

SUPERANNUATION LEGISLATION AMENDMENT AND VALIDATION BILL 2006

Second Reading

Resumed from 10 May.

HON GEORGE CASH (North Metropolitan) [5.05 pm]: This is a bill for an act to amend the Parliamentary Superannuation Act 1970 and the State Superannuation Act 2000. It will also validate certain things done under the State Superannuation Act 2000, the Government Employees Superannuation Act 1987 and the Superannuation and Family Benefits Act 1938. The bill generally deals with seven specific areas: firstly, the full implementation of the commonwealth's clean break approach to splitting superannuation upon marriage breakdown, and relates in particular to the commonwealth Family Law Act, and the necessary consequential amendments required to state legislation. The second area is the reinstatement of the protection of superannuation death benefits for members of public sector schemes from claims by creditors of the estate. The third area is to provide the Government Employees Superannuation Board with the capacity to be a successor fund. The fourth object is to allow GESB to establish a subsidiary to support the provision of ancillary benefits and services to members, including financial advice regarding a member's interest in schemes that are administered by GESB. The fifth area is the need to validate the longstanding funding obligations in place for pension scheme members who are employed by technical and further education colleges throughout Western Australia. The sixth area is the validation of benefits paid in West State Super funds for visiting medical practitioners from 1 July 1992 to 30 June 2001. The seventh is a relatively minor matter that involves rectifying an unintended drafting error in the 2001 superannuation legislation, which removed the entitlements of small groups of employees to membership of West State Super.

Members will be aware of the commonwealth Family Law Act 1975, particularly the provisions covering the distribution of property. I am referring to section 79 of the Family Law Act 1975, which covers the alteration to property interests. For a long period superannuation was an area of property interests in which the Family Courts of Australia that came under the Family Law Act - that does not include the Family Court of Western Australia, which has its own state legislation - were unable to make orders concerning superannuation that would apply on a current basis. When I say "current basis", I mean that it would create an interest there and then. Some time ago, the commonwealth government amended the Family Law Act 1975 and those amendments, which dealt in particular with section 90 of the Family Law Act, allow for the issuing of splitting orders and other orders for the property of spouses. That will enable alteration of property interests to include superannuation in a current-day situation. We agree with those propositions and believe that the state legislation should be amended to allow for flag-lifting agreements or splitting orders for former members of the superannuation scheme.

The next area dealt with in the legislation is the need to rectify an unintended consequence in the treatment of superannuation death benefits. These arose when the operational rules for the main state public sector schemes were transferred from the Government Employees Superannuation Act 1987, which was then known as the GES act, to the State Superannuation Regulations 2001. The opposition has had the opportunity of attending briefings with officers who came to the Parliament, and we agree with that proposition. Another area that has been talked about for a long time is the ability of the Government Employees Superannuation Board to accept transfers from other public sector superannuation funds under arrangements similar to those of a successor fund. This will now come to fruition as a result of this bill, and the opposition agrees with this proposition.

The 2005 bill was introduced into the Parliament but did not proceed to its conclusion, and therefore there was a need for the 2006 bill, which covered all the areas of the 2005 bill plus an additional provision allowing GESB to establish a subsidiary to support the provision of ancillary benefits and services to members, including financial advice about a member's interest in schemes administered by GESB. Again, the opposition was given a briefing on this additional amendment. We recognise that GESB is limited at the moment in the advice it can offer its members. To that extent, some GESB members are disadvantaged in not being able to be provided with professional financial advice that specifically relates to GESB schemes. Financial advisers offer services to the community at large, but it has been argued from time to time that some of those advisers are neither well skilled nor sufficiently knowledgeable about the various schemes administered by GESB, and there is a need for people with particular skills in respect of GESB schemes to be able to offer financial advice to members. This will be a fee-for-service operation, and the opposition accepts the advice it has been given that the operation will be on the basis of a fee for service to recover costs, and that GESB does not intend to make a profit on this advice, nor is it in the business of undercutting professional financial advisers presently operating or who will operate in the future in the financial advice area. Our support for this provision is very much based on the fact that we think that members of GESB are at the moment somewhat disadvantaged by this advice not being available to them, and we want to ensure that they have the same opportunities as people in other superannuation funds.

