Legislative Assembly

13/11/2002

Superannuation Legislation Amendment Bill

Extract

Second Reading

Mr FACE (Charlestown—Minister for Gaming and Racing, and Minister Assisting the Premier on Hunter Development), on behalf of Mr Aquilina [11.04 a.m.]: I move:

That these bills be now read a second time.

The Superannuation Legislation Amendment Bill and the Superannuation Legislation Further Amendment Bill implement a number of proposals affecting the New South Wales public sector superannuation schemes. The bills amend the Superannuation Act 1916, State Authorities Superannuation Act 1987, State Authorities Non-contributory Superannuation Act 1987, Police Regulation (Superannuation) Act 1986, First State Superannuation Act 1992, Judges' Pensions Act 1953 and Parliamentary Contributory Superannuation Act 1971. Honourable members would be aware that before amendments to the Parliamentary Contributory Superannuation Act 1971 can be passed in the Legislative Assembly, the Parliamentary Remuneration Tribunal must have certified that the amendments are warranted. I am pleased to advise that following his assessment, such certification has been provided by the Parliamentary Remuneration Tribunal, His Honour Judge Boland.

I will now provide a summary of the amendments contained in the Superannuation Legislation Amendment Bill. A number of the amendments contained in this bill accommodate Commonwealth changes that prescribe the manner in which ownership of superannuation benefits may be divided on marriage breakdown. The Commonwealth requires all superannuation funds to comply with the new rules from December this year. This bill also provides for the transfer of certain deferred benefits as they arise from the State Authorities Non-contributory Superannuation Scheme—also know as SANCS, or the 3 per cent scheme—to First State Super. Other amendments in the bill create regulation-making powers so that the surcharge cap which exists in the New South Wales public sector defined benefit schemes can be adjusted to reflect possible changes by the Commonwealth to the maximum superannuation surcharge rate, and to address inequities in the way the surcharge cap is applied.

The bill also introduces three reforms that are specific to the Parliamentary Contributory Superannuation Scheme. The first of these reforms will ensure that members are not entitled to superannuation benefits under the Parliamentary Contributory Superannuation Scheme whilst they are serving as members of Parliament. This is consistent with the Commonwealth Parliamentary Superannuation Scheme, and reflects general community expectations about parliamentary superannuation arrangements. The second set of amendments addresses an anomaly associated with the eligibility that members with combined Commonwealth and New South Wales parliamentary service of seven or more years have to a pension. Current provisions cannot always accommodate these members and they may be unable to purchase sufficient service with their lump sum Commonwealth superannuation benefit to qualify for a New South Wales pension.

The bill enables members who have at least seven years parliamentary service to also use other money to purchase sufficient service so they can qualify for a New South Wales parliamentary pension. The final reform to the parliamentary scheme reflects some minor changes to the actuarial investigation and reporting requirements, which were recommended by the Government Actuary. These amendments, which are supported by Treasury, will ensure that triennial actuarial reports are more useful to the Government and in line with standard actuarial practice. The bill also extends the circumstances in which pensions may be paid to spouses in all the schemes so that in certain situations pensions may be paid where the relationship commenced after the member's retirement. Currently, spouse pensions can only be paid if the relationship commenced before the member's retirement.

Finally, the bill also amends the Judges' Pensions Act to ensure that superannuation guarantee requirements for certain judges are met. I now propose to describe in more detail each of the amendments in this first bill. The Commonwealth requires the new rules for the division of superannuation on marriage breakdown to apply to all superannuation funds from December 2002. The bill amends the First State Superannuation Act 1992 to facilitate implementation of the Commonwealth requirements. The amendments will allow a separate interest in First State Super to be created for the member's spouse once the court has made orders, or the parties have agreed, on a division of the superannuation. Amendments to other New South Wales public sector superannuation legislation will be required, but these other schemes are defined benefit schemes and the application of the Commonwealth requirements to them is very complex. These amendments will be dealt with in a separate bill.

The Superannuation Legislation Amendment (Miscellaneous) Act 2001 transferred 97,000 or so SANCS deferred benefits to First State Super [FSS]. This bill transfers SANCS benefits that have become deferred since then, and provides for the transfer of SANCS benefits that become deferred in the future. As with the original transfer, these transfers will only apply in respect of those members who do not also have a benefit in one of the closed New

South Wales public sector schemes. The amount standing to the member's credit in SANCS will be transferred to a new or existing FSS account for the member, without alteration.

