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Hon Nick Griffiths; Hon Helen Hodgson; Hon Jim Scott; Hon Peter Foss; Hon Bruce Donaldson; Hon Derrick Tomlinson

STATE SUPERANNUATION BILL 1999

Second Reading

Resumed from 11 May.

HON N.D. GRIFFITHS (East Metropolitan) [7.50 pm]: The Australian Labor Party is of the view that the State Superannuation Bill should be passed quickly. It is of that view notwithstanding that the Bill contains aspects that are potentially detrimental to the interests of the State of Western Australia and members of the pension schemes Gold State Super and West State Super, and future members of West State Super. We are of that view because that which is good about the Bill outweighs that which is potentially bad about it. If I may put it relatively succinctly, the Bill provides a mechanism for public sector employees' superannuation to be handled with appropriate flexibility so that those employees have choice, have the capacity to reap the benefits of changes that occur in this relatively rapidly changing area of activity, and have the opportunity - this is most important - to have a greater rate of return from West State Super than they have now. West State Super members have a rate of return of consumer price index plus 2 per cent.

Unfortunately, Australia has experienced times of relatively high inflation. Shortly after I was born, although I do not want to admit to my age too readily, the late Sir Robert Menzies presided over the highest rate of inflation Australia has ever experienced. It has not been equalled since. We have had significantly high rates of inflation for much of my life. When that occurs CPI plus 2 per cent is fine. However, many people, who are knowledgeable in this area have suggested to me that over the long haul a rate higher than CPI plus 2 per cent is better suited to appropriate market expectations. In fact, it has been put to me that CPI plus 4 per cent over the life of an economic cycle is more appropriate, although opinions differ on that. The fact remains that West State Superannuation members have not had good rates of return relative to the members of other superannuation schemes during the lifetime of West State Super. The rate of return in the future is a matter for the future and certainly a matter for those who find themselves managing the funds. This Bill provides the opportunity, particularly to West State Super members, to have a better rate of return than they have at present. That is the overriding concern for the Australian Labor Party.

There are also aspects of this Bill that are bad. This is not a Labor Party Bill. If the Labor Party had dealt with this issue, it would have dealt with it in a way that would have ensured that West State Super members had the opportunity to have a higher rate of return than CPI plus 2 per cent. However, we are not the Government. Members opposite won the last election and they have put forward a proposal. They are therefore entitled to have their policies put into effect. It is the only opportunity on offer at the moment for West State Super members to have a higher rate of return than that which they currently receive. The Opposition therefore supports the Bill.

Many significant aspects of the Bill are wrong. The first is that the entitlements of members of the pension scheme and members of Gold State Superannuation are protected by statute. That protection will be removed to regulation. Their entitlements will be set and can be changed by regulation. The protection of regulation as distinct from statute is detrimental to the interests of pension scheme members and Gold State Super members. It is also detrimental to members of West State Super, particularly with respect to disability and dependant entitlements.

The second major area of detriment to the financial interests of the State, as distinct from the interests of members of the schemes, is what I consider to be a rather interesting "cooking of the books". The Bill provides the Government Employees Superannuation Board with a capacity to borrow. It is clear to anyone who has paid any interest whatsoever to this Bill that the proposal is that the board will borrow the West State Super liability. The West State Super liability is the liability of the Government of Western Australia. It is the rate of superannuation payment on the part of an employer to be paid to the benefit of its employee, since 1 July this year at the rate of 8 per cent, which the Government has not been paying. It is true that in recent times within the life of this Government, but not at the commencement of this Government, it has been paying, at least for the most part, those superannuation contributions. I note this in passing in reports from the Auditor General and the board. However, it has not paid them throughout the life of the West State Super scheme. The amount of the liability is in excess of $500m.

In answer to a question without notice I asked on 19 June, I learnt that the West State Super liability at the end of the last financial year was $553m. It is proposed, therefore - the Bill will permit this - that the board borrow the Government's West State Super liability. People acting on behalf of members are being obliged to borrow the debtor's liability. The Legislation Committee examined the matter, and I refer to the fifty-second report of the Legislation Committee on the State Superannuation Bill that was tabled on Monday. On page 28 of that report, the Community and Public Sector Union put the matter quite succinctly. The CPSU said it -

> . . . understands that it is the intention of the Government for the Government Employee Superannuation Board to borrow the money as a vehicle for the State to meeting the unfunded liability for the West S[t]ate Superannuation scheme. This debt is not a debt of the Board, it is a debt of the State and . . . the union believes that this transfer of responsibility for the debt is to access the potential surpluses of the Fund without public scrutiny.

That may be a proper belief. It is also wrong in principle for somebody who owes the money to require somebody else to borrow the money to, in a sense, discharge the debt. They are cooking the books. The reality is that if the West State Super unfunded liability is not discharged in this way, West State Super members will not have the opportunity - whatever that opportunity may mean in our uncertain economic climate - to acquire a return commensurate with that received by others in the community. It is damn blackmail! It is very improper on the part of the Government to do that. However, that is how the Government does business in Western Australia 2000.

Hon Peter Foss: It is better than it used to be. We never got any money then. It cost us squillions to put the money in. You did not even put the money in.

Hon N.D. GRIFFITHS: We are dealing with Western Australia in 2000 and it is being incompetently and improperly governed. The Government requires the Government Employees Superannuation Board to borrow the liability of the Government.

Hon Peter Foss: Do you know what Brian Burke did with the money we put in?

Hon N.D. GRIFFITHS: I am not concerned how money was raised for the North West Shelf, or how the Attorney General's predecessors in politics sent people off to the Boer War. I am dealing with Western Australia in the year 2000. The Attorney General does not give a damn about that.

Hon Peter Foss: Dr Gallop was not a member of that Government, was he?

Hon N.D. GRIFFITHS: The Attorney is in the boring war.

Hon Peter Foss: McGinty and Ripper were not in that war either.

Hon N.D. GRIFFITHS: When the member opposite refers to members in the other place, he should at least have the courtesy to refer to them according to custom.

Hon Peter Foss: But I am interjecting.

Hon N.D. GRIFFITHS: I know that, and I would like to proceed.

I pointed out when I commenced my remarks that the Opposition might expedite the passage of this Bill. We will do so notwithstanding the interjections of the Attorney General. I will not say they are unruly interjections, because that would be most improper of me.

The third deficiency in the Bill is that it fails to address the proper concerns of the police with respect to their unique position of employee and officer. That issue has been raised and will be substantially addressed.

Hon J.A. Scott: Does the Labor Party have a scheme to repay the West State Super unfunded liability?

Hon N.D. GRIFFITHS: Hon Jim Scott should take on board the words of the Prime Minister and be very relaxed and comfortable and wait until good things come to him.

