Parliamentary Committees

# Revenue and Other Legislation Amendment Bill 2016

**Report No. 30, 55th Parliament**
**Infrastructure, Planning and Natural Resources Committee**
**August 2016**

## Infrastructure, Planning and Natural Resources Committee

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### Acknowledgements

The committee thanks all those who briefed the committee, provided submissions and participated in its inquiry.

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## Chair's foreword

This report presents a summary of the Infrastructure, Planning and Natural Resources Committee's examination of the Revenue and Other Legislation Amendment Bill 2016.

The committee's task was to consider the policy outcomes to be achieved by the legislation, as well as the application of fundamental legislative principles, including whether it has sufficient regard to rights and liberties of individuals and to the institution of Parliament.

The committee has considered issues of legislation regarding superannuation, revenue and the Queensland Plan.

The committee considered a number of amendments proposed to superannuation legislation particularly relating to allowing choice of fund for Queensland Government and local government employees, default fund status for QSuper and LGIAsuper and opening these funds to public offer. The committee noted that stakeholders supported the amendment that would allow these employees to choose their superannuation fund. The committee, however, noted that some stakeholders held concerns that amendments that would nominate QSuper and LGIAsuper as the default funds for Queensland Government employees and local government employees while also opening up their membership to the general public would result in an unfair competitive advantage for these funds. Given that only six per cent of the population select a different fund from their default fund, the committee supports the view that it is essential that the nominated default fund for employees meets the requirements for a default fund and is a strong performer. The committee heard evidence that these funds meet these standards. In addition, nominating these funds as the default funds would result in minimum disruption to employees. The committee understands that the bill would not constrain employers such as the Queensland Government and local governments from reviewing and changing their nominated default funds at a later time.

The committee considered a number of amendments to the revenue legislation. Some of the proposed amendments give legislative effect to administrative arrangements and others make minor amendments to correct errors or clarify provisions. The key amendment proposed to be made to the *Duties Act 2001* is to reinstate the interpretation and practice relating to a certain requirement for a transfer duty home concession that existed prior to the Queensland Court of Appeal decision in *Commissioner of State Revenue v Di Sipio & Anor*. The committee discussed the matters raised regarding the proposed amendment by a stakeholder but, in light of the forecast $3.59 million that would be foregone in relation to current transactions, and further amounts related to future transactions, decided to support the proposed amendments.

The committee considered the proposed amendments to the Queensland Plan. The committee noted that there are concerns regarding the potential to weaken the reporting and therefore accountability and development outcomes of the plan. The committee agrees with The Queensland Plan Ambassadors Council that there is a need to ensure that:

> *… the plan remain a living document and process in our public discussions and to be implemented. For it to be viable as a long-term process, however, the Queensland Plan needs to remain visible and relevant and a point of focus, not only for government but also to industry, business, and the community.*[1]

The committee seeks to ensure that the Queensland Plan remains a robust and visible framework to move Queensland forward over the next 28 years.

On behalf of the committee, I thank those organisations and individuals who lodged written submissions on the bill and appeared before the committee at its public hearing.

[1] The Queensland Plan Ambassadors Council, public hearing transcript, Brisbane, 22 July 2016, p 11.

In addition, I would like to thank the departmental officials in Brisbane who briefed the committee; the committee's secretariat; and the Technical Scrutiny of Legislation Secretariat.

I commend the report to the House.

Jim Pearce MP
**Chair**

August 2016

## Abbreviations

| | |
|---|---|
| BUSSQ | BUSSQ Building Super |
| DB | defined benefit |
| Duties Act | *Duties Act 2001* |
| FA Act | *Financial Accountability Act 2009* |
| FLP | Fundamental legislation principle |
| HIA | Housing Industry Association Limited |
| LSA | *Legislative Standards Act 1992* |
| LG Act | *Local Government Act 2009* |
| The plan | The Queensland Plan |
| PPR | principal place of residence |
| QCAT | Queensland Civil and Administrative Tribunal |
| QP Act | *Queensland Plan Act 2014* |
| QSuper Act | *Superannuation (State Public Sector) Act 1990* |
| SIS | *Superannuation Industry (Supervision) Regulations 1994* |
| SLC | (former) Scrutiny of Legislation Committee |

# Recommendations



The committee recommends the Revenue and Other Legislation Amendment Bill 2016 be passed.



The committee recommends that the Revenue and Other Legislation Amendment Bill 2016 be amended to require that a local government's annual report for each financial year must include a statement about the local government's actions in relation to matters in its corporate plan that relate to the Queensland Plan.

# 1 Introduction

## Role of the committee

The Infrastructure, Planning and Natural Resources Committee (the committee) was established by the Legislative Assembly on 27 March 2015 and consists of three government and three non-government members.

The committee's areas of portfolio responsibility are:

- Infrastructure, Local Government, Planning and Trade and Investment
- State Development, Natural Resources and Mines
- Housing and Public Works.[2]

## The referral

Section 93 of the *Parliament of Queensland Act 2001* provides that a portfolio committee is responsible for considering:

- the policy to be given effect by the bill
- the application of the fundamental legislative principles to the bill.

On 16 June 2016, the Hon Curtis Pitt MP, Treasurer, Minister for Aboriginal and Torres Strait Islander Partnerships and Minister for Sport introduced the Revenue and Other Legislation Amendment Bill 2016. The bill, at introduction, stood referred to the Finance and Administration Committee.

With agreement of the House, the Hon Stirling Hinchliffe MP amended the original referral and referred the Revenue and Other Legislation Amendment Bill 2016 to the Infrastructure, Planning and Natural Resources Committee for examination. The Standing Orders require the committee to provide its report to the Legislative Assembly by 19 August 2016.

## The committee's inquiry process

On 17 June 2016, the committee called for written submissions by placing notification of the inquiry on its website, notifying its email subscribers and sending letters to a range of stakeholders. The closing date for submissions was 15 July 2016. The committee received 15 submissions (see Appendix A). Three of these submission were confidential submissions.

On 21 July 2016, the committee held a public briefing with officers from Queensland Treasury, the Department of Premier and Cabinet and the Department of Infrastructure, Local Government and Planning (see Appendix B). The committee held a public hearing in Brisbane on 22 July 2016 (see Appendix B).

Copies of the submissions, transcripts of the briefing and hearing and responses to questions taken on notice at the briefing and the hearing are available from the committee's webpage.[3]

## Policy objectives of the bill

The explanatory notes outline that the bill 'amends Queensland's revenue legislation to protect the State's revenue, give legislative effect to taxpayer beneficial administrative arrangements, maintain

[2] Schedule 6 of the *Standing Rules and Orders of the Legislative Assembly*, effective from 31 August 2004 (amended 18 February 2016).

[3] See www.parliament.qld.gov.au/ipnrc.

the currency of the legislation, and ensure its continued proper operation and administration (the revenue legislation amendments).'[4]

The bill also proposes to make a number of amendments to superannuation legislation including:

- providing Queensland's core State Government employees and most local government employees with choice of fund
- enabling QSuper and LGIAsuper to open their membership to the general public, and
- exempting the QSuper Board from the operation of the *Right to Information Act 2009*.[5]

The bill would also amend the planning and reporting requirements under the *Queensland Plan Act 2014* (QP Act) 'to minimise the administrative burden'.[6]

## Departmental consultation on the bill

*Amendments to revenue legislation*

Community consultation was not undertaken in relation to the revenue legislation amendments in the bill. The explanatory notes indicate that consultation was not considered necessary or appropriate as these amendments are necessary to protect the State's revenue or have either operated under administrative arrangements, or make technical changes to the legislation to ensure its continued effective operation and administration.[7]

*Amendments to superannuation legislation*

The explanatory notes state that consultation was undertaken with QSuper, LGIAsuper, the Local Government Association of Queensland, Brisbane City Council and relevant employers and unions on the superannuation policy objectives.[8] The committee queries why broader consultation was not undertaken in regard to the bill. Sunsuper noted:

> *There was no public consultation on the Bill prior to its introduction on 16 June 2016. A robust public consultation process typically involves a Government announcement of the policy intent, issuing of draft legislation or a discussion paper for consumer and industry feedback and engagement with a wide range of stakeholders, not just those connected to QSuper and LGIAsuper.*[9]

Given that these amendments will change the superannuation landscape in Queensland, the committee believes that a broader range of stakeholders should have been consulted in regard to this bill.

*Amendment of the* Queensland Plan Act 2015

In March 2016, a draft Bill of the QP Act amendments was released for targeted consultation with the Queensland Plan Ambassadors Council and the Local Government Association of Queensland.[10]

## Should the Bill be passed?

Standing Order 132(1)(a) requires the committee to determine whether to recommend the bill be passed. The committee recommends the bill be passed.

