Superannuation Legislation Amendment Bill
Superannuation Legislation Further Amendment Bill

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Second Reading
Third Reading

SUPERANNUATION LEGISLATION AMENDMENT BILL
SUPERANNUATION LEGISLATION FURTHER AMENDMENT BILL

Page: 7235

Second Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [11.34 a.m.]: I move:

That these bills be now read a second time.

I seek leave to have the second reading speech incorporated in *Hansard*.

Leave granted.

The *Superannuation Legislation Amendment Bill 2002* and the *Superannuation Legislation Further Amendment Bill 2002* 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 1906*
- *First State Superannuation Act 1992*
- *Judges' Pension 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 first Bill, the ***Superannuation Legislation Amendment Bill 2002.***

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 known as SANCS or the 3% scheme) to First State Super.

Other amendments in the Bill create regulation making powers so that the surcharge "cap"

which exists in the NSW 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 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 NSW Parliamentary service of 7 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 NSW pension.

The Bill enables Members who have at least 7 years parliamentary service to also use other money to purchase sufficient service so they can qualify for a NSW 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 1953* 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 would 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 NSW 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. 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 NSW 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 also 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 accumulation 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 NSW public sector superannuation arrangements and providing scheme members with investment options.

I now turn to amendments intended to address the way in which the Commonwealth superannuation surcharge tax applies to NSW public sector employees and Parliamentarians.

Currently, the NSW 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% 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 it proposes to reduce the maximum superannuation surcharge rate over three years from 15% to 10.5%.

The Bill creates regulation making powers so that the 15% "cap" can be adjusted to reflect changes made to the maximum surcharge rate imposed by the Commonwealth. This will ensure 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 some members exiting the scheme in that time become directly liable for an amount of surcharge that they otherwise might not have been required to pay.

I will now address the proposals affecting the Parliamentary Super Scheme. Under current provisions, serving Members of Parliament who reach 65 years of age may elect to receive their benefit, and serving MP's who reach 70 years of age must be paid their benefit.

The payment of superannuation benefits to MP's 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 NSW Parliamentary Superannuation scheme must have 7 years service to be eligible for a pension benefit.

Former members of the Commonwealth Parliamentary Super Scheme who become Members of the NSW Parliament can purchase service in the NSW Parliamentary Super scheme using their lump sum payment from the Commonwealth scheme. However, the amount of service purchased is determined by the cost of providing the NSW pension, not by the length of the Commonwealth Parliamentary service.

This means that, currently, some NSW Parliamentarians who have a combined Commonwealth

and NSW Parliamentary service of 7 years or more may not qualify for a NSW Parliamentary pension, because they were unable to purchase sufficient NSW service with their Commonwealth superannuation.

The Bill enables Members who will have combined Commonwealth and NSW parliamentary service of at least 7 years to also use other money to purchase sufficient service to qualify for a NSW Parliamentary pension.

The amendment will not allow Members to receive both Commonwealth and NSW Parliamentary pensions.

The Government Actuary recommended 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 practice.

The changes that will be made include:

- the actuary recommending the contributions to 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 where 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 where 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 has 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's 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 ensure that judges' post 1992 service is recognised for calculating the lump sum. Due to an oversight, however, the 2000 amendments do not cover judges or acting judges who ceased to be judges before the amendments commenced. Amendments to the *Judges' Pensions Act 1953* in this Bill will ensure that the NSW Government satisfies its obligations to provide superannuation guarantee entitlements for all judges and acting judges.

I shall now summarise the amendments contained in the second Bill, the ***Superannuation Legislation Amendment Bill 2002.***

This Bill facilitates the implementation of an agreement to allow certain police officers to retire early from the NSW Police, in line with one of the recommendations of the Police Royal Commission.

The Bill 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 would support other amendments in 2001 that enabled the transfer of similar accumulation style benefits to First State Super.

I now propose to describe in more detail each of the amendments in the second Bill, that is, the ***Superannuation Legislation Further Amendment Bill 2002***.

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 service. I have been advised by my colleague, the Hon M Costa MLC, Minister for Police, that an agreement has been negotiated which supports this recommendation. Under the terms of the agreement, three hundred officers will be able to commence early retirement over the next three years.

This Bill amends the eligibility criteria for disengagement benefits in the *Police Regulation (Superannuation) Act 1906*, 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 NSW Fire Brigades, their spouses and 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 (or SASS) have certain member-financed benefits. These benefits consist of the member's 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 1987* in this 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 this Bill provides for the transfer of certain deferred benefits to First State Super. The benefits to be transferred would be those that have been deferred in the State Authorities

Superannuation Scheme (or SASS), and the State Authorities Non-contributory Superannuation Scheme (also known as SANCS or the 3% 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 the 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 earlier 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 the previous transfers, the full amount standing to the member's credit in SASS and SANCS will be transferred to a new or existing account for the member in First State Super, without alteration.

I commend these Bills to the House.

