

**PARLIAMENTARY SUPERANNUATION LEGISLATION AMENDMENT BILL 1999**

*Assembly's Message*

Message from the Assembly notifying that it had agreed to amendments Nos 5 to 9 made by the Council, and had disagreed to amendments Nos 1 to 4, now considered.

*Committee*

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

The amendments made by the Council to which the Assembly had disagreed were as follows -

No 1

Clause 5, page 4, lines 13 and 14 - To delete the following words -  
of the opposite sex to the member or former member

No 2

Clause 7, page 5, lines 26 and 27 - To delete "for the first time at" and substitute "after".

No 3

Clause 7, page 5, lines 27 and 28 - To delete the words "14 December 1996; or" and substitute "6 February 1993 and before closing day; and".

No 4

Clause 7, page 6, lines 1 and 2 - To delete the lines and substitute the following paragraph -

- (b) who, at the time of being so elected, was not entitled to any pension or other benefit under the scheme;

Hon PETER FOSS: I move -

That the Council not insist on its amendments Nos 1 to 4.

*Point of Order*

Hon HELEN HODGSON: A number of different issues are involved with these amendments. Is it the Chair's intention to take these amendments as one question or will members have an opportunity to deal with them separately?

The CHAIRMAN: I am willing to put amendments Nos 1 to 4 as separate questions. However, the Attorney General may speak to the motion covering the general question.

*Committee Resumed*

Hon PETER FOSS: Mr Chairman, I was about to open my mouth to say those very words. The amendments are of two types: Amendment No 1 is separate from amendments Nos 2, 3 and 4, which go together. Amendment No 1 has a number of problems and has one problem in common with amendments Nos 2, 3 and 4. The Labor Party has expressed concern about the late introduction of amendments Nos 2, 3 and 4, and the Government has expressed concern about the late introduction of amendment No 1.

This set of propositions has been before the Parliament one way or another for a significant period. Ultimately, after a Bill had been introduced in the other House and allowed to lapse, further consultation took place and a further Bill was eventually introduced. That Bill was the product of wide consultation and enjoyed the support of all parties. That Bill came to this House, where a number of amendments were passed. I raised a point about amendment No 1 when it was moved in this Chamber. Irrespective of the merits of the proposition, the appropriate way to deal with it was to bring forward a Bill that dealt with that point to see whether, like the original Bill, it could attract support throughout the Parliament. It is important that it attract that general support. My opposition was not based on the merits or otherwise of the amendment but, rather, that it was late in the day and it was introducing a new concept into a Bill that had attracted general support. Consequently, the Government opposed that amendment. The amended Bill then went back to the lower House, which disagreed with it.

Amendments Nos 2, 3 and 4 were proposed by the Government and passed in the Legislative Council but rejected in the Legislative Assembly. The Opposition in the other place echoed my point that it was unfortunate to introduce a change at a late stage to a Bill that had gone forward on the basis of general agreement; so, the

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Government agreed with the Opposition in the lower House to oppose those amendments to restore an agreed legislative framework. The aim was to ensure that this Bill went through with unanimous support. If anything else needs to happen, the issue should be subjected to a further consultation process. Both points of view have that underlying theme: We do not agree that we should be supporting amendments that have not attracted the same level of support as has the rest of the Bill.

The Government has other problems with amendment No 1. The amendment is poorly drafted and will not achieve the objective because removing the words “of the opposite sex to the member or former member” will not expand the definition of “de facto spouse” to include same sex couples. The commonwealth Superannuation Industry (Supervision) Act does not include same sex couples in its definition of “spouse”. A private member’s Bill was introduced in the House of Representatives by Anthony Albanese in 1998, 1999 and again in 2000 seeking to broaden the legislation and remove discrimination against same sex couples in respect of superannuation benefits. Delaying the passage of this Bill puts at risk the reform of parliamentary superannuation in this State. It might be argued that this is a deliberate tactic to delay reform of this nature.

The amendment regarding same sex couples was introduced at short notice. Legislation recognising same sex couples has not been passed for any other defined benefit parliamentary superannuation scheme in Australia. Tasmania does recognise same sex couples in its new open accumulation scheme and three of the 40 current members of that State’s Parliament are members of that scheme.

