

COAL INDUSTRY SUPERANNUATION AMENDMENT BILL 2013

Second Reading

Resumed from an earlier stage of the sitting.

HON KATE DOUST (South Metropolitan — Deputy Leader of the Opposition) [2.36 pm]: Prior to the lunchbreak I talked about why the opposition thinks the Coal Industry Superannuation Amendment Bill 2013 is a good piece of legislation. I do not have a lot more to say other than I understand that this bill needs to be passed through this place reasonably swiftly as the merge status for the superannuation fund will be 31 December. The first draft of regulations is also anticipated by that same date. With those few words and based on what I have already said about our support for this bill, this is a significant change for members of the superannuation fund. It has a very long history. The coal industry has been quite progressive in providing this type of financial support for its employees. The union has been significant in its advocacy to ensure that its members are well and truly looked after into their retirement. Given that the nature of the superannuation industry is rapidly changing, the decision to shift this industry fund partially from the state—there will still be some state legislation around this—into a federally registered superannuation scheme is sensible because its members will continue to retain the full benefit of their contributions. The opposition is very pleased to support this bill and hopes that this piece of legislation has a swift passage through Parliament.

HON PETER KATSAMBANIS (North Metropolitan) [2.38 pm]: I rise to speak on the Coal Industry Superannuation Amendment Bill 2013. I do not wish to hold up the passage of the bill, but I want to make a few points about it, especially about governance for the best interests of members of this superannuation fund and other superannuation funds more generally.

It is stated in the second reading speech and in the explanatory memorandum, as Hon Kate Doust said in her contribution, that the impetus for this bill will effectively lead to a merger of the Coal Industry Superannuation Board here in WA with a federally regulated fund, the Auscoal Superannuation Fund. It is stated that the rationale for this has come about because of regulatory changes at a federal level. In many ways that is true. What the federal regulatory changes have done over the past few years is impose a series of prudential and administrative requirements on superannuation funds that add costs, particularly to smaller funds because of the inability for smaller funds to spread those costs over a larger base of members. Having had a bit of experience in this area, I believe that a lot of the additional costs and burdens that have been added to superannuation funds have been added as a result of what I consider governance failures that relate to the structure of industry superannuation funds and how board members are either elected or appointed. This particular board is a case in point. The members of this board, as it currently exists, are chosen from industry and trade union representatives. The principal act, the Coal Industry Superannuation Act 1989—I am not going to labour the point or refer to various sections—provides for the election of member representatives. Therefore, the members ought to elect their board members as provided for in the regulations, but in the regulations that underpin the act there is no real election at all. The member representatives are appointed by the trade unions. I do not impugn the motives of the trade union representatives on these boards; I am sure most of them have the best interests of their members at heart.

Hon Kate Doust: All of them.

Hon PETER KATSAMBANIS: If honourable members want to say all of them, I take that on. Michael Williamson, the former national president of the Australian Labor Party and former national president of the Health Services Union, was once a board member of a superannuation fund; so, too, was former Labor member of federal Parliament Craig Thomson. I will not discuss that any further, because I do not want to extend this debate or delay the passage of the bill. I might also refer members of the other side to the Motor Trades Association of Australia Superannuation Fund and ask them to look at publicly available information and let me know whether all union representatives at all times can always be said to have had at heart the best interests of the members they represent. Remember, I am not talking about members of a union, but members of a superannuation fund in a choice environment.

I digressed due to the interjections from the other side, but I get back to the point. The fact is that in a modern environment, members of superannuation funds ought to have the same right as investors and members of public companies; that is, the right to elect the directors who represent them and represent their best interests, in particular, given the complex financial decisions that must be made. As I said earlier, I do not impugn the motives of the member representatives, but I do question the financial capacity of those board members appointed by industry as well as by trade unions. I note that the members of this fund in Western Australia at the moment unfortunately have members' representatives appointed by trade unions. What will happen when the fund eventually merges with Auscoal Superannuation, if the merger goes ahead? Auscoal has nine directors. I looked up the governance structure of Auscoal on its website. One is an independent director, nominated by the

other trustees on the board. Four directors are employer-sponsored nominations and—I will read from the Auscoal website —

Four member Directors are appointed by the CFMEU. Three are nominated for appointment by the CFMEU and the fourth is nominated by appointment by other unions representing members in NSW, QLD and Tasmanian coal mining industry, including the Association of Professional Engineers, Scientists and Managers Australia.

