

Economics and Governance Committee

Report No. 42, 56th Parliament

Subordinate legislation tabled between 23 April 2020 and 19 May 2020

1 Aim of this report

This report summarises the committee’s findings following its examination of the subordinate legislation within its portfolio areas tabled between 23 April 2020 and 19 May 2020. It reports on any issues identified by the committee relating to the policy to be given effect by the legislation, its consistency with fundamental legislative principles (FLPs),¹ its compatibility with human rights,² and its lawfulness. It also reports on the compliance of the explanatory notes with the *Legislative Standards Act 1992* (LSA),³ and the compliance of the human rights certificate with the *Human Rights Act 2019* (HRA).⁴

2 Subordinate legislation examined

No.	Subordinate legislation	Date tabled	Disallowance date*
063	Superannuation (State Public Sector) Amendment of Deed Regulation 2020	19 May 2020	10 September 2020

*Disallowance dates are based on proposed sitting dates as advised by the Leader of the House. These dates are subject to change.

3 Committee consideration of the subordinate legislation

No significant issues were identified by the committee regarding the policy, consistency with FLPs, compatibility with human rights, or lawfulness of the subordinate legislation. The explanatory notes and human rights certificate accompanying the subordinate legislation comply with the requirements of the LSA and the HRA respectively.

¹ Section 4 of the *Legislative Standards Act 1992* (LSA) states that FLPs are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to: a) the rights and liberties of individuals, and b) the institution of Parliament.

² Section 8 of the *Human Rights Act 2019* (HRA) provides that a statutory provision is compatible with human rights if it does not limit a human right, or limits a human right only to the extent that is reasonable and demonstrably justifiable in accordance with s 13 of the HRA. Section 13 of the HRA provides that a human right may be subject to reasonable limits that can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom. Section 13 sets out a range of factors that may be relevant in determining whether a limit on a human right is reasonable and justifiable.

³ LSA, part 4. Section 24 sets out the information that must be included in the explanatory note for subordinate legislation which is required to be tabled in the Legislative Assembly with the subordinate legislation (LSA, s 22).

⁴ Section 41(4) of the HRA provides that the portfolio committee responsible for examining subordinate legislation may, in examining the legislation, also consider the human rights certificate prepared by the responsible Minister for the subordinate legislation. The human rights certificate, which must be tabled in the Legislative Assembly with the subordinate legislation, must state a) whether, in the responsible Minister’s opinion, the subordinate legislation is compatible with human rights, and if so, how it is compatible; and (b) if, in the responsible Minister’s opinion, a part of the subordinate legislation is not compatible with human rights, the nature and extent of the incompatibility (see HRA, s 41(1)-(3)).

4 SL No. 63 of 2020 – Superannuation (State Public Sector) Amendment of Deed Regulation 2020

The objectives of SL No. 63 of 2020 are to:

- allow QSuper standard defined benefit (DB) category members with a terminal medical condition (TMC) which is likely to result in their death in the next 24 months, to access the death benefit that would otherwise become available to them in the future,⁵ and
- provide QSuper members who are economically affected by the COVID-19 epidemic with limited access to their superannuation, in line with recent changes to Commonwealth legislation.⁶

In relation to the first of these two changes, the explanatory notes advise that certification of a TMC was never prescribed as a condition of release for those in the DB category, as:

- members in this situation were to be simultaneously assessed against the definition of total and permanent disablement (TPD),⁷ and
- a TMC benefit is effectively the early release of a death benefit, which is the same benefit paid for TPD in the DB category.⁸

The Treasurer and Minister for Infrastructure and Planning (Treasurer) advised in written correspondence to the committee that '[o]riginally, a TMC was deemed to exist where death was expected to occur in the next 12 months', and therefore, that the person's condition was more likely to also meet the definition of a TPD.⁹ However:

... changes to Commonwealth legislation that extended this timeframe to 24 months has made the likelihood of a person with a TMC not being deemed TPD more possible. There are several medical conditions that may result in death within 24 months but do not necessarily inhibit a member's capacity to work in the intervening period. I am advised that the most prevalent examples are cancer and heart disease but also may include other conditions such as AIDS, emphysema and liver disease. Generally, illnesses of this nature are progressive in nature, and permanent disablement will only occur later, or perhaps never, prior to death.¹⁰

The explanatory notes state that this situation:

... places the member in a difficult position where the early release of a death benefit is refused, and is inconsistent with the treatment of a member in the accumulation category who meets the TMC criteria and is eligible to be paid the full death benefit.¹¹

⁵ The definition of a terminal medical condition (TMC) that will be inserted by SL No. 63 refers to the definition under Regulation 6.01A of the *Superannuation Industry (Supervision) Regulations 1994* (Cwth). This definition states that a TMC exists if two registered medical practitioners have certified, jointly or separately, that the member suffers from an illness, or has incurred an injury, that is likely to result in the member's death within 24 months of the date of certification and at least one of the registered medical practitioners is a specialist practising in an area related to the member's illness or injury.

⁶ Superannuation (State Public Sector) Amendment of Deed Regulation 2020 (SL No. 63 of 2020), explanatory notes, pp 1-2.

⁷ Total and permanent disablement means disablement of a degree which, in the opinion of the QSuper Board after obtaining the advice of not fewer than two medical practitioners, is such as to render the member unlikely to ever be able to work again in a job for which the member is reasonably qualified by education, training or experience. See: Superannuation (State Public Sector) Deed 1990, s 4.

⁸ SL No. 63 of 2020, explanatory notes, p 1.

⁹ Treasurer and Minister for Infrastructure and Planning (Treasurer), correspondence, 29 June 2020.

¹⁰ Treasurer, correspondence, 29 June 2020.

¹¹ SL No. 63 of 2020, explanatory notes, p 1.

SL No. 63 of 2020 seeks to close this eligibility gap and resolve the inconsistency with accumulation category members by introducing TMC as a condition of release in the DB category, and thereby ensuring those members are able to gain access to the death benefit in full.¹²

The Treasurer advised that this will simplify the claims process and options for accessing benefits for these DB members during a difficult time in their lives, with the relevant benefit to be released as a lump sum payment.¹³

With respect to QSuper members who are economically affected by COVID-19, SL No. 63 of 2020 provides for account holders who experience significant falls in income due to the economic circumstances arising from the coronavirus pandemic to access up to \$10,000 per year from their superannuation account balances in 2019-20 and 2020-21.¹⁴ This is achieved by removing a reference to a specific regulation in the relevant Commonwealth provisions governing eligibility for early access to superannuation on compassionate and severe financial hardship grounds, 'to allow for a more general call-up' of such compassionate release grounds.¹⁵

The Australian Taxation Office has issued guidance on the assessment criteria for such 'compassionate releases' of superannuation to deal with the adverse economic effects of COVID-19, advising that for a person to be eligible, one of the following circumstances must apply:

- the person is unemployed
- the person is eligible to receive one of a list of payments (a jobseeker payment, youth allowance for jobseekers (unless the person is undertaking full time study or is a new apprentice), parenting payment (including the single and partnered payments), special benefit, or farm household allowance), or
- on or after 1 January 2020, the person either:
 - has been made redundant or had working hours reduced by 20 per cent or more (including to zero), or
 - is a sole trader whose business was suspended or experienced a reduction in turnover of 20 per cent or more (partners in a partnership are not eligible unless the partner satisfies any other eligibility criteria).¹⁶

The explanatory notes state that implementation of SL No. 63 of 2020 is not expected to result in significant costs, and further, that members will benefit from the improved access to and provision of benefits under the subordinate legislation's amendments through their ability to access funds or an equivalent benefit when they most need it because they:

- have lost their employment
- have otherwise become eligible to access their superannuation under compassionate grounds, or
- have a terminal illness and are DB members.¹⁷

¹² SL No. 63 of 2020, explanatory notes, p 1.