The Crown Solicitor’s Office has advised that the normal meaning of the word “spouse” will continue to be limited to a husband or wife, even though the words “of the opposite sex of the member or former member” will be removed. The commonwealth SIS legislation governing other superannuation funds states that, on the death of a member, the benefit payment must be made to either the member’s legal representative or one or more of the member’s dependants. By definition, a dependant includes a spouse or child. A spouse includes a person who, although not legally married, lives with another person on a genuinely domestic basis as the husband or wife of that person. A same sex partner can be a dependant, but only if the person was actually dependent on the deceased at the time of death. Dependence is a question of fact and is determined by the facts of each case. For example, it may be necessary to establish a mutual co-dependence when taking into account the services of one person in relation to another. The amendment is proposed in a very limited area of parliamentary superannuation and no other parliamentary defined benefits schemes in Australia have made such a change. It also does not meet the policy objective.

Amendments have been made to the superannuation scheme to allow trustees to provide binding death benefit nominations. A member of a regulated superannuation scheme could nominate his or her same sex partner as a beneficiary, and the trustees would be bound to pay the death benefit to that person. However, few schemes have adopted this type of death benefit nomination due to the requirement of the trustees regularly to review the nominations.

Death benefits are taxed differently if they are paid to dependants rather than to non-dependants. When the superannuation scheme pays the death benefit to the member’s estate, it is the responsibility of the executor or administrator to determine whether a subsequent recipient is a dependant and to apply the appropriate taxation. When the superannuation scheme pays a direct benefit to a beneficiary, that responsibility falls upon the trustees.

I understand that it is possible for a person in a same sex relationship to nominate a person who will receive the death benefit. That would be recognised under the SIS legislation. However, if that person were not recognised as a dependant, a different tax regime would apply. Even if the proposed amendment had been effective, it would not change that tax situation as far as the commonwealth system is concerned. It does not make any difference from a tax point of view whether the person receives it as a spouse as defined in our scheme or as a nominated person. The questions to be decided from a tax point of view are whether the person falls within the definition in the commonwealth Act and whether the benefit is going to a named beneficiary.

The Government has three objections to the amendment: First, it was introduced at the last minute and, unlike the original Bill, does not have unanimous support; secondly, it is ineffective in that it does not change the situation to make that person a de facto spouse; and, thirdly, from a tax point of view, it makes no difference. If our legislation were changed and a member wished to do so, he or she could name a person as a dependant. However, it would not make any difference.

Hon HELEN HODGSON: The Attorney General has raised the issue of the late lodgment of this amendment on the Notice Paper. I understand this question was referred to in public debate some time prior to the debate in the Chamber. It is not valid to say that the lateness of its appearance is a good reason to disallow it.

I have listened very carefully to the argument about the commonwealth Superannuation Industry (Supervision) Act. It has been raised many times in other contexts. Members are aware that I have taken a great interest in the

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state superannuation legislation, and the SIS legislation arrangements are part of that. However, we are discussing the parliamentary superannuation scheme. The SIS legislation arrangements relate to a federal scheme, and that scheme applies to the state scheme by way of a memorandum of understanding.

Hon Derrick Tomlinson: There is agreement that they will have the same amendments.

Hon HELEN HODGSON: As I indicated, that is in the memorandum of understanding.

The wording of our scheme does not impinge on taxation issues, and there are a number of schemes that do not discriminate in the wording of the trust deed. The taxation treatment is a different question. I have some comments on the federal situation, from the senate hearings on the superannuation Bill currently before the Senate. The superannuation industry has made it quite clear that this is an anomaly that needs to be rectified. At the moment, if we were to move with our scheme, there may be some difficulties in matching up with the federal position, but as superannuation is altered federally, we will catch up again. We should be leading the way in some of these reforms.

I take exception to the comments that this Parliament should not make policy changes like this on a Bill-by-Bill basis, but rather should introduce legislation to make those changes globally. It may have escaped the Attorney General's attention that I introduced a Bill to this Chamber in August 1997, which attempted to do just that. The Australian Democrats have decided that, since that Bill was not debated fully, it is better policy to address the issue piecemeal, as it arises in legislation. This is not my preferred position.

Hon Peter Foss: The Government does not have a problem with the Australian Democrats introducing a Bill, but it should not be tacked on.

Hon HELEN HODGSON: The Australian Democrats have introduced a Bill.

Hon Peter Foss: This is a superannuation Bill. Don't just tack it on to one we have all agreed to.