I have referred to the good and bad aspects of what is a cure-all. The Bill has developed a fair amount of consultation between the Opposition, the Government, other parties represented in the Chamber, and unions advancing the interest of their members. The matter was referred to the Legislation Committee before this stage, which is not the usual method of dealing with matters. The Legislation Committee dealt with a number of significant policy considerations, in particular, those that I have raised. It also dealt with an aspect that somehow or other the sovereignty of the Western Australian Parliament will be subverted by the Commonwealth. The Legislation Committee has provided a report. The Bill is not a Labor Party Bill; it is a government Bill but the activities of the Labor Party, the Legislation Committee, and the unions representing their members have caused a number of amendments to be advanced that will substantially improve the Bill and will make things better than they otherwise would be. It is on that basis - noting that those opposite unfortunately are the Government of the day that this is the only opportunity to give West State Super members a fair go at the earliest opportunity - that the Australian Labor Party supports the Bill and wishes it be dealt with as quickly and as reasonably as possible.

HON HELEN HODGSON (North Metropolitan) [8.07 pm]: I acknowledge the work of the Legislation Committee under the able chairmanship of Hon Bruce Donaldson. The inquiry was handled quickly because of the need to deal promptly with this matter. To that end, I thank the committee staff who, as always, when the pressure is on, go above and beyond the call of duty to get committee reports to the Chamber in time for the

debate. Having said that, the committee teased out a number of issues. I will indicate the points on which I disagreed with the committee's decision, and points about which, although I have not formally disagreed, I will raise issues during the committee stage because it is important that some responses are put on the record. Basically, the Australian Democrats will support the passage of this Bill although we do not think that it is by any means perfect legislation. That becomes clear from the fact that I have said I will not support a couple of amendments as they come forward tonight. The Bill has some basic fundamental flaws in its structure. However, it is important that we reform superannuation matters for public sector employees.

For a long time, superannuation was one of the things that attracted people to work in the public sector. It was acknowledged that the pay rates of public sector employees were often lower than they could get elsewhere. However, in exchange for that, they had access to a good superannuation plan. People accepted that as part of the remuneration for their job. In the past 10 to 15 years of reforms to superannuation generally, the public superannuation scheme has not kept up with the changes in the community as a whole. To begin with we had the pension fund, followed in 1987 by the Gold State Superannuation fund and in 1993 the West State Superannuation fund. The conditions and entitlements for members of those funds have become progressively poorer when compared with what is available to the community as a whole. It has gone from being one of the best superannuation schemes in the State in terms of what it offered its members to being one of the worst superannuation schemes. This is part of the reason that it is important for the Bill to be amended

Two basic policy matters drive this issue. One is concern for public sector employees and the other is concern for the existence of the fund itself. The Federal and State Governments are committed to a concept of choice of superannuation. However, when their funds do not offer as good a return as can be obtained elsewhere and we are in effect saying to public sector employees that they have a choice, they will leave the fund in droves.

I conducted some quick research on the way in which superannuation generally is handled at the moment. The Australian Prudential Regulatory Authority web site has some interesting breakdowns of the way in which public sector funds perform compared with private sector funds. I found one interesting breakdown which indicated the distribution of funds at March 2000 and included an allocation of funds in various sectors. I will refer to two sectors. One is the corporate sector, which has a large number of funds, with about 1.4 million members and $75b worth of assets. Nationally public sector funds - not just those in Western Australia - have 2.7 million members, double the corporate sector number, and $106b in assets. That means that twice the number of members in public funds have only 25 per cent more assets invested in those funds. That indicates the way in which public sector funds are performing compared with what is available to people outside the public sector.

Other statistics on membership flows indicate that, in the quarter ended March 2000, net entrants into all funds in the whole of Australia numbered 739 000, with 44 000 into public sector funds. However, in September and December, although there was a positive net entrance across Australia, public sector funds reflected a reduction in the number of entrants into the funds so that the membership decreased overall by about 120 000 members in the past nine months; whereas across Australia membership has increased by 1.4 million members. It is clear that public sector funds are currently operating at a disadvantage because the strictures under which they operate work to the detriment of members of those funds. Constituents have raised some of the problems specific to the Western Australian fund with me since 1997 when I was first elected. I remember doing some work and asking a number of questions about employee entitlements when the Dampier to Bunbury natural gas pipeline was sold, because it would affect superannuation entitlements.

Some of the problems brought to me related to the issue of a fixed rate of return. The amount of interest that a superannuation board can declare when the money is retained in its fund, as I recall, is the consumer price index plus 2 per cent; whereas if the funds are invested and the person is still a member, it is the CPI plus 1 per cent. I think those figures are correct, although it is confusing to try to work out which way they go. It is clear that the fixed rate of return is a problem for public sector employees and is one issue that the Government and the Government Employees Superannuation Board are attempting to deal with in the restructuring of the fund.

The second related issue is the lack of portability of superannuation from the public sector fund. Basically, when members leave an accumulated benefit type of fund - that is, money paid in and held to the account of a particular beneficiary - they can normally take the money and reinvest it somewhere else. That has a number of consequences, one being that it assists in keeping their retirement savings in one place, with less likelihood of their losing track of them. It is alarming when one hears about the number of people who do not keep track of their superannuation. The amounts held to their credit are forfeited to the Federal Government and I believe the first lot of forfeitures is due to occur now. There is therefore a lack of portability in the state schemes.

When people are no longer employed in the public sector, their ability to take out money and transfer it elsewhere is restricted. If they are able to do so, a discounting rate is then applied. There are all sorts of logical, financial reasons for that discounting rate, which I will not go into now; except to say that the members of the

fund feel extremely disadvantaged when they are told on a piece of paper that they have $920 000 sitting in the fund, but when they want to roll it out and take it with them to another superannuation fund they are told they can access only $870 000, or whatever the figure may be.

Hon Peter Foss: My son has $35 in a fund and his money is disappearing at the rate of $3 a year.

Hon HELEN HODGSON: We will come to that later when we talk about protection for small benefits and the way that is handled under the federal legislation. Probably the biggest issue to deal with in the public sector superannuation fund is the fact that it is an unfunded fund. That has a number of consequences, and the first is the issue of having to guarantee the return rate. The reason for that is when there is not enough money sitting in the fund to obtain the best market rates of interest, the fund must somehow guarantee the return to members. The fund may be performing well and receiving 10 per cent on its assets, but if the assets are insufficient, it can afford to pay only 1 per cent or 2 per cent to its members. That is one problem that arises because of the unfunded nature of the fund and is the cause of most of the complaints I have received over the years. The main reason that this legislation has been brought before us is to address this particular problem.

Hon Nick Griffiths referred to the issue of the ability to borrow and whether that is being handled correctly. In the past decade enormous changes have occurred in the management of superannuation, which is basically managed at a federal level. We have gone from compulsory superannuation introduced at 3 per cent to its now being between 9 per cent and 11 per cent, depending on the type of employer. We have had the federal system under the Superannuation Industry (Supervision) Act and we could well be moving to another system under the Corporate Law Economic Reform Program 6. That is a Federal Government policy paper on a system that is still in its discussion phase but which will probably take over some of the functions currently handled under the SIS regime. All of this has made people more reliant on their superannuation but less willing to trust government policy when it is being made. People now realise that they are required to join a fund. They have very little choice about what is going on, very little say in the investments that are made and how they are managed, and they are starting to demand a say in what is going on.

