



## NSW Legislative Council Hansard

### Superannuation Legislation Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 8 June 2005.

#### Second Reading

**The Hon. HENRY TSANG** (Parliamentary Secretary) [5.17 p.m.]: I move:

That this bill be now read a second time.

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

#### Leave granted.

The *Superannuation Legislation Amendment Bill 2004* introduces miscellaneous amendments to public sector superannuation Acts to address a variety of issues. The Acts being amended are the *First State Superannuation Act 1992*, the *Police Association Employees (Superannuation) Act 1978*, the *Police Regulation (Superannuation) Act 1906*, the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987*, the *Superannuation Act 1916* and the *Superannuation Administration Act 1996*. Overall the amendments are cost-neutral to Government.

Some of the amendments will directly benefit some members of the public sector superannuation schemes; others are relatively minor affecting the administration of public sector superannuation arrangements.

I will first list the amendments that directly benefit members. These amendments enable acceptance of Federal Government co-contributions, allow certain former public sector employees to make contributions and roll-ins into First State Super, enable the SAS Trustee Corporation to ensure certain death benefits are not subject to contributions tax, allow certain invalidity pensions paid from the State Superannuation Scheme to be paid as complying pensions for tax purposes, and clarify the definition of "nominated" salary for senior executive officers.

The amendments that relate to administrative matters will improve the operation of the legislative provisions applying to hurt on duty claims under the Police Superannuation Scheme, rationalise the legislative provisions applying to the transfer of superannuation entitlements when an employee ceases public sector scheme membership, confirm the power of the FSS and SAS Trustee Corporations to delegate their function of determining disputes to their internal Disputes Committees, and enable the SAS Trustee Corporation to pool insurance experience across employers.

I will now describe the amendments in more detail.

The first set of amendments affecting public sector scheme members will enable Federal Government co-contributions to be accepted in the State Authorities Non-contributory Superannuation Scheme (SANCS) for employees who are members of the State Superannuation Scheme, the State Authorities Superannuation Scheme and the Police Superannuation Scheme. Around 40% (or 40,000) of these members will qualify for the co-contributions because they are already required to make after-tax superannuation contributions to these schemes. These members are also automatically covered by SANCS (also known as the Basic Benefit or 3% scheme).

The bill enables the SAS Trustee Corporation, which is the trustee for the defined benefit schemes, to accept co-contributions into SANCS on behalf of members of the defined benefit schemes. The bill provides for the creation of a separate accumulation account for each affected member for this purpose.

Another amendment affects employees covered by First State Super when they stop working in the public sector. Currently they cannot continue to make contributions or roll-in benefits from other superannuation funds even though they retain a First State Super account. This has been a source of complaint from current and former public sector employees who would prefer to consolidate their superannuation accounts in First State Super, especially employees such as teachers and nurses, who may regularly move between public and private sector employment. The bill will allow former public sector employees with First State Super accounts to continue to make personal contributions and roll-in other superannuation benefits into those accounts.

The bill contains amendments that relate to the treatment of lump sum death benefits payable from the schemes governed by the *Police Regulation (Superannuation) 1906*, the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987*, and the *Superannuation Act 1916*. Under these Acts the trustees must reduce various benefits to offset the employer cost of the fifteen percent

contributions tax payable to the Federal Government. However, a benefit payable to dependants on the death of a former member is exempt from contributions tax. In some cases the benefit may already have been reduced prior to payment. For example, a person may cease scheme membership on resignation from employment but elect to preserve a benefit in the scheme. At that point the value of the benefit is reduced to offset contributions tax, and crystallised. If the person subsequently dies before being paid the benefit, and the benefit becomes payable as a lump sum to a dependant, then the earlier benefit reduction becomes inappropriate. The bill allows the trustees to augment the benefit to the pre-reduced value. The augmentation does not result in a cost to the Government because of tax deductions available to the trustees for the purpose of carrying out such augmentation.

