



NSW Legislative Council Hansard

Superannuation Legislation Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Wednesday 7 June 2006.

Second Reading

The Hon. TONY KELLY (Minister for Justice, Minister for Juvenile Justice, Minister for Emergency Services, Minister for Lands, and Minister for Rural Affairs) [3.00 p.m.], on behalf of the Hon. John Della Bosca: 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 2006 introduces miscellaneous amendments to various Acts governing superannuation schemes for New South Wales public sector employees and parliamentarians.

None of the proposed changes will increase the Government's costs associated with the public sector or parliamentary superannuation arrangements.

The bill contains several amendments to the *Police Regulation (Superannuation) Act 1906*. This Act governs the Police Superannuation Scheme which was closed to new members from 1 April 1988. The scheme covers around 3,700 serving officers and 5,300 former officers now receiving pensions from the scheme.

The Police Superannuation Scheme also provides workers compensation style benefits for officers who are killed or injured as a result of their occupation. Officers covered by the Police Superannuation Scheme are not eligible for coverage by the New South Wales workers compensation arrangements.

The proposed amendments mainly affect invalidity benefits payable from the Police Superannuation Scheme to officers who cease employment because of injury or ill health. The SAS Trustee Corporation, which is the trustee for the Police Superannuation Scheme, is responsible for determining whether an officer is eligible for an invalidity benefit on the basis of whether he or she is incapable of performing his or her 'duties of office'.

A decision of the Full Bench of the Industrial Relations Commission, in *Derrick Boland versus SAS Trustee Corporation* (2 November 1999) cast doubt on the validity of the interpretation of duties of office that has been applied for this determination over the last 20 years or more. The judgment concluded in respect of the Act governing the Police Superannuation Scheme:

"...The legislation should plainly be revisited by the Legislature in order to ensure that a logical, consistent and readily understood regime applies to the important work which police officers perform in the State, particularly that aspect which regulates their circumstances in the event that they are injured in the performance of their duties."

The bill clarifies the definition of duties of office to ensure that it includes the general duties imposed on all police officer by reference to section 14(1) of the Police Act 1990, which states: "In addition to any other functions, a police officer has the functions conferred or imposed on a constable by or under any law (including the common law) of the State".

The amendment makes clear that the interpretation of duties of office that has applied in practice for many years can continue. The bill also validates any past decisions made by the SAS Trustee Corporation.

The bill also clarifies the circumstances in which a former police officer may claim a hurt on duty invalidity pension subsequent to retirement or resignation. New provisions will ensure that former police officers can only make valid claims for hurt on duty benefits, or increases to such benefits, if they are less than 60 years of age, or five years after retirement, whichever is later. Currently, there is no age or time limit. The proposed limits are supported by NSW Police and the Police Association.

The amendments in the bill require police officers to participate in an injury management program offered by NSW Police similar to that under workers compensation arrangements. Currently there is no legislated obligation on the part of an officer to participate in any such program. The bill makes benefit payments conditional on certification from the Police Commissioner that an officer has participated in such a program. Again, this amendment is supported by NSW Police and the Police Association.

In addition, the commutation provisions applying to the Police Superannuation Scheme are amended to allow

members to choose to commute part of a pension entitlement to a lump sum. Currently, they can only commute all or none of their pension. The bill also reduces the age at which an invalidity pension may be commuted from age 60 to 55. These changes are consistent with commutation arrangements in the State Superannuation Scheme which is the other scheme that pays pensions to public sector employees.

I turn now to amendments to the *State Authorities Superannuation Act 1987* which governs the State Authorities Superannuation Scheme, or SASS. This scheme covers around 60,000 public sector employees who had joined prior to its closure to new members in December 1992.

SASS generally provides members with an employer funded lump sum benefit plus an accumulation of members' own compulsory contributions which may be between 1 per cent and 9 per cent of their superable salary each year. These member contributions must currently be paid out of post-tax salary.

The bill proposes to allow SASS members to pay all or part of these compulsory contributions from their pre-tax salary. Salary sacrificing in this way may result in tax advantages for some members, depending on their individual financial circumstances.

The earliest possible implementation date is April 2007. This will allow the scheme's trustee sufficient time to undertake communications with employers and members about the changes, and make operational changes.

The bill contains amendments that provide additional flexibility in the definition of salary for superannuation purposes for members of SASS and the State Superannuation Scheme.

The amendments allow regulations to be made to address agency specific requirements where a new remuneration basis is being proposed for employees, such as an annualised salary.

For example, an agency might propose, with support from employees, that there are operational efficiencies and employee advantages to have an annualised salary replace the payment of a base wage plus overtime and penalty rates. The legislation currently does not allow overtime and some penalty payments to be recognised for superannuation purposes, but an annualised salary may satisfy the current definitions in the legislation. However, the recognition of the full annualised salary for superannuation purposes could generate such significant increase in the cost of increased superannuation benefits that no responsible Government could afford to give unqualified support to a proposed adoption of annualised salary.

The amendments would allow for regulations to prescribe a 'notional' salary for superannuation purposes, thereby encouraging flexibility in negotiating workplace reforms.

The amendments make clear that regulations can only be made with the agreement of the Minister and Treasurer, where the making of a regulation and associated arrangements will not result in a cost to the Government that is greater than if the regulation was not made.

The amendments also make clear that the making of such regulations cannot reduce a member's superannuation salary below that which would have been recognised had the annualised salary not been introduced and regulations made.

The final amendments contained in the bill are to public sector employees' and parliamentarians' superannuation schemes which pay pensions. 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 certify 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.

The purpose of the amendments is to supplement existing administrative arrangements. These enable members to ensure that an election to commute a pension entitlement to a lump sum takes effect before a pension entitlement commences to be paid. In these circumstances, the Tax Office will take the lump sum benefit as having been paid before the pension and therefore assess the tax payable against the higher pension Reasonable Benefit Limit (RBL) instead of the lump sum RBL.

It has become apparent that there may be circumstances where these administrative arrangements are not sufficient to enable members to lodge their commutation elections in time. The amendments address this by allowing members to nominate a later start date for their pension payments.

No pension is then payable in respect of any period prior to the member's nominated commencement date. It will be up to individual members to decide, on the basis of independent financial advice, whether it is in their interest to forfeit pensions for, say, a few weeks or months.

Although 2006 Federal Budget proposals include the abolition of RBLs from 1 July 2007, the above amendments may be useful until that date.

I commend the bill to the House.