

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

Explanatory Notes

FOR

Amendments to be moved during consideration in detail by The Honourable Cameron Dick MP, Treasurer and Minister for Trade and Investment

The title of the Bill

The short title of the Bill is the Superannuation (State Public Sector) (Scheme Administration) Amendment Bill 2021 (the Bill).

Objectives of the amendments

Under section 29 of the *Constitution of Queensland 2001*, the Queensland Governor is appointed by Commission from Her Majesty The Queen. By convention a Governor of Queensland serves for a period of five years.

Under section 3 of the *Governors (Salary and Pensions) Act 2003* (the Act), the salary of a Governor is prescribed in a Regulation, which is set from the beginning of the term of each newly appointed Governor.

Individuals appointed as Governor often have had a distinguished career prior to their gubernatorial appointment, with long established superannuation arrangements.

Under section 7 of the Act, former Governors, who held office for at least 5 years are entitled to a lifetime pension of 35% of their Governor's salary. If a Governor leaves office with less than 5 years' service because they are incapable of performing the duties, the Minister may under section 11 of the Act declare that they are entitled to a pension under section 7 of the Act. Section 7 also provides that a surviving partner of a deceased Governor is entitled to 62.5% of the Governor's pension for their lifetime.

Under section 16 of the Act, a former Governor's pension for a financial year is offset/reduced, including to nil, by the amount of any other 'relevant entitlement' that the former Governor may be entitled to in the financial year.

However, other publicly funded superannuation entitlements, including defined benefit, are not recognised as a ‘relevant entitlement’ for the purpose of section 16. Accordingly, a future Governor, who is eligible for such entitlements would also be able to access the Governor’s pension.

The Act will be updated to recognise existing superannuation arrangements of an incoming Governor, and provide that an incoming Governor will elect either to continue these existing arrangements, or access the Governor’s pension.

The effect of the proposed policy is that a person appointed Governor after commencement of the amendments may:

- elect to have the same superannuation arrangements as a public sector employee, including retaining their existing arrangements and choice of fund; or
- receive a pension under part 3 of the Act.

Achievement of policy objectives

The amendments will amend the Act to provide an incoming Governor with a choice to elect to have the superannuation arrangements that apply under the Superannuation Act or receive a pension under part 3 of the Act.

If an incoming Governor elects to have superannuation arrangements that apply under the Superannuation Act, they can be a member of the superannuation fund they have in place prior to their appointment or transfer to the State public sector scheme under the Superannuation Act if they are not already a member of that scheme.

The Superannuation Act will regulate required contributions that will apply to a Governor who has made an election to have superannuation arrangements under the Superannuation Act.

A Governor who elects to have superannuation arrangements under the Superannuation Act:

- will be able to salary sacrifice required employee contributions;
- will not be entitled to receive a pension under part 3 of the Act; and
- cannot rescind the election.

Alternative ways of achieving policy objectives

Amendment of the Act is required in order to meet the policy objective. An alternative approach to the proposed amendments would be to prescribe specific superannuation arrangements applicable to the Governor in the Act as an alternative to the pension under part 3 of the Act.

The proposed amendments are preferred as the Superannuation Act appropriately regulates contribution rates and the proposed amendments facilitate continuation of superannuation arrangements for persons who are currently in a State public sector scheme under the Superannuation Act.

Estimated cost for government implementation

There will be no additional costs for the government in implementing these amendments.

Consistency with fundamental legislative principles

The amendments are consistent with fundamental legislative principles.

Consultation

The Government Superannuation Office was consulted and supports the amendments.

Consistency with legislation of other jurisdictions

The Bill is specific to the State of Queensland.

NOTES ON PROVISIONS

Amendment 1 amends clause 2 (Commencement) of the Bill to insert reference to new part 2A. This will ensure the amendments to the *Governors (Salary and Pensions) Act 2003* (the Act) commence on assent.

Amendment 2 inserts a new part 2A (Amendment of *Governors (Salary and Pensions) Act 2003*) into the Bill.

New clause 54A provides that part 2A amends the Act.

New clause 54B amends the long title of the Act.

New clause 54C inserts section 4A (Application of part) in part 3 (Pensions), division 1 of the Act to clarify that the provisions regarding pensions do not apply to a person who has elected to have superannuation arrangements under part 3A (Superannuation) of the Act.

New clause 54D inserts a new division heading (Division 5 Other matters relating to pensions) in part 3 of the Act. Miscellaneous provisions relating to pensions are relocated to the new part 3, division 5.

New clause 54E inserts new part 3A (Superannuation) into the Act.

New part 3A, division 1 (Preliminary)

New section 20B provides that part 3A applies to a person appointed as Governor after commencement of the amendments (a future Governor).

New section 20C, subsection (1), enables a future Governor to elect to have superannuation arrangements under part 3A. Subsection (2) prescribes when an election must be made under part 3A and provides that an election under subsection (1) cannot be rescinded.

New part 3A, division 2 (Superannuation arrangements)

New section 20D prescribes definitions for terms used in part 3A.

New section 20E provides that part 3A, division 2 applies if a person makes an election under new section 20C.

New section 20F, subsection (1), provides that a person making an election under part 3A will have the arrangements that apply under the Superannuation Act to a ‘State public sector employee’ mentioned in a ‘State public sector scheme membership declaration’. These terms are defined in new section 20D. Subsection (2) makes provision to ensure that the Superannuation Act applies to the Governor.

New section 20G ensures that if, immediately prior to their appointment as Governor, the person making an election under part 3A was a member of a State public sector scheme under the Superannuation Act, the person’s membership in the scheme continues in the same category and subject to the same conditions as applied before the person’s appointment as Governor. Subsection (3) clarifies that the person is eligible for membership in any category of the State public sector scheme to which they were entitled to be a member prior to appointment as Governor.

New section 20H relates to a person who makes an election under part 3A and was not, immediately prior to their appointment as Governor, a member of a State public sector scheme under the Superannuation Act. The section enables the Minister to declare matters relevant to superannuation arrangements under the Superannuation Act for the person, should they choose to be part of the State public sector scheme. With the operation of new section 20F, the person may continue to be part of another fund if that is their preference.

New section 20I enables a Governor, who makes an election under part 3A, to salary sacrifice employee contributions to their superannuation scheme.

New clause 54F relocates section 20 (Accrual and payment of pensions) of the Act to new part 3, division 5.

New clause 54G amends section 21 (Appropriation) of the Act to ensure that amounts payable under part 3A as superannuation contributions are paid from the consolidated fund.

New clause 54H amends the definition of ‘scheme’, relating to Governor’s pensions in section 22 (Minister is manager for Commonwealth Act) of the Act so that it only applies to pensions payable under part 3 of the Act. The clause also relocates section 22 to new part 3, division 5 and renumbers the section as section 20A.

New section 54I amends the schedule (Dictionary) to the Act to insert relevant definitions.

Amendment 3 inserts into schedule 1 (Other amendments) of the Bill, amendments to definitions of terms in new section 20D of the Act, to reflect changes to those definitions that are required following proclamation of relevant sections of the Bill.

Amendment 4 amends the Long title of the Bill to include reference to the Act.