There is a marked change in the way people regard superannuation. A lot of the superannuation policy is implemented through taxation measures rather than through the SIS regime itself, and that is where we see the issues relating to complying funds and various tax concessions on payments out of superannuation funds. One of the reasons members of the West State Superannuation scheme, in particular, have fallen behind the rest of the population in relation to superannuation is that the rules have moved on and the members of West State Super have been locked into the current regime which was established in 1993. In most cases that has worked to the detriment of the members of West State Super in particular.

I agree with the need for flexibility in the way in which the superannuation scheme for public sector employees is managed. To that extent - and this is an example where the use of regulations becomes important - I agree with the general policy underlying this legislation, although I have a major "but" as far as this goes. One of the issues that exercised quite a bit of time during the Legislation Committee's deliberations was the relationship between the federal superannuation regime and the state superannuation fund. We need to be clear that it is a constitutional matter because management of the state public sector is the responsibility of the State Government under the Constitution, and that means the Federal Government cannot overrule the legislation and the intent of the State Government.

We need a system which will ensure that state public sector employees do not fall behind once again. While I acknowledge that one of the reasons given in the second reading speech and the discussions in the other place for this legislation is to ensure that that flexibility is available and changes can be made rapidly to comply with federal standards, I am sufficiently sceptical to say that this legislation should be monitored. I am concerned that no adequate mechanism is in place.

The committee report addresses the issue of the heads of government agreement. That was one of the benefits I received from being a member of the committee, because during all the discussions I have had with people in relation to this Bill, it was not until the Legislation Committee stage that I became aware that this agreement existed. While I am pleased that the agreement exists, that in itself indicates my problem - continuing to maintain parallel systems by way of a heads of government agreement. If nobody knows the agreement exists except the people involved in administration of the fund, there is no way that people can monitor it to make sure it keeps up with the Superannuation Industry (Supervision) Act requirements and the federal government community standards.

This House has a responsibility to make sure that it continues to watch over the delegated legislation that will be used to implement the superannuation scheme. I proposed to the committee - and it is in my minority report, so I intend to move it later this evening - that we establish a system whereby, when regulations are gazetted and tabled before the Joint Standing Committee on Delegated Legislation, indicating the arrangements that will be

made to implement the fund and the financial arrangements for members, a statement will be tabled before the committee to outline whether it will continue to comply with SIS and with whatever the regime is after SIS. Otherwise, I am concerned it will fall behind without anybody knowing or monitoring what is happening.

This is something of a conundrum. I recognise that some aspects of superannuation policy, as implemented at the federal level, are not good public policy. One of those issues was presented to the committee by the Police Union. The Police Union believes it is appropriate for police officers to retire at the age of 55 years because the Wood Royal Commission into the New South Wales Police Service and other reports all said it is far better for officers' health to retire early. I agree with that.

I also have some concerns about the issue of same-sex relationships and the way in which they are currently regulated at the federal level. However, by tabling a document outlining where the state scheme diverges from SIS standards, I believe we can say there are good policy reasons to substantiate any diversion or digression. In that sense the proposal is not as strong as one that I was originally considering, which was an automatic compliance with the SIS regime. However, I believe it provides scope to ensure that where policy moves and where there are policy reasons for diversion from SIS, then that can be handled appropriately. The heads of government agreement is sufficiently loosely worded to allow such policy digressions from time to time, but it would ensure that members of the public sector scheme do not have worse conditions than those in the general community. That is what I am aiming for. Although some of the unions have suggested that my proposal means they would have to give up some of the things they are working for, my proposal is that they do not receive worse conditions. The tabling of a statement with regulations would allow a diversionary policy which requires that.

The other practical issue to which I have referred is the funding and the fact that the public sector superannuation schemes are severely under-funded. The approach put forward in the Bill is that the Government Employees Superannuation Board will be entitled to borrow to top up its funds in order to obtain a market rate of return. This is where I have some serious reservations, as do a number of the people who made submissions to the committee. One of the interesting issues presented to the committee related to the different public sector unions whose members would be covered by these new arrangements. A couple of the unions were adamant that the GESB policy of borrowing to top up its investment funds was so abhorrent that they did not think it was warranted. However, other unions say their members are severely penalised by the current structure of the scheme and, therefore, they want the Bill and are prepared to put up with any issues that might arise from public sector borrowing.

I am still a little uncomfortable with the borrowing issue, but I refer now to the Treasurer's guidelines. I suggested prior to this matter going to committee, during discussions and in correspondence with the minister, that it would be useful if a copy of the Treasurer's guidelines governing this matter were tabled and available during the debate. That document was provided to the committee and it is attached to the report at schedule 2.

Hon N.D. Griffiths: That is a draft.

Hon HELEN HODGSON: It is a draft, and we will be watching very carefully to see if there are any significant changes. A couple of issues are addressed in the draft guidelines. I would like a commitment from the minister handling this legislation that the final version will be tabled and made available, because the Treasurer's guidelines do not always have to be tabled in this place. As set out in clause (4) of the draft guidelines, the core issue is that there will be -

> . . . a flow through of repayments from the Consolidated Fund for the life of any borrowing arrangements so as to:
>
> > not expose the assets of the Government Employees Superannuation Fund to the risk of borrowing;
> >
> > not adversely impact on member benefits; and
> >
> > not impact on Board finances.

It also requires a statement from the board that it is satisfied that the borrowing arrangement complies with the guidelines. I know that some concerns are expressed about its flowing through to the consolidated fund; however, in this case, that is properly where the liability should rest. It is clear that the unfunded liability arises from the operation of government over previous years; as such, it is properly a cost to government. Therefore, it is appropriate to guarantee it through the consolidated fund. As long as it does not expose the assets of GESB members to further risk, a safeguard is in place as far as membership entitlements are concerned. The question arises of funds meeting liabilities for members who, as they retire, take their pensions from the pension fund and a lump sum from the Gold State Superannuation scheme. They must be reassured that they will not suffer

problems in having their entitlements paid out in due course. Although I do not condone the fact it remained unfunded for so long, I acknowledge that the Government has tried to catch up and is keeping up with its liability which it is progressively funding. It is a burden which must be shared by past Governments of both complexions. It has occurred for a long time, and should have been put right many years ago by whichever Government was in power.

The approach outlined in the Bill will sheet home the liability where it belongs - to government accounts. It will protect members' entitlements and assets. Although I would have preferred to see the fund fully funded, this approach will protect members' interests. A far better approach would have been to close off the West State scheme, as it currently exists, which is partially funded, and commence a fully funded scheme from now on. Transitional issues would be involved. However, that may be an option available as the new legislation allows for different sub-funds, as I consider them, to be set up within the superannuation scheme. That may be one option to be considered in due course.

Another major concern relates to the use of regulations to maintain the existing pension, Gold State and, to a lesser extent, West State schemes. Members of the pension fund in particular were concerned that the regulations may have been drafted in a way that would have changed their entitlements. Everybody on the committee and everybody to whom I spoke on the government advisory teams and the unions acknowledged it was not something they wanted to happen. It is largely a drafting exercise. The amendments on the Supplementary Notice Paper to a large extent should deal with that aspect.

