

Superannuation (State Public Sector) (Scheme Administration) Amendment Bill 2021

Statement of Compatibility

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

In accordance with section 38 of the *Human Rights Act 2019* (HR Act), I, The Honourable Cameron Dick MP, Treasurer, Minister for Investment, make this statement of compatibility with respect to the Superannuation (State Public Sector) (Scheme Administration) Amendment Bill 2021 (the Bill).

In my opinion, the Bill is compatible with the human rights protected by the HR Act. I base my opinion on the reasons outlined in this statement.

Overview of the Bill

The Bill, which amends the *Superannuation (State Public Sector) Act 1990* (Act), provides for the changes in administration of the superannuation scheme for the State public sector to support the proposed merger of QSuper and Sunsuper. It does that by:

- retiring the QSuper Board and providing for the scheme to be administered by a corporate trustee;
- providing for the scheme's trust deed, which sets out the scheme's rules, to be moved out of legislation;
- making consequential changes arising from the changes in governance.

In addition, the Bill provides for:

- employee and employer contribution rates for State public sector employees who are not defined benefit members to be set by regulation; and
- the clarification of the policy intent to require core government employees who elected to have contributions paid to a fund other than the scheme under section 15C of the Act to make employee contributions to their chosen superannuation fund and deductions by employers from employee salaries.

Human Rights Issues

Human rights relevant to the Bill (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 Bill are:

- Recognition and equality before the law (section 15 of the HR Act);
- Freedom of movement (section 19 of the HR Act);
- Taking part in public life (section 23 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.

Choice of Fund – Employee Contributions

The choice of fund amendments in the Bill (clauses 4 and 5) are intended to maintain the existing contribution model for core government employees, irrespective of the employees' choice of fund.

The amendments clarify the existing policy that core government employees are required to make employee contributions to their superannuation fund, regardless of which fund their contributions are paid into. This intent is carried forward in the employee and employer contribution provisions in clauses 31 and 53. The provisions regarding employee and employer contributions in clauses 31 and 53 are aimed at continuing current contribution arrangements for accumulation members.

These amendments do not limit this human right.

Clause 52 – QSuper Board's Trustees and Chief Executive Officer

Clause 52 provides that the trustees on the QSuper Board and the chief executive officer go out of office on the registration day of QSuper Board Pty Ltd, without affecting their accrued benefits or entitlements, or preventing these persons from becoming an officer or employee of QSuper Board Pty Ltd. There is no relevant ground of discrimination under the HR Act. Accordingly, there is no relevant limit on the human right to recognition and equality before the law of the affected individuals.

Freedom of Movement

Section 19 of the HR Act provides for the right of every person to move freely within Queensland, to enter or leave Queensland and to choose where they live. It is intended that a person should not have their freedom of movement unduly restricted.

Administration of the Scheme

Clause 12 of the Bill requires the ordinary residence of the trustee's chief executive officer, a majority of trustees and a majority of the trustee's key management personnel to be in Queensland. It also requires the majority of the trustee's operations in administering the scheme to be based in Queensland. This will limit the right to freedom of movement by affecting the place of residence of the chief executive officer, and may limit the same right of directors, key management personnel and employees involved in the trustee's operations in administering the scheme.

QSuper and Sunsuper are both headquartered in Queensland. The purpose of clause 12 is to ensure that the merged fund remains headquartered in Queensland with the majority of

employment and economic activity maintained in Queensland. In this context, any effect on an individual's freedom of movement is justified in furthering the broader policy objective of maintaining employment and economic activity in Queensland.

Taking part in public life

The right to take part in public life affirms the right of all persons to contribute to and exercise their voices in relation to the public life of the State. It includes protection for all persons to make contributions to the political process and public governance, which encompasses the opportunity to participate in the formulation and implementation of public policy. It is connected with the right to freedom of expression. The right further protects the opportunity of individuals to have access, on general terms of equality and without discrimination, to the public service and to public office.

Clause 52 – QSuper Board's Trustees and Chief Executive Officer

Clause 52 provides that the trustees on the QSuper Board and the chief executive officer go out of office on the registration day of QSuper Board Pty Ltd, without affecting their accrued benefits or entitlements, or preventing these persons from becoming an officer or employee of QSuper Board Pty Ltd. This provision will not prevent them from serving in any other role in public life or governance, and ensures all accrued benefits and entitlements are protected. Therefore, it is considered that this provision 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.

Choice of Fund – Employee Contributions for scheme and choice of fund employees

The choice of fund provisions (clauses 4 and 5) clarify that core government employees are required to make employee contributions to their superannuation fund. The amendments will confirm an established administration of deductions and payment of contributions by core government employees into the employees' superannuation fund.

The amendments, therefore, have the potential to limit a person's property right by restricting their use of a specified percentage of their salary by requiring them to make a superannuation contribution into their chosen fund.

The provisions regarding employee and employer contributions in clauses 31 and 52 are aimed at continuing current contribution arrangements for accumulation members.

In the context of this right, the requirement to pay a contribution does not arbitrarily deprive employees of their property. The requirement to make the contribution is part of an employee's

agreed remuneration arrangements which are known to employees before accepting employment as a core government employee. It also occurs in accordance with transparent and precise criteria directed towards the attainment of the legitimate objective of equal superannuation arrangements for core government employees that make appropriate provisions for their retirement.

These requirements are not oppressive or capricious in that the arrangement holds part of employees' income in trust (the part that can be held is clearly limited to the amount specified) in the employee's superannuation account, which is held by a superannuation fund trustee. While the employee cannot generally use those funds until a condition of release has been met, no other person has a right to access those funds. It is considered these provisions do not arbitrarily deprive employees of property and therefore do not limit this human right.

No compensation payable for changes to trust deed or actuarial investigation

Clause 31 of the Bill contains new sections 26 and 27.

New section 26 provides that the trustee can only amend the defined benefit category rules if the amendment will not affect the contributions required to be made by the Treasurer to satisfy defined benefits that become payable, the entitlements of defined benefit members or the member contribution rates payable by these members, and the Minister has been notified. Otherwise, the trustee can only make an amendment if the Minister has consented to it. The capacity of the trustee to amend these rules must also be read subject to the limitations imposed by the *Superannuation Industry (Supervision) Regulations 1994* (Cth) (SIS Regulations).

The purpose of new section 26 is to ensure that the circumstances in which the deed can be amended are limited and therefore protect the entitlements of defined benefit members and the government's defined benefit liabilities.

New section 27 provides that no compensation is payable to a member in a government defined benefit category for changes to superannuation or other benefits if they result from a change to the trust deed under the new section 26 or are lawfully made because of an actuarial investigation.

Clause 31 potentially limits an individual's property rights by negating a right to claim compensation in the circumstances described above. The limitation is justified because the purpose of the provision is to permit changes to the rules affecting member entitlements only in the very limited circumstances permitted under the SIS Regulations or where lawfully made because of an actuarial investigation. For example, an actuarial assessment of splitting benefits under family law or an actuarial adjustment of benefit payments for tax liabilities. Limiting the right to claim compensation in these circumstances avoids the expense and complications associated with legal proceedings for compensation resulting from otherwise lawful changes. Other review and appeal rights under State and Commonwealth legislation are not excluded, nor is compensation in other circumstances.

Conclusion

In my opinion, the Bill is compatible with human rights under the HR Act because to the extent the Bill limits a human right, it only does so to the extent that is reasonable and justifiable in accordance with section 13 of the HR Act.

THE HONOURABLE CAMERON DICK MP
TREASURER
MINISTER FOR INVESTMENT

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