Hon HELEN HODGSON: The Australian Democrats have introduced a Bill which would prohibit discrimination on the basis of sexuality in services such as superannuation. We have determined that this matter should be addressed as it arises, in the absence of the possibility of dealing with it globally. In a number of States superannuation is covered by equal opportunity legislation, making it illegal to include any discriminatory provisions in a superannuation scheme. This refers to the interaction between state legislation and the commonwealth Superannuation Industry (Supervision) Act. There is a significant discussion of this issue in the December 1997 report of the senate committee inquiring into sexuality discrimination, which considers the situation in each State. In New South Wales, Tasmania and South Australia discrimination on the basis of sexuality in superannuation is prohibited, although South Australia discriminates between legal spouses and de facto spouses, but not between same-sex and heterosexual couples. Those States are quite happy to have equal opportunity protection and to deal with the Superannuation Industry (Supervision) Act implications by allowing the tax legislation to override it. I can understand why the Government does not wish to implement such a policy objective in relation to superannuation here, because the Government does not support the policy of non-discrimination on the grounds of sexuality. It is a policy the Democrats will continue to work towards.

References have been made to poor drafting. Given that the amendments were moved in this Chamber some months ago, and today is the first time I have been told anything about poor drafting, that shows poor communication on the part of the Government. If the amendments were poorly drafted, the Government should have informed me of that earlier, rather than give that as one of the reasons that the amendments should not be passed. The Australian Democrats will be supporting the retention of the amendment made in the Council. To that extent, we do not support amendment No 1 in Assembly message No 72.

Hon GIZ WATSON: I am disappointed that the Assembly has rejected the amendment passed in the Legislative Council. I wish to respond to the comments made by the Attorney General to the effect that a same-sex couple can make provision for superannuation outside the provisions of this Bill. Same-sex couples are discriminated against in that on the retirement of a contributor, the fund can refuse to pay a joint pension to the contributor and a same-sex partner, refuse to pay a lump sum benefit to a same-sex partner, and, on the death of a contributor, refuse to pay death benefits to the same-sex partner. Funds can also refuse to investigate or acknowledge the claims of dependency of the child of a same-sex partner when the contributor is not the biological parent. Benefits paid to the contributor's estate and the surviving benefactor are taxed, whereas there is a tax concession for heterosexual couples. I pay the same taxation contributions as any other member in this Chamber.

Hon Peter Foss: I think you are referring to the commonwealth legislation rather than this state Bill.

Hon GIZ WATSON: The amendment proposed by Hon Helen Hodgson would bring the parliamentary superannuation rights of same-sex couples into line with those of heterosexual couples, which would give them

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the same status under the commonwealth legislation as everyone else. Is the Attorney General saying that is not the case? I can go only on the advice that I have been given.

It is obvious the Government does not wish to set a precedent by accepting the proposed amendment, but there is a level of inconsistency. For example, when I asked if my partner was able to access the same travel benefits as the partner of any other member of Parliament, I was told that was possible. If the Government sees that as acceptable, it should be prepared to accept this change to the superannuation provisions. The points made about this amendment being of benefit to me personally are nonsense, because I would have to be dead for that to be so.

Hon N.D. GRIFFITHS: Some observations need to be made on the issue of same-sex couples and their treatment under the parliamentary superannuation scheme. The Australian Labor Party members in both Houses of Parliament have now voted for the principle that there should be no discrimination. The only way to achieve this objective is through the election of an Australian Labor Party Government. It is clear the Government does not agree with the principle Hon Helen Hodgson seeks to put into legislation. The current Government has an almost record majority in the Legislative Assembly, which is the House of government, where policy should be made. Policy should not be tacked onto Bills in the Legislative Council. The Legislative Council can put forward a proposition to invite the Legislative Assembly to agree with it. The Government has a mandate to govern and to set policy, even though we may disagree with that policy, which we do very often. When the people of Western Australia consider this issue they may come to the conclusion that enough is enough - they want this issue sorted out once and for all. It is essentially a bipartisan - perhaps more than bipartisan - measure. People of Western Australia, as I read their mood, do not want to be concerned any more about parliamentary superannuation. The Leader of the Opposition, the Premier and others who have spoken on the matter have adopted the wishes of those outside this House, to the effect that the current scheme be closed for new members, and that it should occur before the election, which will be held very soon. It is only fair that those who offer themselves for service to the State as members of Parliament should have an idea of what they may expect to get if they become members of Parliament. Many people make great financial sacrifices for themselves and their families on making the decision to become members of Parliament. It is fair and reasonable that they should know the extent of their sacrifice. Therefore, it is appropriate that the matter not be delayed any further.