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4 Revenue and Other Legislation Amendment Bill 2016, explanatory notes, p 1.
5 Revenue and Other Legislation Amendment Bill 2016, explanatory notes, p 2.
6 Revenue and Other Legislation Amendment Bill 2016, explanatory notes, p 3.
7 Revenue and Other Legislation Amendment Bill 2016, explanatory notes, p 10.
8 Revenue and Other Legislation Amendment Bill 2016, explanatory notes, p 10.
9 Sunsuper, submission 16 pp 3-4.
10 Revenue and Other Legislation Amendment Bill 2016, explanatory notes, p 10.

**Recommendation 1**

The committee recommends the Revenue and Other Legislation Amendment Bill 2016 be passed.

# 2 Examination of the Bill

## Amendments to superannuation legislation

The bill proposes a number of amendments to the *Superannuation (State Public Sector) Act 1990* (QSuper Act) and the *Local Government Act 2009* (LG Act). Three key amendments include proposed changes to:

- choice of fund to allow members to choose where their superannuation funds are paid into (except members of a defined benefit category[11])
- nomination of default fund status to confirm that QSuper and LGIAsuper will be the default fund for new members who do not make a choice-of-fund selection
- open membership for both funds to the general public (public offer).[12]

Other proposed amendments to superannuation legislation propose to:

- allow the Treasurer to adjust an employee's defined benefit multiple in situations where shortfalls arise between actual salaries and the assumptions upon which defined benefits entitlements are paid by employers and where the additional amounts are not paid into the scheme
- change the name of QSuper's board of trustees from 'Board of Trustees of the State Public Sector Superannuation Scheme' to 'QSuper Board'
- change the name of the Local Government Superannuation Scheme to LGIAsuper and the name of the Queensland Local Government Superannuation Board to LGIAsuper Trustee to reflect a change in the business names adopted by the board
- allow the QSuper Board to appoint an auditor other than the Auditor-General
- allow parties unrelated to the QSuper Board to promote QSuper
- allow the chief executive officer to be employed by an entity wholly or ultimately owned by the QSuper Board for the purpose of 'providing additional flexibility'[13]
- remove provisions that allow the QSuper Board to deduct surcharge debts from a member's superannuation account with the provisions to be appropriately inserted into the Superannuation (State Public Sector) Deed 1990.[14]

The bill also proposes to amend the *Right to Information Act 2009* to exempt the QSuper Board's functions from its operation to 'maintain the confidentiality of the QSuper Board's commercially sensitive information in an open fund environment'.[15]

### *Choice of fund*

In 2005, the Australian Government introduced choice of fund, which requires employers to allow employees the option to choose their superannuation fund.[16] The State Government advised that

[11] Explanatory notes, p 6.
[12] Explanatory notes, p 6.
[13] Explanatory notes, p 6.
[14] Explanatory notes, pp 2, 6-7.
[15] Explanatory notes, p 2.
[16] Australian superannuation funds are regulated by the Australian Government and the *Superannuation Guarantee (Administration) Act 1992* (Cwlth): explanatory notes, p 2.

choice of fund obligations for QSuper and LGIAsuper members were exempted from choice under Commonwealth legislation provisions.[17]

While it had been considered that 'employers who contributed to funds such as QSuper or LGIAsuper were deemed to meet choice obligations,' Queensland Treasury stated that it did not really allow 'employees the ability to choose their own superannuation fund.'[18] For this reason and to 'reflect today's mobile employment arrangements', the bill proposes to amend superannuation legislation to allow state and local government employees the option of choice of fund.[19]

Queensland Treasury elaborated:

> *The issue about choice of fund is really just reflective of modern employment arrangements. Historically, public sector employees would stay in the one job for 30 or 40 years and now that is not happening. They are moving around regularly and they want to take their superannuation with them. They also would like to continue their insurance in some instances. Plus we have also had a strong growth in the last few years of self-managed super funds. This keeps up with modern employment arrangements and how people want to set up their superannuation.*[20]

Several submitters expressed support for the amendment to allow choice of fund, including some unions and superannuation funds.[21] The Queensland Teachers' Union of Employees (QTU) stated:

> *The QTU supports this Bill because it enables public sector teachers to choose their superannuation fund. Given the more transient nature of employment within the public sector, the ability to open the membership of QSuper to the general public allows for a greater capacity for members to continue using the fund.*[22]

LGIAsuper also supported the amendment that would provide choice of fund to Queensland local government employees:

> *While mandating compulsory membership of LGIAsuper for Queensland local government employees has enabled the Fund to achieve scale advantages which have been passed on to members through low fees and costs and strong, risk-adjusted investment performance, the Board has recognised the inevitability of choice being applied to LGIAsuper's membership.*
>
> *LGIAsuper's membership already have the ability to transfer part or all of their accumulated balance to another fund while still working in Queensland local government under the Federal Government's portability rules. The amendments within the Bill will enable them to choose which fund their employer and member contributions will be paid to as well.*[23]

[17] The explanatory notes (p 2) stated: The choice of fund obligations are automatically satisfied when an employer pays superannuation contributions to certain funds, including an unfunded public sector scheme such as the State Public Sector Superannuation Scheme (QSuper), or are made under Commonwealth prescribed legislation, such as contributions made under the *Local Government Act 2009* (LG Act) to the Local Government Superannuation Scheme.

[18] Public hearing transcript, Brisbane, 21 July 2016, p 2.

[19] Explanatory notes, p 2.

[20] Public hearing transcript, Brisbane, 21 July 2016, p 3.

[21] Queensland Nurses' Union, submission 2, pp 2, 3; QSuper, submission 5; Together Queensland Industrial Union of Employees, submission 8, p 2; LGIAsuper, submission 10, p 3.

[22] Queensland Teachers' Union of Employees, submission 1, p 2.

[23] LGIAsuper, submission 10, p 2.

While other submitters expressed concern about proposed amendments to default fund and public offer (discussed below), these submitters did not raise any issues with allowing state and local government employees choice of fund.[24] As BUSSQ summarised:

> *The Fund choice element of the Bill will allow individual QLD government employees to choose any super fund to direct their super contributions. This is good policy for an employer to adopt and consistent with federal laws requiring "fund choice" and virtually all private sector employers nationally.*[25]

***Default fund status***

The bill proposes to amend the QSuper Act and LG Act to prescribe QSuper and LGIAsuper as the respective default superannuation funds for State public sector and local government employees for those employees who do not choose a superannuation fund.[26] Queensland Treasury explained that it was necessary to prescribe a default superannuation fund for employees as only about 6 per cent of people will exercise choice.[27] Queensland Treasury further advised that QSuper and LGIAsuper had been nominated as the default funds for state and local government employees for the following reasons:

> *For employees who do not choose a superannuation fund, it is really important that the employer choose a good quality fund as a default fund for them. For this purpose, in the bill we are nominating that QSuper and LGIAsuper would be retained as the default funds. Both of those funds are SIS regulated, meaning that they are controlled by the Commonwealth government. They are licensed to offer a default fund. They are clearly member focused. For example, not all funds allow members access to their money for financial hardship grounds, but both of those funds do. They are separate to their respective arms of government, that is, not owned by them yet have a long relationship with them. I think QSuper is over 100 years and LGIA is over 50 years. They are run by very capable and professional boards with employer, employee and independent representation. They have competitive fees, good returns, are award winning, administer the defined benefit funds and understand and accommodate the diversity found within the public sector workforce.*[28]

Several submitters supported the amendment.[29] LGIAsuper provided the following reasons for its support:

> *Appointing another fund as the default fund for local government employees may cause stress and anxiety on the employees in switching to an unknown fund. Also, it could result in loss of scale within LGIAsuper which has provided cost-effective benefits and strong, risk-adjusted investment performance to local government employees for over 50 years.*[30]

Some submitters queried the nomination of QSuper and LGIAsuper as the default funds for core State public sector and local government employees[31] and sought assurance that employees would

[24] EnergySuper, submission 12; Electrical Trades Union of Employees Queensland Branch, submission 13; Sunsuper, submission 16.

[25] BUSSQ, submission 15, p 3.

[26] Explanatory notes, p 6.

[27] Queensland Treasury, Public hearing transcript, Brisbane, 21 July 2016, p 3.

[28] Queensland Treasury, Public briefing transcript, Brisbane, 21 July 2016, p 2.

[29] Queensland Nurses' Union, submission 2, p 3; Together Queensland Industrial Union of Employees, submission 8, p 2; LGIAsuper, submission 10, p 3.

[30] LGIAsuper, submission 10, p 3.

