

Superannuation (State Public Sector) Regulation 2023

Explanatory notes for SL 2023 No. 47

made under the

Superannuation (State Public Sector) Act 1990

General Outline

Short title

Superannuation (State Public Sector) Regulation 2023

Authorising law

Sections 23, 29 and 41 of the *Superannuation (State Public Sector) Act 1990*.

Policy objectives and the reasons for them

Section 23 of the *Superannuation (State Public Sector) Act 1990* (Superannuation Act) states that the rate and frequency of compulsory superannuation contributions to be made by units of the State public sector and State public sector employees must be prescribed by regulation.

A unit of the State public sector is defined under section 4 and Schedule 1 of the Superannuation Act and includes government entities such as departments, entities established under a Queensland Act, body corporates wholly owned by the State and employers with a close link to Government. In addition, some entities are declared units of the State public sector but only for guaranteeing the continuation of superannuation arrangements for employees transferring from an existing unit of the State public sector.

A State public sector employee is defined as an employee of a unit of the State public sector. However, by virtue of section 21 of the Act, section 23 only applies in relation to a State public sector employee mentioned in a membership declaration, other than an employee who is a government defined benefit member. As such, section 23 only applies to State public sector employees who are mentioned in the *Superannuation (State Public Sector) Notice 2021* (Superannuation Notice).

Currently, the *Superannuation (State Public Sector) Regulation 2022* (Regulation 2022) prescribes that the rate and frequency at which core government employees, employees of a unit of the State public sector who have their contributions made to the Government Division of Australian Retirement Trust (known as QSuper), and their respective employers, are the ones that apply by virtue of section 64 of the Superannuation Act.

Section 64 of the Superannuation Act provides that the rate and frequency of contributions for these employees and their employers are the ones that were prescribed under the *Superannuation (State Public Sector) Deed 1990* immediately before its repeal due to the merger of QSuper with Sunsuper to form Australian Retirement Trust.

For non-core government employees who have chosen another fund for their superannuation contributions, the frequency and rate of member and employer contributions required are those under the superannuation arrangements that apply to the employee's employment with the employer (i.e., they are not prescribed, in line with historical arrangements). In summary, the Regulation 2022 continued the superannuation arrangements for State public sector employees that applied before the merger of QSuper with Sunsuper.

The Queensland Government has announced changes to the superannuation arrangements for government employees, commencing on 1 July 2023 (new arrangements). The new arrangements will provide an employer contribution of 12.75 per cent (18 per cent for police officers and 14.25 per cent for fire service officers) of ordinary time earnings (OTE), including when on paid leave, without the requirement for a compulsory member contribution to be made by the employee (as currently required for most employees).

The new arrangements will apply to core government employees (which includes police and fire service officers) and employees listed in the Superannuation Notice whose employer has selected to opt into the new arrangements. Other employees mentioned in the Superannuation Notice will remain under the arrangements that have been in place since 2000 (legacy arrangements).

The objective of the *Superannuation (State Public Sector) Regulation 2023 (Regulation 2023)* is to prescribe the frequency and rate of member and employer contributions for State public sector employees subject to the new arrangements and for employees who will remain subject to the legacy arrangements.

Under section 29 of Superannuation Act, the Treasurer may require employers to pay an amount the Treasurer decides necessary to provide benefits to a member of a government defined benefit category. A regulation may provide payment of an amount decided by the Treasurer to be paid to Australian Retirement Trust (the trustee). The Regulation provides that an amount decided by the Treasurer to be paid to a government defined benefit member's accumulation account must be paid to the trustee.

Achievement of policy objectives

The Regulation repeals the *Superannuation (State Public Sector) Regulation 2022* to prescribe, in detail, the frequency and rate of member and employer contributions to be made by State public sector employees and units of the State public sector.

Employees of employers subject to the new arrangements

From 1 July 2023, core Government employees, other than police and fire service officers, and employees of employers who have opted into the new arrangements and have their contributions made to the Government Division of ART (QSuper) will receive an employer contribution of 12.75 per cent of salary (OTE and paid leave) whilst no longer being required to make a member contribution (but will continue their current member contribution rate, which is based on superannuable salary, until they change it).