With the greatest respect to Hon Helen Hodgson, the leader of the Australian Democrats, I note as a matter of great regret that the Democrats tend to use issues to grandstand to find themselves a place in the political marketplace, without providing any practical solution to what needs to be done. I would be very concerned if there were something more to what Hon Helen Hodgson is seeking to achieve. Is she seeking for some reason to delay or to prevent the passage of this Bill? I hope that is not the case. In respect of the drafting of the clause, I would have thought that it was patent on any reading that the removal of the words that the member seeks to have removed would make no difference whatsoever to the meaning of the subclause. To remove the words "of the opposite sex to the member or former member" adds nothing. The words are superfluous and removing them is superfluous. If the Legislature wants to change the law, it must do so in a somewhat more positive manner than this. In respect of the interpretation of those words, I concur with the remarks of the Attorney General.

Hon J.A. SCOTT: I also believe that the Government should be allowed to govern, but it has a moral obligation to govern on behalf of the people of this State without discrimination between the people of the State. The Government was not elected by one group of people with a particular sexual preference in the community. It was elected by a cross-section of the whole electorate, and it is on their behalf that the Government should govern. The legislation is discriminatory against one group in the community, albeit a small group in this Parliament. That makes it all the more important that the rest of us make sure that when the Government is not governing for all Western Australians, we do our utmost to change it.

The argument about making financial sacrifices when people come into this place is not very valid because the reality is that this Bill asks only one group out of all parliamentarians to make a sacrifice; it does not apply the law equally to all of us. It is clearly unfair. I do not and will not support it, whatever obfuscations are thrown up around it. The legislation clearly holds onto a very dated position and it should not be agreed to.

Hon PETER FOSS: May I correct some of the statements that various speakers have made? The Government has not adopted a policy position on this. Our objection is that this was intended to be a Bill which, after some years of consultation between the parties, had consensus; in fact, it went further than consensus; it was unanimously agreed to.

Superannuation is a difficult matter. As a policy, we tend not to bring in such legislation unless it has consensus. Having achieved that consensus, this legislation was brought into the Parliament, went through the lower House and got to the upper House. At the last minute, like a hand grenade tossed through the door, this amendment was moved. We purposely have not considered it. We do not need to consider it because we know that unless the

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amendment has consensus it should not be in the Bill. It is a bit strange that the Democrats, who have complained about contentious omnibus amendments to the metropolitan region scheme, should put forward this contentious matter to be added to a Bill which has been brought forward on the basis that it has consensus. We are trying to meet the expectation of the public, which is to deal with the question of parliamentary superannuation. The public would like us to have no parliamentary superannuation. I am sure that is one thing they would agree on. They certainly would not be expecting us to extend it.

I am not inviting Hon Helen Hodgson to bring in a Bill to deal with every single aspect of discrimination. However, I am saying that if she believes that this Bill should have a contentious amendment made to it, she can bring in her contentious amendment and see how she goes with it, but she should not add it to a Bill which should have passed rapidly through this Parliament because its contents have been agreed. By raising this contentious matter, she is delaying the passage of legislation, which is earnestly wished for by the people of Western Australia, to make some political point. Bully for her. She has made a political point. Through the division she will probably make a political point again. The only point she must decide on is this: Is she prepared to delay and defer a measure that is earnestly sought by the people of Western Australia, and which came about as a result of lengthy deliberation by all members of Parliament before it was brought into the Parliament, knowing full well that she is departing entirely from the spirit in which the legislation was brought forward?

Hon J.A. Scott: Knowing that you would not support it.

Hon PETER FOSS: That is the point. Hon Jim Scott is saying he would not support it. That is exactly the point. What is being done -

Several members interjected.

The CHAIRMAN: Order!

Hon PETER FOSS: It is no more than a political gimmick. Hon Jim Scott obviously does not believe this clause will be passed. The Democrats are playing political tricks to delay this legislation for their own political purposes. The people of Western Australia plainly want this legislation passed. One does not have to be too bright and pay too much attention to know that this type of change, which is supported by the Government and the Opposition, is wanted by the people of Western Australia. The Democrats are simply politically grandstanding and, as a result, they are holding up legislation which everybody agrees should go forward. The problem is that I believe, having made their political grandstand once -

Hon J.A. Scott: You believe that do you?