Another issue was brought to the committee. I comment on the committee's consideration of information and the way it may be affected by parliamentary privilege. I raise it now because I acknowledge that when we debated the issue in committee, I did not consider myself to be fully informed on matters of parliamentary privilege. I have reflected on that matter since. The way this process is established leaves some glaring problems of which the House needs to be aware. Basically, it is set up so that the minister cannot access information without the consent of the beneficiary. It goes on to say that he can access it for parliamentary purposes or for other necessary functions. However, it is the parliamentary purposes issue that is in question. It was put to the committee that including anything in the legislation that tried to define a parliamentary purpose could limit the ability of this House to exercise its functions and demand information. It was also put to the committee that, in a sense, this was a nonsense because the House could, at any time, demand information from the Government Employees Superannuation Board, with or without the consent of the beneficiary, but it could not demand it of the minister. In a sense that is contrary to the Westminster tradition, in which the minister is meant to be responsible in this place. The minister is meant to provide information to the House as we demand it. We discussed at some length how we would deal with this issue.

I note that the amendment on the Notice Paper is slightly different from the one the committee suggested. I think it goes a little further towards addressing those concerns. However, it was put to us that it was unnecessary to refer to parliamentary purposes at all. The clause could be retained for the purpose of providing confidentiality of a member's information but, without the reference to Parliament, the Parliamentary Privileges Act would automatically override anything in the statute and we would be able to get the information as needed if we demanded it for a particular reason. Having said that, I acknowledge that this House would demand information only for a good reason, and it would not consider prying into people's private affairs on any whim or flight of fancy. On reflection, I probably will not support that part of the clause that deals with parliamentary privilege, because the law as it stands should not be overridden and we should leave it to the Parliamentary Privileges Act to address these matters.

The final matter, which I addressed at some length in my minority report, is the issue of same-sex couples being entitled to superannuation. I am perfectly aware that many of the problems relating to same-sex couples arise from federal law on taxation of the entitlements. We could not correct all the anomalies by dealing with it within the state superannuation fund. However, I also put on record that I believe the definitions in our fund should be in such a state that when reform happens at the federal level, we could immediately offer the appropriate product to members in a same-sex relationship. That means they will be able to participate in superannuation benefits in the same way that heterosexual and de facto couples can. My initial thought when I looked at this Bill was that it would not be an issue until we reached the drafting of regulations, because the Bill is structured such that most of the definitions, beneficiaries and so on will be dealt with at the regulation stage. However, it was put to the committee that a definition of "spouse" was required to allow de facto heterosexual couples to partake of the ability to set up spouse funds. As that debate progressed, it became increasingly clear to me that once the de facto spouses were defined in that part of the Bill, it would be limited to heterosexual couples. Although I could deal with the issue of beneficiaries at the regulation stage, I could not in all good conscience allow a definition of "spouse" to be inserted at this stage. It would limit the ability for a product to be offered to partners in a same-sex relationship.

I say all this, acknowledging that some of the benefits of setting up spouse accounts come through taxation law and that those taxation benefits would not be available unless there were changes in the federal taxation law. Two Bills are before the Federal Parliament at the moment, each of which addresses the question of superannuation entitlements and same-sex couples in different ways. I am sure that it will not be much longer before there is some movement on the issue. I would prefer our State's fund to be in a position to offer an appropriate product to same-sex couples as soon as the appropriate changes are made at the federal level.

I will move at the appropriate time to amend the definition of "spouse" to allow same-sex couples to participate in these schemes as soon as other laws are changed to make it possible. We cannot regulate at the federal level but we can make sure that everything is in place for the beneficiaries of this fund when changes are made federally.

The Bill contains some serious flaws. It would have been appropriate to close off the superannuation fund and start again with a fully funded scheme, but we would still have been left with ensuring that appropriate benefits and entitlements were available to members of the existing schemes. Public sector employees have been calling out for this for a long time because they can see that their rights and benefits are not keeping up with those of the general community.

We will support this Bill but I will seek further amendment on two issues that I have highlighted. There are also issues on which I will see further clarification and comment at the committee stage.

HON J.A. SCOTT (South Metropolitan) [8.42 pm]: The Greens (WA) also support the Bill. We have similar concerns with some clauses. Previous speakers have spoken well about them. We have been made aware of some concerns of the unions, particularly about the borrowing capacity and the unfunded liability. Like Hon Helen Hodgson, I believe that the current board finds itself in a very difficult position because of the history of superannuation schemes in this State. This legislation is probably as good as we will get to enable us to get out of the current unfunded liability, short of some generous windfall payment from consolidated revenue by the Government. However, such a windfall is unlikely because other areas will seek them.

I am very happy with the briefings and considerable effort made by Michelle Ahearn and Adrian Warner, who seem to have gone out of their way to take into consideration the concerns of the various parties involved and to try their very best to accommodate the different positions. They certainly kept me well informed at all times of the negotiations. I commend them for their good work.

This Bill does modernise the administration of the Superannuation and Family Benefits Act 1938. Of course, that legislation was first passed a long time ago. We must amend legislation from time to time to address changing circumstances. Modernisation has certainly provided greater flexibility in some areas that needed it; for example, it will help those in part-time or lower paid positions who have had problems accessing the scheme. They will now be able to access it much more easily, and that is a good move.

I am not sure that I agree with the standing committee's approach to the issue of recovering money. I agree with the concerns raised by the Police Union because the clause takes no account of the reason for the deficit when recovering money from an employee; that is, whether it was the fault of the employee, scheme administrator or some other person. The current wording does not treat the employee as an equal in the scheme and provides that -

> (2) If a Member owes money to the fund the Board may direct the Employer of the Member to -
>
> (a) deduct the amount owing from the Member's pay in the instalments and at times set out in the direction; and
>
> (b) pay the amount deducted to the fund.

It may be unfair if a person is in that position through no fault of his own. That situation should be open to more arbitration. If the deficit is the fault of the member, this may be an appropriate provision. However, if it is not, it is unfair. Unlike the Community and Public Sector Union, I would not say that it is draconian, but it is unfair.

The Police Union and the CPSU raised concerns about borrowing capacity. While I understand that people might feel the scheme will be exposed to greater risk, I believe that that extra flexibility will be an advantage rather than a disadvantage. It is more likely that people will be better off rather than worse off. While borrowing always has its risks, the checks and balances provided will prevent that being a major problem.

I know that members want to get on with the passage of the Bill. Most of the matters I want to address have been covered by other members. Hon Helen Hodgson has proposed a change to recommendation 13 of the report. The proposal is to change clause 28 of the Bill so that the definition of "spouse" will include a person living with a member in a bona fide domestic arrangement. An "ex-spouse" will mean such a person on the

termination of the bona fide domestic arrangement. I think it is an appropriate change and the Greens will support it.

Hon N.D. Griffiths: If you insist upon it you will affect all other members of the superannuation scheme who may have to wait another year for the passage of the Bill. The member is grandstanding.