The Hon. GREG PEARCE [11.34 a.m.]: The Opposition does not oppose these bills. I refer honourable members to the comments made by the member for Upper Hunter in the other House on the bills. The member for Upper Hunter referred to a report by Mercer Investment Consulting, which was referred to in an article in the *Business Review Weekly* magazine of 1 August 2002. The article reported that the State Super Pooled Fund made an investment loss last year of $2.25 billion. While both the Australian and international share markets performed poorly last year, this massive loss was sustained by the State Super Fund. In that year the average fund manager made a loss of 4.1 per cent, but the State Super Fund was well below par, recording a loss of 7.3 per cent. The article and the report were quite damning of the management of super funds in New South Wales. I shall repeat one of the quotes the member for Upper Hunter cited in the other place, because it is important that members of this House also be aware of it. The article stated:

Among this sea of red ink, one of the worst performances of 2001-02 was by Australia's largest superannuation fund, the $25.5 billion defined benefit fund that holds the retirement assets of 178,000 New South Wales public sector employees, former Government employees and pensioners …

To put the loss in context, about $2 billion was wiped off the value of the fund's assets. More importantly, because of the questions it raises about the management of the fund, and because of the potential cost to the NSW Government and taxpayers, the result was significantly worse than the losses incurred by comparable funds …

One of the perceptions of State Super in the marketplace is that it does not have the same depth of internal experience in commercial investment management as some of the other big public sector or corporate funds, and this has led to some poor choices of managers in the past.

That is particularly relevant in this House because, in terms of the management and organisational structure of the State Super Fund, the Special Minister of State is responsible for scheme legislation and the Treasurer is responsible for financial arrangements. When the funds have sustained such losses, and when the management of the funds has been criticised, the Treasurer, understandably, is very embarrassed each time he is asked about the performance of the funds. The Treasurer should be doubly embarrassed, having regard to the way he has recently politicised the role of Treasury in relation to the false costings of Coalition policies he has reported to the House during question time. He should be very embarrassed by the performance of these funds, as should

the Special Minister of State.

I note that WorkCover's fund deficit has continued to climb, and part of the reason for that is mismanagement. Last year WorkCover switched into international equities in relation to its investments, just as the international equity market was crashing. Again, that is poor management in WorkCover. I refer to some of the promises Labor has made: The Central Coast high-speed rail link at $8.7 billion, the north-west rail extension at $1.4 billion, information technology services for schools and hospitals at $1.3 billion, pay rises for nurses at $1.08 billion—

The Hon. Peter Primrose: Point of order: As interesting as this fantasy is, I ask the honourable member to stick to the leave of the bills.

The PRESIDENT: Order! It is a convention in this House that the contributions of members can be wide ranging. The Hon. Greg Pearce is in order.

The Hon. GREG PEARCE: I was referring to the Government's management of the substantial investment funds held in the State Super Fund and WorkCover, and my comments related to these bills, particularly the management of them. I will not go through the entire list of Labor's promises, but they add up to $16 billion. That is $16 billion the Government will never be able to fund. The Treasurer's attempt to criticise the Coalition's policies is nothing more than a piece of trash. The Opposition does not oppose these bills.

The Hon. IAN MACDONALD (Parliamentary Secretary) [11.39 a.m.], in reply: I thank honourable members for their contribution to the debate—except for the Hon. Greg Pearce!

Motion agreed to.

Bills read a second time.

Third Reading

The Hon. IAN MACDONALD (Parliamentary Secretary) [11.40 a.m.]: I move:

That these bills be now read a third time.

Ms LEE RHIANNON [11.40 a.m.]: These cognate bills make various miscellaneous changes to superannuation legislation in New South Wales. The majority of these changes are minor and administrative in nature and do not require particular comment. There are two changes in these bills that the Greens strongly support. The first is the amendment to enable First State Super to accommodate the Commonwealth changes that prescribe the manner in which ownership of superannuation benefits may be divided on marriage breakdown. The amendment seeks to allow the creation in the First State Superannuation Scheme of a separate interest for a person's spouse once the court has made orders, or the parties have agreed, on a division of superannuation. The significance of this amendment is that for the first time superannuation will be included in family court agreements following the breakdown of a marriage or de facto relationship. The Greens strongly support superannuation being so included.

It is a matter of record that the division of assets following the break-up of a relationship has tended to favour the male partner over the female partner because most wealth tends to be concentrated with the male partner for a number of reasons. For example, men are more likely to work in a full-time capacity throughout their working lives, whereas women still generally bear the brunt of child rearing and consequently accrue less superannuation. There is no reason why women should not be entitled to a fair share of any accrued superannuation. If a woman has stayed at home to care for children she has played an equal role in the relationship and in earning the family's income. Therefore, she should be entitled to a fair share of superannuation if the relationship breaks down.

The second element that the Greens are pleased to support is the provision ensuring that members of Parliament cannot receive superannuation benefits while still serving in office. This loophole brought discredit upon Parliament and members generally, and its removal will be one small step towards restoring public confidence in our democratic institutions. However, in the same vein, the Greens are highly disappointed that these bills do not contain a provision allowing members of Parliament to choose to opt out of their overgenerous superannuation scheme and to be regular members of First State Super. The Greens believe that all members of Parliament should be paid super—

The Hon. John Jobling: Point of order: The third reading of this bill has been moved. The second reading debate has concluded. I suggest that the honourable member is delivering a speech more appropriate to the second reading stage and is not speaking about why we should or should not support the third reading of the bill.

The PRESIDENT: Order! I refer to the rulings of former occupants of the chair. President Johnson ruled:

The prime purpose of a third reading of a bill is to ensure a last opportunity to oppose the legislation. The debate upon the third reading of a bill should be confined to that question.

Later, Deputy-President Willis ruled:

The prime purpose of a third reading of the bill is to ensure a last opportunity to oppose the legislation. The House should not be treated to a second reading debate speech on the third reading.

I uphold the point of order and ask the member to confine her speech to debating the reason the bills should not be read a third time.

Ms LEE RHIANNON: Thank you for clarifying that. I was about to conclude my speech, and will do so now.

Motion agreed to.

Bills read a third time.

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Next Page
Previous Page