

GOVERNORS (SALARY AND PENSIONS) BILL 2003

EXPLANATORY NOTES

Title of the Bill

Governors (Salary and Pensions) Bill 2003

Policy Objectives of the Bill

The objective of the Bill is to adjust the rate of the Governor's pension to take account of the removal of the income tax exempt status of the Governor's salary.

The opportunity of amending the law relating to Governor's pension has been taken to:

- restate and modernise the legislation relating to the salary and pension entitlements of the office of Governor of Queensland into one Act; and
- where appropriate, ensure that the provisions relating to the pensions entitlements of the office of Governor are consistent with other legislation.

Achieving the Policy Objectives of the Legislation

Adjustment of the Governor's Pension

Until recently, the official salaries of vice-regal officers in Australia were exempt from income tax by section 51-15 of the *Income Tax Assessment Act 1997*. This exemption was repealed in 2001 by the *Governor-General Legislation Amendment Act 2001*, to take effect from the appointment of the next vice-regal representative in each jurisdiction.

In the *Governors' Pensions Act 1977*, the current rate of pension for the Governor is set at 60% of salary. The Bill adjusts the rate of pension to ensure that, after the Governor's salary becomes subject to income tax, the

pension remains in a similar proportion to salary in the Governor's hands. This could be achieved by expressing the rate of pension as either:

- 60% of after-tax (or net) salary; or
- a smaller percentage (35%) of pre-tax (or gross) salary, calculated to achieve the same result.

To illustrate, the following calculations have been extrapolated from the current salary of the Governor of Queensland, which is set at \$110 550 by the *Governor's Salary Order 1996*. The current Governor's pension entitlement on his leaving office, being 60% of salary, is \$66 330 per annum. For the Governor's net salary to remain at the current level following the imposition of income tax, the Governor's gross salary would be increased to \$190 000. A continuing pension entitlement of \$66 330 per annum would be achieved if the Governor's revised pension entitlement is expressed as:

- 60% of net salary of \$110 550; or
- 35% of gross salary of \$190 000.

For a number of reasons, it is preferable to set the rate of the Governor's pension as a percentage of gross salary. Primarily, expressing the rate of pension as a percentage of a legislatively prescribed salary will ensure that the rate of the Governor's pension is certain for the duration of his or her term in office.

If the pension is expressed as a percentage of after-tax salary, it is subject to the application of Commonwealth income tax legislation to calculate the amount of income tax payable. Further, the amount of pension will change if there is an alteration in the income tax rates or the manner in which income tax is calculated. While such a change occurs infrequently, it creates sufficient uncertainty in the ultimate rate of a Governor's pension during his or her term in office.

Restating the Governor's Salary Act 1872 and the Governors' Pensions Act 1977

The existing law dealing with the salary and pension entitlements of the Governor is contained in the *Governor's Salary Act 1872* and the *Governors' Pensions Act 1977*. These Acts contain a number of spent provisions and are otherwise drafted in an antiquated style.

The necessity to legislatively adjust the rate of the Governor's pension to take account of the removal of vice-regal income tax exemption has been

taken to restate and modernise the legislation relating to the remuneration of the Governor into the Governors (Salary and Pensions) Bill 2003.

The salary and pension entitlements of the current Governor of Queensland and the pensions currently being paid to former Governors and the surviving spouses of former Governors will not be affected in any way by the passage of the Governors (Salary and Pensions) Bill 2003.

Consistency with Other Legislation

While the pension entitlements pertaining to the Governor of Queensland are unique to the office, some of the elements of the pension scheme occur in other public sector superannuation or pension schemes. To ensure that these elements of the Governor's scheme are consistent to the greatest extent possible with other schemes, a number of amendments to the scheme have been made.

In summary, the additional matters that have been amended are:

- providing for the spouses of deceased former Governors to remain entitled to a pension in the event of remarriage;
- providing for the de facto partner of a deceased former Governor to be entitled to a pension benefit, provided the de facto relationship existed for up to two years prior to the Governor's or former Governor's death or a shorter period if the partners evidenced a clear intention that the relationship would be long term and committed;
- ensuring that only one total pension is payable should a deceased former Governor have more than one surviving spouse (that is, a married spouse and a de facto partner), with the Minister to determine the apportionment of the entitlement after consultation with the Leader of the Opposition;
- ensuring that the provision for the indexation of pension entitlements is consistent with the corresponding provisions of the *Judges (Pensions and Long Leave) Act 1957* and the *Parliamentary Contributory Superannuation Act 1970*.

