



REPORT OF THE

STANDING COMMITTEE ON LEGISLATION

IN RELATION TO

THE STATE SUPERANNUATION BILL 1999

Presented by Hon Bruce Donaldson MLC

Report 52

STANDING COMMITTEE ON LEGISLATION

Date first appointed:

December 21 1989

Terms of Reference:

- 1 There is hereby appointed a standing committee to be known as the *Legislation Committee*.
- 2 The Committee consists of 5 members.
- 3 A Bill originating in either House, other than a Bill which the Council may not amend, may be referred to the Committee after its second reading or during any subsequent stage by motion without notice.
- 4 A referral under clause 3 includes a recommittal.
- 5 The functions of the Committee are to consider and report on
 - (a) Bills referred under this order;
 - (b) What written laws of the State and spent or obsolete Acts of Parliament might be repealed from time to time;
 - (c) What amendments of a technical or drafting nature might be made to the statute book;
 - (d) The form and availability of written laws and their publication.

Members as at the time of this inquiry:

Hon Bruce Donaldson MLC, Chairman

Hon Bill Stretch MLC, Deputy Chairman

Hon Derrick Tomlinson MLC

Hon Nick Griffiths MLC (substitute member for Hon John Cowdell MLC)

Hon Helen Hodgson MLC (substitute member for Hon Giz Watson MLC)

Staff as at the time of this inquiry:

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Note

The Fifty Second Report of the Standing Committee on Legislation consists of a Report, and a Minority Report of the Hon Helen Hodgson MLC. The Report reflects the unanimous position of the Committee save and except in relation to Recommendations 13 and 18. The Minority Report reflects the position of the Hon Helen Hodgson MLC in relation to those recommendations.



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CHAPTER 1 RECOMMENDATIONS

SUMMARY OF RECOMMENDATIONS

Recommendations are grouped as they appear in the text at the page numbers indicated.

Page 14:

RECOMMENDATION 1: The Committee recommends that clause 3 be amended as follows:

Page 3, line 6 – To insert after “scheme” –

“established or continued”.

Page 3, after line 8 – To insert the following new sub-clause –

“(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.”.

Page 18:

RECOMMENDATION 2: The Committee recommends that clause 6 be supported.

Page 19:

RECOMMENDATION 3: The Committee recommends that clause 1(2) of Schedule 1 be amended as follows:

Page 25, lines 8 and 9 – To delete the words “a member of the staff” and insert instead – “an employee or officer”.

Page 20:

RECOMMENDATION 4: The Committee recommends that clause 9(4) be supported.

Page 21:

RECOMMENDATION 5: The Committee recommends that clause 12(1)(a) be supported.

Page 23:

RECOMMENDATION 6: The Committee recommends that clause 13 be amended as follows:

Page 8, line 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) refer the matter for independent review by a prescribed person or body.”.*

Page 23:

RECOMMENDATION 7: The Committee recommends that clause 16 be supported.

Page 24:

RECOMMENDATION 8: The Committee recommends that clause 19(3) be supported.

Page 25:

RECOMMENDATION 9: The Committee recommends the intended meaning of clause 23(3) be clarified.

Page 28:

RECOMMENDATION 10: The Committee recommends that clause 24 be supported.

Page 29:

RECOMMENDATION 11: The Committee recommends that clause 25(1) be supported.

Page 31:

RECOMMENDATION 12: The Committee recommends:

- (a) that clause 26 be supported; and**
- (b) the current practice of the GESB be made law by regulation.**

Page 32:

RECOMMENDATION 13: The majority of the Committee recommends that clause 28 be amended as follows:

Page 15, line 4 – To insert after “working” –

“, or have worked,”.

Page 15, after line 9 – To insert the following subclause –

“(3) In this section –

“spouse” includes a person living with the Member in a bona fide domestic arrangement as if they were husband and wife; and

“ex-spouse” includes such a person on termination of that arrangement.”.

Page 34:

RECOMMENDATION 14: The Committee recommends that clause 30 be amended as follows:

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.”.

Page 34:

RECOMMENDATION 15: The Committee recommends that Clause 33(1) be amended as follows:

Page 18, line 4 to 5 – To delete the paragraph and insert instead –

“

(a) must be in writing;

(a) may be given when and how the Treasurer determines; and”.

Page 35:

RECOMMENDATION 16: The Committee recommends that clause 34 be supported.

Page 36:

RECOMMENDATION 17: The Committee recommends that clause 36 be amended as follows:

*Page 20, line 14 – To insert after the word “possession” -
“or the control”.*

Page 21, line 23 to line 24 – To delete – “, or an order or resolution of a House of Parliament.”.

Page 39:

RECOMMENDATION 18:

(a) The majority of the Committee recommends that Clause 38 be amended as follows:

Page 22, line 10 – To insert after “Act” –

“or section 26 of the State Superannuation (Transitional Consequential) Provisions Act 2000”.

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.*

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 which was, immediately before the commencement day, calculated as a multiple of a Member’s salary.”

(b) The majority of the Committee recommends that Schedule 1 be amended as follows:

Page 25, line 7 – To delete “employees of the” and insert instead –

“persons who work for”.

Page 26, line 14 – To delete “appointor” and insert instead –

“Minister”.

Page 26, line 17 – To delete “appointor” and insert instead –

“Minister”.

Page 26, line 18 – To delete “appointor” in both places where it occurs and to insert instead –

“Minister”.

Page 27, line 6 – To delete “employees of the” and insert instead –

“a person who works for”.

Page 27, lines 7 to 12 – To delete the subclause.

Schedule 2

***Page 30, line 1 – To delete “an employee of” and insert instead –
“a person who works for”.***

CHAPTER 2

REFERENCE AND PROCEDURE

REFERRAL OF THE BILL TO THE COMMITTEE

2.1 The long title of the *State Superannuation Bill 1999* (“the Bill”) is:

“An Act to provide superannuation schemes for persons working for –

- *the Crown;*
- *the Government of Western Australia;*
- *Ministers of the Crown; or*
- *certain authorities, bodies and persons,*

and certain other persons, to repeal the Government Employees Superannuation Act 1987 (“GES Act”) and the Superannuation and Family Benefits Act 1938 (“SFB Act”), and for related purposes.”

2.2 The Bill was introduced and read a first time in the Legislative Council on motion by the Hon Peter Foss MLC, Attorney General on Thursday, May 11 2000. The Bill’s second reading commenced on May 11 2000.

2.3 The Bill was referred to the Committee on September 5 2000 on motion by the Hon Nick Griffiths MLC prior to the second reading being agreed. A reporting date of October 9 2000 was fixed. The Committee commenced consideration of the Bill on September 6 2000.

PROCEDURE OF THE COMMITTEE

2.4 The role adopted by the Committee in the scrutiny of the Bill was to consider matters of detail in particular clauses and provide recommendations and proposals for amendment.

2.5 As part of this process the Committee has made comment on whether the Bill is consistent with the claims made concerning it in the second reading debate, particularly by the Minister promoting the Bill. In this report, the “Second Reading Speech” refers to that of Hon Peter Foss in the Legislative Council.

CONSULTATION PROCESS

2.6 In view of the time constraints for reporting to the Legislative Council, the subject matter of the Bill and the issues raised by the debate in the Legislative Council, the Committee considered that it would be of limited assistance to invite submissions on

the Bill from the general public. Also due to time limitations the Committee did not conduct hearings.

2.7 The Committee invited submissions from persons well placed to give the Bill consideration and also sought information from the Commonwealth Treasury on the equivalent Commonwealth framework. A list of persons invited to make submissions is set out in Appendix 1.

2.8 The Committee was fortunate to secure the services of Ms Christina Eftos, Advisory Officer to the Committee for the purposes of this inquiry. The Committee expresses its appreciation to Ms Eftos for her assistance in the conduct of this inquiry and preparation of this report. She was ably assisted by the Committee Clerk, Ms Kate Fitzgerald.

CHAPTER 3

OVERVIEW OF THE BILL

INTRODUCTION

3.1 The Explanatory Memorandum to this Bill stated that,

“The purpose of this Bill is to change the structure of the current legislative framework governing State public sector superannuation schemes to enable the Government Employees Superannuation Board (the Board) to:

- Provides more flexibility for members resulting in industry standard superannuation services and new products and services;*
- Remove unintended anomalies and inequities;*
- Comply with relevant Commonwealth legislation; and*
- Support more efficient administration, which has the potential to deliver lower costs to members and savings to Government.”¹*

3.2 The Bill seeks to repeal and replace the two existing pieces of legislation that presently deal with State public sector superannuation schemes:

3.2.1 *Superannuation and Family Benefits Act 1938* (a closed pension and provident fund scheme);² and

3.2.2 *Government Employees Superannuation Act 1987* (closed defined lump sum scheme and accumulation lump sum scheme).³

3.3 The Bill intends to provide rules for the establishment of a Government Employees Superannuation Fund, which will comprise of the existing superannuation schemes. The Bill also provides for the re-establishment and administration of the Government Employees Superannuation Board (referred to as “GESB” in the present and “the Board” as provided for in the Bill). In the Bill there is also provision for the making of regulations to contain specific arrangements for each scheme.⁴

¹ Explanatory Memorandum for *Superannuation Bill 1999*, p.1.

