

Superannuation (State Public Sector) Amendment Bill 2006

Explanatory Notes

General Outline

Short Title

The Short Title of this Bill is *the Superannuation (State Public Sector) Amendment Bill 2006*.

Policy Objectives and Reasons for the Bill

The Bill amends the *Superannuation (State Public Sector) Act 1990* (the “QSuper Act”) to provide a framework for QSuper to apply for Commonwealth regulation as an employer sponsored fund. The changes mainly relate to the operation of the Board of Trustees of the Superannuation State Public Sector Scheme (Board). Specifically the proposed amendments involve the Board’s appointment, termination, remuneration and protection from liability processes and some provisions to ensure the Board is responsible for investments. To support regulation, changes are also proposed to QSuper’s administrator, the Government Superannuation Office (GSO) whereby functions and assets relating to the Fund are transferred to the Board. Some staff will be transferred to the Board or a subsidiary of the Board, and others will remain with the Treasury Department but be assigned to work for the Board, with the existing rights of all involved staff maintained. The proposed amendments include the establishment of a new statutory position, the Government Superannuation Officer, to ensure the continuous provision of various administrative services that are unrelated to the administration of the QSuper scheme. A further change is proposed to allow former members who have left public service but who have retained an account with QSuper to have contributions by their new employer, made to QSuper.

In addition, the Bill amends the *Parliamentary Contributory Superannuation Act 1970* (the “Parliamentary Act”) as a result of proposed changes with regards to the provision of administrative services to the trustees, currently provided by the GSO.

Alternatives to the Bill

There are no alternative methods for achieving the objectives.

Financial Considerations

A decision of the Board to become regulated would result in an estimated annual cost increase of \$500,000 to \$1 million per annum. These costs, which include direct licensing levies and additional compliance resources to ensure QSuper meets its regulatory obligations, will be funded by the administration fee charged on member and employer investment balances. The increased cost is manageable for a fund of QSuper's size and will not materially impact on fees charged to members or Government.

Fundamental Legislative Principles

The proposed Bill provides that amendments to the *Superannuation (State Public Sector) Deed 1990* may be made by Governor in Council, but generally only with the Board's consent. In limited circumstances, specifically permitted by Commonwealth legislation, such consent is not required.

Consultation

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

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.

Part 2 Amendment Of Superannuation (State Public Sector) Act 1990 (The “Qsuper Act”)

Clause 3 provides that the Bill amends the QSuper Act.

Clause 4 amends Section 2 by removing, inserting or altering relevant definitions to accommodate the proposed amendments to the QSuper Act. The definition of unit of the State public sector is also broadened, allowing QSuper membership to employees of entities wholly owned by the State or wholly owned subsidiaries of body corporates that already meet the current definition of unit of the State public sector.

Clause 5 amends Section 4 to clarify that the Board only has one function, which is to administer the scheme.

Clause 6 removes current Sections 5 to 6A and inserts new sections 5 to 6AA.

The proposed Section 5 requires the Minister to appoint to the Board a prescribed number of trustees as nominated by the Minister (employer trustee) and member entities (member entity trustee) respectively. The prescribed number is 5, unless a regulation prescribes an alternative number of at least 4 and not more than 6 trustees, creating a Board with between 8 and 12 members. The same prescribed number will apply to both employer and member entity trustees. The Minister may also appoint, with the written consent of the Board, one additional trustee, who is required to meet the definition of independent trustee. A trustee may only be appointed if eligible, and the trustee has consented in writing to the appointment.

A trustee’s tenure is for a maximum period of 3 years, unless the trustee resigns, becomes a disqualified person or is removed or suspended in accordance with Commonwealth superannuation legislation.

The proposed Section 6 ensures that a person is not eligible to be a trustee where the person is disqualified under Commonwealth superannuation legislation or is a minor. Trustees will be required to advise the Board on becoming aware they are no longer eligible to be a trustee.

