

Superannuation (State Public Sector) Amendment of Deed Regulation (No. 1) 2015

Explanatory notes for SL 2015 No. 72

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

General Outline

Short title

Superannuation (State Public Sector) Amendment of Deed Regulation (No. 1) 2015

Authorising law

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

Policy objectives and the reasons for them

The Board of Trustees of the State Public Sector Superannuation Scheme (QSuper Board) administers the State Public Sector Superannuation Scheme (QSuper) in accordance with the *Superannuation (State Public Sector) Deed 1990* (QSuper Deed).

Access to superannuation on compassionate or financial hardship grounds

Under the *Superannuation (Industry Supervision) Act 1993* (Cwlth) and QSuper Deed, members of QSuper can access their superannuation early on compassionate or financial hardship grounds on satisfying certain criteria. However, under the current QSuper Deed, defined benefit members must close their defined benefit and transfer the total balance to an accumulation account before they can access their superannuation on such grounds.

The QSuper Board has requested that the QSuper Deed be amended to allow defined benefit members to withdraw amounts directly from their defined benefit account if approved to access their superannuation on compassionate or financial hardship grounds. This will allow the member to retain their defined benefit after accessing the amount. The maximum amount a member may withdraw is the 'present day' value of their defined benefit.

Tax payable under division 293 of the Income Tax Assessment Act 1997

Division 293 of the *Income Tax Assessment Act 1997* (Cwlth) prescribes that an individual pay additional tax on their superannuation when their income (which includes certain superannuation contributions) exceeds \$300,000 (division 293 tax). A person may pay division 293 tax by withdrawing an amount from their superannuation.

The payment of division 293 tax is deferred for defined benefit members until their superannuation entitlement is payable. This allows the tax to be paid from the person's defined benefit, which generally would not be accessible at the time their division 293 tax liability is assessed.

The QSuper Board has requested that the QSuper Deed be amended to:

- allow members to pay their deferred division 293 tax by electing to reduce a lifetime pension they are entitled to for membership in a defined benefit category; and
- facilitate other withdrawals from superannuation to pay division 293 tax.

The QSuper Board will reduce a member's lifetime pension in a way that is consistent with the current methodology it uses to reduce a lifetime pension to pay a 'surcharge' tax debt, which is a similar type of tax.

Salary reduction benefit

The QSuper Deed allows for the QSuper Board to pay, at its discretion, a supplementary benefit to a defined benefit member to compensate for a reduction in their entitlement caused by a reduction in salary (the supplementary benefit is termed a salary reduction benefit). It has been identified that the methodology used to determine the salary reduction benefit requires a change, to close a loophole that could result in a member being potentially paid more than its design intended.

The QSuper Board has requested that the QSuper Deed be amended to remove a restriction on when a salary reduction benefit may be paid to allow for the above mentioned change in methodology. The State Actuary will advise the QSuper Board how to change the methodology to close the loophole.

Alignment with certain Commonwealth superannuation legislation

Minor inconsistencies exist between the QSuper Deed and the:

- *Superannuation Industry (Supervision) Regulation 1994* (Cwlth) in relation to the acceptance of employer and personal superannuation contributions for persons aged 65 or over, and
- *Superannuation Guarantee (Administration) Act 1992* (Cwlth) in relation to the minimum remuneration on which superannuation must be paid.

The QSuper Deed requires an amendment to correct these minor inconsistencies.

Achievement of policy objectives

Access to superannuation on compassionate or financial hardship grounds

The Amendment of Deed Regulation inserts new part 7G into chapter 1 of the QSuper Deed, which provides for the reduction of a standard defined benefit account for a member who has money released under compassionate and/or financial hardship grounds.

Tax payable under division 293 of the Income Tax Assessment Act 1997

The Amendment of Deed Regulation inserts new Part 7H into chapter 1 of the QSuper Deed, which provides for the reduction of a lifetime pension or defined benefit to comply with a release authority for division 293 tax.

Salary reduction benefit

The Amendment of Deed Regulation amends section 64 of the QSuper Deed to remove the restriction that a salary reduction benefit can only be paid by the QSuper Board when a member receives their benefit entitlement on ceasing employment.

Alignment with certain Commonwealth superannuation legislation

The Amendment of Deed Regulation amends relevant sections in chapter 3 of the QSuper Deed to align its contribution provisions with relevant Commonwealth superannuation legislation.

Minor Technical Amendment

In addition to achieving the policy objectives outlined above, the Amendment of Deed Regulation inserts full definitions for the terms 'resignation matter' and 'Parliamentary Benefits Committee' into section 340 of the QSuper Deed. Prior to the amendment, the meaning of these terms was defined in other legislation and inserting full definitions improves readability.

Consistency with policy objectives of authorising law

This Amendment of Deed Regulation is consistent with the policy of the authorising law in that regulations can be made in order to administer QSuper.

Inconsistency with policy objectives of other legislation

The Amendment of Deed Regulation is consistent with the policy objectives of other legislation.

Benefits and costs of implementation

It is not expected that the implementation of the Amendment of Deed Regulation will result in significant costs.

Consistency with fundamental legislative principles

The Amendment of Deed Regulation is consistent with fundamental legislative principles and ensures QSuper's governing rules are consistent with Commonwealth superannuation legislation.

Consultation

Consultation has occurred with the QSuper Board, the Government Superannuation Officer, the State Actuary, the Office of the Queensland Parliamentary Counsel and the Office of Best Practice Regulation.

Results of consultation

All parties agree with the amendments to the QSuper Deed.