The reasons for the transfer remain the same as for the earlier transfers, that is, it is sensible for deferred SANCS benefits, which are accumulation-style accounts, to be transferred from a defined benefit scheme to an accumulations scheme such as First State Super, where they can be administered with other accumulation accounts. The transfer will benefit members as First State Super offers a choice of five investment strategies, whereas investment choice is not available in SANCS. The proposed provisions are consistent with the objectives of the earlier transfers in simplifying the administration of New South Wales public sector superannuation arrangements and providing scheme members with investment options.

I turn now to amendments intended to address the way in which the Commonwealth superannuation surcharge tax applies to New South Wales public sector employees and parliamentarians. Currently, New South Wales Acts require the superannuation scheme trustees to reduce members' benefits by an amount of Commonwealth surcharge tax which is payable at the time the benefit is paid. The maximum amount by which a benefit can be reduced is limited to 15 per cent of the employer-financed benefit that accrued since the surcharge was introduced in 1996. This amount is known as the surcharge cap. The Commonwealth Government has announced that it proposes to reduce the maximum superannuation surcharge rate over three years, from the 15 per cent to 10.5 per cent.

The bill creates regulation-making powers so that the 15 per cent cap can be adjusted to reflect changes made to the maximum surcharge rate imposed by the Commonwealth. This will ensure that members of the public sector schemes are protected by a surcharge cap that accurately reflects possible Commonwealth changes to the surcharge rate. The regulation-making power also provides flexibility in addressing anomalies identified in the application of the surcharge cap. For example, when the surcharge cap provisions were originally introduced it was not known that the Australian Taxation Office could issue surcharge assessments two to three years after the assessment period. This means that some members exiting the scheme in that time would become directly liable for a surcharge that they otherwise might not have been required to pay.

I will now address the proposals affecting the parliamentary superannuation scheme. Under current provisions, serving members of Parliament who reach 65 years of age may elect to receive their benefit, and serving MPs who reach 70 years of age must be paid their benefit. The payment of superannuation benefits to MPs who are still in office is inconsistent with the Commonwealth Parliamentary Superannuation Scheme and with general community expectations. The bill amends these provisions so that members are not entitled to superannuation benefits under the Parliamentary Contributory Superannuation Scheme while they are serving as members of Parliament. The new measures will not be extended to serving members currently receiving benefits. Members of the New South Wales Parliamentary Superannuation Scheme must have seven years service to be eligible for a pension benefit.

Former members of the Commonwealth Parliamentary Superannuation Scheme who become members of the New South Wales Parliament can purchase service in the New South Wales Parliamentary Superannuation Scheme using their lump-sum payment from the Commonwealth scheme. However, the amount of service purchased is determined by the cost of providing the New South Wales pension, not by the length of Commonwealth parliamentary service. This means that, currently, some New South Wales parliamentarians who have a combined Commonwealth and New South Wales parliamentary service of seven years or more may not qualify for a New South Wales parliamentary pension, because they were unable to purchase sufficient New South Wales service with their Commonwealth superannuation.

The bill enables members who will have combined Commonwealth and New South Wales parliamentary service of at least seven years also to use other money to purchase sufficient service to qualify for a New South Wales parliamentary pension. The amendment will not allow members to receive both Commonwealth and New South Wales parliamentary pensions. The Government Actuary recommended that several changes be made to the requirements for actuarial investigation and reporting. The reason for the changes is to ensure that triennial actuarial reports are more useful to the Government and reflect standard actuarial practices.

The changes that will be made include the actuary recommending that the contributions be paid to the fund for the three-year period to the next actuarial valuation, instead of the next 25 years, as is currently required; the actuary reporting on additional issues of assets, liabilities, membership, benefit payments, investment earnings, legislative changes, demographic changes, administration expenses and any other matters referred by the trustees or the Minister; and the Minister having the power to instigate interim investigations. In all schemes in which superannuation benefits are payable in the form of a pension, rather than a lump sum, benefits are also payable to the spouse of the member when the member dies, provided that the member and the spouse were in a relationship at the time of the member's retirement.

The bill extends the circumstances in which spouse benefits can be paid so that spouse benefits may also be paid when the relationship commenced after the member's retirement and existed for at least three years prior to the member's death, and there is or has been a dependent child of the relationship. If the relationship existed for less than three years at the time of the member's death, the benefit payable will be reduced on a pro rata basis.

Finally, the Courts Legislation Amendment Act 2000 amended the Judges' Pensions Act 1953 to provide for a lump-sum superannuation guarantee benefit, as required by the Commonwealth superannuation guarantee, for judges and acting judges not eligible for a pension. The superannuation guarantee has been in place since 1992 and

transitional provisions in the amendments will ensure that judges' post-1992 service is recognised for calculating the lump sum. However, due to an oversight, the 2000 amendments did not cover judges or acting judges who ceased to be judges before the amendments commenced. Amendments in this bill to the Judges' Pensions Act 1953 will ensure that the New South Wales Government satisfies its obligations to provide superannuation guarantee entitlements for all judges and acting judges.