Again, I have to ask: Why can members not appoint their own directors? Why do they not get a right to vote for a director, as they would if they were members of a public company? They do not, unfortunately. In today's modern environment, with complex financial interests, and the extremely complex financial interests that underpin some superannuation funds, professional expertise is needed, not willing amateurs, to look after people's funds. If members want to look at really complex arrangements, perhaps, again, they should look at the MTAA fund I mentioned earlier and work out the type of complex arrangements that members of boards with possibly good interests, probably good interests, but certainly little financial acumen or expertise, were getting their fund members involved in, to the massive detriment of those fund members. It is high time that members of superannuation funds and industry superannuation funds got a chance to appoint their own directors, rather than have them appointed by trade unions.

Lest it be said by members of the other side that these funds somehow or other represent only trade union members therefore it is appropriate that the trade union represent those members on the fund, I will refer to some statistics. The latest Australian Bureau of Statistics report on employee earnings, benefits and trade union membership, dated August 2012 but actually released in May this year, shows that only 18 per cent of people in the workforce are trade union members, which represents 20 per cent of full-time employees and 14 per cent of part-time employees.

Hon Ljiljanna Ravlich: So what is your point?

Hon PETER KATSAMBANIS: It is interesting to note that only 13 per cent of private sector employees are trade union members and even in the public sector, that bastion of trade unionism apparently, less than half, only 43 per cent, of public sector employees are trade union members. My point is, as Hon Ljiljanna Ravlich asked, that these trade union director appointments are completely unrepresentative of the membership of these superannuation funds, which on average are likely to have only one trade union member in five of the members of any fund anywhere in Australia, because only 18 per cent of the workforce is trade unionised. Even if it is a public sector fund—although there is no such concept anymore in a choice environment—and even if the fund was made up primarily of public sector employees, less than half would be trade union members. I acknowledge that perhaps in the early 1990s when a lot of these industry funds were being set up, and even back in the 1940s when the predecessor of this fund was being set up, it might have been appropriate that industry and trade unions appointed the directors; but that time has long gone. These are extremely large funds managing other people's money. They should have people with professional acumen and expertise managing and controlling the governance of them. Members of the fund should be given the right and the choice to elect the directors who represent them. If that happened, it would be a very good day for everyone, including the coal industry employees who will be moved from the current Western Australian fund into Auscoal, which is, although not a new fund, a new fund for those members. That would be important.

If there were greater professional acumen on the boards of these companies, perhaps those additional layers of regulation that I spoke about before that have been put in place by the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission would not have been required. The point is if they can reduce the level of red tape and regulation, they can reduce the costs and, therefore, increase the benefit to members.

On another point in relation to choice, if we were merging two public companies, the members of those companies—the shareholders—would have the right to vote on whether or not they merged with one company. However, in this particular case, as we eloquently heard from Hon Kate Doust, the board of directors of this fund, with no direct relationship to the members, did not ask members whether they would like to join Auscoal or another industry fund.

Hon Kate Doust: How do you know?

Hon PETER KATSAMBANIS: They did not hold a poll; I can tell the member that much. They certainly did not hold a poll. I think it is better governance. Superannuation funds should be governed as much as possible by the same rules that apply to Australian public companies. It would be much better governance if the members themselves got to choose the fund that they were merging with. I am not suggesting that this is a flaw in the Western Australian system; it is just a flaw inherent in the superannuation system. It has the potential to lead to less than optimal outcomes for the very people that the system should look after—the members of the funds; the

people whose money is being looked after. That is why today I wanted to put those issues on the record, given that I had the opportunity to speak on a bill that will merge the Western Australian Coal Industry Superannuation Fund with a federally regulated fund.

