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## 2014 Superannuation benefits for senators and members elected before 2004

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**IMPORTANT NOTE:** This research paper describes superannuation benefits available to senators and members who first served in parliaments prior to the general election held 9 October 2004.<sup>1</sup> Those who were re-elected will continue to be eligible for benefits under the arrangements described below.

Parliamentarians elected for the first time at the 2004 election, however, are eligible for benefits under the [Parliamentary Superannuation Act 2004](#).<sup>2</sup> Newly-elected parliamentarians will nominate a complying superannuation fund into which contributions of 15.4 per cent will be made by the government on their behalf. These arrangements have the stated aim of bringing superannuation arrangements for parliamentarians in line with current community standards of superannuation arrangements in the Commonwealth Public Sector. There will not, therefore, be a paper written to outline these new arrangements. Interested readers are referred to the general discussion of these changes in the publication *Parliamentary Retiring Allowances Act 1948: Debates, Committee Reports, Remuneration Tribunal Reviews and a Chronology of Legislative Amendments*.<sup>3</sup> Further information can be found on the Department of Finance website, [Parliamentary Superannuation Act 2004](#).<sup>4</sup>

## Introduction

This research paper provides a summary of Commonwealth parliamentary superannuation benefits in place prior to the 2004 general election. It provides explanation, hyperlinks and documents pertaining to the operation of the Parliamentary Contributory Superannuation Scheme (the PCSS). A table of eligibility requirements and benefits under the Scheme is given.

The research paper should be read in conjunction with the research paper, [Parliamentary remuneration and entitlements](#).

A history of parliamentary superannuation can be read in *The Parliamentary Retiring Allowances Act 1948: Debates, Committee Reports, Remuneration Tribunal Reviews and a Chronology of Legislative Amendments*.<sup>5</sup>

## Legislation

The [Parliamentary Contributory Superannuation Act 1948](#) (the PCSS Act) established the Parliamentary Retiring Allowances Trust (the Trust) and the Scheme. The Scheme is administered by the [Department of Finance](#) (Finance) under the direction of the Trust. The Minister for Finance, currently [Senator the Hon. Mathias Cormann](#), is a trustee of the Scheme, along with two Senators and two Members of the House of Representatives.

## The Scheme

Operation of the PCSS is outlined in the [Parliamentary Contributory Superannuation Scheme Handbook](#) published by Finance.<sup>6</sup>

The Scheme is an unfunded defined benefit scheme. 'Unfunded' means that when a pension becomes payable, benefits are funded from an appropriation within the Commonwealth Budget while 'Defined Benefit' means that the member's entitlement is, in general, a multiple of years of service and a percentage of salary. In other words, the amount of benefit is fixed by a formula rather than by market returns on investments made by the fund.

## Contributions

Membership of the scheme was compulsory for all Senators and Members prior to 2004. There are some current members of parliament who still belong to the PCSS. Contribution rates are given as a fixed percentage of the 'Parliamentary allowance' and of any additional salary payable to Ministers and Parliamentary office holders. Contributions are paid into the Consolidated Revenue Fund. For the purposes of this paper, salary for superannuation purposes will be referred to as parliamentary allowance.

The parliamentary allowance is determined by the Remuneration Tribunal and is based on the base salary for Senators and Members. Parliamentarians currently receive a base salary of \$195,130 per annum, of which the

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1. Original background note, *Superannuation benefits for senators and members*, by Leanne Manthorpe.

2. [Parliamentary Superannuation Act 2004](#), accessed 15 April 2014.

3. L Manthorpe, [Parliamentary Retiring Allowances Act 1948; debates, committee reports, Remuneration tribunal Reviews and a chronology of legislative amendments](#), Background Note, 1 July 2007, accessed 15 April 2014, [http://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/0708/praa](http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0708/praa)

4. Department of Finance, website, [Parliamentary Superannuation Act 2004](#), accessed 14 April 2014.

5. L Manthorpe, op. cit.

6. Department of Finance, [Parliamentary Contributory Superannuation Scheme handbook](#), October 2013, viewed 16 April 2014.

Remuneration Tribunal has determined that \$40,730 is not counted for superannuation purposes.<sup>7</sup> This leaves the parliamentary allowance for superannuation purposes to be \$154,400.<sup>8</sup> Information about the parliamentary base salary can be found in the Background Notes, [The base salary for senators and members](#) and [Parliamentary remuneration and entitlements](#).