Administrative Cost

The future administration costs to the Government will be minimal.

Consistency with Fundamental Legislative Principles

The Bill is consistent with the fundamental legislative principles defined in section 4 of the *Legislative Standards Act 1992*. Section 4 requires that legislation has sufficient regard to:

- (a) the rights and liberties of individuals; and
- (b) the institution of Parliament.

Consultation

The Government Superannuation Office, the State Actuary, the Office of the Governor and the Department of Justice and Attorney-General were consulted in the development of the Bill.

NOTES ON CLAUSES**PART 1—PRELIMINARY**

Clause 1 of the Bill provides that the short title of the Act is to be the *Governors (Salary and Pensions) Act 2003*.

Clause 2 refers to the dictionary in the schedule to the Act for the definition of particular words used in the Act.

PART 2—SALARY

Clause 3 provides for a salary to be payable to the Governor at the rate prescribed under a regulation.

Clause 4 provides for a salary to be payable to a person who is an Acting Governor at the same rate payable to the Governor. Subclause (2) provides for the amount of salary payable to be reduced by the amount payable to the person as Lieutenant-Governor, Chief Justice or Supreme Court judge for the same period.

Section 41 of the *Constitution of Queensland 2001* provides that an Acting Governor to assume the administration of the Government of the State in certain circumstances when the office of Governor is vacant. Under section 41(3), the person who must act as Governor is the Lieutenant-Governor of the State or, if there is no Lieutenant-Governor, the Chief Justice of Queensland or, if the Chief Justice is not present in the State and able to act, the next most senior judge of the Supreme Court of Queensland who is present and able to act.

PART 3—PENSIONS

Division 1—Introductory

Clauses 5 and 6 set out the purposes of this part of the Act and details how the provisions of the part are organised into divisions and how the provisions interact with each other.

Division 2—Entitlements and rates of pensions payable

This division sets out the entitlements to a pension, and the rates of pension, for former Governors and the surviving partners of former Governors who have died. Each clause in this division deals with a person who is to become entitled, or who has become entitled, to a pension in each of the following circumstances:

- clause 7 applies to a person who is appointed Governor after the commencement of the Act and who is an Australian citizen on appointment;
- clause 8 applies to the current Governor of Queensland (that is, the person who holds the office of Governor on the commencement of the Act);
- clause 9 applies to a former Governor who was in receipt of a pension when the Act commenced; and
- clause 10 applies to the surviving partner of a deceased Governor.

Clause 7 sets out the entitlement to a lifetime pension and the rate of pension for a person who is appointed Governor after the commencement of the Act.

There are two preconditions to the person's entitlement to the pension. Firstly, the person must have been an Australian citizen at the time he or she was appointed Governor. Secondly, he or she must have held the office for 5 years or more. There is an exception to the second condition. If the person held the office for less than 5 years, he or she will be entitled to a pension if the Minister declares under section 11 that the person is entitled to a pension. Section 11 sets out the ground on which the Minister may make such a declaration and the process to be followed.

Subclause 7(3) provides that the rate of pension is equal to 35% of the Governor's salary at the time the Governor ceases to hold office.

This clause establishes the rate of pension from the time at which the salary of the Governor becomes assessable for income tax; that is, from the appointment of the next Governor of Queensland. The rate of pension is adjusted from the 60% of salary that is applicable under the *Governors' Pensions Act 1977* to 35% of salary, to take account of the removal of the tax-exempt status of the Governor's salary. In the Governor's hands, a pension of 35% of pre-tax salary will be comparable to 60% of a post-tax or tax-exempt salary. (See the discussion about the adjustment of the rate of pension earlier in these notes under the heading "Achieving the Policy Objectives of the Legislation".)

Subclauses 7(4) and (5) outline the pension entitlement for the surviving partner of a person who is appointed Governor after the commencement of this Act, whether the Governor died while in office (irrespective of length of term of office prior to death) or died at sometime after ceasing to hold the office. The rate of pension payable to the surviving partner in both circumstances is the same and is for the surviving partner's lifetime.

Clause 8 sets out the entitlement to a lifetime pension and the rate of pension for a person who holds the office of Governor immediately before the commencement of the Act.

Subclause 8(2) provides that the rate of pension is equal to 60% of the Governor's salary at the time the Governor ceases to hold office.