Hon J.A. SCOTT: The member and I differ in that if I know there is something wrong with the Bill I think it should be fixed now rather than wait for some time in the future when a Labor Government may be in office. If the Labor Party thinks the clause is inappropriate and the Bill is discriminatory it should do something now to fix it. One should always attempt to fix what is wrong with a Bill at the time of its passage rather than at some future date. I do not think that Hon Nick Griffiths is right. I think he and his party are worried about the debate. Even though they may believe that it needs changing, they are not prepared to stick their necks out. There is some legitimacy in saying they should take what they think they can get. One never knows about the future. One day the Government may decide to treat all people equally. It is better to change things now rather than at some airy-fairy time in the future as proposed by the Labor Party. I support Hon Helen Hodgson's amendment. In all other respects the Bill is a good step in the right direction. Most of the changes outlined will be beneficial to the members of the State's superannuation schemes.

HON PETER FOSS (East Metropolitan - Attorney General) [8.53 pm]: I thank members for their very valuable contributions to the debate. I want to assure Hon Helen Hodgson that the Government is happy to table the Treasury instruction once the legislation is passed and the final instruction has been given.

I want to respond to a point made by Hon N.D. Griffiths. This Government has taken considerable measures to deal with the question of unfunded liability. It has done so in two ways. The Government now uses accrual accounting. With the type of accounting used before, it was fairly easy to have no idea about how the Government's liabilities would be met. The Government has moved towards requiring all separate corporate bodies to fund the loan where the liabilities and funds deposited are separate. It has cost the Government a considerable amount to do that. It has meant that the Government has been deprived of a cash flow of which previous Labor Governments had the benefit. When Brian Burke was in office he did not fund the liabilities.

As members of Parliament, we were contributing a substantial part of our salaries to our superannuation, but the Government was not putting in any money at all; it was completely unfunded. However, Hon Brian Burke had a really good idea. He spent the bit that we put in, which I thought was a very clever idea on his part. Therefore, not only was the Government's part unfunded, but also our part was unfunded. When I reminded him of this he said, "But we don't want to go back to Menzies and the Boer War." I do not know how many Boer War veterans are in the Labor Party shadow Cabinet, but I can tell the House that Dr Gallop, that well-known Burke war veteran, if I can call him that, is the Leader of the Opposition in the other place, and the Leader of the Opposition in this House was a minister in the former Labor Government. The Labor Party also has the member for Fremantle, Jim McGinty, and Eric Ripper, who I believe is the Deputy Leader of the Opposition, in the other House. It was extraordinary for the last Labor Government to use the Boer War as justification for not doing something. Perhaps we should tell members of the public that the time between the Boer War and now is about the amount of time that should elapse between two Labor Governments. In fact, that is an excellent suggestion.

If I remember rightly, at that time, Dr Gallop was the minister in charge of that portfolio, so not only was he in the Government but also he was the minister who had responsibility for that legislation.

Hon B.K. Donaldson: And what about the State Government Insurance Commission?

Hon PETER FOSS: We will not even talk about the SGIC.

Hon N.D. Griffiths: I remember that in 1982 Malcolm Fraser talked about 1974-75. You always do this just before you are going to lose. You can't defend the present; you have to rely on your perverted view of the past.

Hon PETER FOSS: I find the protestations of Hon Nick Griffiths amusing. Having accused us of not funding a liability that we have been busily trying to fund during our time in government - it has been difficult and it has been done with some pain - that is a bit precious on the part of Hon Nick Griffiths. However, I can understand why he wants to treat the not-so-long-ago efforts of particularly Dr Gallop in his financial arrangements as history. I am sure that we would all like that to be ancient history, and I look forward to the time that it is, when the involvement of Labor in the government of this State is so far away that the people who can remember it will all be 90 years old or dead.

Most of the matters raised by Hon Nick Griffiths were considered and dealt with by the committee. In particular, the committee was satisfied with the safeguards and the Treasurer's draft guidelines.

Hon N.D. Griffiths: You should have finished your speech when you thanked everybody for their contributions.

Hon PETER FOSS: I would like to. I will make amends now and try to finish quickly. I thank members for their contributions. We can probably deal with some of the items, because I have put amendments on the Notice Paper that I think will address some of the matters that have been raised.

I thank members for their support, and I look forward to the Bill's rapid passage through the committee stage.

Question put and passed.

Bill read a second time.

Committee

The Chairman of Committees (Hon J.A. Cowdell) in the Chair; Hon Peter Foss (Attorney General) in charge of the Bill.

Clauses 1 and 2 put and passed.

Clause 3: Interpretation -

Hon PETER FOSS: I move -

Page 3, line 6 - To insert after "scheme" -

established or continued

Page 3, after line 8 - To insert the following new subclause -

(2) For the purposes of this Act, a person who -

(a) holds an office or position established or continued under a written law; or

(b) is appointed to an office or position by the Governor, a Minister, an Employer or a person who works for an Employer,

is taken to work for an Employer.

Hon HELEN HODGSON: This amendment was raised in the Legislation Committee's report and will address the problem that was raised by the Police Union - and that I believe also affects certain parliamentary staff - in respect of whether certain persons are employees.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 4 to 12 put and passed.

Clause 13: Review of Board decisions -

Hon PETER FOSS: I move -

Page 8, lines 13 to 16 - To delete all words after "subsection (1)" and insert instead -

may -

(a) if the decision relates to a superannuation scheme continued by section 29(c) or (d), appeal to a Judge; or

(b) in any case, refer the matter for independent review by a prescribed person or body.

Hon HELEN HODGSON: This matter also came up in the Legislation Committee, and I had some reservations about this matter at that time, because while this amendment will deal with the primary issue in that it will continue the appeal rights of members of the former scheme, it could have been clarified further by the insertion of additional subclauses.

As that was not part of the committee recommendation, I raise it so that it is on the record, but I will not pursue it by proposing additions at this stage.

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 14 to 22 put and passed.

Clause 23: Investment manager -

Hon HELEN HODGSON: Recommendation 9 in the fifty-second report of the Standing Committee on Delegated Legislation sought clarification of exactly what clause 23 means. The committee discussed this at some length. The clause did not seem to add anything to the legislation, notwithstanding the response provided by the Government Employers Superannuation Board. In fact, it reached a point at which a specialist drafter needed to provide us with the advice we needed, which is why we highlighted it in the report and asked for clarification of the meaning of clause 23(3).

Hon PETER FOSS: Clause 23(3) was inserted to remove any ambiguity about when the Treasurer's approval needs to be sought on the appointment of an investment manager. Some investment transactions merely involve the purchase of a product or service and there is no delegation of the board's function to a provider of a product or service. The clause makes it clear that the provider in this instance is not considered to be an investment manager. In any event, the Treasurer's approval is still required under clause 18(1) for the type of investment; that is, the nature of the product or services.

Hon HELEN HODGSON: Am I correct in saying that when it is simply a matter of purchasing a financial product, rather than a person making a strategic decision, the person would not be considered to be an investment manager within the meaning of this clause?

Hon Peter Foss: Yes.

Clause put and passed.

Clauses 24 and 25 put and passed.

