



Superannuation Legislation Amendment (Family Law) Bill.

Second Reading

The Hon. JOHN DELLA BOSCA (Special Minister of State, Minister for Commerce, Minister for Industrial Relations, Assistant Treasurer, and Minister for the Central Coast) [9.14 p.m.]: I move:

That this bill be now read a second time.

I seek leave to incorporate my second reading speech in *Hansard*.

Leave granted.

The Superannuation Legislation Amendment (Family Law) Bill 2003 proposes to make a number of amendments to legislation governing the New South Wales judicial, parliamentary and public sector employees' superannuation schemes. Most of the proposed amendments stem from Commonwealth reforms that provide for the division of superannuation on marriage breakdown under the Family Law Act 1975. In general terms, the new Commonwealth laws make superannuation part of the marital property and prescribe a range of processes to facilitate superannuation splitting where that is appropriate.

First, the legislation prescribes the information that trustees must give to the parties on request to help them make decisions. Second, it sets down detailed methods for the court to value superannuation interests. In some cases, the Federal Attorney-General is able to approve other methods for valuing entitlements where this is appropriate. Third, the legislation sets out the processes for the couple or the court to either defer the decision about the split by using a payment flag, or to allocate all, or part, of a future benefit entitlement to the member's spouse. Fourth, the legislation provides the rules which will bind the trustee to pay out the spouse's entitlement in certain ways when the member's benefit becomes payable.

The Commonwealth has been able to rely on its constitutional powers to achieve the immediate physical splitting of certain classes of benefits. These are accumulation interests in superannuation funds which are regulated under the Superannuation Industry (Supervision) Act 1993. If an order or agreement provides a member's spouse with an entitlement in a regulated accumulation scheme, that person can request the trustee to create a separate benefit in the plan or move the benefit to a different plan. Even if the member's spouse has not made such a request, the scheme's governing rules may empower the trustee to set up a separate account or transfer the spouse's entitlement elsewhere.

The New South Wales First State Superannuation Act 1992 governs the accumulation scheme covering New South Wales public sector employees. It was amended during the spring sitting of Parliament last year, as honourable members would recall, to replicate the framework set out by the Commonwealth for family law entitlements in accumulation schemes. The bill proposes to enable the creation of separate interests in all the public sector defined benefit schemes, wherever this is appropriate. The amendments proposed will also facilitate compliance with the requirements of family law. The Acts to be amended are the First State Superannuation Act 1992, the Judges' Pensions Act 1953, the Parliamentary Contributory Superannuation Act 1971, the Police Association Employees (Superannuation) Act 1969, the Police Regulation (Superannuation) Act 1906, the State Authorities Non-contributory Superannuation Act 1987, the State Authorities Contributory Superannuation Act 1987, and the Superannuation Act 1916.

As might be expected, the legislative amendments are more substantial for defined benefit schemes. This is largely because the design and structure of each of these schemes is unique and the accrual of interests is more complicated to quantify. The impact of the proposed amendments will be to pay the family law superannuation entitlement to the spouse or transfer it to another superannuation fund as soon as possible. At the same time as the entitlement is paid from the fund, there will be a corresponding reduction of the member's superannuation entitlements. The amendments include regulation-making powers to deal with matters of detail. These will include making elections, the composition of payments, periods of payment, calculation of entitlements, calculation of the value of superannuation interests, additional circumstances for payment and the reduction of benefits.

Members of the House will be aware that amendments can be made to the Parliamentary Contributory Superannuation Act 1971 only after the Parliamentary Remuneration Tribunal has first certified that the amendments are warranted. I am pleased to advise the House that the Hon. Roger Boland, constituting the Parliamentary Remuneration Tribunal, has issued a certificate approving the proposed amendments in accordance with the requirements of the Parliamentary Remuneration Act 1989. The tribunal's determination was gazetted on Friday 7 November 2003. In summary, the proposed amendments will complement the Commonwealth's family law superannuation splitting framework and implement the creation of separate interests wherever possible in the New South Wales public sector defined benefit schemes.

The bill includes also miscellaneous amendments to deal with three issues of a minor nature. These amendments will enable some superannuation changes previously made to be applied consistently across all New South Wales public sector schemes. The first set of amendments will allow pensions paid under the Transport Employees Retirement Benefits Act 1967 and the New South Wales Retirement Benefits Act 1972 to be adjusted in line with the consumer price index in years when the index is less than 1 per cent but more than 0 per cent. The same changes were made to the State Superannuation Scheme, the State Authorities Superannuation Scheme and the Police Superannuation Scheme in late 2000. The changes will mean that all New South Wales public sector pensions can be adjusted to reflect small increases in the index in the year in which they occur.

The second set of miscellaneous amendments extends the definition of "spouse" in the Local Government and Other Authorities (Superannuation) Act 1927, the Transport Employees Retirement Benefits Act 1967, the New South Wales Retirement Benefits Act 1972 and the Public Authorities Superannuation Act 1985 to include de facto partners and same-sex partners. De facto partners were included in the definition of spouse in most New South Wales superannuation schemes in 1993, while same-sex partners were included in the definition of "spouse" in 2000. The proposed amendments will mean that heterosexual and same-sex de facto partners of pensioners will be eligible for a spouse pension in the same circumstances as married spouses. This will bring the definition of "spouse" in these schemes into line with other New South Wales public sector schemes.

The final issue to be addressed is the provision of spouse benefits in the Transport Employees Retirement Benefits Act 1967. The proposed amendments extend the circumstances under which a spouse benefit is payable. This new benefit can be paid when a relationship commences after the member's retirement and there is, or has been, a dependent child of the relationship. The full benefit is available if the relationship existed for three years prior to the member's death. Benefits are reduced on a pro rata basis when the relationship existed for less than three years. The proposed amendments reflect amendments made to the other New South Wales public sector pension schemes in the spring sitting of Parliament last year. Unfortunately, these were unintentionally omitted from the Transport Employees Retirement Benefits Act 1967. I commend the bill to the House.

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