The fifth area that I mentioned earlier requires the validation of the membership eligibility and funding obligation to the GESB pension scheme of employees of technical and further education colleges. This measure will be backdated to 1 January 1997. The briefings given to the opposition on this area explained in detail the reasons that these validation clauses are necessary, and we acknowledge that there is a need for the various acts to be amended in the way proposed in this bill. Members will be aware that the opposition is not too happy when there is a need to validate past acts because of some of the issues that can arise as a result of such validations. However, I am speaking here specifically about the validation of a measure that takes a benefit away from someone rather than one that validates a benefit that has been granted.

The sixth area that the bill covers is intended to validate contributions made by a number of visiting medical practitioners who were ineligible for membership of GESB schemes because they did not fit within the definition of the word “employee” contained in the legislation. We accept that there is a need to confirm the benefits that those visiting medical practitioners are entitled to and to validate those benefits so that there is no question about their position.

The seventh area covered by the bill relates to a drafting error that arose some time ago when the GES act was repealed. Normally, when acts are repealed transitional provisions are provided in the repealing act so that nothing is lost, so to speak, as a result of the repeal, especially when another piece of legislation is being enacted to take over all or some of the areas covered by the act proposed to be repealed. When the earlier act in this case was repealed some provisions were not adequately carried over into the State Superannuation Regulations 2001, and an amendment is contained in the bill now before the house to take those matters into account and to remedy that discrepancy or error.

There is no need to go into great detail about the question of clean break. This is a matter that follows on from the commonwealth legislation. The clean break legislation, as it is sometimes referred to, has been discussed at length in the community, and it is my understanding that most people would agree with the general proposition about the alteration of property interests as a result of the breakdown of a marriage. We are not here to argue whether the clean break scheme is right or wrong. We recognise that the change is required to be made in the state legislation, and this therefore has our support.

In relation to the fourth area I mentioned, that of GESB providing financial advice, I have already said that the opposition agrees with this measure on the basis that we do not want GESB members to be disadvantaged. I think this will be a growth area for GESB. Many members have not been provided in the past with adequate financial advice about their interests. I am told by officers of GESB that they are contacted regularly by their own members seeking financial advice, but the current legislation precludes them from providing that advice. This measure has been a long time coming, but at least it is in this bill. I am glad that this measure has been included in this bill, otherwise it may have had to wait some time before another amending bill was presented to the Parliament. In saying that, when I had a briefing with Government Employees Superannuation Board officers, I asked why this provision had been included in the bill. They explained that it was a late inclusion and that they were able to include it because the 2005 bill did not go through Parliament. They also made the point that GESB is always reviewing the legislation under its control and that we can anticipate another bill in due course with further amendments. It is an ongoing process. It was lucky, so to speak, that the fourth issue to which I referred was included in this bill rather than the officers having to wait to include it another bill.

With those comments, the opposition supports the bill. We recognise the important work that is carried out by the Government Employees Superannuation Board. Moreover, we recognise the very strong support offered to the Government Employees Superannuation Board. When comparing some of GESB’s recent investment decisions with the rates of returns of other organisations, I can see why a number of people who are not able to join that fund would like to do so. Clearly, that organisation is in touch with superannuation and investments generally and, when compared with other schemes, is able to produce a significant return for its members. In that regard, we recognise the work that is being done by GESB officers, which puts its members in a favoured position. Being in a favoured position does not just happen in the cut and thrust financial world; rather, it requires significant skills, and those skills have been very ably demonstrated by GESB staff over a number of years. The opposition supports the bill.

HON MURRAY CRIDDLE (Agricultural) [5.23 pm]: I feel duty-bound to make a few comments about the Superannuation Legislation Amendment and Validation Bill 2006. I thank Hon Kate Doust for arranging the briefing that I just had. I was of the understanding that this bill would be debated later in the week; however, bills sometimes move up the order of business quickly, and this is the bill that we are dealing with at the moment.