The proposed Section 6A states that the Board may ask the Minister to end a trustee's appointment where the trustee is absent from 3 meetings per financial year without good and sufficient reasons, or if the Board is satisfied that the trustee can no longer perform their responsibilities due to physical or mental incapacity or if the Board is satisfied that the continuation of the appointment may cause the Board not to meet the fit and proper standards applying to a trustee as prescribed in Commonwealth superannuation legislation. Before the Board asks the Minister to remove a trustee, the Board must provide the affected trustee with a right of appeal. Also, where the trustee is nominated by a member entity, the Minister can only remove the trustee if so approved by the member entity, except where the removal is proposed to ensure that the Board continues to meet its fit and proper requirements. The Minister must comply with a request from the Board to end a trustee's appointment.

The proposed Section 6AA ensures that where a trustee's office becomes vacant before the end of the term of appointment, another trustee is to be nominated and appointed within 90 days of the vacancy occurring or, where no nominations are received, as soon as possible after receiving a nomination. The term of appointment of the replacing trustee is for a duration ending at the end of the original term. This requirement will ensure that the current arrangement of replacing half of the existing trustees every eighteen months will continue.

Clause 7 amends Section 6B to ensure the operation of this section applies to both trustees and alternate trustees.

Clause 8 removes current Section 6C and 6D and inserts new sections 6C to 6DA to replace the power of members of the Board to appoint deputies with the power to appoint no more than 2 alternate trustees. The rules in regard to the appointment of a chairperson are also amended, and changes are proposed to the arrangements applying to the Board's Executive Officer.

The proposed Section 6C provides the Board with the power to appoint no more than 2 alternate trustees, in accordance with a policy as set by the Board. A person can only be appointed as an alternate trustee if the person is eligible to be a trustee, and accepts the appointment in writing. An alternate trustee is appointed for a maximum term of three years. The section also sets out the circumstances under which an alternate trustee can be removed, consistent with the provisions applying to employer and member entity trustees. An alternate trustee will have the same powers under the Act as a trustee when attending a Board meeting.

The proposed Section 6D gives the Minister the power to appoint a chairperson to the Board, provided that the Minister consults with the Board prior to the appointment and the appointee provides written consent to the Minister with regards to the appointment. The position of chairperson has a tenure of no longer than 3 years and the position becomes vacant if the chairperson resigns, stops being a trustee or the Minister revokes the appointment after consulting with the Board.

Section 6DA specifies that the Chief Executive Officer (formerly called Executive Officer) will be employed by the Board or a subsidiary of the Board, and no longer appointed by Governor in Council.

Clause 9 amends section 6E to reflect the change of title from Executive Officer to Chief Executive Officer.

Clause 10 amends section 6F(1) and (2) to reflect the change of title from Executive Officer to Chief Executive Officer. A new section 6F(3) is inserted to clarify that the powers delegated by the Board are subject to the limits imposed under section 11A (restrictions relating to defined benefit assets), necessitating the renumbering of current section 6F(3).

Clause 11 amends section 6H(2)(b) to reflect that a meeting of the Board must be called on the written request of a quorum of trustees.

Clause 12 amends Section 6I to provide that another trustee chosen by the trustees present is to preside over the meeting in the chairperson's absence and that a resolution can only be passed if at least a quorum of trustees has voted in favour of the resolution.

Clause 13 amends section 6J to ensure that resolutions out of meeting can be made if a quorum of trustees has given written agreement for the resolution to be passed.

Clause 14 amends section 7 to incorporate minor and consequential amendments related to amendments to Section 4 and to reflect current drafting practice.

Clause 15 replaces current sections 8 and 9 with new sections 8 to 9A. Section 8 indemnifies Officials, out of the Fund, for acts or omissions made in good faith and excludes acts or omissions that are dishonest, negligent or reckless. Previously, liability attached to the State. The Board can effect insure and pay the cost from the Fund.

Section 9 provides that the remuneration and allowances paid to the trustees are decided by the Minister after consulting the Board and are paid out of the Fund.

Section 9A provides the Chief Executive (Under Treasurer) may assign public service employees to work for the Board or a subsidiary of the Board.

Clause 16 replaces current section 11 with new sections 11 and 11A to provide the Board, with control to appoint or remove investment managers, consistent with Commonwealth superannuation legislation. The power does not extend to defined benefit assets, and the Government, as the ultimate bearer of defined benefit liabilities, retains control over these monies. Accordingly, the Board must obtain written approval from Governor in Council if it wanted to alter the current appointment of QIC as investment manager for defined benefit assets. The power for setting investment objectives, strategies or policies for defined benefit assets rests with the Minister but may be delegated to an appropriately qualified person in the department.