Clause 26: Recovery of money owing to Fund -

Hon J.A. SCOTT: Why is clause 26 written in the way it is, particularly paragraphs (c) and (d) and subclause (2)? In one case there is an arrangement and in another case there is a direction. I think the Community and Public Sector Union and the Police Union (WA) pointed out that the amount that may be owed could arise through no fault of a member; yet he may be placed in a difficult position by the imposition of deductions as opposed to his employer, who could come to an arrangement for the satisfaction of the debt. Why is there a difference?

Hon PETER FOSS: The difference is that nothing was in place before this. This makes provision for an arrangement to be made with an employer. Although the board is in a fairly useful position of holding money on behalf of an employee and being able to deduct it, it does not have the same capacity with an employer. This requires that a contractual arrangement be entered into to ensure the money is paid.

Hon B.K. DONALDSON: I understand that the Government has picked up recommendation 12 in the fifty-second report of the Legislation Committee that the current practice of the Government Employees Superannuation Board be made law by regulation.

Hon Peter Foss: That is true.

Hon B.K. DONALDSON: Although it is not subject to amendment, it is important that the Attorney General clarify the steps the Government intends to take.

Hon PETER FOSS: The chairman of the Legislation Committee is correct. Recommendation 12 suggests that the board's current principles for collecting moneys owing by members be made law by regulation. The Government supports this recommendation and parliamentary counsel has advised that the general regulation-making powers under clause 38 of the Bill provide sufficient scope for this to occur. Accordingly, I give a commitment that the regulations will include the board's administrative policy for the recovery of money.

Hon DERRICK TOMLINSON: Hon Jim Scott has expressed the concern that an employer may direct that a sum of money be deducted from employees' remuneration, and if employees are compelled to pay that - probably before they receive their pay anyway - that may impose a hardship on the employee. What procedures exist to ensure that employees do not suffer hardship? For example, does the employer negotiate with the employee on what is a reasonable sum, and when there is an agreement about a reasonable sum is that the sum that is directed to be taken from the employee's salary?

Hon PETER FOSS: One probably ought to ask the question of the people who passed this Act in 1987, which is where this provision came from. All that is being added is the ability to get money out of the employer as well. That was done administratively previously. Now it has been suggested that we do two things: The first is that we arrive at an arrangement and the second is that we put that arrangement into regulations. Members must keep in mind that the person who will get money from the scheme is the member, not the employer. The person who has the account with the scheme is the member and the person who will receive money is the member. It is

appropriate that as far as between the scheme and the member - the one who is going to pay the money and the one who will receive the money - there be a more direct debit system applied. When it gets to the end, people are entitled to have their money paid to them out of the scheme. The employer is really a third party, because all he is doing is deducting money from the employee and making sure that the funding takes place. The employer should be seen as a third party to the matter.

Hon HELEN HODGSON: Up to that point most of the issues I would have raised have been addressed. I take exception to the comments of the Attorney General when he differentiated between employers and employees on the basis of one being the beneficiary and the other a third party. Under federal law it is compulsory that contributions be made into a superannuation fund. In that context both parties have an enforceable liability that the board should follow up.

I acknowledge the practical difficulties that arise from having to recover small amounts of money and making individual arrangements with members of a fund. I also acknowledge that it is often beyond the control of members whether the correct contributions are being taken out of their salary. However, in some instances, members cannot afford to make repayments at the rate at which they are asked. I believe the current policy deals with that issue by ensuring that an arrangement is entered into if it is more than a certain amount. The proposal of putting this matter into the regulations was to find a balance between the administrative difficulty of making an arrangement for $5 a week and the practical issue of ensuring that employees did not suddenly discover that half their pay had gone on a backlog of superannuation due to no fault of theirs. For that reason I am pleased to hear the Attorney General's commitment that it will be incorporated by regulation.

I conclude by noting the irony that it probably was not noticed in 1987 because there was nothing against which to measure it. Now that the two clauses are worded differently, it has highlighted the fact that employees have relied on an administrative mechanism rather than having any statutory rights in respect of negotiating repayment schemes. In a sense, correcting the anomaly of 1987 has highlighted the fact that members have probably not had any rights in that respect in the first place.

Clause put and passed.

Clause 27 put and passed.

Clause 28: Superannuation schemes -

Hon PETER FOSS: I move -

Page 15, line 4 - To insert after "working" the words ", or have worked,".

Page 15, line 7 - To delete "ex-spouses" and substitute "former spouses".

Amendments put and passed.

Hon PETER FOSS: I move -

Page 15, after line 9 - To insert the following new subclause -

(3) In subsection (2) -

"spouse", in relation to a person, includes another person living with that person in a bona fide domestic arrangement as if they were husband and wife.

Hon HELEN HODGSON: I move a further amendment to this amendment -

To delete all words following the word "arrangement".

This amendment to the amendment relates to the issue that I addressed at some length in my contribution to the second reading debate. This amendment will ensure that the state superannuation scheme is able to set up spouse accounts to cater for same-sex couples. The amendment is made in the knowledge that federal legislation may cause some difficulties. However, it is good policy to ensure that the scheme is set up in a way which allows flexibility. I refer to the comments made in the second reading speech that the purpose of this legislation, having been designed to be governed primarily by regulation, is to ensure that it has the flexibility to adequately meet changes in the federal regulatory requirements as well as the community's expectations and standards. It is therefore appropriate that we ensure this product is able to be developed and offered at the appropriate time. I therefore propose to remove the reference to "husband and wife" as that phrase infers a heterosexual-type relationship.

Hon PETER FOSS: I am not sure the amendment would achieve the desired result. In any event, the Government opposes it.

Hon DERRICK TOMLINSON: This issue was raised in the Standing Committee on Legislation. I think the reason for the amendment moved by Hon Helen Hodgson is to create the capacity for someone in a same-sex relationship to nominate a spouse for the purposes of receiving a benefit.

Hon HELEN HODGSON: This is not the clause that deals with the beneficiaries. This clause deals with spouse accounts, which is a different issue. A spouse account is a product offered by superannuation schemes. The beneficiaries are dealt with under the regulatory-making power, which confers on the regulations the power to identify those who are considered beneficiaries to the scheme. I am not addressing that at this stage. This clause will allow the fund to offer an arrangement that would enable a member's spouse to take part in the superannuation scheme.

I remember comments were made during the committee that spouses are already independent, and about the way they would feel if superannuation were dealt with in this manner.

Hon N.D. Griffiths: Which committee was this?

Hon HELEN HODGSON: The Standing Committee on Legislation.

Hon N.D. Griffiths: When did we deliberate on that?

Hon HELEN HODGSON: I would not call comments made over coffee afterwards deliberations. This clause deals with spouse accounts, which is a product that allows a person's spouse to be a member of the superannuation fund and to have a separate account in his or her name.