Hon George Cash covered the relevant parts of the bill. I am pleased that the bill includes a clean break provision. I believe that that is the result of the federal government’s 2002 legislation. Some people are waiting for this bill to be passed. Clarity in this area will be very good. After the bill is passed, people will be in a better

position to ascertain their situation. The area of death benefits needed validation. I am pleased to see the advice provision for GESB members. Financial advice is something that a lot of us welcome and that more of us should use. That sort of advice is very good. I note that such advice is a fee-for-service provision; however, it will certainly be of benefit. Certainly, I would benefit from advice in that area. Superannuation can be quite complicated. I have listened to the Treasurer talk about the federal government's latest changes to superannuation laws. People must become well and truly aware of the changes - the sooner, the better. The differences in the amount of funds that will be affected are quite dramatic and something that we should all be aware of. I was lucky enough to hear the Treasurer explain the changes. The system is a lot simpler now, but it will have a massive impact on those who have superannuation funds.

As I said, the other areas of the bill have been covered by other members. I am pleased to see this legislation move forward. It will be of benefit to those who belong to GESB. I welcome the legislation.

HON BRUCE DONALDSON (Agricultural) [5.26 pm]: I endorse what Hon George Cash said about this bill. The fourth item he outlined was the question of financial advice. It is important that we have that capability. The Government Employees Superannuation Board is the secretarial wing of the Parliamentary Superannuation Board. We are fortunate that that advice is available to us, especially given some of the changes that have been announced by the federal Treasurer. It all sounds good on paper, but we must consider the fine print. I am referring to tax-free lump sum provision benefits. As I understand it, that comes from a taxed fund. I think West State Super and the funds to which state and federal members belong are untaxed funds. Everybody got a bit excited when the changes were announced. The issue that worries me - putting members of Parliament aside - is the public servants who have GESB funds. I do not know whether they will be collared in the same way. The changes could be a bitter blow to many thousands of public servants who utilise the good GESB fund. Even financial planners are having difficulty coming to terms with some of the changes. Advising people about the changes will be pretty important. If financial advisers have not already been bombarded by questions, I bet they will be. A lot of people have to make decisions about when to retire. They need to know what benefits they will receive if they delay their retirement until after 20 September 2007. Having said that, part of the fine print is that the Treasurer will consult with the industry about the package. I do not know what that means. Normally when something is announced by the Treasurer, it is almost etched in stone. However, I am not too sure whether that is the case in this instance. I think the Treasurer wants to get industry consultation on some of the changes that have been announced. This legislation is timely from the point of view of GESB members. I am sure that not only public servants will be interested to learn where they sit with this, but also each and every member of Parliament will be interested to learn about this somewhere down the track. Hon Kate Doust, the Chairperson of the Parliamentary Superannuation Board, has indicated that that will be the case. Fee-for-service financial advice is important and is a positive step forward.

HON PAUL LLEWELLYN (South West) [5.28 pm]: I will not go over the details that have already been mentioned by Hon George Cash. The Superannuation Legislation Amendment and Validation Bill 2006 makes a number of changes to the superannuation arrangements that apply to the state public sector and parliamentary superannuation schemes. Basically, the Greens (WA) believe that the changes are commonsense changes and that they are desirable. However, we will make a number of points about the options available to public servants, such as the kind of superannuation investments in which they can invest and the types of superannuation schemes they can choose. As a member of Parliament, I am able to choose what superannuation package I invest in. I have chosen to go for an ethical investment package. I chose that not just on personal, social and ethical grounds but because it is a good business investment. I will elaborate on that in a moment. Ethical, or socially responsible, investment involves a level of screening by fund managers to identify positive projects to invest in or at least to exclude investments that are harmful to people and the planet, but it is not a soft financial choice. There are a number of ethical investment funds in Australia and a number of ethical investment arrangements. I have in front of me a copy of *ethicalinvestor*, a magazine on Australian ethical investment, which goes through a number of investment scenarios. I will elaborate on those very briefly. The question that we should ask the Parliamentary Secretary to the Minister for Government Enterprises and the Minister for Government Enterprises is whether it would be possible for the Government Employees Superannuation Board to offer people the choice of investing in ethical investments. Two solutions are available. The first solution is for the Government Employees Superannuation Board to offer the ethical investor program. The other solution is to change the law to allow public servants to choose a superannuation provider of their choice.