[31] Energy Super, submission 12; Electrical Trades Union of Employees Queensland Branch, submission 13.

have the right to bargain on which superannuation fund should be the default fund covered by their collective agreements.[32] In response, Queensland Treasury advised:

> *An employer, usually in consultation with unions as part of its workplace industrial negotiations, decides the default superannuation fund for its employees. The Queensland Government is the employer of core State public sector employees which is a large and diverse sector of workers characterised by a mobile workforce working in multiple industries, multiple awards, many unions etc. As such, the decision has been made to retain QSuper as the single default superannuation fund at this stage. Unions representing core public sector employees support QSuper being the default fund for these employees (as confirmed in submissions made to the Committee from the Queensland Nurses' Union, the Queensland Teachers' Union and Together Union). The Queensland Government can, at any time in the future, review the decision, and if desired, choose another superannuation fund to be the default fund for employees.*
>
> *In summary, employers generally set the default superannuation fund for their employees in consultation with the relevant unions. The relationships between employers, unions and superannuation funds are mutually beneficial and should operate in the best interests of employees/members and have often been established over long timeframes. Consequently, it is uncommon for an employer to change their default as a result of one superannuation fund competing against another superannuation fund.*[33]

However, Sunsuper raised concerns regarding administrative arrangements which would impede the choice of other superannuation funds:

> *In practice, even if public sector superannuation arrangements were proposed to be opened to other funds, there would be no changes to these arrangements; given how strongly embedded public sector funds are in the payroll and other human resource systems of Government departments.*[34]

*Competitive advantage*

Some submitters expressed concern that the proposed amendment to nominate QSuper and LGIAsuper as the default funds would create an unfair competitive environment for these funds over other superannuation funds.[35]

ETU summarised its concerns as follows:

> *The inherent unfairness in the bill is that QSuper and LGIAsuper will have the capacity to fully expand their coverage into the private sector, while maintaining the benefit of exclusive default status in the state public sector and local government, while other super funds will not have the same opportunity to become a default fund for those employees in the state public sector and local government who may not be engaged with their superannuation.*[36]

Energy Super supported the view that the bill would create an unfair competitive advantage for QSuper and LGIAsuper as no other fund would have the opportunity to become the default fund for state and local government employees. Coupled with the amendment to open membership to the

[32] Together Queensland Industrial Union of Employees, submission 8, p 2.

[33] Queensland Treasury, response to submissions, p 2.

[34] Sunsuper, submission 16, p 3.

[35] Electrical Trades Union of Employees Queensland Branch, submission 13; Energy Super, submission 12, p 2; BUSSQ, submission 15, p 5; Sunsuper, submission 16.

[36] Electrical Trades Union of Employees Queensland Branch, Public hearing transcript, Brisbane, 21 July 2016, p 1.

public (public offer status), Energy Super argued that QSuper and LGIAsuper would be able to 'access employer defaults currently being offered by other funds without the opportunity for these funds to compete for default status of employers in QSuper and LGIA Super.'[37] Sunsuper argued:

> *…this Bill will create unfair competition that allows QSuper and LGIA Super to compete for default arrangements in the broad market whilst having their current default arrangements protected.*[38]

BUSSQ supported opening the default employer arrangements to competition.[39] Both ETU and Energy Super recommended either opening the default arrangements for the state public sector and local government to choice to encourage genuine competition or, failing that, prohibit QSuper and LGIAsuper from pursuing default fund status outside the state public sector and local government.[40] Energy Super identified that Western Australia had similar arrangements in regards to preventing super funds similar to QSuper and LGIAsuper from competing for new employer default business.[41]

In response to the recommendation that QSuper be prevented from competing for new employer default business, Queensland Treasury advised:

> *… the Bill does not prevent other funds from competing for core public sector employer default business. Rather, it reflects the Queensland Government's decision, as employer of Queensland's core State public sector employees, to have QSuper as the default fund for employees. Employers choose the default superannuation fund for their employees and any limits to this are limits on employers. Allowing core State public sector employees to choose a fund other than QSuper will increase competition and to restrict QSuper, which is to be an open fund, could be seen as anti-competitive. Further, Western Australia's default fund for public sector employees is an exempt public sector superannuation scheme and therefore cannot open its membership to the general public and is not regulated by the Australian Government. Consequently, a comparison between the proposed changes for Queensland and the current situation in Western Australia cannot be made.*[42]

Queensland Treasury argued that offering choice of fund would increase competition which would be of benefit to employees:

> *… by introducing choice we are actually putting QSuper and LGIAsuper into a competitive environment as well. We need to bear that in mind. Now they are going to have to go out there and compete for members which they have not had to do in the past.*[43]

QSuper supported the view that the bill would increase competition rather than decrease it and put QSuper on a level playing field with other superannuation funds:

> *Finally—and it comes down to the competitive discussion that we have heard—I mentioned that this is in fact increasing choice rather than decreasing choice. As we enter this more competitive world, we do so without being party to the multitude of industrial awards that many industry funds have access to today where they are named the default fund. As a closed fund, we have been unable to participate in this private sector award nomination process. I use as an example—and I do not like to talk about funds if they are not in the*

[37] EnergySuper, submission 12, p 2.
[38] Sunsuper, submission 16, p 3.
[39] BUSSQ, submission 15, p 4.
[40] Electrical Trades Union of Employees Queensland Branch, Public hearing transcript, Brisbane, 21 July 2016, p 1; EnergySuper, submission 12, p 3.
[41] EnergySuper, submission 12, p 3.
[42] Queensland Treasury, response to submissions, p 5.
[43] Queensland Treasury, Public briefing transcript, Brisbane, 21 July 2016, p 7.

> *room but it is an example of a Queensland fund—Sunsuper. It has been prescribed as the default fund in over 60 federal and state awards. QSuper has not had access to those awards.*[44]

*One default fund*

ETU proposed that state and local government employees be offered the choice of more than one default fund:

> *While the majority of our members have Energy Super as their industry super fund by virtue of how our members operate, we have other members who are members of various super funds. The proposal that we are suggesting is that, largely, the public sector has relevant enterprise agreements. Reference can be made in those documents to superannuation benefits and, like the private sector, those enterprise agreements can make reference to recommended default funds. They can have more than one default fund. What we are suggesting is that, if QSuper has the capacity to go out into the private sector and seek to be a default fund for employers for their employees in those businesses, the same opportunity should be afforded to other industry superannuation funds to approach government to put forward and tender to them what it is that their super fund can offer to members, which may be more beneficial than what QSuper can at that particular juncture.*[45]

However, Queensland Treasury stated that it was not uncommon for an employer to have one default fund and provided the following reasons for the decision to maintain QSuper as the single default fund at this time for core State public sector employees:

- to protect employees' superannuation in a Commonwealth regulated, industry respected superannuation fund that consistently provides industry leading investment returns
- to ensure minimal disruption to employees, payroll systems and human resource areas
- to consolidate superannuation for employees who move between departments and agencies (through career development and/or government structural changes), and
- to provide affordable insurance, particularly for employees employed in 'high risk' occupations – e.g. the police force.[46]

However, Queensland Treasury also advised that the proposed amendment would not constrain the Queensland Government 'from reviewing, in the future, its decision to make QSuper the single default fund for core State public sector employees.'[47] Queensland Treasury explained:

> *… QSuper does not have a monopoly position on default superannuation for the core public sector. However, decisions around the default fund would consider the interests of employees and efficiencies for departments and related agencies and cost impacts on Queensland's taxpayers.*[48]

Queensland Treasury provided the following example of the benefits of State sector core employees having access to one default fund:

> *Let us say you have a person who starts work in Treasury and they join fund A. They increase their insurance and they are in Treasury for six or seven years, and while they are in Treasury they develop a chronic illness. Then they decide to go over to Premier's and*

[44] QSuper, Public hearing transcript, Brisbane, 22 July 2016, p 7.
[45] Public hearing transcript, Brisbane, 22 July 2016, p 3.
[46] Queensland Treasury, response to submissions, p 1.
[47] Queensland Treasury, response to submissions, p 3.
[48] Queensland Treasury, response to submissions, p 3.

> *Premier's has fund B. They are working in Premier's for another year or so and then their illness comes back. Chances are their insurance in fund A will have lapsed because they have not kept that fund up, and in fund B they may not be covered. Or if they are covered, they are probably not covered for that additional insurance that they purchased under fund A. The Queensland government looks at itself as one employer. We can have our staff working in Treasury or in Premier's. They will move around. They are in police, Fire Services, ambulance—all sorts of places around government—but they are one employer. I think that is one of the nuances that has been missed in both of these submissions and the point I wanted to get across about why it is important to have just one default fund, because it is going to be messy for payroll to try and do anything different at this stage and not necessarily a good outcome for our employees.*[49]

***Public offer***

The bill proposes to amend the QSuper Act and LG Act to allow the general public to become members of QSuper and LGIAsuper.[50]

Submitters were divided on their views regarding this amendment. LGIAsuper and QSuper were supportive of the amendment with LGIAsuper stating that it would offset possible member fund transferrals with the introduction of the choice of fund amendment. LGIAsuper stated:

> *To date the Local Government Act has limited the Fund's membership to employees in Queensland local government and their spouses.*
>
> *… LGIAsuper members have had the ability to transfer out part or all of their accumulated balance to another fund under the portability rules. The Fund experienced leakages of members to other funds of approx $224m during 2015–16.*
>
> *With the introduction of choice of fund to Queensland local government employees the potential leakage of members will increase. To offset the leakage the Board requires the power to allow persons from outside local government to join the Fund so that it can maintain its scale advantages and continue to deliver strong, risk-adjusted investment performance with low fees which will result in higher retirement savings for members.*[51]

The Queensland Teachers' Union also considered the benefits of the proposed amendment as follows:

> *… the opening of the fund will attract new members to the scheme, therefore strengthening QSuper as a fund for all participating Queensland public servants.*[52]

<u>*Timing of commencement of provisions*</u>

Of concern to several submitters was the issue of the timing of when choice of fund would be offered to members and when public offer would occur.[53] ETU explained:

> *The Government has expressed an intention that choice of fund will not be available to State Public Sector and Local Government employees before 30 June 2017, while the timing of public offer remains unclear.*
>
> *If it were the case that QSuper and LGIAsuper were made available through public offer prior to State Public Sector and Local Government employees having the opportunity to*

[49] Public hearing transcript, Brisbane, 22 July 2016, p 24.
[50] Explanatory notes, p 6.
[51] LGIAsuper, submission 10, p 2.
[52] Queensland Teachers' Union of Employees, submission 1, p 2.
[53] Electrical Trades Union, submission 13, p 2; Energy Super, submission 12, p 2.