² See *Superannuation and Family Benefits Act 1938* Parts IV, V, VB and Parts VA, VB immediately before its repeal by section 39, and see also clause 29 of the *State Superannuation Bill 1999*

³ See *Government Employee Superannuation Act 1987* Part VIIA and Parts IV, V, VI and VII

⁴ Explanatory Memorandum for the *State Superannuation Bill 1999*, p.1.

3.4 In the Explanatory Memorandum it is purported that the Bill provides,

*“...a flexible legislative framework for administration of the State’s public sector schemes as well as updating the general functions and powers of the Board”.*⁵

HEADS OF GOVERNMENT AGREEMENT

3.5 The Western Australian Government is also a signatory to a “Heads of Government Agreement: Exemption of Certain Public Sector Superannuation Schemes from the Superannuation Industry (Supervision) Act 1993” (“the Heads of Government Agreement”) between the Commonwealth and the State and Territory Governments. The Heads of Government Agreement specifically states that the States and Territories public sector schemes are exempt schemes for the purposes of the *Superannuation Industry (Supervision) Act 1993* (Cth) (SIS Act).

*“To ensure that members of exempted public sector schemes are treated fairly and equally with their private sector counterparts, and that the Commonwealth’s retirement income policy objectives are met in respect of scheme benefits, the State and Territories undertake to ensure that member’s accrued benefits in exempt schemes are fully protected.”*⁶

3.6 This agreement is an inter-governmental agreement. Inter-governmental agreements are made at meetings between State and Commonwealth Ministers (“Ministerial Councils”) responsible for the particular portfolios or areas to discuss matters of interest.⁷ The Broad Protocols for the Operation of Ministerial Councils (agreed by the Council of Australian Governments in December 1992) provide for reporting to and approval of the Cabinet in each State for inter-governmental agreements, with the onus on the Minister, and consultation with interest groups. There is no provision in the protocols for a Minister to inform or have the approval of the Parliament to enter into an inter-governmental agreement.⁸

3.7 There is a view that some direct reference should be made to the Commonwealth superannuation jurisdiction and its relationship with the State regime in either the

⁵ Explanatory Memorandum for the *State Superannuation Bill 1999*, p.1.

⁶ Heads of Government Agreement: Exemption of Certain Public Sector Superannuation Schemes from the Superannuation Industry (Supervision) Act 1993, p1.

⁷ Standing Committee on Uniform Legislation and Intergovernmental Agreements, *19th Report*, Legislative Assembly 1997, p.4.

⁸ See Council of Australian Governments, *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies 1997*, p.12.

body of the Bill or in subsequent regulations to ensure that the relationship to the Commonwealth regime is apparent on the face of the legislation.

- 3.8 The SIS Act has governed most of the superannuation sector since July 1994.⁹ The exception to this is the States and Territories public sector schemes, such as the schemes referred to in the Bill, that are outside the Commonwealth's Constitutional power:

“With the exception of some State public sector schemes that are generally outside the Commonwealth's Constitutional power, superannuation funds must elect to be regulated under the SIS Act to be eligible for concessional taxation treatment and to receive compulsory superannuation guarantee contributions. This involves structuring the fund so that the trustee comes under the corporations or old age pension head of power.”¹⁰

- 3.9 However, section 45(6) of the SIS Act states that if a superannuation fund is an exempt State public sector superannuation scheme, as for example the Western Australian public sector schemes, the fund is a “...*complying superannuation fund in relation to the year of income for the purposes of Part IX of the Income Tax Assessment Act*”. The consequence is that taxation concessions for the superannuation schemes that fall under the SIS Act, are also given to schemes made under the Western Australian superannuation legislation. Therefore the exempt public sector schemes such as the schemes governed presently in Western Australia by the *Superannuation and Family Benefits Act 1938* (closed pension and provident fund scheme) and the *Government Employees Superannuation Act 1987* (closed defined lump sum scheme and accumulation lump sum scheme), have access to the taxation concessions¹¹ as if they were schemes covered by the SIS Act.

- 3.10 The *Commonwealth Acts Interpretation Act 1901* at section 10A headed “References to amended or re-enacted laws of States and Territories” states:

“Where an Act contains a reference to a short title or other citation that is or was provided by the law of a State or Territory for the citation of a law that State or Territory as originally enacted or made, or as amended, then, except so far as the contrary intention appears:

⁹ Written Submission from the Commonwealth Treasury dated September 13 2000, p.1.

¹⁰ Written Submission from the Commonwealth Treasury dated September 13 2000, p.1.

¹¹ Heads of Government Agreement: Exemption of Certain Public Sector Superannuation Schemes from the Superannuation Industry (Supervision) Act 1993, p.1.

(a) *the reference shall be construed as a reference to that law as originally enacted or made and as amended from time to time;*

(b) *where that law has been repealed and re-enacted or re-made, with or without modification, the reference shall be construed as including a reference to the re-enacted or re-made law as originally enacted or made and as amended from time to time...*”

3.11 This Bill would repeal in total the present two superannuation Acts in Western Australia and replace them altogether. It is unclear as to whether the wording of section 10A of the *Acts Interpretation Act 1901* would be construed to include the Bill in the list of exempt schemes in Schedule 1AA, Part 3 of the SIS Regulations.¹²

3.12 Similar consideration must also be given to Schedule 1, *Superannuation (Resolution of Complaints) Regulations* titled “Exempt Public Sector Superannuation Schemes Taken to be Regulated Superannuation Funds”. This provides the nexus for State public sector superannuation schemes to have access to the Commonwealth Superannuation Complaints Tribunal.¹³

3.13 Under the Heads of Government Agreement the Western Australian Government has undertaken to,

“notify the Commonwealth of those schemes which it proposes are appropriately exempted from SIS ... the States and Territories are also to notify the Commonwealth of those exempt schemes which are to have access to the Superannuation Complaints Tribunal...

*the Commonwealth undertakes to take the steps necessary to exempt selected State and Territory schemes from the SIS legislation from its commencement.”*¹⁴

¹² See Pearce, D.C. and Geddes, R.S. (1996), *Statutory Interpretation in Australia*, Butterworths (4th ed.), p.163.

¹³ See the *Superannuation (Resolution of Complaints) Act 1993* (Cth).

¹⁴ Heads of Government Agreement: Exemption of Certain Public Sector Superannuation Schemes from the Superannuation Industry (Supervision) Act 1993, p.2.

CHAPTER 4

EXAMINATION OF PARTICULAR CLAUSES

CLAUSE 3

Overview

- 4.1 Clause 3 defines various words and expressions in the Bill. The main issue of interest in this clause is the absence of any definition of “employee”, which in turn creates ambiguity as to the applicability of the Bill to police, parliamentary and electoral officers.

Proposed Amendment

- 4.2 The GESB proposes to amend the definition of “scheme” to refer to a superannuation scheme “*established or continued*” under this Act. The GESB stated that the proposed amendment is to clarify the meaning of the word.¹
- 4.3 The GESB also proposes to amend the Bill to insert a sub-clause 3(2) to include such officers who do not fall under the common law definition of “employee”:

“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.”

Summary of Submissions

- 4.4 The WA Police Union of Workers (“Police Union”), in its written submission to the Committee, was particularly concerned about the lack of clarity in the Bill regarding the term “employees”. The Police Union refers to the fact that there is common law precedent which indicates that police officers are not “employees”.² The Police Union is concerned that as the Bill stands presently, it is arguable that police would not be

¹ Written Submission of the Government Employee Superannuation Board dated September 15 2000, at Attachment 4: “State Superannuation Bill 1999 – Government Amendments (explanatory table)”.

² Written Submission of the WA Police Union of Workers dated September 15 2000, p.11.

covered by the legislation and consequently police superannuation entitlements would have no statutory protection:

“To avoid any legal ambiguity about Police being covered by the Bill it is necessary to include within the interpretation provisions specific reference to Police as being either employees or persons who work for employers.”³

- 4.5 The Police Union believes the proposed GESB amendment is “satisfactory”⁴ but on the proviso that the Commissioner of Police will be prescribed as an “employer” in the regulations. Its preference would be either that the Commissioner of Police be defined in the Act as “employer”, or that “employee” is defined and includes persons appointed under Part 1 of the *Police Act 1892*.⁵

Comment

- 4.6 The proposed GESB amendments substantially address this issue.

