

Superannuation (State Public Sector) Amendment of Deed Regulation 2020

Explanatory notes for SL 2020 No. 63

made under the *Superannuation (State Public Sector) Act 1990*

General Outline

Short title

Superannuation (State Public Sector) Amendment of Deed Regulation 2020

Authorising law

Sections 12 and 31 of the *Superannuation (State Public Sector) Act 1990*

Policy objectives and the reasons for them

Commonwealth legislation prescribes conditions that superannuation fund members must meet to access their superannuation (conditions of release). One of these conditions is when a member has a terminal medical condition (TMC) and two medical practitioners certify that the condition is likely to result in the member's death in the next 24 months (certification period).

TMC was never prescribed as a condition of release for the standard defined benefit (DB) category under the *Superannuation (State Public Sector) Deed 1990* (Deed), as members in this situation were to be simultaneously assessed against the definition of total and permanent disablement (TPD). A TMC benefit is effectively the early release of a death benefit, which is the same as the benefit paid for TPD in the DB category.

However, there may be instances where a DB member meets the TMC definition but not the TPD definition (e.g. although suffering a TMC, they could continue to work for the immediate future). This situation places the member in a difficult position where the early release of a death benefit is refused, and is inconsistent with the treatment of a member in the accumulation category who meets the TMC criteria and is eligible to be paid the full death benefit.

Achievement of policy objectives

The policy objective is achieved by the making of the *Superannuation (State Public Sector) Amendment of Deed Regulation 2020* (Amendment Regulation). The Amendment Regulation resolves the inconsistency with accumulation members by introducing TMC as a condition of release to the DB category, which will give impacted members access to the death benefit that would have otherwise become available in the future.

The Amendment Regulation also makes a minor amendment to align the conditions when superannuation can be accessed on compassionate grounds with those under Commonwealth legislation, including allowing QSuper members who are economically impacted by the COVID-19 epidemic limited access to their superannuation.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the policy objectives of the *Superannuation (State Public Sector) Act 1990* to provide for a superannuation scheme for Queensland public sector employees.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation. In particular, it is consistent with the policy objectives of the *Superannuation Industry (Supervision) Act 1993* (Cwth).

Benefits and costs of implementation

It is not expected that the implementation of the Amendment Regulation will result in significant costs. The amendments provide benefits such as increased access under COVID-19 legislation and equivalent benefits to defined benefit and accumulation members. The reason improved access and the provision of equivalent benefits is beneficial to members is because the amendment will allow those members who have:

- lost their employment, or
 - otherwise become eligible to access their superannuation under compassionate grounds, or
 - a terminal illness and are defined benefit members
- to access funds or an equivalent benefit when they need those funds most.

Consistency with fundamental legislative principles

Section 4(3)(g) of the *Legislative Standards Act 1992* provides that legislation has sufficient regard to the rights and liberties of individuals if it does not adversely affect rights and liberties, or impose obligations, retrospectively.

Section 2 of the Amendment Regulation commences section 5 of the Amendment Regulation retrospectively (effective 25 March 2020). Section 5 removes the reference to a specific regulation in the *Superannuation Industry (Supervision) Regulations 1994* (Cwth) (SIS Regulations) to allow for a more general call-up of compassionate release grounds in the SIS Regulations.

The SIS Regulations have been amended to permit superannuation account holders to access up to \$10,000 per year in 2019-20 and 2020-21 from their account balances due to significant falls in income due to economic circumstances arising from the coronavirus pandemic. The retrospectivity of this clause to the date of the commencement of the amendments to the SIS Regulations does not affect the rights and liberties of superannuation account holders, as the application for compassionate release is at the discretion of account holders and approval of release is subject to the satisfaction of the Commonwealth decision maker under the SIS Regulations.

The Amendment Regulation does not raise any further fundamental legislative principle issues.

Consultation

In accordance with the *Superannuation (State Public Sector) Act 1990*, the QSuper Board consented to the making of the Amendment Regulation. The Government Superannuation Officer was also consulted and supports the proposed Amendment Regulation.

The Queensland Productivity Commission (QPC) was consulted on the need to undertake a regulatory impact analysis in accordance with the *Queensland Government Guide to Better Regulation* (the Guidelines). QPC noted the proposed access arrangements are consistent with members in QSuper's accumulation category, who are paid their death benefit insurance amount if they suffer a TMC, and that this will reduce the regulatory burden on defined benefit members. QPC considered it is reasonably clear there will be no significant adverse impacts and no further regulatory impact analysis is required under the Guidelines.