This clause establishes the rate of pension from the time at which the vice-regal income tax exemption applied to the salary of the Governor; that is, the salary of the person holding office immediately before the commencement of the Act is exempt from income tax by section 51-15 of the *Income Tax Assessment Act 1997*. The repeal of this section does not take effect until the appointment of the next vice-regal representative in

Queensland. (See discussion about the adjustment of the rate of pension earlier in these notes under the heading “Achieving the Policy Objectives of the Legislation”.)

Subclauses 8(3) and (4) outline the pension entitlement for the surviving partner of a person who holds the office of Governor immediately before commencement of the Act, whether the Governor died while in office or died sometime after ceasing to hold the office. The rate of pension payable to the surviving partner in both circumstances is the same and is payable for the surviving partner’s lifetime.

Clause 9 provides that the entitlement to a lifetime pension and the amount of pension payable to a person who is a former Governor immediately before the commencement of this Act continues to be payable to that person.

Subclause 9(3) outlines the lifetime pension entitlement for the surviving partner of a person who was a former Governor upon the former Governor’s death.

Clause 10 provides that the entitlement to a lifetime pension and amount of pension payable to a person who is the surviving partner of a former Governor immediately before the commencement of this Act continues to be payable to that person.

Division 3—Provisions that may affect pension entitlement or amount of pensions

Clause 11 sets out the entitlement to a lifetime pension for a person who held the office of Governor for less than five years.

Subclause 11(1) provides that a person who held the office of Governor for less than five years may apply to the Minister for payment of the pension under the Act on the ground that the person was incapable of performing the duties of the office at the time of ceasing to hold the office.

Subclause 11(2) provides that the Minister may declare that the person is entitled to a pension under the Act if satisfied that the person ceased to hold office on the ground that the person was incapable of performing the duties of the office. The Minister may consider matters reasonably relevant to determining the person’s entitlement to a lifetime pension.

Subclause 11(3) provides that the Minister must provide the person with written reasons if the Minister decides that the person is not entitled to receive a pension under the Act as the person ceased to hold office for a

reason other than the person was incapable of performing the duties of the office.

Clause 12 provides that a former Governor, or the surviving partner of a deceased Governor, can take part of the pension entitlement payable under this Act as a lump sum to meet the former or deceased Governor's surcharge liability.

As a lump sum surcharge debt will be applied personally to a former Governor or deceased Governor who receives a pension entitlement under this Act, this clause allows a portion of the pension to be taken as a lump sum to assist the recipient to fund the cost of the surcharge.

Subclause 12(3) restricts the amount of the pension which can be commuted in respect of a former Governor or deceased Governor to that required to meet the surcharge liability relating to holding the office of the Governor.

Subclause 12(4) provides that before a former Governor or surviving partner of a deceased Governor can commute part of the pension entitlement to a lump sum for the purposes of extinguishing a Governor's surcharge liability, a written application must be made to the Minister accompanied by the surcharge liability notice issued by the Commissioner of Taxation stating the amount of the former or deceased Governor's surcharge liability.

Subclauses 12(5) and (6) provide that upon receipt of the written application accompanied by the notice the Minister can authorise the commutation of that part of the pension (on a basis determined by the Queensland Government Actuary) required to extinguish the former or deceased Governor's surcharge liability.

Subclause 12(7) inserts a number of definitions essential for the operation of the clause. The definitions derive their meaning from the Commonwealth Government's *Superannuation Contributions Tax (Members of Constitutionally Protected Superannuation Funds) Assessment and Collection Act 1997*.

Clause 13 provides for a minimum benefit to be paid to a person who dies while holding office or ceases to hold office under the Act. This ensures that the Queensland Government meets obligations under the *Superannuation Guarantee Charge Act 1992* (Cwlth).

In practise, this is achieved by an actuary specifying a minimum benefit formula that complies with the *Superannuation Guarantee Charge Act 1992* (Cwlth). Under all circumstances when a Governor leaves office the

minimum benefit is calculated and compared with the benefit derived in accordance with either clause 7 or 8. Where necessary, the benefit is increased to the level of the minimum benefit.

Subclause 13(2) provides that the benefit is calculated by an actuary and is to be at a level sufficient to meet the state's obligations under the *Superannuation Guarantee Charge Act 1992* (Cwlth). The minimum benefit is paid to an approved deposit fund or superannuation fund in accordance with the *Superannuation Industry (Supervision) Act 1993* (Cwlth).

