

Superannuation Legislation Amendment Bill 2004

EXPLANATORY NOTES

GENERAL OUTLINE

Short Title

The Short Title of this Bill is *the Superannuation Legislation Amendment Bill 2004*.

Policy Objectives and Reasons for the Bill

The Bill amends the *Parliamentary Contributory Superannuation Act 1970* to close the Queensland Parliamentary Superannuation Scheme to new Members of the Legislative Assembly and requires new Members to become members of QSuper. This will apply to any new Member elected (at a by-election or general election) after this legislation has passed, irrespective of whether they have previously been a State Member of Parliament. This Bill will also vary the method by which pensions are indexed in the Queensland scheme to bring this into line with the Commonwealth scheme.

Further, the Bill seeks to incorporate amendments made to the *Family Law Act 1975* (Cwlth) into the *Governors (Salary and Pensions) Act 2003* and the *Judges (Pension and Long Leave) Act 1957*, to enable the former spouse of a member to be paid a portion of a member's superannuation benefit either at the time of the split or at a specified time in the future. Provisions in the Bill describe how to value and split a member's entitlement with their former spouse.

In addition, the Bill amends the *Superannuation (State Public Sector) Act 1990* to implement the above changes by providing QSuper membership to new Members of the Legislative Assembly as well as former spouses of

members of the Judges' and Governor's schemes who are entitled to benefits as a result of a Family Law benefit split.

Further, this Bill will reduce the rates of surcharge in accordance with the Commonwealth's *Superannuation Budget Measures Act 2004* and also makes minor technical amendments to *Parliamentary Contributory Superannuation Act 1970*, the *Superannuation (State Public Sector) Act 1990* and the *Superannuation Legislation Amendment Act 2003*.

Achieving the Objectives

The Bill amends the:

Parliamentary Contributory Superannuation Act 1970 (the "Parliamentary Act") to:

- close membership of the Parliamentary Fund to new Members of the Legislative Assembly,
- amend the method of pension indexation for certain classes of Members,
- incorporate the Commonwealth Government's reduced surcharge rates;
- provide for the Treasurer to make contributions to the Fund at times other than when payments and benefits are paid out of the Fund;
- allow access for current Members of the Legislative Assembly to any cashable amount they may have transferred into the Parliamentary Fund in accordance with Commonwealth laws and the rules of QSuper;
- apply a 90-day limit for ceasing Members to transfer their benefits from the Parliamentary Fund, with QSuper appointed as the default fund;
- provide a discretionary power for the Trustees of the Parliamentary Fund to accept late applications for benefit payments;
- clarify surcharge provisions to ensure they do not apply to pensions payable to a child; and
- allow the recommencement of a child's pension should the child again qualify because of recommencing education (following the

death of a member, pensions are payable to the member's children aged under 16 or receiving full time education up to age 25).

Governors (Salary and Pensions) Act 2003 (the "Governor's Act") and the *Judges (Pension and Long Leave) Act 1957*(the "Judges' Act") to:

- incorporate Family Law Act amendments which allow the splitting of a superannuation interest on marital breakdown;
- provide the former spouse with the option of a pension based on their own life expectancy or a pension for the term of the former Governor's or Judge's life;
- reduce the entitlements of former Governors or retired judges following a Family Law split by the amount paid to their former spouse;
- ensure former spouses are not entitled to reversionary benefits where a Family Law property settlement has been finalised;
- allow for the splitting of a minimum benefit lump sum where the Governor or judge did not qualify for a pension benefit, and establish QSuper as the default fund to which the former spouse's benefit will be paid; and
- make various technical amendments to define relevant terms contained in the Family Law Act and facilitate the splitting of benefits.

Superannuation (State Public Sector) Act 1990 (the "QSuper Act") to:

- provide QSuper membership to new Members of the Legislative Assembly and former spouses of current and former Governors and judges, incorporate the Commonwealth Government's reduced surcharge rates, make some minor technical amendments and correct drafting anomalies.

Superannuation Legislation Amendment Act 2003 (the "SLA Act") to:

- reflect the broadening of QSuper membership to Governors and judges as proposed under this Bill.

Alternatives to the Bill

There are no alternative methods for achieving the objectives.

Financial Considerations

The State Actuary has advised that altering the method of pension indexation for existing members of the Parliamentary Fund will increase the long-term cost of benefits (between \$16m and \$33m based on current salary levels) but this additional cost would be mitigated by the savings the State would make in closing the Scheme. On current State Government contribution levels, approximately \$4.4m per year will be saved once the Parliamentary scheme has no current members.

Fundamental Legislative Principles

The appointment of the Chief Executive Officer of the Government Superannuation Office to the position of Executive Officer of the QSuper Board was made on an acting basis from 2 July 1997, but necessary approval for this from the Executive Council was overlooked and did not occur until 24 July 2003. Retrospective approval is being sought to ensure all actions taken by the Executive Officer under delegation from the QSuper Board for this period are valid.

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 Act is taken to have commenced on a day fixed by proclamation, other than part 5. Part 5 therefore commences on Assent.