> *access choice of fund, this would create a further unfairness in the system. QSuper and LGIAsuper would have the capacity to pursue new members from outside of the State Public Sector and Local Government before other superannuation funds are able to pursue new members from within.*[54]

Energy Super and ETU therefore recommended that the timing of the commencement of QSuper and LGIAsuper's public offer status and member choice be aligned to occur at the same time.[55]

Queensland Treasury agreed with the recommendation and confirmed that public offer and choice would commence at the same time:

> *The Queensland Government will commence the Bill's 'open fund' provisions and 'choice of fund' provisions simultaneously and has not suggested otherwise. The Queensland Government recognises that it would not be appropriate to delay the commencement of the 'choice of fund' provisions, which is why simultaneous commencement is planned.*[56]

*Public perception of funds*

Another issue that was raised in relation to opening QSuper and LGIAsuper membership to the public was the perception that the public may have of these superannuation funds and the related impact on their competitive positioning in the market. Sunsuper argued that:

> *There is a strong potential for Queenslanders to perceive QSuper as "government backed" given Government control of key aspects of the fund. This will be attractive to some people. This is exacerbated by marketing features such as the fund's email address and website which use "qsuper.qld.gov.au" where comparable funds in NSW and Victoria (FirstState and VicSuper) are firststatesuper.com.au and vicsuper.com.au.*[57]

ETU noted that such a perception could lead to reputational risk for the Government:

> *… the fact that QSuper and LGIAsuper are both fully Government owned and known to be funded by Government, it lends itself to the public having a misconception that in some way returns are guaranteed by Government, which is not the case, but if returns do not match member expectation, the Government risks further damage to its reputation on that basis.*[58]

Energy Super held similar views and made further comment:

> *With LGIA Super and QSuper opening to the public and with full Government ownership, it may provide the perception that the Government is offering a Government guaranteed product and could lead to reputational risk. This perception would be increased by the fact that:*
>
> - *the Defined Benefit fund remains with the Accumulation Division,*
> - *it is well known that it is funded by the Government and*
> - *reconfirmed by the recent announcement to recoup some surplus.*
>
> *A number of States have grappled with this in the past and have made a number of adjustments prior to going to public offer status such as separating the Defined Benefit*

54 Electrical Trades Union, submission 13, p 2.
55 Electrical Trades Union, submission 13, p 2; Energy Super, submission 12, p 3.
56 Queensland Treasury, response to submissions, p 3.
57 Sunsuper, submission 16, p 3.
58 Electrical Trades Union, submission 13, p 2

> *assets and retaining ownership of this division then privatising the accumulation fund while still maintaining default status for the public sector.*[59]

Similarly, Sunsuper noted the approaches taken by Governments in other States:

> *Other Governments, such as NSW and Victoria, have dealt with public offer by stepping away from controlling key aspects of their state's public sector fund (such as the trust deed) or have not provided the fund with public offer status (South Australia).*[60]

BUSSQ Building Super (BUSSQ) also recommended that amendments be made to the bill to 'structurally separate the defined benefit from defined contribution' and 'shift the ownership of the defined contribution fund from Government to private ownership.'[61]

Queensland Treasury responded to concerns about the risk to the Queensland Government's reputation and the perception of these funds:

> *QSuper is not owned by the Queensland Government. QSuper is a trust, controlled by a board of trustees, and consequently its members own QSuper. QSuper is regulated by the Australian Government, which requires that it operate independently of the Queensland Government. QSuper has the same board structure as industry funds (the number of trustees representing contributing employers is equal to the number of trustees representing members, and there is also an independent chairperson).*
>
> *Members are aware of the independent status of QSuper. This was clearly demonstrated during the negative investment returns of the global financial crisis (GFC). There is no indication that members expected assistance from the Queensland Government for the GFC's impact on their superannuation. Queensland Treasury does not perceive any risk to the Queensland Government caused by the superannuation policy changes in the Bill.*[62]

Queensland Treasury also commented further on concerns regarding the government 'ownership' of QSuper:

> *As stated above, QSuper is not owned by the Queensland Government. QSuper is funded in a similar manner to many industry funds via a fee paid from member accounts.*
>
> *Energy Super states that the Queensland Government's decision to recoup some of the defined benefit funding surplus illustrates the Government's ownership of QSuper.*
>
> *These issues are totally separate. The fund which finances the employer share of defined benefit entitlements is held in a voluntary reserve by Government and not in QSuper. The Government's decision to recoup part of this reserve's surplus is not connected in any way to the superannuation proposals contained in the Bill.*[63]

In response to the recommendation to structurally separate the defined benefit from defined contribution, Queensland Treasury advised the following:

> *In 1997 the Queensland Government combined a number of separate public sector defined benefit schemes and a public sector accumulation scheme into one fund – QSuper. In 2009 the Queensland Government confirmed the decision to have public sector superannuation in one fund when QSuper became regulated by the Australian Government (both the defined benefit scheme and the accumulation scheme are federally regulated). One superannuation*

[59] Energy Super, submission 12, p 2.
[60] Sunsuper, submission 16, p 2.
[61] BUSSQ, submission 15, p 2.
[62] Queensland Treasury, response to submissions, p 4.
[63] Queensland Treasury, response to submissions, p 4.

*fund for all employees is in their best interests as often defined benefit members also have money in an accumulation account. Also, the administrative efficiency of retaining a single fund for superannuation is cost effective for payrolls, pay offices and members.*

*The situation in Queensland is different to other jurisdictions. For example, in NSW and Victoria separate accumulation schemes were established for public sector employees some years before choice of superannuation fund or public offer was considered.*

*Consequently, not only is the suggestion to separate the accumulation scheme from the defined benefit scheme outside the policy intent of the Bill, it would not be possible.* [64]

***Amendment to adjust an employee's defined benefit multiple***

The bill proposes to amend the QSuper Act to allow the Treasurer to adjust an employee's defined benefit multiple in situations where shortfalls arise between actual salaries and the assumptions upon which defined benefits entitlements are paid by employers and where the additional amounts are not paid into the scheme.[65] Queensland Treasury advised the following in relation to why the amendment was required:

*It is really an equity measure…It is around circumstances where this is no actual change in the member's circumstances in reality, if you like, but their superannuable salary changes. This can happen, for example, when people receive allowances and other components of their remuneration which are not part of their superannuable salary. The superannuable salary is the salary that gets multiplied by their accrued multiple to produce their benefit in the defined benefits scheme…*

*Someone might have a base salary of $90,000 and that is their superannuable salary. It is what you would consider as their standard salary. That would be the salary that their contributions are based on, not only the member contributions but the employer contributions. That is what their benefit would be based on if they were to leave at that time. Say they receive allowances of $30,000—the example we have given is that they have $30,000 of other allowances; $90,000, by the way, is about the average salary of a defined benefit member, so these numbers are fairly realistic—so they have a total remuneration package of $120,000. Then that member has a change in their circumstances. This is not usually decided by a member; it will be done by the employer—and there is no suggestion that this is done with any bad faith or nefarious intent.*

*If that salary is rolled up and superannuable salary then suddenly becomes $120,000—nothing changes for the member; they were still getting exactly the same money as they did before but their superannuable salary becomes $120,000—and nothing is done to their multiple, so the multiple still stays as it was which is currently what happens, they get a windfall. Suddenly they have a 30 per cent increase in their superannuable salary and thus a 30 per cent increase in their benefit, but absolutely nothing happened to them. You can imagine that that is seen as inequitable between that member and the same person sitting at the desk next to them who is an accumulation member. They had exactly the same thing happen to them. They had been there for exactly the same period of time. They had the same salaries. They would get nothing extra. Their future contributions would change with the new superannuable salary, and so it would with the DB member as well, but nothing would change in terms of their accrued entitlements. That is one big inequity.*

[64] Queensland Treasury, response to submissions, p 7.

[65] Explanatory notes, p 7.

