration and Audit Act 1977*, and the accounts required to be kept under that Act, in s.10 of the *Superannuation (State Public Sector) Act 1990*.

Clause 28 amends section 13(6) of the Act to refer to an ‘entitled former spouse’. This ensures that the Minister may declare that an entitled former spouse of a member is eligible to become a member of the QSuper Fund, following an agreement to split the member’s superannuation benefit. The clause also inserts a definition of ‘entitled former spouse’ in s.13(11) of the Act. This restricts the categories of persons eligible for membership as an ‘entitled former spouse’ to those who are entitled to a portion of the member’s superannuation benefit under an agreement under the Commonwealth’s *Family Law Act 1975*, or a court order made under that Act.

Clause 29 inserts the words ‘or entitled former spouse’ in the title of s.13B. The clause also inserts the words ‘entitled former spouse’ in s.13B(2), to ensure that an entitled former spouse can remain in the Fund after the member has left the QSuper Fund.