RECOMMENDATION 1: The Committee recommends that clause 3 be amended as follows:

Page 3, line 6 – To insert after “scheme” –

“established or continued”.

Page 3, after line 8 – To insert the following new sub-clause –

“(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.”.

CLAUSE 6

Overview

- 4.7 Clause 6 of the Bill seeks to update the functions and duties of the GESB presently found in various provisions of the *Government Employee Superannuation Act 1938*.⁶

³ Written Submission of the WA Police Union of Workers dated September 15 2000, p.13.

⁴ Written Submission of the WA Police Union of Workers dated September 15 2000, p.13.

⁵ Written Submission of the WA Police Union of Workers dated September 15 2000, p.12. & 13.

⁶ Explanatory Memorandum for the *State Superannuation Bill 1999*, p.3.

No reference is made to any necessity to comply with the Commonwealth SIS framework or to observe obligations under the Heads of Government Agreement.

Summary of Submissions

- 4.8 In its written submission, the GESB stated that in any case, the Bill complies with the Heads of Government Agreement whereby the States agree to conform with the Commonwealth Retirement Incomes Policy.⁷ Furthermore the Board also noted,

*“With a few exceptions, the State legislation in fact exceeded most of these [Commonwealth] compliance requirements. Given other State legislation that governs the activities of statutory authorities, in general it is evident that there is more regulation of the State’s public sector schemes than for other superannuation schemes.”*⁸

- 4.9 In the Second Reading Speech the Attorney General stated:

*“Ongoing compliance with Commonwealth legislation governing superannuation also drives the need for changes to the structure of the legislation as proposed in the Bill, otherwise the State will continue to fall behind. At present the state legislation does not comply with the Commonwealth preservation standards, and specific changes are required to ensure that the legislation is consistent. As many of the Commonwealth compliance requirements will form part of the regulations, this means that compliance issues can be more easily addressed.”*⁹

- 4.10 The Committee notes that the issue of whether a direct reference should be made to the Commonwealth SIS framework has been raised. The arguments the Committee have considered are as follows:

- 4.10.1 clause 6 should state that the Bill must comply at all times with the SIS Act and SIS Regulations;
- 4.10.2 there be a requirement in the Bill that reference to standards or rules in the Bill must be at least equivalent to any comparable and applicable standards or rules that have effect by operation of the SIS Act; or alternatively

⁷ Written Submission of the Government Employees Superannuation Board dated September 15 2000, at Attachment 8, “Attachment 8 – Legislation Committee Issues 1”.

⁸ Written Submission of the Government Employees Superannuation Board dated September 15 2000, at Attachment 8, “Attachment 8 – Legislation Committee Issues 1”.

⁹ Legislative Council, Second Reading Speech, Hon Peter Foss MLC, Attorney General, Legislative Council, May 11 2000 at 6864.

- 4.10.3 that clause 38 be amended so that an explanatory memorandum which accompanies a regulation which comes before the House should, where it prescribes matters of a kind that are substantially the same as comparable Commonwealth SIS standards, describe how and why they detract from the Commonwealth equivalent.
- 4.11 The Police Union believes,
- “... the areas of non-compliance need to be identified and openly scrutinised to determine the desirability of maintaining any differences.”¹⁰*
- 4.12 Particularly, the Police Union is strongly opposed to the Commonwealth policy for the preservation age of 60 years old. The Police Union is also concerned that the regulating power provided in Clause 38 will be used to increase the preservation age from 55 to 60 years for persons born after 1960.¹¹
- “The [Commonwealth] Government announced in the 1997 Budget that the preservation age would be increased from 55 to 60 years on a phased-in basis. By 2025, the preservation age will be 60 years for anyone born after June 1964, with the age 60 years preservation age being reduced by one year for each year that the person’s birthday is before 1 July 1964. This means a person born before 1 July 1960 will continue to have a preservation age of 55.”¹²*
- 4.13 In the Commonwealth Government’s Retirement Income Policy which forms part of the Heads of Government Agreement, it is stated that the Commonwealth Government sought to raise the preservation age from 55 to 60 as a means of ensuring superannuation savings provide an adequate income upon retirement.
- “These will strengthen the essential retirement incomes role of the superannuation industry by increasing the proportion of superannuation savings preserved for retirement and by making it more likely that superannuation savings are directed towards the*

¹⁰ Written Submission of the WA Police Union of Workers dated September 15 2000, p.19.

¹¹ Written Submission of the WA Police Union of Workers dated September 15 2000, p.16.

¹² Kehl, D. (2000) “Superannuation Ready Reckoner: Taxation and Preservation Rules for 2000-2001” Current Issues Brief 16 1999-2000, Australian Parliamentary Library (www.aph.gov.au/library/pubs/cib/1999-2000/2000cib16.htm), p.9. – also note that in this context a preservation age refers to the age at which a certain superannuation benefit can be obtained - see p.8.

provision of income in circumstances of genuine retirement from the workforce.”¹³

- 4.14 The written submission of the Police Union on this issue in relation specifically to police states:

“The ability to retire at no later than 55 years is critical to police who work in an environment with a high potential for injury and stress-related burnout. Further to the Wood Royal Commission recognised the need for police to be able to retire without reduced benefits after 20 years service.”¹⁴

- 4.15 The Community and Public Sector Union SPSF Group, WA Branch (“the CPSU”) submission outlines clauses in the Bill which “...either breach important Commonwealth standards or do not provide for the standards”¹⁵. One clause referred to is clause 24, that deals with the borrowing powers of the Board. The CPSU submission also refers, in this context, to the membership of the Board (clause 8) and Minister’s power to direct the Board (clause 35).

- 4.16 The Australian Liquor, Hospitality and Miscellaneous Workers Union (“LHMU”), and Unions WA both expressed the view that the Heads of Government Agreement sufficiently dealt with the issue of compliance with Commonwealth standards and believe that blanket compliance with the Commonwealth standards would disadvantage their members.¹⁶ The LHMU reiterated the sentiments of the Police Union with regards to the prescribed preservation age.¹⁷

- 4.17 The issue of preservation age is not exclusively related to superannuation legislation but is also affected by the Commonwealth taxation framework, the consequences of which are beyond the control of the Western Australian Parliament.

- 4.18 Eligible Termination Payments (“ETPs”) are lump sums paid on retirement or resignation from the workforce and include payments from superannuation funds. ETPs are comprised of several components and are subject to different taxation

¹³ Heads of Government Agreement: Exemption of Certain Public Sector Superannuation Schemes from the Superannuation Industry (Supervision) Act 1993, p.4.

¹⁴ Written Submission of the WA Police Union of Workers dated September 15 2000, p.16.

¹⁵ Written Submission of the CPSU dated September 15 2000, p. 3.

¹⁶ Written Submission of the LHMU dated September 14 2000, p.2. & Written Submission of Unions WA dated September 14 2000, p.2.

¹⁷ Written Submission of the LHMU dated September 14 2000, p.2.

treatment, with payments received by persons under the age of 60 years being potentially taxed at a higher rate.¹⁸

RECOMMENDATION 2: The Committee recommends that clause 6 be supported.

CLAUSE 8

Overview

4.19 The Explanatory Memorandum to the Bill notes in relation to clause 8,

“The composition of the Board is the same as that of the Board established under the GES Act, however, the members of the Board are now its directors.”¹⁹

4.20 Concern was raised about the present wording of the clause which arguably allows for the Executive Director (or officer or staff) of the Board to be the Chairman or Deputy Chairman of the Board, or the Employer director of the Board.

Summary of Submissions

4.21 The Committee has considered the proposition that Clause 1(2) of Schedule 1 be amended. This qualifies whom the Minister, may appoint as Chairman of the Board.

4.22 The GESB supports such an amendment. The Committee requested clarification as to why the proviso was also not extended to exclude an employee or officer (including the Executive Director of the GESB) from also being an Employer director of the Board. The GESB response was as follows:

¹⁸ Kehl, D. (2000) “Superannuation Ready Reckoner: Taxation and Preservation Rules for 2000-2001” Current Issues Brief 16 1999-2000, Australian Parliamentary Library. (www.aph.gov.au/library/pub/cib/1999-2000/2000cob16.htm), p.5. - as an example, the post-June 1983 component is taxed according to whether the fund earnings were taxable and the age of the benefit recipient. Presently people of 55 years or over, after an amount of \$100 696, are subject to a maximum tax rate of 15%. This is compared to people of less than 55 years of age who are subject in the same instance to a maximum tax rate of 20% (see p.6.)

¹⁹ Explanatory Memorandum for the *State Superannuation Bill 1999*, p.4.