> *The other problem is funding purposes. That liability has just suddenly jumped, and those sorts of changes are unfundable from an actuarial perspective. There are no economic constraints. The whole mechanisms of defined benefits schemes assume that salaries move in some sort of reasonable way. That does not mean that we know exactly what is going to happen, but it means that on average they move in reasonable ways.*[66]

The committee is satisfied that the proposed amendment to allow the Treasurer to adjust an employee's defined benefit multiple in this situation will meet the objective of the bill to protect the State's revenue.

Committee comment

The committee has considered the issues raised regarding proposed amendments to superannuation legislation, particularly relating to choice of fund, public offer and the proposed default fund status of QSuper and LGIAsuper.

The committee agrees with submitters and Queensland Treasury that the proposed amendment to allow state and local government employees to choose their superannuation fund will align with the choice available to employees outside of these sectors and that it will also reflect today's mobile working environment.

In regard to the proposed amendment to prescribe QSuper and LGIAsuper as the default funds for state and local government employees respectively and concerns that the bill would create an unfair competitive advantage for these superannuation funds, the committee is satisfied that the bill would not constrain the Queensland Government and local governments as employers from changing the default fund status of QSuper and LGIAsuper in the future. The committee is also satisfied with Queensland Treasury's advice that it is common for an employer to nominate one default fund and that this is in the best interest of employees. Further, the committee supports Queensland Treasury's reasoning that QSuper and LGIAsuper are suitable funds for nomination of single default fund status at this time and that this would cause the least amount of disruption to members.

The committee notes the general support regarding the amendment to open membership of QSuper and LGIAsuper to the general public. The committee also notes that Queensland Treasury responded to concerns that the timing of public offer and choice of fund be aligned and is satisfied that these two events will occur at the same time.

The committee notes that some submitters were concerned that the public perception of QSuper being a 'government owned' superannuation fund would create an unfair competitive advantage for the fund. However, the committee is satisfied with Queensland Treasury's advice that QSuper is not government owned and that members are aware of this and therefore would not rely on the government to assist the fund. The committee believes that this in turn means that there is no reputational risk to the Queensland Government in continuing to have QSuper as its default fund at this time.

For these reasons, the committee is satisfied with the proposed amendments to superannuation legislation within the bill.

## Amendments to the revenue legislation

### *Amendments to the* Duties Act 2001

The bill proposes to amend the *Duties Act 2001* (Duties Act) to:

[66] Queensland Treasury, Public briefing transcript, 21 July 2016, p 5.

- reinstate the interpretation and practice relating to a particular requirement for the transfer duty home concessions that was in place prior to the decision of the Queensland Court of Appeal in *Commission of State Revenue v Di Sipio & Anor* [2015] QCA 198
- give legislative effect to administrative arrangements which:
    - extend the insurance duty exemption for private health insurance contracts to overseas student health cover and temporary visa holder health cover, and
    - extend the corporate reconstruction exemptions from transfer duty and landholder duty to dutiable transactions which are statutory vestings, and
- remove a redundant transfer duty exemption and correct a drafting error.[67]

*Transfer duty home concessions*

The Duties Act imposes transfer duty on dutiable transfers such as the transfer of land, with transfer duty concessions available for certain dutiable transactions.

If a person satisfies certain criteria, a home concession can be obtained. If obtained, the home concession is subject to requirements regarding the occupation and disposal of the land. That is, the acquirer must:

- occupy the land as their principal place of residence (PPR) within 12 months of the transfer date, and
- not dispose of the land before occupying it
- not dispose of the land within 12 months of occupying it.[68]

However, a transitional period of occupation of up to six months after the transfer date by the vendor or pre-existing tenant is permitted.[69]

In 2015, the Queensland Court of Appeal held that 'no disposal occurs merely because land is purchased subject to a pre-existing lease and that the acquirer must do a positive act in relation to the pre-existing lease for a disposal to occur.'[70] This means that an acquirer may earn rental income from a pre-existing tenant for longer than six months after the transfer date and still obtain the home concession provided that the acquirer occupies the land within 12 months of the transfer date.[71]

Queensland Treasury maintained that the decision 'basically overturned longstanding policy and practice … which had been in place since 2001'.[72] The explanatory notes stated that the decision is 'not consistent with the policy of the home concession, and poses a risk to revenue'.[73]

Queensland Treasury elaborated:

> *The fundamental premise of the home concession provisions is to facilitate people, through concessions and duty relief, into home ownership. It is for the use of their principal place of residence. Conditions have been put in place around that concession to ensure that it is targeted to those people, obviously – that the use is for PPR – that there are not inconsistent uses to the person using it as a home. Obviously, investment is considered an inconsistent*

67 Explanatory notes, p 1.
68 Explanatory notes, p 3.
69 Explanatory notes, pp 3-4.
70 Explanatory notes, p 4. See also, *Commission of State Revenue v Di Sipio & Anor* [2015] QCA 198.
71 Explanatory notes, p 4.
72 Public briefing transcript, Brisbane, 21 July 2016, p 13.
73 Explanatory notes, p 4.

> *use to purchasing a property as your home. The ability to lease the property prior to moving into it is not allowed. That is considered an inconsistent use.*
>
> *When the provisions were designed, though, it was accepted that there will be cases, through no fault of their own, where the property that the person is looking at and wants to buy is subject to an existing tenancy. … It was considered that it might be unfair to those purchasers if they were prevented from getting the benefit of the home concession when they did not put the tenant in in the first place. …*[74]

Further:

> *Office of State Revenue compliance activity indicates there are approximately 470 further transactions potentially affected by the change in interpretation as a consequence of the Court of Appeal decision in* Di Sipio*, representing an estimated $3.59M in transfer duty foregone as a consequence of that decision. Similar or higher annual revenue impacts would be expected on an ongoing basis, with taxpayer behaviour adjusting to take advantage of the benefits of pre-existing leases at transfer.*[75]

The Housing Industry Association Limited (HIA) submitted that the six month requirement for the removal of the vendor or pre-existing tenant is 'arbitrary' and potentially 'unreasonably short' if a tenant has to be evicted.[76]

Queensland Treasury explained the reason that the period of six months was selected:

> *The six months was considered to strike a balance between all of those competing interests. Any time frame in tax legislation does tend to be arbitrary. I guess there is arbitrariness for the sake of being capricious and arbitrary but this was one was grounded in balancing all of those competing considerations and generally with the knowledge that most tenants have already started running. You do have six months. The purchaser has a choice when looking at that property. They will know the existing tenant. They will know the date of the end of the tenancy. They will understand their own financial circumstances. They have the full ability to make the choice going into the purchase knowing that, if they have a tenancy that has longer than six months to run, they may or may not necessarily be able to claim the concession.*[77]

Queensland Treasury further stated:

> *There is also a concern that it could have impacts in relation to the skew in the market. There is a concern that people could artificially have tenant arrangements put in place and that you can have exploitation of the concession …*[78]

The HIA disagreed with the assertion that tenancy arrangements may be arranged to take advantage of the current interpretation:

> *… it is extremely unlikely that anybody would seek to game the system by trying to purchase a property that had an existing tenant in it who would be staying in that house beyond six months but less than 12 months from the transfer date. It just seems incongruous that somebody would go to those lengths to have the owner-occupier concessions apply to them.*[79]

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74 Public briefing transcript, Brisbane, 21 July 2016, p 13.
75 Queensland Treasury, response to submissions, p 4.
76 Housing Industry Association Limited, submission 4, p 1.
77 Public hearing transcript, Brisbane, 22 July 2016, p 21.
78 Public briefing transcript, Brisbane, 21 July 2016, p 14.
79 Public hearing transcript, Brisbane, 22 July 2016, p 17.

Queensland Treasury outlined its position regarding the likelihood of the 12 months' rent being an incentive:

> *It is an equity issue. … On an average rental property of $450 a week, if that is your average rent, if I can rent that for 52 weeks that is $23½ thousand. I know the comment was made that that is possibly not enough incentive for people. Coming from the world we are in with tax and compliance, I can tell you that people will structure for that kind of money.*[80]

With respect to issues arising if a tenant refuses to leave a property within six months, Queensland Treasury advised:

> *I can say in all of the cases we have seen in this space there are procedures that must be followed under the residential tenancies act in order to have a tenant leave. Those have fairly decent lead times in terms of the notices that must be provided to ensure that the person is required to leave at the end of the term of the lease. In all of the years that we have administered this particular provision of the home concessions, the vast majority of the cases where a tenant has not left within time have all been where the owner has not actually complied with their requirements—they have not provided appropriate notices and have not complied with the residential tenancies legislation. From our perspective, with those requirements being one of the many arms of government, it is important that we are not seen to be usurping other protections within legislation put in place by government. In those situations, we say, 'You did not comply with what you needed to, so the cards fall where they fall.'*
>
> *We have had one instance … where the person had done everything that they could have been required to do and had a very recalcitrant tenant who refused to leave and went through a protracted process to get them out. While the legislation itself does not cater for that situation specifically, we have a separate process within the Treasury department, as most departments do, which is an ex gratia process. In those circumstances that was a situation where we said, 'That is not fair. They have done everything that they should. It is not fair that they lose the concession for something that was outside their control when they have come to the process with clean hands.' That was a situation where we actually recommended for ex gratia relief.*[81]

The HIA recommended that the bill be amended to provide that a home concession is dependent on:

- the property becoming the PPR within 12 months of the transfer of ownership
- the property remaining as the PPR for a minimum of a further 12 months.[82]

HIA's view was that the home being used as the PPR within 12 months is 'a more than adequate safeguard against exploitation of the concession.'[83]

Queensland Treasury considered the recommendation to be 'a significant change to the policy and existing conditions of the home concession.'[84]

Committee comment

The committee notes that the proposed amendment to the *Duties Act 2001* in relation to the home concession is to reinstate the original policy intention and longstanding practice. We recognise the issues regarding the proposed amendment raised by the Housing Industry Association Limited but, in

[80] Public hearing transcript, Brisbane, 22 July 2016, p 21.
[81] Public hearing transcript, Brisbane, 22 July 2016, pp 22-23.
[82] Housing Industry Association Limited, submission 4, pp 1-2.
[83] Housing Industry Association Limited, submission 4, p 1.
[84] Queensland Treasury, response to submissions, p 3.

light of the forecast $3.59 million in transfer duty that would be foregone in relation to current transactions, and further amounts related to future transactions, we support the proposed amendments.