The Australian Ethical Investment superannuation fund has been performing extremely well. It does not invest in just any industry; it invests in ethical businesses that generate good returns for investors. It sets up investment opportunities for people who wish to contribute to the world and make the world a better place. The largest insurance companies in the world have already acknowledged the impact of climate change, the resulting investment opportunities and responsibilities that they have in allocating their resources to find positive solutions rather than exacerbate the problems. For example, we could make a distinction between an investment in a coal-

fired power station, which would obviously exacerbate the matter of climate change, and investment in renewable energy sources. This opportunity should be available not just to an exclusive group of public servants and members of Parliament but to all members of the public service in Western Australia so they can take some responsibility for the way in which their superannuation funds are invested. I was looking at the growth of investments - I do not want to go on about renewable energy too much - in certain sectors between 2005 and 2015. It is predicted that investment in fuel cells, solar technology, wind power technology and biofuels will rise from approximately \$40 billion in 2005 to more than \$220 billion by 2015. These are very approximate figures from the Australian ethical investment magazine, *ethicalinvestor*. These are good investments in clean, safe technology.

I also want to look at the opportunities to do some good in the world in relation to national disasters. Recovery programs after national disasters generate business. A sad fact of the reality of living on planet Earth is that major natural disasters such as floods and tsunamis generate massive investment opportunities for recovery. Unfortunately, many of our superannuation investment funds are investing in destructive processes. They invest in armaments factories, which cause a lot of damage. They invest in research into any kind of destructive technology. Then we have the financial recovery process. There is no opportunity for government employees to invest in positive reconstruction programs because they do not have a choice. There should be a choice. In fact, no choice is offered to government employees. One of my staff members, a person who is also interested in ensuring that her investment does not go into inappropriate destructive industries, wanted to allocate her superannuation to ethical investments but could not.

I return to investment opportunities. I will use an example very close to home. The effects of cyclone Larry recently resulted in phenomenal damage to infrastructure and housing, which created an opportunity for the building industry in the recovery program. Why would we not use our government investment structures to invest in those parts of the economy where we are doing public good rather than investing arbitrarily in different sectors of the economy that are often destructive? This is not soft minded. If we look at the total cost of an event such as cyclone Larry, we see that contracts worth up to \$526 million were allocated to construction companies in the recovery program. That is not a soft investment; that is a hard investment and it is an investment directed through an ethical assessment about where we put our money. I am sure that the Government Employees Superannuation Board is making hard decisions every day about where to put its money. The Greens (WA) advocate that there should at least be an ethical investment portfolio within the Government Employees Superannuation Board and at the very least an opportunity for the thousands of members of that scheme to participate in positive investments.

While war is big business, climate change is also big business. The opportunities that will arise out of the mitigation or adaptation to climate change are not insubstantial. I am talking about billions of dollars to investment in clean technology and billions of dollars to invest in recovery programs. Again, all government employees should be offered an opportunity to invest in ethical investments. I do not know how this bill could be changed by way of an amendment in the committee stage or how I could get some clarification. How do we get some acknowledgement of the proposition that serious consideration should be given to expanding the investment arrangements for our superannuated public servants?

I will not go into the bill in detail, as it was laid out very clearly by Hon George Cash. The Greens certainly support the full implementation of the commonwealth's clean break approach and the splitting of superannuation upon marriage breakdown. We acknowledge the sad fact that marriage breakdown seems to be more common than not these days. We also note the clear benefit that should arise from GESB being able to establish a subsidiary organisation to provide financial advice. We acknowledge the good sense in having that advisory body at arm's length, independent of the superannuation board. In that way it will manage or mitigate the risks to the state superannuation board. I am unclear what kinds of risks are involved and I seek clarification from the minister. Does that risk relate to the possibility that the advisory body might give bad advice and that if it was too closely related to the superannuation board there might be some kind of liability? What exactly is the risk referred to in the second reading speech?