I have one other associated point to make. This Western Australian fund is a small fund, but there has never been a proven correlation between the size of a fund and its performance. I am not going to blame the previous federal government for this; I think it was taken along for a ride. Over the past five or six years there seems to have been a push, mainly from the Australian Prudential Regulation Authority, to create bigger and bigger funds and to eliminate smaller funds. It is true that sometimes smaller funds have higher costs, but those costs are often, as I indicated at the start of my contribution, imposed on them by regulators to cover up governance failings that could be fixed in a different way. Eliminate those governance costs, or those structural costs that are built into the compliance regime by APRA and the Australian Securities and Investments Commission, and we will often find that smaller funds are far more nimble and far better performing, especially in down markets. I will not bore people by referring to Chant West research and other publicly available research, but we saw during the global financial crisis that a lot of the larger funds underperformed and a lot of the smaller, more nimble funds performed far better for their members, including industry funds. I put on record that I have no problem at all with industry funds, lest anyone think I have a concern with them. I just have a problem with the current unrepresentative governance structures that disenfranchise members and also lead to a situation in which directors may not have the appropriate skills necessary to look after the best interests of the members they are there to serve.

I am sure that I will get an opportunity at various other times to say more about this. I hope that people involved in reforming the superannuation industry listen to this. It is critically important that members get to choose directors who represent their interests. It is across the board. I do not suggest that this should apply only to industry funds. Some large investment companies in Australia that run superannuation funds in which people invest money should also look at their governance structures. I have made my point directly to them in the past. It is not an attack on industry funds; the whole superannuation industry more broadly should look at a better governance structure. That governance structure will mean less onerous regulation, therefore less cost to members and better benefits for members so that they can enjoy those benefits in their retirement. With those words, I support the passage of the bill through the house.

HON KEN BASTON (Mining and Pastoral — Minister for Agriculture and Food) [2.54 pm] — in reply: I will make a few comments in reply on the Coal Industry Superannuation Amendment Bill 2013. I thank Hon Kate Doust and Hon Peter Katsambanis for their support of this bill. I note that the ALP and the unions have provided their full backing to this bill. I believe that the Greens (WA) do not oppose it. The purpose of the bill of course is to amend the Coal Industry Superannuation Act. That came about because of federal government changes. They were substantial changes that would have caused a small fund like this a very heavy burden; in fact, a conservative figure was bandied around of \$500 000. The Coal Industry Superannuation Fund currently has 1 209 members, comprising 736 active and 477 retained members. That fund will change when it joins with Auscoal once this bill is passed. It will amalgamate with a \$7 billion super fund that has 72 000 members. Of course the previous 1 200 members have a fund of \$186 million. Although that figure is not to be sneezed at, federal government regulatory changes will impose additional cost factors on funds. These changes include: Stronger Super, which was introduced following the Cooper review in 2010; SuperStream, which requires more efficient administration systems and will be expensive to comply with; the revised Australian Securities and Investments Commission disclosure requirements; and additional Australian Prudential Regulation Authority reporting requirements. Those cost factors add up to an extra burden on what is a relatively small super scheme. This is obviously a benefit to coalminers' superannuation.

I will not talk for too long. One point Hon Kate Doust raised related to whether the defined benefit scheme will stay. The simple answer to that is yes. This bill was first introduced when Hon Norman Moore was in this place. I believe he went to great lengths to make sure that whatever was in a defined super scheme was carried forward. I do not know why that had any relevance to him at all!

Hon Kate Doust: I think he was a big supporter of defined benefit superannuation!

Hon KEN BASTON: I thought it was a point of interest that Hon Norman Moore was involved in this bill and wanted to ensure that everyone in this super fund would not lose out on anything they already had.

Hon Kate Doust also asked whether, at a local level, there will be a group in Perth that can actually have input into the trust. The answer to that is yes; a policy committee will provide feedback to the trustee board on local interests. The current board has agreed to stay on as that policy committee. That at least will give it some continuity, which is important. Hon Kate Doust asked why the legislation will be reviewed by the Department of Treasury after three years. I stated the reason why in my second reading speech; Treasury will decide whether or not it still needs to be in an act of Parliament. At this stage, it is for continuity. Hon Kate Doust also touched on

the security aspect of it and why there needs to be an amendment to the act to change the trustees in the amalgamation.

With those comments, I commend the bill to the house.

Question put and passed.

Bill read a second time.

Leave granted to proceed forthwith to third reading.

Third Reading

Bill read a third time, on motion by **Hon Ken Baston (Minister for Agriculture and Food)**, and passed.