*Legislative effect to administrative arrangements*

The Duties Act imposes insurance duty on premiums charged under contracts of general, life and accident insurance but an exemption applies for private health insurance contracts. An amendment to the Duties Act in 2008 'inadvertently excluded overseas student health insurance contracts and temporary visa holder health insurance contracts from the exemption.'[85] The error was identified in 2014 and an administrative arrangement was put in place to extend the insurance duty exemption to cover overseas student health insurance contracts and temporary visa holder health insurance contracts. The bill proposes to give legislative effect to the administrative arrangement.[86]

The Duties Act provides exemptions from transfer duty and landholder duty for certain dutiable transactions related to corporate reorganisations. At the time the provisions were drafted, it was not contemplated that a voluntary reconstruction could be undertaken through a statutory vesting process. Nevertheless, it has occurred.[87] Queensland Treasury advised: 'It is not intended that that is not covered; it was just never contemplated that it could be done that way.'[88] The bill proposes to give legislative effect to an administrative arrangement has operated since 30 November 2015 to extend the corporate reconstruction exemptions to statutory vestings.[89]

*Minor amendments*

The bill proposes to remove a redundant transfer duty exemption for transactions under the repealed *Anzac Square Development Project Act 1982* and correct a typographical error in the example in schedule 4 of the Duties Act.[90]

### *Amendments to the* Land Tax Act 2010

The bill proposes to amend the *Land Tax Act 2010* to give legislative effect to an administrative arrangement which has operated since 4 October 2014. The administrative arrangement removes a condition which requires parcels of land to have been subdivided from one larger parcel for a discount to be applied to the value of each parcel.

The bill also proposes to make minor amendments to the land tax exemption where a person transitions from their old home to a new home to clarify that the new home must be an established home, not vacant land. The explanatory notes explained that this reflected the intended policy of the transitional home exemption and the general operation of the Land Tax Act regarding exemptions.[91]

### *Amendments to the* Taxation Administration Act 2001 *and the Taxation Administration Regulation 2012*

The bill proposes to amend the *Taxation Administration Act 2001* to:

- clarify provisions which specify the time at which a document is taken to be given to, and when a payment is taken to be received by, the Commissioner of State Revenue

85 Explanatory notes, p 4.
86 Explanatory notes, pp 1, 4.
87 Public briefing transcript, Brisbane, 21 July 2016, p 13.
88 Public briefing transcript, Brisbane, 21 July 2016, p 13.
89 Explanatory notes, p 5.
90 Explanatory notes, p 5.
91 Explanatory notes, pp 1, 5.

- clarify that costs ordered by the Queensland Civil and Administrative Tribunal (QCAT) are included in a person's tax liability
- correct a cross-reference related to the review jurisdiction of QCAT.

The bill proposes to amend the *Taxation Administration Regulation 2012* to prescribe the time at which an electronic payment is taken to be received by the Commissioner of State Revenue.[92]

Committee comment

The committee supports the proposed amendments to the *Land Tax Act 2010*, the *Taxation Administration Act 2001* and the *Taxation Administration Regulation 2012* as well as the amendments to the *Duties Act 2001* relating to health insurance and reconstruction exemptions.

### Amendment of the *Queensland Plan Act 2014*

In early 2013, the Queensland Government began the process to develop a 30-year vision for the state. The process involved community engagement in which over 78,000 Queenslanders identified their priorities for the State and 600 Queenslanders participated in a Brisbane Summit.[93] The committee heard that the Queensland Plan (the plan) is significant in that:

> *In a world where there is so much public time and debate focused on the short term, the Queensland Plan provides a 30-year vision for Queensland and a facility to enable a continuing conversation about the steps we as a state need to be taking in embracing the needs and opportunities of the longer term.*[94]

The plan articulated the following vision for the State:

> *In 30 years Queensland will be home to vibrant and prosperous communities.*
>
> *Our state will be well planned with the right infrastructure in the right places to support a population that has grown across every region.*
>
> *We will value education as a lifelong pursuit where we gain practical skills, enrich our lives, find secure jobs and improve the competitiveness of our economy.*
>
> *Our brightest minds will take on the world and we will work collaboratively to achieve the best results for Queensland.*
>
> *We will be the greatest state in which to live, work and play, and guardian of a sustainable natural environment that inspires an active lifestyle and supports healthy communities.*
>
> *We will have a community spirit that embraces our diversity and unique culture and gives everyone the opportunity to shine. We will not leave anybody behind.*
>
> *Government can't do this alone but as a community working together we can achieve everything we want for our state's future.*[95]

The *Queensland Plan Act 2014* provides a framework that aligns the actions by governments, business, industry and community organisations in shaping the future growth and prosperity of the state.[96] The main purposes of the Act are to:

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92 Explanatory notes, pp 1, 2, 6.

93 Queensland Plan website, https://www.queenslandplan.qld.gov.au/about/the-vision.aspx accessed 26 July 2016.

94 Public hearing transcript, Brisbane, 22 July 2016, p 11.

95 Queensland Plan website, https://www.queenslandplan.qld.gov.au/about/the-vision.aspx accessed 26 July 2016.

a. provide for the development and ratification of a plan, known as the Queensland Plan, that—

   i. establishes a long-term vision for the future growth and prosperity of Queensland; and

   ii. reflects the aspirations of the community, business and industry for the future of Queensland; and

b. provide for the implementation of the Queensland Plan, including by—

   i. developing a government response to the Queensland Plan and aligning the policies, programs and services of public authorities to the strategic direction of the government response; and

   ii. aligning local government planning to the strategic direction of the Queensland Plan; and

   iii. encouraging the community, business and industry to implement the Queensland Plan; and

c. establish the ambassadors council to advocate for the implementation of the Queensland Plan by the community, business and industry.[97]

***Amendment of the QP Act***

The bill will not alter:

- the ongoing operation of The Queensland Plan Ambassadors Council
- the requirement on the government to issue an annual progress report to the parliament
- the requirement for the plan to be reviewed and updated every five years
- the requirement that local government take the Queensland Plan into account in their corporate planning activities.[98]

The bill's objective is to replace the annual requirement to develop and implement a government response to the plan[99] with a requirement for the Premier to consider the Queensland Plan in developing the statement of government objectives for the community under the *Financial Accountability Act 2009* (FA Act).[100]

The FA Act, section 10, articulates requirements regarding the community objectives of government:

*(1) From time to time, the Premier must prepare and table in the Legislative Assembly a statement of the State government's broad objectives for the community.*

*(2) The statement must include details of arrangements for regular reporting to the community about the outcomes the government has achieved against its objectives for the community.*

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96 Queensland Plan website, https://www.queenslandplan.qld.gov.au/about/the-vision.aspx accessed 26 July 2016.

97 Queensland Plan website, https://www.queenslandplan.qld.gov.au/about/the-vision.aspx, accessed 26 July 2016.

98 Department of Premier and Cabinet, public briefing transcript, Brisbane, 21 July 2016, p 11.

99 Section 3(b)(i) See the 2014/2015 government response: https://www.queenslandplan.qld.gov.au/resources/plans-and-reports/annual-progress-report-14-15.aspx, accessed 26 July 2016.

100 Public briefing transcript, Brisbane, 21 July 2016, p 11. Explanatory notes, p 15

> *(3) The Premier must prepare and table the first statement of broad objectives within 90 days after the commencement of this section.*[101]

By removing the requirement for a government response there is no longer the need for reporting requirements against the government's response.[102]

The Department of Premier and Cabinet argued that:

> *A proposed new provision ensures The Queensland Plan is considered in the development of the objectives for the community under the* Financial Accountability Act 2009*. Departments are already required to base their strategic and financial planning on those objectives, and to report on their contribution to those objectives in Annual Reports. This provision would, therefore, ensure that The Queensland Plan is indirectly reflected in departmental planning and reporting… Removing the requirement for a government response re-focusses attention on The Queensland Plan itself as a bipartisan long-term vision for the State.*[103]

The Queensland Plan Ambassadors Council raised concerns regarding the removal of the requirement for a government response as it would weaken both the profile and effectiveness of the plan.

