Superannuation (State Public Sector) Amendment of Deed Regulation 2021

Explanatory notes for SL 2021 No. 179

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

General Outline

Short title

Superannuation (State Public Sector) Amendment of Deed Regulation 2021

Authorising law

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

Policy objectives and the reasons for them

QSuper is the default superannuation scheme for Queensland State public sector employees and is administered by the QSuper Board. QSuper and the QSuper Board are regulated entities and must comply with Commonwealth superannuation legislation.

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 fails to exercise its duty of care. From 1 January 2022, changes to 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 objective of the *Superannuation (State Public Sector) Amendment of Deed Regulation 2021* (Amendment Regulation) is to amend the Deed to 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 ensure the QSuper Board has sufficient capital from 1 January 2022 to meet liabilities that are otherwise unable to be met from the assets of the Fund. Without this change, any penalty, including an administrative penalty irrespective of size, could result in the QSuper Board becoming insolvent and, under Commonwealth legislation, an insolvent person cannot be a trustee.

Achievement of policy objectives

The Amendment Regulation will achieve its objective to ensure the financial stability of the QSuper Board following commencement of the Commonwealth regulatory changes on 1 January 2022 by enabling the Board to charge a fee for the services it provides to build up a sufficient reserve to meet liabilities that are otherwise unable to be met from the assets of the fund.

Consistency with policy objectives of authorising law

The amendment regulation is consistent with the main objectives of the authorising law.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The implementation of the Amendment Regulation will ensure the continued financial stability of the QSuper Board from 1 January 2022 and avoids the potential disruptive impact on QSuper members if the QSuper Board was required to resign or was removed as trustee of QSuper due to insolvency. The fee will be paid from the fund’s reserves.

Consistency with fundamental legislative principles

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

Consultation

The QSuper Board and the Office of Best Practice Regulation (OBPR) have been consulted.

The QSuper Board has consented to the making of the Amendment Regulation. OBPR has advised no further regulatory impact analysis is required under the Queensland Government Guide to Better Regulation. All parties consulted agree with the proposed regulation.