I shall now summarise the amendments contained in the Superannuation Legislation Further Amendment Bill. This bill facilitates the implementation of an agreement to allow certain police officers to retire early from NSW Police, in line with one of the recommendations of the Royal Commission into the New South Wales Police Service. It will also facilitate the implementation of an industrial award providing new death and incapacity benefits to certain firefighters. The Government recognises the inherent dangers faced daily by firefighters in the performance of their duties. The award is expected to be finalised over the next few months, and will include significant benefits for firefighters who are killed or injured as a result of their work.

Other amendments in the bill will enable the trustees of the State Authorities Superannuation Scheme—known as SASS—to offer scheme members a new investment strategy that will provide greater protection from volatility in the investment markets. Finally, the bill contains amendments that provide for the transfer of certain deferred benefits in defined benefit schemes to First State Super. The proposed amendments will support other amendments in 2001 that enabled the transfer of similar accumulation-style benefits to First State Super. I propose now to describe in more detail each of the amendments in the Superannuation Legislation Further Amendment Bill.

As honourable members may be aware, one of the recommendations made by the police royal commission was that an opportunity be given for certain police officers to accept early retirement after 20 years of service. I have been advised by my colleague the Hon. Michael Costa, MLC, Minister for Police, that an agreement has been negotiated which supports this recommendation. Under the terms of the agreement, 300 officers will be able to commence early retirement over the next three years. The bill amends the eligibility criteria for disengagement benefits in the Police Regulation (Superannuation) Act 1986 so that officers who are at least 45 years of age but less than 55 years of age with 20 or more years of equivalent full-time service will be eligible to receive the benefit.

The Government recognises that the work of firefighters is inherently dangerous, and agrees that firefighters should be adequately compensated if they are injured or killed while carrying out their duties. Over the next few months the Government expects to implement new death and incapacity arrangements for firefighters. New death and incapacity benefits will become available for permanent and retained firefighters who are employed by New South Wales Fire Brigades, their spouses and their children. The new benefits will apply to all firefighters who would not already be entitled to pension benefits from the old State Superannuation Scheme if they were killed or incapacitated. The purpose of the amendments in this bill is simply to ensure that the award provisions can be implemented for firefighters who are members of First State Super or the State Authorities Superannuation Scheme.

Members of the State Authorities Superannuation Scheme have certain member-financed benefits. These benefits consist of the members' contributions plus investment earnings and, along with deferred benefits in the scheme, are subject to the performance of the investment market. The Government recognises that many members, particularly those close to retirement, would prefer to invest their benefits in a more conservative type of investment strategy. The scheme trustee is currently developing a cash-plus option in respect of member-financed benefits and deferred benefits. This option will offer members greater levels of capital security and less volatility in investment returns.

Members will be allowed to invest all or part of their benefits, and to switch between the cash-plus option and the investment mix that applies to the scheme as a whole. Amendments to the State Authorities Superannuation Act in the bill will make it possible for the trustee to implement this investment strategy. The amendments will also allow the trustee to offer additional investment options in the future, reflecting the trend in the superannuation industry towards greater investment choice for members with accumulation benefits.

Finally, the bill provides for the transfer of certain deferred benefits to First State Super. The benefits to be transferred will be those that have been deferred in the State Authorities Superannuation Scheme and the State Authorities Non-Contributory Superannuation Scheme—also known as SANCS, or the 3 per cent scheme. Benefits under these schemes are deferred when members cease employment in the public sector, and accrue with interest until they are paid. Although the benefits are currently maintained in the defined-benefit SASS and SANCS schemes, they are really accumulation style benefits like those in First State Super. It is more logical for these benefits to be administered with accumulation accounts in First State Super, and for members to have the benefit of the investment choice available in First State Super.

The proposed amendments will only apply to deferred benefits for former members who have already reached the retirement age applicable to the schemes and who therefore have no other entitlements under the schemes. The transfers are consistent with legislative amendments introduced in 2001 that enabled the transfer of other deferred SANCS benefits to First State Super, which offers members a range of investment options and, in many cases, has facilitated the consolidation of members' superannuation accounts. As with previous transfers, the full amount standing to the member's credit in SASS and SANCS will be transferred to the new or existing account for the member in First State Super, without alteration. I commend the bills to the House.