> *The replacement of 3(b)(i) with a requirement that it "be considered in preparing a community objectives statement" potentially relegates the profile of the Queensland Plan within state governance arrangements and changes substantially one of the main purposes of the Act, namely to secure alignment of state policy, programs and services with "the strategic direction of the government response" to the Plan. The proposed amendment would replace a specific positive action statement with a less-committed statement requiring "consideration" in the formulation of a community objectives statement as required by another piece of legislation, the Financial Accountability Act 2009.*[104]

The bill also repeals local government reporting obligations under the plan which requires public authorities and local governments to include statements about the Queensland Plan in their annual reports.[105] The committee were informed that:

> *The burden at the moment is that [local governments] are required to incorporate the Queensland Plan in their corporate plans and they are required to report in their annual reports on what they have done in respect of those things in their corporate plans in relation to the Queensland Plan… The second of those things will be removed under this bill; the first of those things will not be removed under this bill.*[106]

LGAQ oppose the annual report reporting requirements for local government and have consistently sought to have extra or duplicate administrative burdens removed.[107]

> *LGAQ and a number of councils expressed concern … over the potential extra administrative burden on having to report in their annual report... In a general sense, councils and local governments are always concerned about. Just to clarify that it really was a duplication, under the Local Government Regulations it actually prescribes what a council has to include in its annual report. The first one of these is the chief executive officer's assessment of the local government's progress towards implementing its five-year corporate plan and annual*

[101] Financial Accountability Act 2009, section 10.
[102] Public hearing transcript, Brisbane, 22 July 2016, p 27.
[103] Response to submissions, 22 July 2016, p 5.
[104] The Queensland Plan Ambassadors Council, submission 9, p 2.
[105] Revenue and Other Legislation Amendment Bill 2016, explanatory notes, p 16.
[106] Public hearing transcript, Brisbane, 22 July 2016, p 24.
[107] Public hearing transcript, Brisbane, 22 July 2016, p 25.

> *operational plan. Indeed, if they have something in their corporate plan or annual operational plan which somehow relates to an achievement which aligns with the Queensland Plan, they will automatically be reporting against that in their operational plan via this requirement in the Local Government Regulation.*[108]

The Queensland Plan Ambassadors Council argued that by removing the requirement for local government to report annually, a significant accountability mechanism would be lost:

> *The Council believes annual reports to be core accountability and communications artefacts of government which give the Plan visibility in its implementation. It is essential for accountability that public reporting via annual reports be mandated. This should not be an onerous task as the information would already be available and easily accessible.*[109]

Further the committee heard that as the plan was a high-level aspirational plan, reporting requirements should not be onerous:

> *We do not believe it would be onerous for any organisation to make commitments by way of responding to the plan. Where it has such aspirations, for the various levels of government and across government, it would be quite clearly in their interests to also report against the aspirations of the Queensland community through the plan.*[110]

Committee comment

The committee is of the view that Queenslanders support a long-term plan and vision for the State, such as the one offered by the Queensland Plan.

The committee acknowledges concern from The Queensland Plan Ambassadors Council regarding the potential to weaken the reporting and therefore accountability and development outcomes of the plan. The committee agrees that there is a need to ensure that:

> *… the plan remain a living document and process in our public discussions and to be implemented. For it to be viable as a long-term process, however, the Queensland Plan needs to remain visible and relevant and a point of focus, not only for government but also to industry, business, and the community.*[111]

We are aware that for governments, publically reporting on their activities may be perceived as an onerous task. However, the committee are of the view that public reporting supports the alignment of state policy, programs and services under the plan. The committee is concerned that the proposed reporting requirements under the *Financial Accountability Act 2009* section 10 are broad. The community objectives statement lacks detail by providing high-level aspirational objectives and this may weaken the awareness of the plan and accountability in regard to its implementation.

The committee views the Queensland Plan Annual Progress Report, produced each year by the Queensland Government, as a useful mechanism for detailing the range of activities of towards the plan.

The committee considers that an annual reporting requirement should be retained for public authorities and local governments.

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[108] Public hearing transcript, Brisbane, 22 July 2016, p 25. Local Government Association of Queensland, submission 3.

[109] The Queensland Plan Ambassadors Council, submission 9, p 3.

[110] Public hearing transcript, Brisbane, 22 July 2016, p 13.

[111] Public hearing transcript, Brisbane, 22 July 2016, p 11.

**Recommendation 2**

The committee recommends that the Revenue and Other Legislation Amendment Bill 2016 be amended to require that a local government's annual report for each financial year must include a statement about the local government's actions in relation to matters in its corporate plan that relate to the Queensland Plan.

# 3 Compliance with the *Legislative Standards Act 1992*

## Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that 'fundamental legislative principles' (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:

- the rights and liberties of individuals
- the institution of parliament.

The committee examined the application of FLPs to the bill.

## Potential FLP issues

The committee is of the view that clauses 10, 16, 54, 62 and 68 contain potential breaches of fundamental legislative principles.

### *Clauses 10 and 16*

Section 4(2)(a) of the LSA provides that the fundamental legislative principles include requiring that legislation has sufficient regard to the rights and liberties of individuals.

*Clause 10*

Clause 10 inserts transitional provisions under new part 22 (sections 663-666) in chapter 17 of the *Duties Act 2001*.

Section 665 (Retrospective operation of section 375) provides that section 375, as amended by clause 7 of the Bill, applies to contracts of insurance for which insurance duty would otherwise be payable on or after 14 October 2014.

Section 666 (Retrospective operation of section 404) provides that section 404, as amended by clause 8 of the Bill, applies to a vesting of dutiable property that takes place on or after 30 November 2015.

*Clause 16*

Clause 16 inserts new section 99 of the *Land Tax Act 2010*, a transitional provision. Section 30, as amended by clause 13, is taken to have had effect on and from 4 October 2014.

Potential FLP issues

Clause 10, through sections 665 and 666, allows for sections 375 and 404 to operate retrospectively. Likewise, clause 16 allows section 30 to operate retrospectively.

These are potential breaches of section 4(3)(g) of the LSA which provides that legislation should not adversely affect rights and liberties, or impose obligations retrospectively. Strong argument is required to justify an adverse effect on rights and liberties, or imposition of obligations, retrospectively.

The explanatory notes provide the following justification for the retrospective sections:

> *It is not considered that this breaches fundamental legislative principles as the amendments provide a benefit to taxpayers by extending the availability of tax exemptions and*

> *concessions which have operated under administrative arrangements, most of which have been made publically available.*[112]

Committee comment

In light of the justification provided in the explanatory notes, being that the amendments will be beneficial to the general public, the committee considers the retrospective operation of the clauses to be appropriate in the circumstances.

***Clause 68***

Section 4(4)(b) of the LSA provides that whether a bill has sufficient regard to the institution of Parliament depends on whether, for example, the bill sufficiently subjects the exercise of a proposed delegated legislative power (instrument) to the scrutiny of the Legislative Assembly.

Clause 68(1) provides that the section applies to an employed member or former employed member in the standard defined benefit category if:

(a) the member's salary as at an annual review date is higher than the member's previous annual review date salary, and

(b) the Treasurer, on the advice of an actuary, believes the increase in salary is, or includes, an unremunerative increase.

Pursuant to clause 68(2) the Treasurer may decide a relevant accrued multiple for the member, as at the annual review date, to be an amount recommended by an actuary that:

(a) excludes the effect of the unremunerative increase, and

(b) does not otherwise affect the member's benefits in the standard defined benefit category at the annual review date.

The explanatory notes provide the following information in relation to the clause:

> *A defined benefit is calculated based on a person's salary and an accrued multiple representing their years of scheme membership. Consequently, an increase in salary has an immediate increase in the accrued benefit. For accumulation account members, such an increase in salary will only affect future benefits. Promotional and general increases in salary are reasonable where there is an increase in the person's total remuneration. However, in situations where the increase in salary has not increased overall remuneration, e.g. conversion of an allowance to base salary, an adjustment, in a method recommended by an actuary, will apply to defined benefit members' accrued multiples to offset the increase in the benefit caused by the unremunerative salary increase. Importantly, this will not reduce the person's accrued benefit excluding the increase.*[113]

Potential FLP issues

The committee notes that clause 68(2) provides the Treasurer with a discretionary power to decide a member's accrued multiple in the standard defined benefit category, in the manner recommended by an actuary.

Section 4(4)(b) of the LSA provides that a bill should sufficiently subject the exercise of a delegated legislative power to the scrutiny of the Legislative Assembly. It is therefore arguable that clause 68 does not subject the Treasurer's decision to sufficient scrutiny.