¹³ Treasurer, correspondence, 29 June 2020. The Treasurer also advised that members eligible for a TPD benefit can, instead of receiving a lump sum payment, elect to receive a lifetime pension instead.

¹⁴ SL No. 63 of 2020, explanatory notes, p 2. Note: This applies only to QSuper members who are citizens or permanent residents of Australia and New Zealand. Temporary residents are able to apply once to access up to \$10,000 of super in 2019-20 only, and cannot apply for a further early release of funds in 2020-21. See: Australian Taxation Office (ATO), *COVID-19 early release of super*, last modified 19 June 2020, <https://www.ato.gov.au/Individuals/Super/In-detail/Withdrawing-and-using-your-super/COVID-19-early-release-of-super/>

¹⁵ SL No. 63 of 2020, explanatory notes, p 2.

¹⁶ ATO, *COVID-19 early release of super*, last modified 19 June 2020, <https://www.ato.gov.au/Individuals/Super/In-detail/Withdrawing-and-using-your-super/COVID-19-early-release-of-super/>

¹⁷ SL No. 63 of 2020, explanatory notes, p 2.

The changes to DB category eligibility for access to the death benefit for those with a TMC commence on 1 July 2020, while the amendment to provide for early access to superannuation for those adversely affected by the economic impacts of COVID-19 has retrospective effect from 25 March 2020.¹⁸

The explanatory notes advise that the QSuper Board ‘consented to the making of the Amendment Regulation’ and that the Government Superannuation Officer ‘was also consulted and supports the proposed Amendment Regulation’.¹⁹

In addition, the explanatory notes report that the Queensland Productivity Commission identified that the increased consistency between DB and accumulation members ‘will reduce the regulatory burden on defined benefit members’, and that it is ‘reasonably clear there will be no significant adverse impacts and no further regulatory impact analysis is required’.²⁰

4.1 Compatibility with the *Human Rights Act 2019*

The human rights certificate tabled with the subordinate legislation states that SL No. 63 of 2020 ‘does not affect or engage a human right’ and that the Minister (at that time, the Treasurer and Minister for Aboriginal and Torres Strait Islander Partnerships) considers the subordinate legislation to be compatible with the HRA.²¹

Committee comment

The committee identified no issues regarding the subordinate legislation’s consistency with FLPs or its lawfulness. The explanatory notes tabled with SL No. 63 of 2020 comply with part 4 of the LSA.

The committee also identified no issues regarding the compatibility of the subordinate legislation with the HRA, noting SL No. 63’s provision for a potential expansion of access to certain benefits to individuals beyond those pertaining to rights and freedoms recognised in the HRA.

The human rights certificate tabled with SL No. 63 of 2020 contains a sufficient level of information to facilitate understanding of the subordinate legislation in relation to its compatibility with human rights.

5 Recommendation

The committee recommends that the House notes this report.



Linus Power MP

Chair

July 2020

Economics and Governance Committee

Chair

Mr Linus Power MP, Member for Logan, Chair

Deputy Chair

Mr Ray Stevens MP, Member for Mermaid Beach, Deputy Chair

Members

Ms Nikki Boyd MP, Member for Pine Rivers²²

Mr Lance McCallum MP, Member for Bundamba²³

Mr Sam O’Connor MP, Member for Bonney

Mr Dan Purdie MP, Member for Ninderry²⁴

Ms Kim Richards MP, Member for Redlands

Mr Trevor Watts MP, Member for Toowoomba North²⁵

¹⁸ SL No. 63 of 2020, s 2.

¹⁹ SL No. 63 of 2020, explanatory notes, p 3.

²⁰ SL No. 63 of 2020, explanatory notes, p 3.

²¹ SL No. 63 of 2020, human rights certificate, p 1.

²² Until 19 May 2020.

²³ From 19 May 2020.

²⁴ Until 19 May 2020.

²⁵ From 19 May 2020.