Subclause 13(3) inserts a number of definitions essential for the operation of the clause. The definitions derive their meaning from various Commonwealth Government superannuation acts.

Clause 14 sets out entitlements to a pension if a deceased Governor is survived by more than one surviving partner.

Subclauses 14(2) and (3) provide that the pension payable is the pension that would have been paid had only one surviving partner survived the deceased Governor. This pension amount is to be apportioned between the surviving partners by the Minister, after consultation with the member who is recognised in the Legislative Assembly as the Leader of the Opposition, in the shares that the Minister considers appropriate.

Subclause 14(4) provides that the Minister must consider the needs of each surviving partner and other matters considered reasonably relevant to determining the apportionment.

Clause 15 provides that all pension entitlements payable under the Act are increased in line with the Consumer Price Index (CPI) where there is any increase in CPI, but for the pensions to remain the same where the CPI decreases. Where the CPI increases in the year following a decrease, the increase will be limited to the net increase over the period since it was last increased.

Clause 16 provides that the receipt of another pension or retiring allowance equal to or less than the entitlement to a lifetime pension payable under this Act to a former Governor decreases by the amount of the pension payable under this Act by the amount of the other pension or retiring allowance. The reduction, if any, of the entitlement to a pension payable under this Act is calculated on a yearly basis.

Subclause 16(3) sets out pensions and retiring allowances payable to a former Governor which decrease the amount of the entitlement to a lifetime pension payable under this Act.

Division 4—Provisions that may result in end of entitlements to pensions

Clause 17 inserts a number of definitions essential for the operation of this division.

Clause 18 provides that the pension entitlement of a former Governor can be removed if the Legislative Assembly accepts the findings of a tribunal of former judges that on the balance of probabilities the former Governor misbehaved in a way that justifies ending the pension entitlement.

Clause 18(3) provides for a tribunal, to consist of at least 3 members, to be established by an Act to inquire into the misbehaviour of the former Governor. The tribunal members are to be appointed by resolution of the Legislative Assembly. The tribunal has the functions, powers, protection and immunity given by an Act. See, for example, the *Parliamentary (Judges) Commission of Inquiry Act 1988*.

Clause 18(4) provides that the tribunal members must be former judges or justices of Australian State or Federal superior courts. A person cannot be a member of a tribunal if that person and the former Governor were judges of the same court at the same time.

Clause 18(5) provides that the tribunal must report to the Legislative Assembly whether on the balance of probabilities, the former Governor misbehaved in a way that justifies ending the pension entitlement.

Clause 18(6) provides that the occasion of the former Governor's appointment to office and the time when the misbehaviour took place are not relevant to resolutions of the Legislative Assembly. Where a former Governor dies after a tribunal has been established but before the tribunal makes a report to the Legislative Assembly, the tribunal may nonetheless make a report about the former Governor as to whether on the balance of probabilities there is proved misbehaviour to the Legislative Assembly.

Clause 19 provides that a resolution of the Legislative Assembly may provide that amounts paid to a former Governor as a pension entitlement or lump sum are recoverable as a debt due to the State. The recovery of such amounts would be prescribed by regulation.

PART 4—MISCELLANEOUS MATTERS

Clause 20 provides for a pension to accrue daily and be payable fortnightly or at other intervals with the approval of the Treasurer.

Clause 21 appropriates the consolidated fund for the payment of amounts payable as salary, pension or lump sum under the Act.

Clause 22 provides for the Minister to be taken to manage the Governors' pension scheme for the purposes of the Commonwealth Government's superannuation surcharge regime.

Clause 23 sets out the power of the Governor in Council to make regulations under the Act.

PART 5—TRANSITIONAL PROVISIONS

Clause 24 continues the existing salary of the person holding office as Governor on the commencement of this section. In doing so, this clause ensures that the salary of the current Governor of Queensland is unaffected by the repeal of the *Governor's Salary Act 1872* and the passage of this Act.

Clause 25 ensures that a former Governor or the surviving spouse of a former Governor who was not entitled to a pension under the *Governors' Pensions Act 1977*, is not entitled to a pension under this Act.

PART 6—REPEALS

Clause 26 repeals the two Acts that have been restated: the *Governors' Pensions Act 1977* and the *Governor's Salary Act 1872*.

SCHEDULE—DICTIONARY

The Schedule defines certain terms used in the Bill.