“The GESB does not support this change. All positions on the Board, namely Member Directors, Employer Directors and Chairman all have the potential for a conflict of interest. The corporate governance policies of the Board require these conflicts to be dealt with through early recognition, appropriate disclosure and transparent resolution of conflicts. This is consistent with the resolution of conflicts with both private and public corporations.”²⁰

4.23 The LHMU on this issue states:

“There is a requirement for the Chairman of the Board to be independent. Therefore we support the current restriction preventing an officer or staff of the GESB being the Chairman. The second issue is whether the Chief Executive Officer should be a full voting member representing the employer on the Board as well as being the officer responsible for the Department. We would prefer a separation of the role of CEO and that of Employer Director of the Board. The CEO should attend Board meetings to report on the performance of the Department and to provide independent professional advice to the Board. There is a perceived conflict of interest when the CEO sits in judgement of his/her own departments performance, or when the CEO provides advice to the Board. Is the advice independent advice or from an employers perspective only? We agree with the position of Unions WA that this issue should not hold up the Bill and should be addressed by the Board’s corporate governance policy.”²¹

RECOMMENDATION 3: The Committee recommends that clause 1(2) of Schedule 1 be amended as follows:

Page 25, lines 8 and 9 – To delete the words “a member of the staff” and insert instead – “an employee or officer”.

²⁰ Written Submission of the Government Employees Superannuation Board dated September 15 2000, at Attachment 8, “Attachment 8 – Legislation Committee Issues 1”.

²¹ Written Submission of the LHMU dated September 14 2000, p.2.

CLAUSE 9(4)*Overview*

- 4.24 This clause provides a defence from an action against the Crown or the Board against loss or damage suffered by a person as a result of the Board making an investment.

Summary of Submissions

- 4.25 The Committee requested from the GESB clarification as to whether clause 9(4) is a complete defence or only goes to mitigation. The clause states that:

“In an action against the Crown or the Board for loss or damage suffered by a person as a result of the making of an investment by the Board, it is a defence for the defendant to provide that the investment was made in accordance with the investment strategy formulated under section 19(1).”

- 4.26 The Explanatory Memorandum states that,

“Subclause 9(4) provides a defence for the Crown and the Board from actions relating to investments made in accordance with the investment strategy under subclause 19(1).

This provision reflects standard provisions in section 55(5) of the Superannuation Industry (Supervision) Act 1993 (SIS Act) which are applicable to superannuation funds generally.”²²

- 4.27 The GESB responded to the Committee by stating with regards to this clause:

“This is a complete defence and any action would fail where it was established that the investments were made in accordance with the investment strategy. Mitigation is usually only relevant in criminal proceedings and would not be considered in a civil action.”²³

RECOMMENDATION 4: The Committee recommends that clause 9(4) be supported.

²² Explanatory Memorandum for the *State Superannuation Bill 1999*, p.4.

²³ Written Submission of the Government Employees Superannuation Board dated September 20 2000, “Legislation Committee Issues 2”, p.2.

CLAUSE 12(1)(a)*Overview*

4.28 Clause 12(1)(a) states that the Board may delegate the performance of any of its functions to “any person”.

Summary of Submissions

4.29 The CPSU in its submission expressed the view that the Board should not be able to delegate the appeals process under clause 13 as it has a duty of care to members²⁴ (see discussion under headings “Clause 13” and “Clause 34”). Unions WA stated that it was not an issue it was concerned about as,

“...power of delegation is necessary in the day to day administration of funds such as those covered by the GESB. Given the ultimate responsibility for any decision made by way of delegated authority rests with the Board, clearly not to be taken lightly [sic]. The strategies and processes adopted through corporate governance strategies must guide this process.”²⁵

4.30 The GESB has submitted to the Committee that this is consistent with delegation provisions of other statutory corporations and is necessary for the Board to operate effectively.²⁶

RECOMMENDATION 5: The Committee recommends that clause 12(1)(a) be supported.

CLAUSE 13*Overview*

4.31 Clause 13 deals with review or appeal from decisions of the Board.

4.32 The Explanatory Memorandum states:

“This clause enables a person aggrieved by a decision of the Board to apply to have the decision reviewed and sets out the process for subsequent appeal or referral in accordance with the regulations.”²⁷

²⁴ Written Submission of the CPSU dated September 15 2000, p. 5.

²⁵ Written Submission of Unions WA dated September 14 2000, p.3.

Proposed Amendment

- 4.33 In the second reading debate in the Legislative Assembly, concern was raised about the clause 13 review and appeals process being subject to regulation.²⁸

“A concern was expressed during debate in the Legislative Assembly that it would be possible for current review/appeal provisions not to be continued in the regulations. Whilst not the intention, it is possible that the clause could be interpreted in such a way.”²⁹

- 4.34 The GESB proposes to amend clause 13 to delete the proviso, “*if the regulations permit*” and refer to schemes continued under clause 29(c) and (d) going to appeal by a Judge. This is intended to “*...ensure that the current review and appeals processes are continued*”³⁰.

Summary of Submissions

- 4.35 Clause 13(3) provides that a person aggrieved by a Board decision on a review may, if the regulations permit, appeal to a Judge or refer the matter for independent review by a prescribed body or person.
- 4.36 The Committee sought clarification from the GESB of the reason for using the wording “appeal” in the context of a Judge and “review” in the context of a prescribed body or person.
- 4.37 The GESB submitted that Clause 13 seeks to combine:
- 4.37.1 section 54 of the *Government Employees Superannuation Act 1987*, which applies to Gold State Super and West State Super members and refers to independent review of the Board’s review; and
 - 4.37.2 section 85 of the *Superannuation and Family Benefits Act 1938*, which applies to the Pension scheme and requires the Board to review disputes

²⁶ Written Submission of the Government Employees Superannuation Board dated September 15 2000, at Attachment 8, “Attachment 8 – Legislation Committee Issues 1”.

²⁷ Explanatory Memorandum for the *State Superannuation Bill 1999*, p.5.

²⁸ Legislative Assembly Second Reading, Consideration of Detail, May 10 2000.

²⁹ Written Submission of the Government Employees Superannuation Board dated September 20 2000, “Legislation Committee Issues 2”, p.2.

³⁰ Written Submission of the Government Employees Superannuation Board dated September 20 2000, “Legislation Committee Issues 2”, p.2.

but provides a different process whereby members may appeal to a Judge of the Supreme Court sitting in chambers.³¹

4.38 The Committee recognises the desired outcome to continue the present system.

RECOMMENDATION 6: The Committee recommends that clause 13 be amended as follows:

Page 8, line 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) refer the matter for independent review by a prescribed person or body.”.*

CLAUSE 16

Overview

4.39 Clause 16 states that the Board should keep accounting records it considers appropriate to perform its function. The Explanatory Memorandum states that this clause is similar to section 10 of the GES Act excluding provision for apportioning of income from the investment of the Fund, which is covered by clause 22.³²

Summary of Submissions

4.40 The Committee requested information from the GESB about the applicable external benchmarks of accounting standards. The GESB responded by noting that as a statutory body it was required to comply with the *Financial Administration and Audit Act 1985* and other relevant written laws.³³ The GESB is also subject to annual audits by the Auditor General and is required to comply with Australian Accounting Standard AAS25.³⁴

RECOMMENDATION 7: The Committee recommends that clause 16 be supported.

³¹ Written Submission of the Government Employees Superannuation Board dated September 20 2000, “Legislation Committee Issues 2”, p.2.

³² Explanatory Memorandum for the *State Superannuation Bill 1999*, p.5.

³³ Written Submission of the Government Employees Superannuation Board dated September 20 2000, “Legislation Committee Issues 2”, p.4.

³⁴ Written Submission of the Government Employees Superannuation Board dated September 20 2000, “Legislation Committee Issues 2”, p.4.

CLAUSE 19(3)*Overview*

- 4.41 Clause 19(3) requires the Board to review its broad investment strategy and management and performance of its investments.

Summary of Submissions

- 4.42 The Committee sought clarification from the GESB about the meaning of “*from time to time*” in accordance with Treasurer’s guidelines. The GESB explained that in relation to clause 19(3),

“... SIS legislation does not stipulate an ascertainable interval for review. However, SIS guidelines state that the investment strategy also be regularly monitored and reviewed to ensure that it remains appropriate. The SIS legislation and guidelines have deliberately not specified an ascertainable interval because there is a risk that the strategy will be reviewed to comply within the specified interval rather than as appropriate, for example, when there are changes in economic conditions.

Clause 19(3) allows the Treasurer to impose these same SIS guidelines on the Board ... The Treasurer’s Guidelines provide the flexibility to incorporate different review intervals for different aspects of the overall investment strategy.”³⁵

RECOMMENDATION 8: The Committee recommends that clause 19(3) be supported.

CLAUSE 23(3)*Overview*

- 4.43 Clause 23(3) states that a person is only an investment manager for the purposes of the Bill when the Board appoints them as such. The purpose of appointing an investment manager is to carry out the purposes and functions of that appointment.