Hon DERRICK TOMLINSON: I am confused, although I find the question of spouse entertaining - I have a very entertaining spouse. If the words "as if they were husband and wife" were removed from the Attorney General's amendment, it would read "living with that person in a bona fide domestic arrangement". I am not sure what a bona fide domestic arrangement is. An elderly parent of either gender could live in a bona fide domestic relationship with offspring of either gender. According the proposed definition, the son or daughter would be the spouse, which might be adequate for the purpose of a spouse arrangement under a superannuation scheme. However, the amendment would imply that "a bona fide domestic arrangement" is tantamount to a marital relationship between two persons or, in the language of contemporary practice, a permanent relationship.

Hon Peter Foss: A significant other.

Hon DERRICK TOMLINSON: The terminology does not matter. We are talking about a particular domestic arrangement. If the words were removed, we would be left with a definition that encompassed any bona fide domestic arrangement. I hope Hon Helen Hodgson can demystify this as I believe it is an important point.

Hon PETER FOSS: Hon Derrick Tomlinson has a good point. It could also be argued that same-sex couples live in genuine domestic arrangements as if they are husband and wife. Connubiality is probably an important point. I tried to shorten this by saying that I am not sure it achieves the result Hon Helen Hodgson intends to achieve, but we oppose it. I think Hon Derrick Tomlinson is correct, and I think it could also be said that even without removing it, it does not necessarily exclude same-sex couples.

Hon HELEN HODGSON: Firstly, this concept of a bona fide domestic relationship is one that has been considered by the courts at different times and my understanding of this phrase comes from dealing with spouse rebates when I was working at the Australian Taxation Office when it started trying to define "spouses" as including de factos. There is a meaning for that phrase which involves an examination of the facts and a determination of whether there is a permanent relationship between the two.

Secondly, a recent Senate Select Committee on Superannuation and Financial Services report entitled "Report on Provisions of the Superannuation (Entitlements of Same Sex Couples) Bill 2000" raises issues which go beyond people in a connubial relationship and it looks at the situation, for example, of two sisters who have remained spinsters all their lives but have a genuine relationship in which they are dependent on each other and wish to ensure that their compulsory superannuation goes to the person with whom they have shared their lifestyle. In that context, given that these people are required to be in these schemes, I do not think that it makes a great deal of difference whether a person is in a connubial relationship if it is with their life partner. I can think of a couple myself. Because a brother and sister share the same surname I thought for years they were husband and wife, but in that situation they have shared their domestic arrangements for so long that they should be entitled to nominate that person and to provide for that person.

Hon DERRICK TOMLINSON: I thank Hon Helen Hodgson for that very important explanation. I suggest, however, that we should be looking for a term other than "spouse" because, according to convention - and I am very conventional when it comes to the English language - "spouse" implies a particular kind of connubial

relationship. If we are to embrace the legitimate arguments presented by Hon Helen Hodgson, I suggest we find an alternative word.

Amendment on the amendment put and a division taken with the following result -

Ayes (5)

Hon Helen Hodgson	Hon J.A. Scott	Hon Christine Sharp	Hon Norm Kelly *(Teller)*
Hon Giz Watson			

Noes (21)

Hon Kim Chance	Hon Max Evans	Hon Mark Nevill	Hon Derrick Tomlinson
Hon J.A. Cowdell	Hon Peter Foss	Hon M.D. Nixon	Hon Ken Travers
Hon M.J. Criddle	Hon G.T. Giffard	Hon Simon O'Brien	Hon B.K. Donaldson *(Teller)*
Hon Cheryl Davenport	Hon N.D. Griffiths	Hon Greg Smith	
Hon Dexter Davies	Hon Ray Halligan	Hon W.N. Stretch	
Hon E.R.J. Dermer	Hon Murray Montgomery	Hon Bob Thomas	

Amendment on the amendment thus negatived.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 29 put and passed.

Clause 30: Other public sector superannuation schemes -

Hon PETER FOSS: I move -

Page 16, line 3 - To delete "its employees" and insert instead -

persons who work for the Employer

Page 16, lines 6 and 7 - To delete "its employees" and insert instead -

persons who work for the Employer

Page 16, line 18 - To delete "employee or class of employees" and insert instead -

person who works for an Employer, or class of such persons.

Amendments put and passed.

Clause, as amended, put and passed.

Clauses 31 and 32 put and passed.

Clause 33: Treasurer's approvals and guidelines -

Hon PETER FOSS: I move -

Page 18, lines 4 and 5 - To delete the lines and insert instead -

(a) must be in writing;

(b) may be given when and how the Treasurer determines; and

Amendment put and passed.

Clause, as amended, put and passed.

Clauses 34 and 35 put and passed.

Clause 36: Minister to have access to information -

Hon PETER FOSS: I move -

Page 20, line 14 - To insert after "possession" -

, or under the control,

Hon HELEN HODGSON: This is the issue to which I referred in the second reading debate concerning its relationship to parliamentary privilege. It was put to the Standing Committee on Legislation, and I now put it to the Chamber, that with the use of the "parliamentary purposes" definition, as separate from other official purposes, the minister may cause complications in relation to the interpretation of the Parliamentary Privileges Act and the way in which the two statutes will interrelate. For that reason, I seek some comments from the Attorney General about why he believes that it is appropriate to have the references to parliamentary purposes in this legislation and the reasons he feels that this statute should be used to override the common law and the interpretation of the Parliamentary Privileges Act.

Hon PETER FOSS: These clauses arose out of the Burt Commission on Accountability. Earlier we were talking about government being accountable for things. The fact is that Governments are not accountable unless these provisions are included. I know that sometimes there is a failure to understand that point in this Parliament, and people ask questions about things for which ministers do not have ministerial responsibility. In the absence of the power to direct, the minister has no accountability so far as the actions are concerned. In the absence of a power to obtain information, the minister has no obligation to obtain information. It is a question of accountability. In the absence of those two things, one cannot say that Parliament has said that a minister will remain accountable. He may be the minister responsible for the Act, but he is not the accountable minister and, strictly speaking, he cannot be asked any questions.

Hon HELEN HODGSON: It was my understanding that under the Parliamentary Privileges Act we could issue an order requiring certain information to be made available and that the practice was to go through the minister for that type of information. The alternative would be to go directly to the Government Employees Superannuation Board and bypass the minister. That is removing accountability from the minister and placing the obligation on the public servant, which is probably contrary to the way we understand ministerial accountability.

Hon PETER FOSS: Precisely. That is exactly the point. If the minister does not have any accountability, either by answering questions or by giving directions, he cannot be asked questions. If people try to do it by way of a parliamentary order, first of all they must justify the summons. They might find it rather hard to justify why they are asking that question as a parliamentary committee. One cannot assume a parliamentary committee can ask for anything. It must be within the purview of the parliamentary committee and it must be for legitimate purposes, otherwise the witness can object to giving that information. Ultimately, a minister can always be ordered to do so. If a minister is ordered do it, he must do it. We have had examples in which a minister has been told that he will produce information. He has no excuse. Orders under the Parliamentary Privileges Act can be challenged. I remember one case in which the House made an order against a third party. My recollection is that nothing happened on it. It went straight to the Supreme Court and there it stayed. In due course, prorogation occurred and that was the end of the order. People do have powers, but they should not believe that they would get much of a result just because the Act says that they will. If somebody is prepared to put up a big enough fight, prorogation will occur before the matter gets through the courts. The period between prorogations is less than the period it takes to list the matter in court.

