

SUPERANNUATION LEGISLATION AMENDMENT BILL 2003

EXPLANATORY NOTES

GENERAL OUTLINE

Policy Objectives

The objective of the Bill is to incorporate recent amendments made to the *Family Law Act 1975 (Cwlth)* into the *Parliamentary Contributory Superannuation Act 1970* (the “Parliamentary Act”). The amendments made to the *Family Law Act 1975 (Cwlth)* enable a superannuation benefit to be split following a divorce or marital separation. The Commonwealth regime provides that a couple can come to an agreement or obtain a court order which is then served on the superannuation fund trustees, advising of the proportion or amount of the member’s superannuation interest that is to be assigned to the member’s former spouse.

The Bill also seeks to amend the *Superannuation (State Public Sector) Act 1990* (the “QSuper Act”) to provide membership of the State Public Sector Superannuation Scheme (“QSuper”) to former spouses of Parliamentary members who receive an amount from the Parliamentary Fund under an agreement or court order.

The methodologies used to value and split a member’s entitlements are dependent upon the length of service of the member when an agreement or court order is received.

The benefit of a member who has more than 8 years’ service at the date information is requested will be valued in accordance with a method determined by the State Actuary and approved by the trustees. Once an agreement or court order is received, the former spouse will be immediately paid out based on the contents of that agreement or court order.

In the case of a member with less than 8 years’ service at the date information is requested, the parties to the marriage, or the Court, will determine a percentage of any future payments to be paid to the former spouse. Then:

- (a) if the member leaves Parliament before 8 years' service is reached, the agreed percentage of the member's lump sum benefit is paid to the former spouse at that time; or
- (b) if the member is still in Parliament when 8 years' service is reached, the former spouse would at that time be offered the option of:
 - (i) having the benefit valued and a lump sum amount, based on the agreed percentage, being allocated with the member's entitlement reduced proportionately; or
 - (ii) waiting until the member eventually leaves Parliament, and then receiving the agreed percentage of whatever benefit the member elects. Hence, whether the former spouse would receive a pension and/or lump sum benefit would depend on how the member elected to take their benefit. If there is a pension benefit for the former spouse, they would have the option of basing this on their own life expectancy.

Reasons for the Bill

The Bill amends the Parliamentary Act and consequentially, the QSuper Act, to facilitate the operation of the *Family Law Act 1975 (Cwlth)* for the Parliamentary Fund.

Achievement of the Objectives

The Bill inserts a new Part into the Parliamentary Act to ensure that a former spouse of a member can receive a portion of the benefit payable to the member following a divorce or marital separation.

The Bill makes the following amendments:

- inserts new Family Law definitions;
- clarifies that benefits can be assigned for the purposes of the Commonwealth's *Family Law Act 1975*;
- allows the trustees to charge a reasonable fee for activities undertaken in relation to the operation of Part VIIIIB of the *Family Law Act 1975 (Cwlth)*;
- details the manner in which benefits are to be paid to former spouses in the event of a Family Law split;

- ensures that former spouses who receive a benefit under a Family Law split are not entitled to other spousal benefits;
- allows the trustees to provide information as required under the Family Law Act to an eligible person; and
- clarifies the effect of an agreement or court order on members' benefits.

Additionally, the QSuper Act is to be amended to allow the former spouses of Parliamentary members who receive an amount from the Parliamentary Fund under an agreement or court order, membership of QSuper.

Alternatives to the Bill

There are no alternative methods for achieving the objectives.

Estimated Cost for Government Implementation

There are no financial considerations.

Consistency with Fundamental Legislative Principles

The Bill is consistent with Fundamental Legislative Principles.

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 in the Bill.

NOTES ON PROVISIONS

PART 1—PRELIMINARY

Clause 1 cites the short title of the Bill.

Clause 2 provides that the Bill is to commence on assent, with certain sections to commence on proclamation after the Commonwealth Attorney-General has approved the specific valuation methods of the Parliamentary Contributory Superannuation Scheme.

PART 2—AMENDMENT OF PARLIAMENTARY CONTRIBUTORY SUPERANNUATION ACT 1970 (THE “PARLIAMENTARY ACT”)

Clause 3 provides that the Bill amends the Parliamentary Act.

Clause 4 inserts relevant definitions into section 5 of the Parliamentary Act.

Clause 5 allows for all notes in the text of the Parliamentary Act to be part of the Parliamentary Act.

Clause 6 inserts a new Part 3A into the Parliamentary Act to deal with agreements and court orders under the Commonwealth's *Family Law Act 1975*. This Part will ensure that a former spouse can receive a portion of the member's superannuation entitlements, if the trustees receive an agreement or court order.

The proposed Section 25E contains the relevant definitions for the new Part 3A of the Parliamentary Act.

The proposed Section 25F applies if the trustees receive a request for information under the Family Law Act. It provides that in response to a request for information regarding the benefits of a member with less than 8 years' service, the trustees may provide an actuarially-determined multiple. In response to a request for information regarding the benefits of a member

with at least 8 years' service, the trustees may provide an actuarially-determined value of the member's interest.

If an agreement or court order is received in respect of a member who has not completed 8 years' service and that member subsequently ceases to be a member without having qualified for a pension, the proposed Section 25G applies. The trustees must pay the former spouse's entitlement as a lump sum amount to a nominated superannuation fund or approved deposit fund account within 3 months or it will be paid to QSuper. This section also provides that the former spouse cannot be entitled to more than one payment.

The proposed Section 25H applies where an agreement or court order has been received for a member who has completed at least 8 years' service. It provides that the trustees must pay the former spouse's entitlement as a lump sum amount to a nominated superannuation fund or approved deposit fund account within 3 months or the amount will be paid to QSuper.

In relation to a member who has not completed 8 years' service at the time of the agreement or court order, but subsequently completes 8 years, the proposed Section 25I applies. At the completion of 8 years, the former spouse will be offered the option to elect a lump sum amount. The trustees must pay the former spouse's entitlement of the lump sum amount within 3 months of them making an election, to a nominated superannuation fund or approved deposit fund account, or it will be paid to QSuper. If the former spouse does not elect under this Section 25I, then upon the member subsequently ceasing -

- i. if they do not qualify for a pension, Section 25G will apply; or
- ii. if they do qualify for a pension, Section 25K will apply.

The proposed Section 25J outlines that benefits payable to the member must be reduced by any lump sum amount paid to their former spouse under Sections 25G, 25H and 25I as a result of a family law split.

The proposed Section 25K applies where a former member is entitled to be paid a lifetime pension. The trustees are required to pay the former spouse a nominated proportion of the former member's pension throughout the life of the former member and reduce the former member's pension accordingly. Alternatively, it allows the former spouse to elect to take an actuarially-determined pension over their own lifetime. Such an election must be made within the prescribed timeframes. This section also provides that the former spouse cannot be entitled to more than one payment.

The proposed Section 25L ensures that once a former spouse receives a benefit, no further benefits (such as those payable on the death of a member or former member) will be payable to the former spouse under the Parliamentary Act.

The proposed Section 25M requires the trustees to inform a former spouse when an agreement or court order is received from another person.

The proposed Section 25N allows trustees to charge a reasonable fee for activities undertaken in relation to an agreement or court order.

Clause 7 amends section 33 to ensure that benefits can be assigned to the former spouses of Parliamentary members, when they are entitled.

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

Clause 8 provides that the Bill amends the *Superannuation (State Public Sector) Act 1990*.

Clause 9 provides for former spouses of Parliamentary members to be members of QSuper if they receive an amount from the Parliamentary Fund under an agreement or court order.