Other amendments would affect a small number of people receiving invalidity pensions from the State Superannuation Scheme, which is governed by the *Superannuation Act 1916*. Under the Act invalidity pensioners may be recalled to service if their health is restored. This provision makes invalidity pensions 'non-complying' pensions for tax purposes because technically they are not payable for life. The non-complying status of these pensions can result in adverse tax implications for some invalidity pensioners. The bill allows invalidity pensioners who are at least fifty five years of age to elect to have their pension paid in a complying form to reduce the potential for adverse tax outcomes.

The last set of amendments affecting members relates to the definition of nominated salary as it applies to Senior Executive Officers who are members of the State Superannuation Scheme or the State Authorities Superannuation Scheme. The purpose of the amendment is to put beyond doubt that optional member contributions made by these Officers to another superannuation fund do not reduce the nominated salary which forms the basis of determining their superannuation entitlements. This will ensure that the effect of optional superannuation contributions on nominated salary is no different from the effect of any other item that an Officer may include as part of a Total Remuneration Package.

I now turn to the amendments that affect relatively minor aspects of the administration of public sector superannuation arrangements.

The bill contains amendments that will improve the operation of legislative provisions affecting the Police Superannuation Scheme, which covers Police Officers who were recruited prior to 1 April 1988. Payments in respect of death or injury arising as a consequence of their employment are paid from the Scheme in accordance with the *Police Regulation (Superannuation) Act 1906*. The Act requires the Commissioner of Police, in most instances, to determine whether a death or injury has resulted from being hurt on duty. However, there is currently a lack of clarity about whether the Commissioner is empowered to make a hurt on duty determination in respect of certain types of claims for payment of a gratuity. Judges of the former Compensation Court found that some of the legislative provisions currently preclude the Commissioner of Police from making a hurt on duty decision in some circumstances. The bill amends the legislative provisions to make it clear that the Police Commissioner is to make the hurt on duty determination in these circumstances. The provisions were developed following extensive discussions between the SAS Trustee Corporation and NSW Police, and are supported by the Minister for Police and the Police Association of NSW.

Also in relation to the Police Superannuation Scheme, the bill validates hurt on duty determinations that were made in the past by the Commissioner of Police without first being requested to do by the SAS Trustee Corporation. In addition the amendments will allow the Commissioner of Police to make these determinations in future without first being requested to do so by the trustees.

A further aspect of the bill relevant to the Police Superannuation Scheme concerns appeal rights where a Police Officer is not satisfied with a determination made by the SAS Trustee Corporation about a claim for a hurt on duty benefit. Currently there are conflicting legislative provisions in the *Police Regulation (Superannuation) Act 1906* and the *Superannuation Administration Act 1996* prescribing the avenues for appeals. The latter Act gives Police Officers a right of appeal to the Industrial Relations Commission in Court Session, while the former Act gives the right of appeal to the District Court. The bill makes it clear that rights of appeal will only be to the District Court. These amendments are supported by the Minister for Police, NSW Police and the Police Association of NSW.

The bill deals with amendments to rationalise certain provisions in the *State Authorities Non-contributory Superannuation Act 1987*, the *State Authorities Superannuation Act 1987*, and the *Superannuation Act 1916*. The Acts have different ways of dealing with the superannuation entitlements of employees whose employment is transferred to the non-Government sector, depending on whether the transfer is a result of a 'Government privatisation initiative' or of a 'Government initiative'. In effect the provisions have the same outcome. The amendments in the bill amalgamate and streamline the provisions to facilitate administration and do not represent any changes in policy. The amendments also enable regulations to be made to prescribe an employer's liabilities in respect of benefits or contributions that may be payable in any period in which an employee may elect to transfer employment or superannuation entitlements before the election takes effect. The *Superannuation Administration Act 1996* specifies that one of the principal functions of the SAS and FSS Trustee Corporations is to determine members' disputes about decisions made by the trustees. The bill makes

it clear that the Trustee Corporations may delegate this function to their internal disputes committees.

Finally, the bill amends the *State Authorities Superannuation Act 1987*, the *State Authorities Non-contributory Superannuation Act 1987*, and the *Superannuation Act 1987* to enable the SAS Trustee Corporation to equitably pool insurance experience among scheme employers, on the basis of actuarial advice.

I commend the bill to the House.