Police officers will receive an employer contribution of 18 per cent of OTE, with fire service officers to receive a contribution of 14.25 per cent of OTE.

New non-casual employees will have their member contribution set at 5 per cent of superannuable salary (6 per cent for police officers under the age of 60 years) but will also be able to change their contribution (including reducing it to zero).

The regulation defines the meaning of salary (OTE and paid leave) and superannuable salary. Superannuable salary has the same meaning as before the changes, but the definition has been updated to reflect modern drafting practices.

The regulation does not prescribe the contribution arrangements for employees who are not core Government employees and have chosen a fund other than QSuper. Although their employer is most likely to apply the same arrangement compared to those who contribute to QSuper, this requirement has never been prescribed by legislation but has always been handled administratively.

Employees covered by legacy arrangements

Employees listed in the Superannuation Notice who are not subject to the new arrangements will continue under the existing arrangements. These arrangements were prescribed in detail under the repealed *Superannuation (State Public Sector) Deed 1990* but will now be prescribed under the Regulation.

Amendments to the Superannuation Notice

Schedule 2 of the Superannuation Notice lists the membership conditions that apply to listed units of the State public sector and their employees. Schedule 2 is being amended to differentiate between those employers that are subject to the new arrangements, and employers that will continue under the legacy arrangements.

Consistency with policy objectives of authorising law

The Regulation is consistent with the policy objectives of the legislation, that is, to prescribe the frequency and rate of contributions to be made by units of the State public sector and State public sector employees.

Inconsistency with policy objectives of other legislation

The Regulation is consistent with the policy objectives of the *Superannuation Guarantee (Administration) Act 1992* (Cwlth).

Benefits and costs of implementation

The simplification of superannuation arrangements for Part 1 employers will increase the cost of superannuation for many public sector employers. In the absence of this regulation, a significant proportion of this cost would have impacted public sector agencies in coming years due to the increasing superannuation guarantee rate.

Public service entities have been funded for these increased costs, as the new contribution arrangements are considered an important element of maintaining attractive employment conditions in the currently highly competitive labour market.

Consistency with fundamental legislative principles

Section 23 of the Superannuation Act provides a power for the rate and frequency of compulsory contributions to be prescribed by regulation. However, there is a sub-delegation of the power delegated by the Superannuation Act, given that the relevant rate and frequency of contributions for an employee depends on whether their employer is mentioned in part 1 or 2 in the replaced Schedule 2 of the Notice. As such, the sub-delegation may infringe the Fundamental Legislative Principle (FLP) that the subordinate legislation has sufficient regard to the institution of Parliament.

Whilst the initial location of employers in part 1 or 2 of the Schedule of the Notice will be determined by the amendments made by the Regulation, there will be nothing preventing the Minister from amending the Notice, Schedule 2 in the future to move employers between parts 1 and 2 which will in turn affect the rates and frequencies for compulsory contribution in relation to their employees.

However, the FLP issue is mitigated as the sub-delegation is subordinate legislation (Notice) and any future amendment of the Notice would be subject to Parliamentary scrutiny by way of a disallowance motion by the Legislative Assembly under section 50 of the *Statutory Instruments Act 1992*. Otherwise, the Regulation is consistent with Fundamental Legislative Principles.

Consultation

The new contribution arrangements were developed in consultation with employee representative organisations and Queensland Government payroll providers. Consultation with payroll providers was ongoing to ensure any implementation issues were identified and resolved prior to finalisation of the policy.

All employers to be covered by the new arrangements have been consulted and are in agreement.

In accordance with *The Queensland Government Guide to Better Regulation*, the proposed regulation does not require further regulatory impact analysis as it falls within two agency-assessed exclusion categories:

- category (c) – regulatory proposals for the internal management of the public sector or statutory authority and
- category (g) – regulatory proposals that are of a machinery nature for those entities maintaining legacy arrangements.