The Greens think it is a sensible move to bring in this bill to resolve some of the drafting and other anomalies that have arisen out of the past superannuation arrangements. We will be seeking clarification about how to progress our propositions for ethical investment.

HON KATE DOUST (South Metropolitan - Parliamentary Secretary) [5.42 pm]: I thank members for their comments and their support of the Superannuation Legislation Amendment and Validation Bill 2006. The bill, particularly the clean break provisions, is eagerly awaited by members of GESB. I understand a couple of hundred members of GESB are awaiting this legislation so they can finalise some of the financial aspects of their separation or divorce from their former partners. This bill will provide relief so that they can move on with their lives. It also brings us into line with the commonwealth legislation.

I acknowledge the comments about the establishment of the subsidiary fund to provide financial advice for members of GESB. Members will be aware that currently members of GESB are able to phone at any time and seek general advice free of charge. That situation will continue. The provision of financial advice proposed under this change is of a fairly limited nature. It relates to products provided by GESB. It is a user-pays service, so members would have to elect and pay for the opportunity to access advice. The advice will be provided by employees of GESB and no commission is involved. Although advice about the products will be made available, the advisers will not be able to direct members as to what they should do. The advisers can outline the products and information available and it will be up to members to decide what they want to do. Hon Paul Llewellyn asked why it is being set up as a separate subsidiary to GESB.

Hon Paul Llewellyn: The question was about the risks being mitigated. I understand why it is a separate entity.

Hon KATE DOUST: I am not too sure what the member means by risk. Does he mean how far the advice can go?

Hon Paul Llewellyn: It is in the second reading speech.

Hon KATE DOUST: It is to prevent some of the problems that occurred in the past when financial advisers offered fairly broad advice to members of the community and people lost a lot of money. This proposal is very restricted and limited. It is up to members of GESB to decide whether to follow the advice.

Hon Bruce Donaldson referred to recent changes in the budget. He will be pleased to know that the Parliamentary Superannuation Board - this is a bit of an advertisement - will be offering briefing sessions to members both of the old and new schemes to update them on the changes that have occurred as a result of the federal budget. It is also to advise them of a range of other changes and products that members may be interested in.

GESB is also looking at the impact of the recently announced changes on its members who work in the public sector. I understand briefings have been held with people from the commonwealth, and information will be provided to members of GESB about how those changes can impact on them and what they can do to work around or work with those changes. I hope that satisfies Hon Bruce Donaldson.

Hon Bruce Donaldson: I was more interested in the definitions of taxed and untaxed funds. That is the crux of the matter.

Hon KATE DOUST: A lot of work is being done on that with GESB and hopefully later this year more information can be provided. There will be broad consultation with members of GESB about taxed and untaxed funds, and possibly there may be further legislation to deal with that.

Hon Norman Moore: You should talk to the federal Treasurer about what it means. He may be the problem in respect of this matter.

Hon KATE DOUST: All I can say is that these issues are being looked at and we will have to wait and see. People will be consulted and provided with information at the appropriate time.

Hon Paul Llewellyn spoke about ethical investment and I suppose the short answer is that public servants who are members of GESB do not have the opportunity to decide about ethical investments. I agree with him that this is an issue that interests members of superannuation funds across the country. I understand that the key topical issue for GESB members was the provision of financial advice. GESB surveys its members on a regular basis to find out what sorts of products they would like made available to them and what they are interested in. GESB is currently looking at the issue of ethical investment. I understand it is hoped a new operating system will be implemented towards the end of 2006, and these changes could facilitate additional asset classes consistent with GESB's program of reform to upgrade products and services to match the market and meet members' needs. The capacity to make a choice about ethical investments might be addressed later this year for members who are public servants. We may not be able to deal with that matter in this bill, but we hope to address it at a later stage.

I hope that I have answered some of the questions of members. I thank members for their support of the bill. The bill is eagerly anticipated by members of GESB. Members have acknowledged that GESB is a very fine and well-operated fund for its members. These changes will simply enhance the benefits and services provided to members of the superannuation fund. I commend the bill to the house.

Question put and passed.

Bill read a second time.

Committee

The Deputy Chairman of Committees (Hon Graham Giffard) in the chair; Hon Kate Doust (Parliamentary Secretary) in charge of the bill.

