

# Superannuation (State Public Sector) Amendment of Deed Regulation 2021

## Human Rights Certificate

### Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019* (HR Act), I, the Honourable Cameron Dick MP, Treasurer and Minister for Trade and Investment provide this human rights certificate with respect to the *Superannuation (State Public Sector) Amendment of Deed Regulation 2021* (the Amendment Regulation) made under the *Superannuation (State Public Sector) Act 1990*.

In my opinion, the Amendment Regulation, as tabled in the Legislative Assembly, is compatible with the human rights protected by the *Human Rights Act 2019* (the HR Act). I base my opinion on the reasons outlined in this statement.

### Overview of the Subordinate Legislation

The Amendment Regulation, which amends the *Superannuation (State Public Sector) Deed 1990* (Deed), will enable the QSuper Board to be paid remuneration from the QSuper assets for the services it provides in administering QSuper. The remuneration will be charged as a fee for service and held as a trustee reserve from which the QSuper Board can meet liabilities that are otherwise unable to be met by an indemnity from the assets of QSuper.

Currently, the QSuper Board can indemnify itself from the fund's assets for liabilities incurred by acting as a superannuation trustee, except where it fails to act honestly or intentionally and recklessly failed to exercise its duty of care.

From 1 January 2022, Commonwealth legislation will prevent trustees, including the QSuper Board from using fund assets to pay a penalty in relation to a contravention of a Commonwealth law, including where the trustee has acted honestly and exercised its duty of care. As a profit-for-members fund, the QSuper Board does not have access to capital or other assets to meet these potential liabilities.

The proposed amendment to the Deed will ensure the QSuper Board has sufficient capital from 1 January 2022 to pay any penalties it can currently meet out of the assets of the fund. Without this change, any penalty, irrespective of size, could result in the QSuper Board becoming insolvent and, under Commonwealth legislation, an insolvent person cannot be a trustee.

## Human Rights Issues

### Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019*)

I have considered each of the rights protected by part 2 of the HR Act. In my opinion, the human rights that are potentially relevant to the Amendment Regulation are:

- Recognition and equality before the law (section 15 of the HR Act); and
- Property rights (section 24 of the HR Act).

#### Recognition and equality before the law

Under section 15 of the HR Act, the right to recognition and equality before the law encompasses the right to recognition as a person before the law and the right to enjoy human rights without discrimination. The right reflects the essence of human rights; that every person holds the same rights by virtue of being human and not because of some particular characteristic or membership of a particular social group.

The proposed new subsection 14A(3) of the Deed provides that the board may charge a member or a class of members a different fee, or a different amount of a fee, based on criteria the board considers fair and reasonable. The QSuper Board is required by Commonwealth law to exercise its powers in the best financial interests of members. In this context, in determining what is fair and reasonable, the QSuper Board would, for example have regard to the cost of administering a product, not personal characteristics or membership of a particular social group.

The amendment does not limit this human right.

#### Property rights

Section 24 of the HR Act provides that all persons have a right to own property alone or in association with others and that a person must not be arbitrarily deprived of the person's property. In this context, case authority suggests that 'arbitrarily' refers to conduct that is capricious, unpredictable or unjust and also refers to inferences which are unreasonable in the sense of not being proportionate to a legitimate aim that is sought. Importantly, deprivation of property is not limited to, for example, a forced transfer or extinguishment of title of ownership, but would include any 'de facto expropriation' by means of a substantial restriction in fact of a person's use or enjoyment of their property

As noted above, the QSuper Board is required by Commonwealth law to exercise its powers in the best financial interests of the members.

The capital accumulated by the QSuper Board in exercising the remuneration power will only be used to meet liabilities the Board can no longer satisfy out of QSuper's assets, mitigating the financial and disruptive impact if the Board were to become insolvent.

The remuneration will be paid from QSuper's reserves and not from members' accounts, with the Board to regularly review its target capital adequacy reserve to ensure it remains in members' best financial interests. The Australian Prudential Regulation Authority (APRA) will have oversight of the remuneration power.

The amendment does not limit this human right.

## Conclusion

I consider that the *Superannuation (State Public Sector) Amendment of Deed Regulation 2021* is compatible with the *Human Rights Act 2019* because it does not limit human rights.

**CAMERON DICK MP**  
TREASURER  
MINISTER FOR TRADE AND INVESTMENT

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