³⁵ Written Submission of the Government Employees Superannuation Board dated September 20 2000, “Legislation Committee Issues 2”, p.5.

Summary of Submissions

- 4.44 The GESB submitted that the purpose of the clause was to clarify at which point a person becomes an investment manager.³⁶
- 4.45 The CPSU in its submission questioned why there is a necessity in sub-clause (1)(a) to appoint an employee as an investment manager while sub-clause (3) requires the Board to formally delegate an investment function to that person.³⁷ With regards to delegation of functions to an investment manager under clause 23(2), the CPSU stated,

“If the person is an employee of the Board and that person’s duties include investment duties why is the Board required to formally delegate its investment function when the duties could be undertaken on a master/servant basis as applies to other employees of the Board. For example, the Board is not required to formally delegate the administration of the Fund to any person or employee yet this activity is a core business of the Board undertaken by staff.”³⁸

- 4.46 Notwithstanding the comments of the GESB, clause 23(3) is unclear.

RECOMMENDATION 9: The Committee recommends the intended meaning of clause 23(3) be clarified.

CLAUSE 24*Overview*

- 4.47 Clause 24 refers to the power of the Board to borrow money. The Explanatory Memorandum states that this clause expands the Board’s current borrowing power:

“This clause expands the Board’s power to borrow for a purpose other than for overcoming a cash flow problem in the payment of benefits. However the Board must seek the Treasurer’s approval in relation to that borrowing. This reflects parts of section 14 of the

³⁶ Written Submission of the Government Employees Superannuation Board dated September 20 2000, “Legislation Committee Issues 2”, p.5.

³⁷ Written Submission of the CPSU dated September 15 2000, p. 6.

³⁸ Written Submission of the CPSU dated September 15 2000, p. 6.

*GES Act, but also allows the Treasurer to set guidelines in relation to borrowing.*³⁹

4.48 In the Second Reading Speech, the Attorney General stated:

*“This change will enable all possible funding options for the outstanding superannuation liability to be examined, demonstrating a responsible approach to financial management of the State and consistency with the Government’s general policy of empowering statutory authorities with borrowing facilities within their enabling legislation.”*⁴⁰

Summary of Submissions

4.49 The GESB in its written submissions, included a briefing note which stated,

*“The power is in the Board’s hands to ensure that any borrowing arrangements proposed by the Government will not expose the assets of the Fund to the risk of borrowing nor adversely impact on member returns.”*⁴¹

4.50 The GESB in its further submission to the Committee addressed in more detail the issue of protection of member’s interests. Particular reference was made to clause 6(2)(a) that states that the Board must “*as far as practicable*” act in the best interests of members of the schemes.

4.51 The GESB also noted that clause 31(1)(a) provides that the Crown guarantees “*payment of every benefit payable under the scheme*”.

4.52 The draft Treasurer’s guidelines (see Appendix 2) with regards to borrowing powers at guideline 3 states:

³⁹ Explanatory Memorandum for the *State Superannuation Bill 1999*, p.6.

⁴⁰ Legislative Council Second Reading Speech, *State Superannuation Bill 1999*, Hon Peter Foss MLC

⁴¹ Written Submission of the Government Employees Superannuation Board dated September 15 2000, at Attachment 7 “Briefing Note: State Superannuation Bill 1999 – Borrowing Powers”, Draft Treasurers Guideline (see Appendix 2 of this Report).

“Borrowing by the Board, other than for the purpose of overcoming a cash flow problem in the payment of benefits, will only be considered for approval by the Treasurer if the borrowing is for the purpose of funding the State’s unfunded superannuation liability.”⁴²

4.53 Unions WA and the LHMU both are satisfied that Treasurer’s guidelines relating specifically to funding the State’s unfunded liability will be sufficient to deal with any concerns regarding protection of member’s interests.⁴³

4.54 The Police Union and the CPSU⁴⁴ are strongly opposed to clause 24. The Police Union supports the deletion of the clause.⁴⁵

4.55 The Police Union stated,

“Clause 24 of the Bill would give the Board much greater borrowing discretion than is available in the existing legislation and in excess of that usually extended to superannuation funds.”⁴⁶

4.56 The Police Union proposes that decisions of the Board to exercise the borrowing powers should be changed from the requirement of “...at least five of the seven directors approving any borrowing arrangements”⁴⁷ to state that unanimous agreement by the directors is required to approve any such borrowing arrangement.⁴⁸

4.57 The draft Treasurer’s guideline 4 states:

⁴² Written Submission of the Government Employees Superannuation Board dated September 15 2000, at Attachment 7 “Briefing Note: State Superannuation Bill 1999 – Borrowing Powers”, Draft Treasurers Guideline (see Appendix 2 of this Report).

⁴³ Written Submission of Unions WA dated September 14 2000, p.5. & also see Written Submission of the LHMU dated September 14 2000, p.3.

⁴⁴ Written Submission of the CPSU dated September 15 2000, p. 6.

⁴⁵ Written Submission of the WA Police Union of Workers dated September 15 2000, p.17.

⁴⁶ Written Submission of the WA Police Union of Workers dated September 15 2000, p.17.

⁴⁷ See *State Superannuation Bill 1999*, clause 4 of Schedule 2:

“Voting

At a Board meeting —

- i) each director has one vote;*
- ii) the person presiding does not have a casting vote; and*
- iii) a resolution is passed if 5 or more directors vote in favour of it.”*

⁴⁸ Written Submission of the WA Police Union of Workers dated September 15 2000, p.16-17.

“Any borrowing arrangement considered by the Treasurer for approval under (3) above must:

(b) contained a[n] agreement with the Treasurer for a flow through of repayments from the Consolidated Fund for the life of any borrowing arrangement so as to;

- not expose the assets of the Government Employees Superannuation Fund to risk of borrowing;*
- not adversely impact on member benefits; and*
- not impact on Board finances.”⁴⁹*

4.58 The CPSU oppose the Board being able to borrow money other than for “*short-term cash flow reasons*”⁵⁰ and stated that the CPSU,

“...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.”⁵¹

RECOMMENDATION 10: The Committee recommends that clause 24 be supported.

CLAUSE 25(1)

Overview

4.59 This sub-clause provides, “*If money is owed to the Fund interest accrues on it at a rate, in a manner and for the period, determined by the Board*”.

⁴⁹ Written Submission of the Government Employees Superannuation Board dated September 15 2000, at Attachment 7 “Briefing Note: State Superannuation Bill 1999 – Borrowing Powers”, Draft Treasurers Guideline (see Appendix 2 of this Report).

⁵⁰ Written Submission of the CPSU dated September 15 2000, p. 6.

⁵¹ Written Submission of the CPSU dated September 15 2000, p. 7.

Summary of Submissions

4.60 The Committee sought clarification as to the meaning of “...*determined by the Board*”. The response from GESB was that it is intended that the rate be linked to a market rate.

RECOMMENDATION 11: The Committee recommends that clause 25(1) be supported.

CLAUSE 26*Overview*

4.61 Clause 26 deals with the Board’s avenues for recovery of money owing to the Fund.

Summary of Submissions

4.62 The GESB submitted that there are three key principles adopted by it in relation to collecting moneys owing:

- “(a) *Where a member defers contributions for the purposes of leave without pay then upon return to work officers of the Board negotiate repayment of the arrears based on double deductions until the arrears are cleared.*
- “(b) *All members with arrears under \$500 have an automatic \$20 deducted per fortnight until the arrears are cleared. However if a member advises that they can’t afford \$20 per fortnight, officers of the Board negotiate another amount or defer the repayment program.*
- “(c) *For members with amounts over \$500 all repayment programs are negotiated with the member.*”⁵²

4.63 The GESB informed the Committee that under section 16 of the GES Act, it has had the discretion to use the power to recover money owing to the fund where appropriate. The GESB also submitted that due to the large number of members who may be in arrears for amounts less than \$500, it is “...*not practicable to enter into specific*

⁵² Written Submission of the Government Employees Superannuation Board dated September 15 2000, at Attachment 8, “Attachment 8 – Legislation Committee Issues 1”.

*arrangements with each member without unnecessarily impacting on administrative costs.*⁵³

4.64 The Police Union submitted that,

“There is no requirement for reference to the member prior to the taking of recovery action and accordingly no requirement for consideration of the member’s circumstances. This could result in a member experiencing financial hardship as a result of an imposed repayment/recovery schedule...