Clause 1: Short title -

Hon PAUL LLEWELLYN: This might be the time to ask for some clarification. I do not have a lot to say on this clause, but I note that this is a bill for an act to amend the Parliamentary Superannuation Act and the State Superannuation Act. The bill was brought on for debate at fairly short notice, and I am happy to deal with some of the issues now, although I was not able to be briefed on the bill. A member of my staff was briefed on the bill and raised the matter of ethical investment. My question relates to a tangible, practical measure to incorporate an ethical investment clause. I would like some advice from the parliamentary secretary about how she will move forward.

Hon KATE DOUST: On the issue of ethical investment, as I have said, GESB surveys its members to determine the sorts of issues they are interested in and the sorts of investment products they would like to have available to them. I understand that a legislative change is not required to introduce a product to deal with ethical investment. GESB is looking at the issue. Once the board has looked at the product and determined how it can be introduced, it would be a decision of GESB to introduce that type of product for its members. It may simply be a question of timing. I cannot give the member a time frame on when that would happen. It would be based on member demand; the board would look at the product and decide whether there was enough demand to introduce the product for its members.

Hon PAUL LLEWELLYN: Parliamentarians have the option of choosing their superannuation fund. Where is the equivalent provision in state statute?

Hon KATE DOUST: When the most significant change was made to the parliamentary superannuation scheme in 2001, with the establishment of what is affectionately known as the new scheme, members at that point -

Hon Norman Moore: Affectionately!

Hon KATE DOUST: Yes, affectionately! At that point members had a choice of fund; members could elect to stay in the West State Super fund or to go into another fund. If members chose a fund that enabled them to choose a product that would allow ethical investment -

Hon Paul Llewellyn interjected.

Hon KATE DOUST: However, choice does not exist for public servants who are members of GESB.

Hon Paul Llewellyn: I follow that.

Hon KATE DOUST: Choice does not exist and is not covered in the bill.

Hon Paul Llewellyn interjected.

Hon KATE DOUST: Will the member let me finish? The issue of choice for public servants is being addressed by GESB and the government. At this time, those opportunities are not available to public service members of GESB; they are available to members of Parliament because they can elect a fund that provides that sort of product.

Hon PAUL LLEWELLYN: Where is that choice provided for in statute? Is it in the bill, because I have not had the opportunity to go through it? For better or worse, if bills are brought on quickly, they must be debated in this place. Is choice provided in the act, or is it provided by way of regulation? I want to know where it is.

Hon KATE DOUST: It is not in the bill. I understand that the issue of choice for parliamentarians came about as an instruction of the Treasurer.

Hon PAUL LLEWELLYN: I understand that there will be two scenarios: one will allow public servants to have a choice similar to that which parliamentarians have now, and the other will put in place an ethical investment portfolio within the state superannuation board. Do public servants have the capacity under the state superannuation board to choose between extremes; that is, to choose between high-risk and low-risk and ethical and non-ethical investment? I understand that they can choose their risk level, but how is that choice granted? Is it through regulation or policy, or is it in statute? Can we emulate that for ethical investment?

Hon KATE DOUST: I understand that the member is talking about choice of fund.

Hon Paul Llewellyn: No, not choice of fund. Public servants can choose high-risk or low-risk investment within their current superannuation package. The question I am asking is: how does one choose between ethical and non-ethical investment?

Hon KATE DOUST: I understand that the initial choice of investment is part of the scheme design. As I have said, the issue of ethical investment is being looked at and will be taken up with the board, and the board will determine whether it will introduce that product for members. Once that happens, each member will be able to choose that product if he or she wants to do so. There is no change to the legislation.

Extract from *Hansard*
[COUNCIL - Tuesday, 23 May 2006]
p2944d-2950a

Hon George Cash; Hon Murray Criddle; Hon Bruce Donaldson; Hon Paul Llewellyn; Hon Kate Doust

Clause put and passed.

Clauses 2 to 20 put and passed.

Title put and passed.

Report

Bill reported, without amendment, and the report adopted.

Sitting suspended from 6.02 to 7.30 pm