PART 2 – AMENDMENT OF GOVERNORS (SALARY AND PENSIONS) ACT 2003 (the “Governors Act”)

Clause 3 provides that the Bill amends the Governors Act.

Clause 4 inserts a new Part 3, division 3, after Section 16 into the Governors Act to deal with agreements and court orders under the Commonwealth Government’s *Family Law Act 1975*, such that a former spouse can receive a portion of the former Governor’s pension entitlements where the Minister receives an agreement or court order.

The proposed Section 16A contains the relevant definitions for the new subdivision 2 of the Governors Act.

The proposed Section 16B allows the Minister to release information regarding the pension entitlements of both former and current Governors for the purposes of finalising a property settlement as required under the *Family Law Act 1975*.

The proposed Section 16C provides for splitting a minimum benefit lump sum. Where a former Governor leaves office without qualifying for a pension, the former Governor will be paid a lump sum (broadly representing the State’s requirement to pay a minimum level of employer superannuation). The lump sum must be split if a court order or superannuation agreement has been received. The former spouse, in this case, must nominate an approved deposit fund or superannuation account within three months of the lump sum becoming payable, or as a default, their portion will be transferred to QSuper.

Where an agreement or court order is received, Section 16D requires the Minister to split a pension when payable between the former Governor and the former spouse. The former spouse will be given three months to decide to continue receiving a proportion of the former Governor’s pension or elect to have the pension recalculated and paid over the former spouse’s own lifetime. The Minister is required to reduce the entitlements of a former Governor following an agreement or court order by the proportion stated in the agreement or court order.

The proposed Section 16E ensures that the former spouse is entitled to receive a proportion of the Governor’s pension where the Governor dies whilst in service and a Court Order or agreement is in place.

The proposed Section 16F ensures that a former spouse is not entitled to receive reversionary benefits under the Governor's Act where a property settlement has been finalised that incorporated the former Governor's superannuation entitlement.

The proposed Section 16G ensures that when a Minister receives an agreement or court order from a person other than the entitled former spouse, the Minister must as soon as practicable inform the entitled former spouse of the receipt of the agreement or order.

Clause 5 inserts relevant definitions.

PART 3 – AMENDMENT OF JUDGES (PENSIONS AND LONG LEAVE) ACT 1957 (the “Judges Act”)

Clause 6 provides that the Bill amends the Judges Act.

Clause 7 inserts relevant definition into section 2 of the Judges Act.

Clause 8 inserts a new Part 2, division 2, after Section 8B into the Judges Act to deal with agreements and court orders under the Commonwealth Government's *Family Law Act 1975*, such that a former spouse can receive a portion of the former judge's pension entitlements.

The proposed Section 9 inserts relevant definitions for new Subdivision 2 of the Judges' Act.

The proposed Section 10 allows the release of information regarding the superannuation entitlements of both retired and current judges and the method of calculating a judge's accrued benefit multiple for the purposes of finalising a property settlement as required under the *Family Law Act 1975*.

The proposed Section 11 provides for splitting a minimum benefit lump sum. Where a retired judge leaves office without qualifying for a pension, the retired judge will be paid a lump sum (broadly representing the State's requirement to pay a minimum level of employer superannuation). The lump sum must be split if a court order or superannuation agreement has been received. The former spouse, in this case, must nominate an approved deposit fund or superannuation account within three months of the lump sum becoming payable, or as a default, their portion will be transferred to QSuper.

Where an agreement or court order is received, Section 12 requires the Minister to split a pension when payable between the retired judge and the

former spouse. The former spouse will be given three months to decide to continue receiving a proportion of the retired judge's pension or electing to have the pension recalculated and paid over the former spouse's own lifetime. The Minister is required to reduce the entitlements of a retired judge following an agreement or court order by the proportion the agreement or court order determined for the former spouse.

The proposed Section 13 ensures that the former spouse is entitled to receive a proportion of the Judge's pension where the Judge dies whilst in service and a Court Order or agreement is in place. The pension will be calculated by reference to the benefit that would be payable to a judge had they retired on the grounds of ill health.

The proposed Section 14 ensures that a former spouse is not entitled to receive reversionary benefits under the Judges' Act where a property settlement has been finalised that incorporated the retired judge's superannuation entitlement.

The proposed Section 14A ensures that when a Minister receives an agreement or court order from a person other than the entitled former spouse, the Minister must as soon as practicable inform the entitled former spouse of the receipt of the agreement or order.

PART 4 – AMENDMENT OF PARLIAMENTARY CONTRIBUTORY SUPERANNUATION ACT 1970 (the 'Parliamentary Act')

Clause 9 provides that the Bill amends the Parliamentary Act.

Clause 10 provides for the closure of the existing scheme for Members of the Legislative Assembly following the proclamation of this Bill. New Members elected after this Bill is enacted (irrespective of whether they were previously a Member of the Queensland Parliament) will join QSuper.