*The Bill should be amended to include a provision making consideration of a member’s circumstances mandatory, especially since the Bill includes such a provision with regard to recovering monies from employers”.*⁵⁴

4.65 The Police Union supports amending the clause to delete the words, “...deduction of the amount owing from the Member’s pay under subsection (2)” and substituting the words, “entering into an arrangement with the Member for the satisfaction of the debt.”⁵⁵

4.66 The CPSU described the clause as “draconian” and stated,

*“If recent experience is anything to go by members owe money to the Fund largely through administration problems within the Board and through no fault of members (annual salary and contribution adjustment is a case in point). If a significant amount of money is owing (eg above \$20) then the Board should be required to enter into an arrangement for payment with the member rather than have the power to confiscate the member’s salary or wage.”*⁵⁶

4.67 Unions WA in contrast was satisfied that the Board’s policy for handling recovery of money issues was sufficient and that no amendment to the clause was necessary.⁵⁷ Likewise, the LHMU did not see any problems with the provision.⁵⁸

⁵³ Written Submission of the Government Employees Superannuation Board dated September 15 2000, at Attachment 8, “Attachment 8 – Legislation Committee Issues 1”.

⁵⁴ Written Submission of the WA Police Union of Workers dated September 15 2000, p.18 -19.

⁵⁵ Written Submission of the WA Police Union of Workers dated September 15 2000, p.19.

⁵⁶ Written Submission of the CPSU dated September 15 2000, p. 7.

⁵⁷ Written Submission of Unions WA dated September 14 2000, p.6.

⁵⁸ Written Submission of the LHMU dated September 14 2000, p.3.

4.68 The Committee is generally in favour of incorporating the GESB key principles into the clause. Furthermore, this clause does not address the situation of the dispute as to the owing of money to the Board. The practical considerations of collecting debts must be weighed against the right of a member to rebut the assertion that such money is owed, before the process of recovery is contemplated.

RECOMMENDATION 12: The Committee recommends:

(a) that clause 26 be supported; and

(b) the current practice of the GESB be made law by regulation.

CLAUSE 28

Overview

4.69 This clause deals with the establishment of superannuation schemes by the Governor (being schemes other than those continued under clause 29(a), (c) and (d)), with reference to spouses or ex-spouses, who are working for Employers to participate in the scheme.

4.70 The term “spouse” refers to either member of a married couple in relation to the other person.⁵⁹

Proposed Amendment

4.71 The GESB proposed to amend sub-clause (1) by stating that the Governor can establish superannuation schemes for persons who are not only those working for an Employer but also those who “*have worked*” for an Employer.

Summary of Submissions

4.72 The Committee sought clarification from the GESB as to the intended scope of sub-clause (2), which refers to “spouse or ex-spouse”. The GESB acknowledged that amendment would be necessary to include defacto spouse in that clause, as was the intention:

“It was the intention during drafting for the definition of spouse to include de facto spouses and it was considered that this could be achieved through the membership provisions within the regulations. Advice in response to this issue is that an amendment is required to ensure the term spouse is defined to include:

⁵⁹ Nygh, P & Butt, P. (1997) *Butterworth’s Australian Legal Dictionary*, Butterworths, p.1102

“a person who is the Member’s husband or wife; or

is living with the Member on a bona fide domestic basis as the Member’s husband or wife”

This amendment would ensure that the Bill contains the future flexibility to extend the Commonwealth’s superannuation and family law changes and the operation of spouse accounts to apply to de facto spouses, should this approach be supported in the future.”⁶⁰

- 4.73 In light of the GESB submission with regards to this issue, the majority of the Committee is of the view that the clause should be amended to clarify that “spouse” in this clause is intended to include couples living as if they were husband and wife and that the term “ex-spouse” is to be also interpreted accordingly.

RECOMMENDATION 13: The majority of the Committee recommends that clause 28 be amended as follows:

*Page 15, line 4 – To insert after “working” –
“, or have worked,”.*

Page 15, after line 9 – To insert the following subclause –

“(3) In this section –

“spouse” includes a person living with the Member in a bona fide domestic arrangement as if they were husband and wife; and

“ex-spouse” includes such a person on termination of that arrangement.”.

CLAUSE 30

Overview

- 4.74 Clause 30 is headed “Other public sector superannuation schemes”. The Explanatory Memorandum states that sub-clause (2) and (3) are intended to allow contributions to be made to other schemes (apart from those continued under this Bill) subject to the Minister’s and Treasurer’s approval.⁶¹

⁶⁰ Written Submission of the Government Employees Superannuation Board dated September 20 2000, “Legislation Committee Issues 2”, p.6.

⁶¹ Explanatory Memorandum for the *State Superannuation Bill 1999*, p.8.

Proposed Amendment

- 4.75 As previously discussed in relation to clause 3 in this report, the GESB proposes that the reference to “employee” be broadened to include police, parliamentary and electoral officers by referring instead to “persons who work for the Employer”.

Summary of Submissions

- 4.76 In its submission, the GESB stated in relation to the heading of this clause that,

“This clause merely continues the current provisions of section 56A(2) of the GES Act whereby a public sector scheme established before 28 December 1989 such as the Fire Brigade Superannuation Fund does not require specific approval.”⁶²

- 4.77 Clause 30(2)(c) seems curious in light of the heading and the comments by the GESB. The Explanatory Memorandum refers simply to “other schemes” which suggests that this clause would allow contributions to private sector schemes as well as public sector schemes. The intention of the clause remains unclear.

- 4.78 Unions WA in its submission stated,

“The Committee may not be aware that there are other funds/schemes established within the public sector with specific approval as given by the Minister and the Treasurer ... An example of such a scheme is the Alinta Gas [scheme]. To date, all these schemes have been established in corporatized authorities within the public sector. The title must accurately reflect the detail dealt with in the particular clause.”⁶³

- 4.79 In light of the above submissions it is assumed the clause is intended to exclude Employers from making contributions to private sector schemes. The clause should be amended to broaden its meaning to include private sector schemes as this would be in keeping with the stated intention of the Bill to:

- 4.79.1 provide more flexibility for members and access to industry standard superannuation and new products and services; and

⁶² Written Submission of the Government Employees Superannuation Board dated September 15 2000, at Attachment 8, “Attachment 8 – Legislation Committee Issues 1”.

⁶³ Written Submission of Unions WA dated September 14 2000, p.6.

4.79.2 remove unintended anomalies and inequities.⁶⁴

RECOMMENDATION 14: The Committee recommends that clause 30 be amended as follows:

*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.”.*

CLAUSE 33(1)

4.80 This clause provides at sub-clause (1)(a) that an approval, under clauses 18, 23, 24 and 38(4), to invest assets of the fund, appoint an investment manager, borrow money or make particular regulations respectively be “...*in writing but may otherwise be given when and how the Treasurer determines*”.

Summary of Submissions

4.81 It is unclear in this clause as to whether approval is required to be in writing.

4.82 The GESB stated in its submission that “*Treasurer’s approvals must be in writing*”.

RECOMMENDATION 15: The Committee recommends that Clause 33(1) be amended as follows:

Page 18, line 4 to 5 – To delete the paragraph and insert instead –

“

(a) must be in writing;

(c) may be given when and how the Treasurer determines; and”.

⁶⁴ Legislative Council, Second Reading Speech, Hon Peter Foss MLC, Attorney General, Legislative Council, May 11 2000 at 6863.

CLAUSE 34*Overview*

- 4.83 Clause 34 provides that the Board or Minister may give written directions to Employers about practices and procedures to be observed with regards to the operation of the Bill.

Summary of Submissions

- 4.84 The Committee sought clarification from the GESB as to the link between clause 34 and clause 13. Namely, the Committee wished to ascertain whether the review/appeal process set out in clause 13 was applicable. It appears on the face of the clause that a direction by the Board under clause 34 will be reviewable under clause 13 but a direction by the Minister will not be reviewable.
- 4.85 The GESB responded with regards to the issue of review/appeal from the Minister's direction as follows:

“ ... when a Minister issues a direction then it is likely to relate to whole of Government issues that have either been ratified by Cabinet or have received central agency endorsement. Ministers are accountable to their Cabinet colleagues for directions to agencies under another Minister's control.”⁶⁵

- 4.86 The GESB further notes that this clause refers to directions on “*practice and procedures*” and is therefore not in conflict with Treasurer's guidelines or regulations, which generally deal with schemes, the Board and the Fund, as opposed to operational practices.⁶⁶

RECOMMENDATION 16: The Committee recommends that clause 34 be supported.

CLAUSE 36*Overview*

- 4.87 This clause removes any doubt as to the Minister's powers to demand information from the Board for parliamentary and ministerial purposes. Under sub-clause (2) the Board has a duty to give the Minister information “*in the possession of the Board*”

⁶⁵ Written Submission of the Government Employees Superannuation Board dated September 20 2000, “Legislation Committee Issues 2”, p.7.

⁶⁶ Written Submission of the Government Employees Superannuation Board dated September 20 2000, “Legislation Committee Issues 2”, p.7.

and the Minister may retain copies. Although sub-clause (3) appears to exclude access, or the means of obtaining access, to “*confidential information*” about a “beneficiary”, a closer reading suggests that it does not affect the Minister’s power to require the information. It denies the Minister the right to request information in a form that discloses confidential information about a beneficiary without that beneficiary’s consent.