Hon PETER FOSS: Of course the member is politically grandstanding. He knows he is politically grandstanding. He knows it will not be accepted -

The CHAIRMAN: Order! The Attorney General should address the Chair.

Hon PETER FOSS: It was tossed in at the last moment; it does not even work; it is purely posturing, and it is posturing at a time when we know that this legislation needs to be passed. Hon Nick Griffiths is quite right. If we put this off until after the next election, it will mean that another group of people will come into the Parliament under the old scheme who will then have this transitional provision. That is undesirable; we know it is undesirable. What is desirable for the peace, order and good government of Western Australia is to have this legislation passed. It should not be delayed by political posturing, with statements about the principles of the Democrats and all these sorts of things. The members of the Democrats have not done what they said they were going to do, anyway. More importantly, those members know all they are doing is trying to waylay and upset a process that has been through proper consultation.

What about the Greens? How many times have I heard Hon Jim Scott speak about how we should consult and do all these other things? Then whack! At the last minute those rules do not apply to them; they apply only when the Democrats are complaining about other people. If it is in their own personal interest, they are allowed to ignore all the consultation that has gone before.

Hon Norm Kelly: You had better check out what you are doing to your back bench.

Hon PETER FOSS: I am very glad. We seldom get the members of the Democrats in the Chamber; it is nice to know they are here. Despite all their principles about consensus and consultation, we can forget that when it comes to their own personal interest; we get into political posturing and attempts to delay the legislation. No doubt the Democrats will try to do that through a division.

**Extract from Hansard**  
[COUNCIL - Thursday, 21 September 2000]  
p1597b-1602a

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Hon HELEN HODGSON: I am trying to locate the relevant dates for this Bill, and I may be a couple of days out, but my recollection is that we dealt with this legislation on the Tuesday before we rose for the recess and sent a message to the Legislative Assembly which arrived on the Wednesday before the winter recess in June 2000. It is my recollection that the debates in the Assembly on this amendment occurred only a week ago. We received the message in this Chamber a week ago and we are dealing with it today. Where has the delay been? It has not been as a result of actions taken by the Democrats in this Chamber. The delay occurred as a result of dealing with the message that this Council sent the Assembly last June.

Hon J.A. SCOTT: First, the Attorney General misrepresented my statements during his tirade -

Hon Peter Foss: You certainly deserved that one - you and your questions on national parks.

The CHAIRMAN: Order! The Attorney General should not assist Hon Jim Scott with his speech.

Hon J.A. SCOTT: Thank you, Mr Chairman. Some people find it hard to deal with having lost portfolios because of their incompetence, but we will slip past that.

Several members interjected.

The CHAIRMAN: Order! Members are straying from the question before the Chair.

Hon J.A. SCOTT: The Attorney General said that somehow or other we want to hold up this Bill. I would like to see it go through very quickly. All we want is to see it go through without discrimination, and all the posturing in the world by the Attorney General does not change that. It can go through now if those on the government side do not want to be discriminatory.

Question put and division taken with the following result -

Ayes (19)

Hon Kim Chance	Hon N.D. Griffiths	Hon Mark Nevill	Hon Bob Thomas
Hon J.A. Cowdell	Hon Ray Halligan	Hon M.D. Nixon	Hon Derrick Tomlinson
Hon Dexter Davies	Hon Barry House	Hon Ljiljanna Ravlich	Hon Ken Travers
Hon Peter Foss	Hon Murray Montgomery	Hon B.M. Scott	Hon Muriel Patterson
<i>(Teller)</i>			
Hon G.T. Giffard	Hon N.F. Moore	Hon W.N. Stretch	

Noes (5)

Hon Tom Helm	Hon J.A. Scott	Hon Giz Watson	Hon Norm Kelly <i>(Teller)</i>
Hon Helen Hodgson			

**Question thus passed; the Council's amendments not insisted on.**

Hon PETER FOSS: I move -

That amendments Nos 2, 3 and 4 made by the Council be not insisted on.

As I indicated previously, the reason for this is to make sure that we have the consensus and general agreement that I spoke of earlier. As there is not that consensus and general agreement, the Government does not intend to insist on the amendments.

**Question put and passed; the Council's amendments not insisted on.**

*Report*

Resolutions reported, the report adopted, and a message accordingly returned to the Assembly.