Clause 11 will provide greater flexibility in the funding of the Parliamentary Fund by enabling the Treasurer to make contributions to the Fund to ensure the effective and efficient operation of the Fund.

Clause 12 amends the definition of "preserved amount" to allow Members to transfer benefits preserved in the Fund upon resignation or retirement from Parliament to another superannuation fund.

Clause 13 allows a pension paid to a deceased Member's child to recommence should the child meet the age and educational criteria set out in the Act.

Clause 14 inserts a new Section 24A to clarify that a Member with than one term of Parliamentary service is only entitled to receive one pension under the Act.

Clause 15 alters the method by which pensions are indexed and brings them into line with the method by which pensions are indexed in the Commonwealth Government's scheme for its Members of Parliament. Currently, pensions are indexed in line with movements in the Consumer Price Index for all groups, Brisbane. Pensions commenced after the date of proclamation of this Bill relating to a Member who is a Member immediately before the commencement of this amendment Act, will be indexed in line with movements in the salary paid to sitting Members of the Legislative Assembly.

Clause 16 progressively reduces the maximum rate of surcharge that can be deducted from 12.5% to 10%, after 30 June 2005 in line with the Commonwealth Government's superannuation surcharge tax rates.

Clause 17 inserts a new Part 4, Division 3, after Section 30F, establishing a provision to ensure that members who have previously left Parliament and have retained benefits within the Parliamentary Fund are required to roll benefits out of the Fund under the same conditions as proposed in clause 19.

Clause 18 inserts a new Section 31A to provide the Trustees of the Parliamentary Fund with discretion to accept late applications. This discretion will allow the Trustees to pay benefits, should the application period for such a payment have elapsed, due to good and sufficient reasons that satisfy the Trustees.

Clause 19 allows members of the Parliamentary Fund 3 months to roll their benefit out of the Parliamentary Fund. This will allow members sufficient time to organise an alternative fund to which the benefit can be rolled out. If, however, an alternative fund is not nominated within 3 months the benefit will be paid to QSuper on behalf of the former member.

Clause 20 allows previously accessible benefits rolled into the Parliamentary Fund to be accessed by Members at anytime. This is consistent with Commonwealth Government superannuation legislation and reflects the rules of QSuper

PART 5 – AMENDMENT OF SUPERANNUATION LEGISLATION AMENDMENT ACT 2003

Clause 21 provides that the Bill amends the Superannuation Legislation Amendment Act 2003.

Clause 22 omits the insertion of definitions ‘approved deposit fund’, ‘State Public Sector Superannuation Fund’ and ‘superannuation fund’ and inserts new definitions for each.

Clause 23 omits the insertion of section 25E ‘Definition for part 3A’. These definitions need to be moved from Part 3A to the general definitions for the Act, as they apply more generally to the Parliamentary Act not just Part 3A.

Clause 24 omits part 3 of the Superannuation Legislation Amendment Act 2003, which provides former spouses of Parliamentary members, membership of QSuper. The proposed new section 13(6)(c) of the Superannuation (State Public Sector) Act 1990, provides former spouses of Parliamentary members, former Governors and retired judges membership of QSuper.

PART 6 – AMENDMENT OF SUPERANNUATION (STATE PUBLIC SECTOR) ACT 1990 (the ‘QSuper Act’)

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

Clause 26 amends the definition of a “unit of the State public sector” to include the Legislative Assembly. This amendment will allow new Members of the Legislative Assembly, following the proclamation of this Bill, to join QSuper. New Members of the Legislative Assembly will be provided with similar superannuation conditions to permanent Queensland public sector employees.

Clause 27 inserts new section 13(6)(c) to allow former spouses of retired Governors and judges to join QSuper following a Family Law split. Where a former Governor or retired judge did not qualify for a pension under their respective Acts, the former spouse is able to nominate a fund to transfer

their portion of the former spouse's minimum lump sum benefit to be paid. Where the former spouse does not nominate a fund, the benefit will be transferred to QSuper.

Clause 28 progressively reduces the maximum rate of surcharge that can be deducted from 12.5% to 10%, after 30 June 2005 in line with the Commonwealth Government's superannuation surcharge tax rates.

Clause 29 inserts new Section 20A to require the annual QSuper financial statements to be audited by the Auditor-General each year. This amendment corrects a drafting error arising from the *Treasury Legislation Amendment Act (No. 2) 2002*.

Clause 30 allows the charging of interest where delays in receipt of either the amount and/or data from a contributing employer hinders the processing of a contribution.

Clause 31 clarifies that benefits under the QSuper Act may be assigned to a former spouse in accordance with the *Family Law Act 1975* (Cth) in the event of a marital breakdown.

Clause 32 inserts a new part 4A to declare that the person who was appointed as Executive Officer on 24 July 2003 held the office since 2 July 1997 and ratifies the decisions made by that person (and those who have acted in that position) in the capacity of Executive Officer of the QSuper Board.

PART 7 – OTHER AMENDMENTS

Clause 33 makes minor technical amendments to drafting anomalies and renumbers some provisions for the Acts it mentions.