- 4.88 Clause 36 does not purport to affect an exercise of power by a House of the Parliament. Accordingly, an order from a House of the Parliament directing the Minister to table information answering the description in sub-clause (3) is not affected, but the Minister’s capacity to require that information from the Board depends on a beneficiary’s consent. If consent is not given, the Minister cannot comply with the order but, nonetheless, may be held in contempt of the Parliament.
- 4.89 Clause 36 also does not purport to affect the power of a House of the Parliament (or a committee given the power) to order the production of documents under section 4 of the *Parliamentary Privileges Act 1891*. Accordingly, a House of the Parliament could bypass the Minister and require the Board to produce information, which the Minister is not entitled to under sub-clause (3).
- 4.90 To the extent that the clause confers power in the Minister to require information for the Board, it may prevent argument about the existence and ambit of similar powers claimed by and for the Minister under the general law.
- 4.91 It appears that sub-clause (3) leaves open the possibility, albeit remote, of the Minister having to choose between the law and the demands of a House of the Parliament.

RECOMMENDATION 17: The Committee recommends that clause 36 be amended as follows:

Page 20, line 14 – To insert after the word “possession” -

“or the control”.

Page 21, line 23 to line 24 – To delete – “, or an order or resolution of a House of Parliament,”.

CLAUSE 38

Overview

- 4.92 The Bill relies extensively on regulation to prescribe the conduct of the Board and the management of schemes. The Bill places a heavy reliance on subordinate legislation and quasi-legal instruments throughout.

- 4.93 Whilst regulations are a matter of public record, the matter of making regulations is formally invisible to the public. That is to say that information about the process of making regulations is not readily available to the public.⁶⁷
- 4.94 Reliance on regulation is justified if:
- 4.94.1 they are necessary to deal with matters of a technical nature that parliament has neither the time or expertise to deal with;
 - 4.94.2 they are intended to deal with unforeseen contingencies as they arise; or
 - 4.94.3 it is likely that there will be a necessity for flexibility to adapt to unknown future positions.⁶⁸
- 4.95 However, the use of subordinate legislation such as regulations, is not justified:
- 4.95.1 because it is easier to administer with less limitations than statutes;
 - 4.95.2 because of incomplete preparatory work on the part of the instructing officer or agency; or
 - 4.95.3 if it is an over-reaction to the doctrine of *ultra vires*.⁶⁹
- 4.96 Clause 38(2) of the Bill sets out a range of matters for which regulations may be made, including the establishment of superannuation schemes, the management of the Fund, scheme rules and administration and the provision by the Board of other products and services.⁷⁰
- 4.97 Clause 38(3) places restriction on the regulation making powers under the Bill by stating that regulations cannot be made if they “...*reduce the amount of a benefit that accrued, became payable or may become payable in relation to a period before the regulations came into operation*”⁷¹.
- 4.98 Clauses 38(4) and (6) require the Treasurer’s approval and consultation with the Treasurer respectively.

⁶⁷ Joint Standing Committee on Delegated Legislation, *16th Report*, Legislative Council 1995, p.5.

⁶⁸ Joint Standing Committee on Delegated Legislation, *16th Report*, Legislative Council 1995, p.7-8.

⁶⁹ Joint Standing Committee on Delegated Legislation, *16th Report*, Legislative Council 1995, p.7.

⁷⁰ Explanatory Memorandum for the *State Superannuation Bill 1999*, p.10.

⁷¹ Explanatory Memorandum for the *State Superannuation Bill 1999*, p.10.

Proposed Amendment

4.99 The GESB proposes to amend this clause to prevent regulations being made in relation to the relevant superannuation schemes unless:

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

4.99.2 an actuary appointed by the Board has certified that the proposed regulation will not reduce (or have that effect) the multiplying factor for any relevant benefit or the pension value factor in relation to clause 29(a) and (b) schemes and clause 29(c) schemes respectively.

4.100 The GESB states that the proposed amendment,

“... protects the accrual rate of the benefit exclusive of salary and service, which are factors within the member’s control. The proposed amendment also protects the continuing existence of future benefits by preventing regulations that would have the effect of removing the benefit entitlements eg. by reducing the benefit multiplying factor to zero.”⁷²

4.101 The proposed GESB amendment is favourable, as it is prudent to place further restriction on regulation-making powers in light of the extensive reliance on regulation in the proposed legislative framework.

Summary of Submissions

4.102 The Police Union and the CPSU have concerns about clause 38 of the Bill. The CPSU is particularly concerned that the Government would have the ability by regulation to stop members from accruing benefits in schemes or to reduce the benefits.⁷³

4.103 The CPSU suggests that clause 38(3) be amended to provide for the right of members of the schemes currently administered by the Board to continue to remain entitled to the future service benefits of the schemes.⁷⁴

⁷² Written Submission of the Government Employees Superannuation Board dated September 15 2000, at Attachment 8, “Attachment 8 – Legislation Committee Issues 1”.

⁷³ Written Submission of the CPSU dated September 15 2000, p. 8.

⁷⁴ Written Submission of the CPSU dated September 15 2000, p. 8.

4.104 The Police Union is concerned that the clause enables entitlements to be eroded or varied without open accountability.⁷⁵ It refers to proposed GESB amendments to sub-clauses (6) and (8), and expresses concern that such amendments are,

*“...limited to the protection of the quantum of accrued benefits. They do not provide any protection from the imposition of regulation that could remove the existence of certain benefits...”*⁷⁶

4.105 Accordingly, the Police Union suggests amendment to clause 38(3)(a) to state that regulations cannot be made if they reduce the amount of a benefit or in any way effect the existence of entitlement to a benefit. Further to this, it is suggested that proposed amendment to clause 38(4) include reference also to superannuation schemes continued by section 29(d) of the Bill.⁷⁷ The Police Union submits that restrictions to regulation-making powers should be stronger in clause 38.

4.106 It appears that a lot of the issues raised with regards to this clause could be avoided if there were maintenance of separate funds.

4.107 The present sub-clause (4) states that certain regulations *“...cannot be made under subsection (1) unless they have been approved by the Treasurer”*. The Committee sought clarification as to the intended meaning of this clause as it appeared to veto the operations of the Executive Council.

4.108 The GESB has responded by stating that this is not the intention of this clause but instead intends to provide that the Minister cannot do anything that may impact on the Crown without the Treasurer’s approval.⁷⁸

RECOMMENDATION 18:

(a) The majority of the Committee recommends that Clause 38 be amended as follows:

Page 22, line 10 – To insert after “Act” –

“or section 26 of the State Superannuation (Transitional Consequential Provisions Act 2000”.

⁷⁵ Written Submission of the WA Police Union of Workers dated September 15 2000, p.14.

⁷⁶ Written Submission of the WA Police Union of Workers dated September 15 2000, p.15.

⁷⁷ Written Submission of the WA Police Union of Workers dated September 15 2000, p.15.

⁷⁸ Written Submission of the Government Employees Superannuation Board dated September 15 2000, at Attachment 8, “Attachment 8 – Legislation Committee Issues 1”.

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.”.*

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 which was, immediately before the commencement day, calculated as a multiple of a Member’s salary.”.

(b) The majority of the Committee recommends that Schedule 1 be amended as follows:

Page 25, line 7 – To delete “employees of the” and insert instead –

“persons who work for”.

*Page 26, line 14 – To delete “appointor” and insert instead –
“Minister”.*

*Page 26, line 17 – To delete “appointor” and insert instead –
“Minister”.*

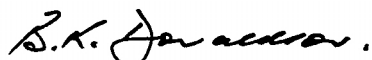
*Page 26, line 18 – To delete “appointor” in both places where it occurs and to insert instead
–
“Minister”.*

*Page 27, line 6 – To delete “employees of the” and insert instead –
“a person who works for”.*

Page 27, lines 7 to 12 – To delete the subclause.

Schedule 2

*Page 30, line 1 – To delete “an employee of” and insert instead –
“a person who works for”.*



HON BRUCE DONALDSON MLC

DATE: OCTOBER 6 2000

APPENDIX 1

Appendix 1**List of submissions received by the Committee**

Submission No	Individual/Organisation and Date of Submission
1.	Government Employees Superannuation Board dated September 15 2000.
2.	Community and Public Sector Union, WA Branch and Civil Service Association of WA Inc dated September 15 2000.
3.	UnionsWA dated September 14 2000.
4.	Australian Liquor, Hospitality and Miscellaneous Workers Union, WA Branch dated September 14 2000.
5.	W.A. Police Union of Workers dated September 15 2000.
6.	Government Employees Superannuation Board dated September 20 2000.
7.	Hon Graham Kierath MLA, Minister Assisting the Treasurer dated September 27 2000.