[112] Explanatory notes, p 8.

[113] Explanatory notes, pp 17-18.

*Appropriate delegation of legislation*

The Office of Queensland Parliamentary Counsel Notebook states 'For Parliament to confer on someone other than Parliament the power to legislate as the delegate of Parliament, without a mechanism being in place to monitor the use of the power, raises obvious issues about the safe and satisfactory nature of the delegation'.[114] The matter involves consideration of whether the delegate may only make rules that are subordinate legislation, and thus subject to disallowance.

> *The issue of whether delegated legislative power is sufficiently subjected to the scrutiny of the Legislative Assembly often arises when the power to regulate an activity is contained in a guideline or similar instrument that is not subordinate legislation and therefore is not subject to parliamentary scrutiny.*[115]

The Scrutiny of Legislation Committee (SLC) commented adversely on provisions allowing matters, which might reasonably be dealt with by regulation, to be processed through some alternative means that does not constitute subordinate legislation and therefore is not subject to parliamentary scrutiny. In considering the appropriateness of delegated matters being dealt with through an alternative process, the SLC considered:

- the importance of the subject dealt with;
- the practicality or otherwise of including those matters entirely in subordinate legislation;
- the commercial or technical nature of the subject matter;
- whether the provisions were mandatory rules or merely to be had regard to.[116]

The explanatory notes address the potential FLP and provide the following justification for the clause:

> *The power can only be used when there has been an increase in the employee's defined benefit salary in circumstances where there has not been an increase in the employee's total remuneration, e.g. when an allowance is converted to base salary. It is not considered that this breaches fundamental legislative principles as the 'windfall' benefit caused by an arbitrary increase in salary is not a right of the employee. Further, the power supports prudent financial management of defined benefit liabilities, essential to sustaining the scheme and protecting the rights of all defined benefit members.*[117]

Committee comment

Clause 68 provides the Treasurer with a significant discretionary power. However, the committee notes the justification provided in the explanatory notes in that the power can only be used in certain circumstances, that is, where there has been an increase in the employee's defined benefit salary yet there has been no increase in the employee's total remuneration. The committee also notes that the Treasurer may make a decision on an adjustment based on the advice of an actuary. The committee is therefore satisfied that the clause is appropriate in these circumstances.

[114] Office of the Queensland Parliamentary Counsel (OQPC), Fundamental Legislative Principles: *The OQPC Notebook*, p 154.
[115] OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 155.
[116] OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, p 155.
[117] Explanatory notes, p 9.

***Sections 54 and 62***

Section 4(c) of the LSA provides that whether a bill has sufficient regard to the institution of Parliament depends on whether, for example, the bill authorises the amendment of an Act only by another Act.

*Clause 54*

Clause 54 inserts new section 2A into the *Superannuation (State Public Sector) Act 1990*.

New section 2A(1) provides that the Minister may, by written notice, declare an entity to be a unit of the state public sector. Pursuant to clause 54(2), if there is any doubt that a person is an employee of a unit of the state public sector, the Minister may, by written notice, declare whether the person is or is not an employee of a unit of the state public sector.

Section 2A(3) provides that a notice under 2A(1) or (2) is subordinate legislation.

*Clause 62*

Clause 62(1) provides that the Minister may, by written notice, declare the employees of a unit of the state public sector who are core government employees for this Act.

Pursuant to clause 62(2) a notice under section 62(1) is subordinate legislation.

Potential FLP issues

In allowing the Minister to make a declaration by written notice, both clauses 54 and 62 potentially breach the FLP that a bill should only authorise the amendment of an Act by another Act, pursuant to section 4(4)(c) of the LSA.

A clause in an Act, which enables the Act to be expressly or impliedly amended by subordinate legislation or executive action is defined as a Henry VIII clause. The SLC's approach to Henry VIII clauses was that if an Act purported to be amended by a statutory instrument (other than an Act) in circumstances that were not justified, the SLC would voice its opposition by requesting that Parliament disallow the part of the instrument that breached the FLP requiring legislation to have sufficient regard for the institution of Parliament.[118] The SLC considered the possible use of Henry VIII clauses in the following limited circumstances:

- to facilitate immediate executive action;
- to facilitate the effective application of innovative legislation;
- to facilitate transitional arrangements;
- to facilitate the application of national scheme legislation.[119]

In relation to clause 54, the explanatory notes provide the following justification:

> *It is not considered that this breaches fundamental legislative principles as employers either request or consent to participation in QSuper. It is appropriate for the Minister, as Treasurer, to exercise this power because the Treasurer is responsible for overseeing the impact QSuper's contributing employers have on defined benefit liabilities. In addition, the Minister's written notice is subordinate legislation and therefore, subject to the scrutiny of the Legislative Assembly.*[120]

The explanatory notes provide the following justification for clause 62:

[118] OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, page 159.
[119] OQPC, Fundamental Legislative Principles: *The OQPC Notebook*, page 159.
[120] Explanatory notes, p 9.

> *It is not considered that this breaches fundamental legislative principles as it is appropriate for the Minister, as Treasurer, to exercise this power as the Treasurer represents the Queensland Government in its capacity as the primary employer sponsor of QSuper. In addition, the Minister's written notice is subordinate legislation and therefore, subject to the scrutiny of the Legislative Assembly.*[121]

Committee comment

Clauses 54 and 62 allow the Minister to make declarations by way of written notice as opposed to making amendments through an Act.

Given that the bill seeks to provide a greater choice to the general public as well as current members of QSuper and LGIAsuper, it may be argued that clauses 54 and 62 satisfy circumstances envisaged by the SLC in which legislation is amended to facilitate transitional arrangements.

Further, these clauses specifically require the written notices to take the form of subordinate legislation, which is considered by a parliamentary committee and is subject to disallowance. For these reasons, the committee concludes that sufficient regard has been given to fundamental legislative principles in relation to clauses 54 and 62.

### Explanatory notes

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the bill. The notes are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the bill's aims and origins.

[121] Explanatory notes, p 9.

# Appendices

## Appendix A – List of submitters

| Sub # | Name |
|---|---|
| 1 | Queensland Teachers' Union of Employees |
| 2 | Queensland Nurses' Union |
| 3 | Local Government Association of Queensland |
| 4 | Housing Industry Association Limited |
| 5 | QSuper |
| 6 | Australian Property Institute |
| 7 | Confidential |
| 8 | Together Queensland Industrial Union of Employees |
| 9 | The Queensland Plan Ambassadors Council |
| 10 | LGIAsuper |
| 11 | Confidential |
| 12 | Energy Super |
| 13 | Electrical Trades Union of Employees Queensland |
| 14 | Confidential |
| 15 | BUSSQ |
| 16 | Sunsuper |

## Appendix B – List of witnesses at the public briefing and public hearings

### PUBLIC BRIEFING – 21 JULY 2016

**Queensland Treasury**

- Mr Wayne Cannon, State Actuary, Queensland Treasury
- Ms Melinda Kross, Director Policy and Legislation, Office of State Revenue
- Ms Narelle Houston, Special Policy Advisor, Office of State Revenue
- Ms Lyn Melcer, Representing the Government Superannuation Officer, Queensland Treasury

**Department of Premier and Cabinet**

- Mr Jim Groves, Director, Research and Evaluation

**Department of Infrastructure, Local Government and Planning**

- Mr Bill Hastie, Manager (Policy), Legal, Legislation and Policy Services

### PUBLIC HEARING – 22 JULY 2016

**Electrical Trades Union of Employees Queensland**

- Ms Neisha Keys, Industrial Officer
- Mr Stuart Traill, Supply Industry Organiser

**QSuper**

- Mr Michael Pennisi, Chief Executive Officer
- Mr Glen Hipwood, Executive General Manager, Strategy and Performance

**The Queensland Plan Ambassadors Council**

- Mr Mark Henley, Acting Chairperson
- Professor John Cole OAM

**Housing Industry Association**

- Mr Warwick Temby, Executive Director

**Queensland Treasury**

- Ms Melinda Kross, Director Policy and Legislation, Office of State Revenue
- Ms Narelle Houston, Special Policy Advisor, Office of State Revenue
- Ms Lyn Melcer, Representing the Government Superannuation Officer, Queensland Treasury

**Department of Premier and Cabinet**

- Mr Jim Groves, Director, Research and Evaluation

**Department of Infrastructure, Local Government and Planning**

- Mr Bill Hastie, Manager (Policy), Legal, Legislation and Policy Services

## Statement of Reservation

The LNP Opposition Members have concerns regarding Clause 68, which will insert a new section 28A into the Superannuation (State Public Sector) Act 1990. As highlighted through questioning from the Member for Burleigh during the public briefing, this amendment gives the Treasurer the ability to change the multiple at which a standard defined benefit member's final retirement benefit is calculated. Some of the Opposition's concerns relate to the lack of appeal rights regarding the application of this change. We will be further highlighting these concerns during the second reading debate.

Mark Robinson MP
**Deputy Chair**

Michael Hart MP
**Member for Burleigh**