Amendment put and passed.

Hon PETER FOSS: I move -

Page 21, lines 3 and 4 - To delete "is authorized by the beneficiary" and insert instead -

is -

(c) authorized by the beneficiary; or

(d) authorized or required by a written law.

Amendment put and passed.

Clause, as amended, put and passed.

Clause 37 put and passed.

Clause 38: Regulations -

Hon PETER FOSS: I move -

Page 22, line 10 - To insert after "Act" -

or section 26 of the *State Superannuation (Transitional and Consequential Provision) Act 2000*

Amendment put and passed.

Hon PETER FOSS: I move -

Page 23, after line 6 - To insert the following new subclause -

(4) Regulations cannot be made under subsection (1) in relation to the superannuation schemes continued by section 29(a), (b) or (c) unless -

(a) the Board has certified that it is satisfied that the proposed regulations will not affect contributions or benefits; or

(b) an actuary appointed by the Board has certified that the proposed regulations will not reduce, or have the same effect as reducing -

(i) in the case of a scheme continued by section 29(a) or (b), the multiplying factor for any relevant benefit; or

(ii) in the case of the scheme continued by section 29(c), the pension value factor for any Member of that scheme,

to less than it was immediately before the commencement day; or

(c) any reduction of the kind referred to in paragraph (b) will apply only in respect of Members who have agreed with the Board that the reduction is to apply in the calculation of their benefit.

Amendment put and passed.

Hon HELEN HODGSON: I move -

Page 23, after line 14 - To insert the following new subclause -

(5) Regulations that prescribe matters of a kind that are substantially the same as those for which a comparable standard or rule is in force under the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth must be laid before each House of Parliament with a statement describing the extent to which the regulations comply with, or deviate from, the comparable Commonwealth provisions.

I raised this issue in both my minority report and during the second reading debate. It is necessary to track the comparability between the Superannuation Industry (Supervision) Act provisions and the regulations that are prepared under this State Superannuation Bill. I acknowledge the problems that occur when policy settings are different at the state and federal levels, but the proposal of a statement describing the compliance with the commonwealth standards would to a large extent put on the public record, when there is a deviation, the reason for the deviation.

The amendment is not intended to cause any difficulties in the administrative process. The Joint Standing Committee on Delegated Legislation would automatically be sent information relating to this Bill anyway. It is simply a matter of extra description of the regulations of the Bill being made available, which would improve accountability. Members of the fund would be assured that their fund was not falling behind others in any significant areas. It would also enhance the process of keeping it parallel with community standards.

Hon B.K. DONALDSON: Hon Helen Hodgson has great faith in the Commonwealth. Federal Governments keep changing the goalposts on superannuation. One of the fundamental objectives of superannuation in this country is to ensure that as many people as possible can fund their retirement. The aging population will put a further drain on the workforce. The regulations made under the provisions of the Superannuation Industry (Supervision) Act are one way for the Commonwealth to keep on top, because constitutionally it does not have the power. The Commonwealth Government uses the big stick in the form of the Australian Taxation Office. It would be very foolhardy for any superannuation fund in Western Australia not to comply with those regulations because it would be at a risk of the ATO's approaching it with a big waddy and saying that the fund will no longer have those taxation benefits. Although SIS regulations are supervised to some extent from a distance, quite frankly the tax provisions have more potent force because any board or trust administering superannuation funds would be subject to great criticism if it did not ensure the maximum taxation benefits for its beneficiaries.

Hon PETER FOSS: I echo Hon Bruce Donaldson's comments but I believe there is more to it than that. Hon Bruce Donaldson will recall that the Joint Standing Committee on Delegated Legislation requires, and I am sure will continue to require, explanatory memoranda. It may well require this matter to be dealt with in explanatory memoranda. We all know what happens to regulations that do not come with a satisfactory memorandum. I do

not think there will be any problem on the committee's part in making sure it gets it memoranda. I do not believe there will be any problem arriving at a memorandum that is satisfactory to the House. However, the committee has always been very careful to put at the end of the memorandum that it is in no way to be taken as interpreting the legislation itself; in other words, it is not a legislative document or an interpretive document - it is purely for the information of the committee.

This amendment worries me. It refers to matters of a kind that are substantially the same as those for which a comparable standard or rule is in force and provides that they must be laid before the House with a statement describing the extent to which regulations comply with, or deviate from, the comparable commonwealth provisions. That is not simply a statement, it is an opinion; in fact, it is a legal opinion. What happens if it is wrong? What is its status in terms of interpretation? I see that as a considerable clouding of the waters around the regulation. It would be a very unwise practice. The committee's current practice of stating that the memorandum is not in any way to be used in interpretation is the way to go. I trust the committee. It has been a fearless, impartial and bipartisan body in ensuring that such matters in which it is interested are dealt with properly in an explanatory memorandum. I would hate to see this on the public record, as suggested by Hon Helen Hodgson. It would add more doubt than certainty.

Hon HELEN HODGSON: I find it amusing that Hon Bruce Donaldson refers to my faith in the Commonwealth Government. I have questions about the faith of some members in the heads of government agreement. I have seen the document, although I was not aware it existed until we got to the committee stage, which indicates its obscurity. It is simply a statement of a number of policies. Those policies comprise the Superannuation Industry (Supervision) Act framework, but that legislation is far more detailed.

The Civil Service Association and Community and Public Sector Union submission pointed out that one of the core provisions of the Bill - that is, the borrowing provision - is not permitted under the legislative guidelines. The fund will still be a complying fund even though it does not comply with one of the requirements of the SIS provision because it fits within the heads of agreement document. In some cases the divergence is acceptable if it is being done for a good policy reason. Can the Attorney General give an undertaking that when explanatory memoranda are tabled they will address this matter? With or without the rider about its efficacy in explaining the legislation, it is important that this information be made available to the people determining whether the regulations fit within the appropriate framework.

Hon PETER FOSS: I am not prepared to give that undertaking. It is far too hazardous for a minister to make a statement about what will happen. I am sure that it will happen, and I am sure the committee will ensure it happens. However, I will not make it subject to that undertaking.

Amendment put and negatived.

Hon PETER FOSS: I move -

Page 23, after line 28 - To insert the following new subclause -

(8) In subsection (4) and this subsection -

"commencement day" means the day on which this Act comes into operation;

"multiplying factor", in relation to a relevant benefit, means the components of the benefit formula by which the Member's salary is to be multiplied in order to calculate the benefit;

"pension value factor" means -

(a) the number of units that a Member may, or may become entitled to, acquire per dollar of the Member's salary; or

(b) the amount of the pension that will or may become payable in respect of each unit held by a Member;

"relevant benefit" means a benefit, or part of a benefit, the amount of which was, immediately before the commencement day, calculated as a multiple of a Member's salary.

Amendment put and passed.

Clause, as amended, put and passed.

Progress reported and leave granted to sit again.

[Continued next page.]

[Resolved, that the House continue to sit beyond 10.00 pm.]