APPENDIX 2

DRAFT TREASURER'S GUIDELINE**BORROWING POWERS OF THE GOVERNMENT EMPLOYEES SUPERANNUATION BOARD****BACKGROUND**

Section 24(1)(a) of the State Superannuation Act 2000 (the Act) does not allow the Government Employees Superannuation Board (the Board) to borrow unless the borrowing is for the purpose of overcoming a cash flow problem in the payment of benefits or for a purpose approved by the Treasurer.

Section 24(1)(b) requires the terms of the borrowing to be approved by the Treasurer. Section 24(1)(c) requires that the borrowing comply with the Treasurer's guidelines.

Pursuant to section 33(2)(j) of the Act the Treasurer has issued the following Guideline to be followed by the Board in relation to borrowing.

TREASURER'S GUIDELINE

- (1) This Guideline is applicable to the Board which is subject to section 33(2) of the Act.
- (2) This Guideline applies to borrowing by the Board.
- (3) Borrowing by the Board, other than for the purpose of overcoming a cash flow problem in the payment of benefits, will only be considered for approval by the Treasurer if the borrowing is for the purposes of funding the State's unfunded superannuation liability.
- (4) Any borrowing arrangement considered by the Treasurer for approval under (3) above must:
 - a) contain a agreement with the Treasurer for a flow through of repayments from the Consolidated Fund for the life of any borrowing arrangement 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.
 - b) support the Board in the performance of its functions; and
 - c) be in the best interests of members of the superannuation schemes administered by the Board.
- (5) The borrowing arrangement must also be accompanied by a statement from the Board which confirms that the Board is satisfied that the borrowing arrangement complies with this Guideline.
- (6) The statement shall be signed by the Chairman and one member of the Board.

APPENDIX 3

WESTERN AUSTRALIA

LEGISLATIVE COUNCIL

**SCHEDULE SHOWING AMENDMENTS
RECOMMENDED BY THE STANDING
COMMITTEE ON LEGISLATION**

STATE SUPERANNUATION BILL 1999When in Committee on the *State Superannuation Bill 1999***Clause 3****1/3** Page 3, line 6 - To insert after “scheme” -

“ established or continued ”.

2/3 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.

”.

Clause 13

3/13 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
refer the matter for independent review by a prescribed person or body.
”.

Clause 28

4/28 Page 15, line 4 - To insert after “working” -

“ , or have worked, ”.

5/28 Page 15, after line 9 - To insert the following new subclause -

“
(3) In this section —
“**spouse**” includes a person living with the Member in a bona fide domestic arrangement as if they were husband and wife; and
“**ex-spouse**” includes such a person on termination of that arrangement.
”.

Clause 30

6/30 Page 16, line 3 - To delete “its employees” and insert instead -

“ persons who work for the Employer ”.

7/30 Page 16, lines 6 and 7 - To delete “its employees” and insert instead -

“ persons who work for the Employer ”.

8/30 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. ”.

Clause 33

9/33 Page 18, lines 4 and 5 - To delete the paragraph and insert instead -

“
(a) must be in writing;
(b) may be given when and how the Treasurer determines; and
”.

Clause 36

10/36 Page 20, line 14 - To insert after “possession” -

“ or the control ”

11/36 Page 21, lines 23 and 24 - To delete “, or an order or resolution of a House of Parliament,”.

Clause 38

12/38 Page 22, line 10 - To insert after “Act” -

“

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

”

13/38 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.

”

14/38 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 which was, immediately before the commencement day, calculated as a multiple of a Member’s salary.

”.

Schedule 1

- 15/S1** Page 25, line 7 - To delete “employees of the” and insert instead -
“ persons who work for ”.
- 16/S1** Page 25, lines 8 and 9 - To delete “a member of the staff” and insert instead -
“ an employee or officer ”.
- 17/S1** Page 26, line 14 - To delete “appointor” and insert instead -
“ Minister ”.
- 18/S1** Page 26, line 17 - To delete “appointor” and insert instead -
“ Minister ”.
- 19/S1** Page 26, line 18 - To delete “appointer” in both places where it occurs and insert instead -
“ Minister ”.
- 20/S1** Page 27, line 6 - To delete “employees of the” and insert instead -
“ a person who works for ”.
- 21/S1** Page 27, lines 7 to 12 - To delete the subclause.

Schedule 2

- 22/S2** Page 30, line 1 - To delete “an employee of” and insert instead -
“ a person who works for ”.



**MINORITY REPORT OF THE
HON HELEN HODGSON MLC**

STANDING COMMITTEE ON LEGISLATION

IN RELATION TO THE

THE STATE SUPERANNUATION BILL 1999

Report 52 – Minority

**MINORITY REPORT OF THE
HON HELEN HODGSON MLC**

I wish to record my dissent from the majority report in respect of two recommendations.

RECOMMENDATION 13, CLAUSE 28

I do not agree with the definition of the term “spouse” that the majority has recommended be inserted at clause 28, as it discriminates against same sex couples.

Superannuation is one of the major areas of discrimination against same sex couples. Same sex couples may live together in a long term relationship, often with one partner wholly or partly supporting the other during this period, and find that they are unable to access the same entitlements as a defacto or married couple after a much shorter period of time. This issue was recently discussed in detail by the Senate Select Committee on Superannuation and Financial Services (refer to the Report on Provisions of the Superannuation (Entitlements of Same Sex Couples) Bill 2000, tabled in April 2000).

Discrimination can occur in several ways.

Firstly, entitlements to benefits may be different if a couple is not in a relationship that is recognised by the fund. Heterosexual surviving partners are automatically considered to be dependents, and thus have an entitlement to benefits on the death of the fund member, whereas same sex partners are either unable to access benefits or have to prove financial dependence on the deceased partner. In the context of this Bill, the nomination of and entitlements of beneficiaries will be a matter for regulation, and therefore does not arise directly at this time.

Secondly, the taxation treatment of benefits received by a same sex partner differs from that applied to heterosexual partners, again because concessional treatment is available when benefits are paid to a dependent. This is not a matter that can be addressed in this Bill as it is a matter of Federal taxation law. However, the existence of these provisions in the Federal *taxation* law should not be used as a reason to enact discriminatory provisions in state *superannuation* law. There are many members who receive benefits in a form that does not fall within the discriminatory provisions of the Income Tax Assessment Act.

Thirdly, superannuation funds may allow a member to make contributions on behalf of a spouse. It is in this context that the Committee has proposed the inclusion of a definition of spouse in this Bill. I am concerned that the definition of spouse that has been recommended will exclude same-sex couples. I am aware that currently Federal superannuation policy is to make such schemes available to married or defacto couples. Once again, this is implemented through Taxation law, in that a tax rebate is available to a person who contributes to a superannuation fund on behalf of their spouse.

The GESB has stated in its submission that:

“This amendment would ensure that the Bill contains the future flexibility to extend the Commonwealth’s superannuation and family law changes and the operation of spouse accounts to apply to defacto spouses, should this approach be supported in the future”.

Yet this amendment may actually limit the ability of the GESB to develop a product that could in fact offer such a product to its members who are in same sex relationships, whether they qualify for taxation concessions or not. I believe it is bad policy to insert a definition that precludes the possibility of such a product being developed and made available when Federal superannuation policy changes.

I dissent from Recommendation 13 and recommend that Clause 28 be amended as follows:

Page 15, after line 9 – insert following subclause –

“In this section “spouse” includes a person living with the Member in a bona fide domestic arrangement and ex-spouse includes such a person on termination of that arrangement.”

RECOMMENDATION 18, CLAUSE 38

The relationship of Federal superannuation policy in respect of the state superannuation scheme is a complex matter, which is highlighted by the issue of same sex relationships. I believe that it is important to ensure that the “Best Practice” requirements of the SIS regime apply, particularly in respect of the relationship between the members of the fund and the trustees of the fund. I am also concerned that Public Sector employees should be entitled to a superannuation scheme at least as good as any available through the private sector.

I do not believe that the “Heads of Government Agreement” is adequate as the instrument to ensure that public sector employees are guaranteed conditions equivalent to those protected by Federal legislation in respect of private funds. However, it is also clear that the policy framework within which the SIS rules are structured is flawed – as in the matters of same sex relationships, and retirement age. It becomes impossible, in any practical sense, to legislate in a manner that would require the trustees of the fund to comply with SIS, while allowing departure where Federal policy is inappropriate.

Therefore I would prefer to see a statement of compliance with SIS conditions incorporated in the explanatory memorandum and other documents prepared in conjunction with the

regulations. Such a statement would allow an explanation of the reasons for any departures from SIS, and the potential impact of such departures.

I agree with Recommendation 18, save and except that the following further amendment should be inserted into Clause 38:

Page 23, after line 14 – to insert the following 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.*



HON HELEN HODGSON MLC

DATE: OCTOBER 6 2000