Clause 17 amends section 12 to provide that the *Superannuation (State Public Sector) Deed 1990* may only be amended with the Board's consent unless explicitly permitted by Commonwealth superannuation legislation. The amendment to this section is required to ensure compliance with Commonwealth legislation.

Clause 18 amends section 13(9) to allow new non public sector employers of former QSuper members the ability to make contributions to QSuper on their employee's behalf. The section also gives the Board, with the approval of the Minister, the ability to set conditions for these contributions.

Clause 19 inserts a new Part 3A to establish the statutory position of Government Superannuation Officer, who will be responsible for providing non QSuper related superannuation functions to Government, including administrative services to the trustees of the Parliamentary Fund.

Clause 20 is a re-write of section 17(3) to make it more clear.

Clause 21 amends section 18 to make it subject to the requirement under Commonwealth superannuation legislation that no charge can be laid over a member's minimum accrued superannuation benefit.

Clause 22 amends section 20 by inserting a note at the end of this section to clarify that the Board must also comply with all reporting requirements as set out in Commonwealth superannuation legislation.

Clause 23 amends section 20A by inserting a note at the end of this section to clarify that the Board must also comply with all auditing requirements as set out in Commonwealth superannuation legislation.

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Clause 24 inserts a new section 23(6) to reflect that unclaimed monies, as defined in the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (Cwth) (SUMLM Act) are subject to that Act. This amendment is necessary to comply with Commonwealth superannuation legislation. A consequent amendment is the renumbering of current section 23(6) to section 23(7).

Clause 25 amends section 30A to reflect the change in title from Executive Officer to Chief Executive Officer, as per the proposed amendment to section 6D.

Clause 26 inserts new Part 4A (sections 31A and 31B) which sets out the arrangements and conditions applying where employees and/or the assets and liabilities of the Government Superannuation Office are transferred to the control of the Board or a subsidiary of the Board.

The proposed section 31A provides that, with the consent of a public service employee of the Department, the Minister may transfer the employee to the Board, or a subsidiary of the Board. The transfer is subject to the condition that the employee retains his or her existing entitlements, including current salary, rights to superannuation or recreation, long service or other leave. This section further clarifies that the transfer does not constitute a retrenchment or redundancy, and that no benefits are payable merely due to the fact that the employee is no longer employed by the Department. This will provide for the transfer of staff to direct employment by the Board, to ensure that the Board can meet its obligations in a regulated fund environment.

The proposed section 31B provides that the Minister, by gazette notice, may transfer the assets and liabilities of the State that are controlled by the GSO to the Board, or a subsidiary of the Board. The proposed transfer recognises that the assets of the GSO reflect reserves arising from the administration of QSuper.

Clause 27 inserts new Division 4 to Part 6 (sections 36 to 43) to reflect transitional provisions applying to the existing trustees and CEO.

The proposed section 36 contains the relevant definitions for the new Division

The proposed section 37 provides that the chief executive will remain a trustee until the chief executive resigns as a trustee by written notice to the Minister.

The proposed section 38 provides that the appointment of the other trustees will continue until the end of the term stated in their appointment. Current trustees nominated for appointment by member entities are taken to be member entity trustees and all other trustees are taken to be employer trustees.

The proposed section 39 provides that the trustees continue to be entitled to the remuneration as approved by Governor in Council until the Minister makes a decision in accordance with proposed new Section 9.

The proposed section 40 provides that the chief executive continues as the chairperson.

The proposed section 41 provides that where the person in the position of executive officer to the Board is a public service employee, the person may be transferred to the position of CEO, and maintain all existing rights and entitlements of a public service employee.

The proposed section 42 ensures that the protection from liability provisions in the Act applying to an official, applies to the person who was the executive officer before the commencement of the provisions.

Section 43 continues the appointment of QIC as investment manager of the Fund until revoked.

Part 3 Amendment of Parliamentary Contributory Superannuation Act 1970 (the ‘Parliamentary Act’)

Clause 28 provides that the Bill amends the Parliamentary Act.

Clause 29 amends Section 10(1) to specify that the Government Superannuation Officer may provide services to the trustees to assist in administering the Parliamentary Act.