Current Contribution Rates for Senators and Members:

- 11<sup>1</sup>/<sub>2</sub> per cent of Parliamentary Allowance until completion of 18 years service
- 5<sup>3</sup>/<sub>4</sub> per cent of Parliamentary Allowance after completion of 18 years service

The Remuneration Tribunal also determines the contribution base for any additional salary payable to Ministers and Parliamentary office holders for superannuation purposes (the ‘allowance by way of salary’), and has determined that 20 per cent of the additional salary not be counted for superannuation contribution purposes.<sup>9</sup>

Current Contribution Rates for Office holders receiving additional salary:

- 11½ per cent of the monthly amount of additional salary received is contributed by those Office holders who have not attained their maximum additional pension entitlement
- For Office holders who have attained their maximum additional pension entitlement, the contribution rate reduces to 5<sup>3</sup>/<sub>4</sub> per cent while that maximum applies.

Contributions are only paid while any additional salary is received.

Members of the PCSS are unable to make salary sacrifice superannuation contributions.

## Retirement benefits

### Summary

Former parliamentarians gain an entitlement to a pension, called a Retiring Allowance, if they meet the minimum eligibility requirements set out in the Act. The Scheme provides an additional pension entitlement for Office holders. The benefits payable depend upon a parliamentarian’s length of service, the mode of retirement and the receipt of any additional salary. In certain circumstances a portion of the retiring allowance may be converted to a lump sum. If no retiring allowance is payable, former parliamentarians are entitled to a lump sum benefit that may include a refund of their contributions.

Retiring allowances are payable fortnightly from the Consolidated Revenue Fund and are subject to income taxation.

Benefits are summarised in the following table and discussed in the subsequent paragraphs.

**Table of Benefits under the Act**

Senator or member	Mode of retirement	Benefit	Eligibility requirements
Senator or member	Voluntary— expiration of term	<a href="#">Retiring allowance</a> —a pension payable for life <sup>10</sup>	12 or more years’ service or if has ceased to be a senator or member on four occasions.
Senator or member	Voluntary— and has attained the age of 60 years	Retiring allowance	Deemed to be involuntary retirement. Eight or more years’ service or if has ceased to be a senator or member on three occasions.
Senator	Involuntary—	Retiring allowance	Eight or more years’ service or if has

7. Remuneration Tribunal, Determination 2013/13: [Members of Parliament – Base salary, additional salary for parliamentary office holders, and related matters](#), 12 June 2013, accessed 16 April 2014.

8. In its 2014 [Annual review of Remuneration for Holders of Public Office](#), the Remuneration Tribunal determined that there will be no annual adjustment to remuneration for offices in its jurisdiction from 1 July 2014 for one year. This includes parliamentarians and office-holders as well as other principal executive offices. Remuneration Tribunal, 2014 Review of Remuneration for Holders of Public Office, [Statement](#), 12 May 2014.

9. Remuneration Tribunal, Determination 2012/03: [Parliamentary additional salary and related matters](#), as at 12 March 2012, accessed 16 April 2014.

10. Parliamentarians elected for the first time at the 2001 general election cannot access the retiring allowance until age 55. Those members of the scheme elected prior to 2001 are eligible to receive the retiring allowance immediately after retirement.

<b>Senator or member</b>	<b>Mode of retirement</b>	<b>Benefit</b>	<b>Eligibility requirements</b>
	due to the loss of preselection or loss at an election		ceased to be a senator on three occasions.
Member	Involuntary—due to the loss of preselection or loss at an election	Retiring allowance	Eight or more years' service or if has ceased to be a member on three occasions.
Senator or member	<a href="#">Ill-health</a>	Retiring allowance 50% of the parliamentary allowance payable.	Senators and members who do not qualify for a retiring allowance under the above conditions may be entitled to a retiring allowance if the Parliamentary Retiring Allowances Trust (the Trust) is satisfied that the retirement is due to ill-health Eight or more years' service or if he or she has ceased to be a Senator or Member on three occasions.
Senator or member	Ill-health	Retiring allowance 50% of the parliamentary allowance payable.	Eligibility in Row 4 does not apply and he or she is classified as a Class 1 invalid by the Trust.
Senator or member	Ill-health	Retiring allowance 30% of the parliamentary allowance payable.	Eligibility in Row 4 does not apply and he or she is classified as a Class 2 invalid by the Trust.
Senator or member	Ill-health	The greater of the following: Refund of his or her contributions together with a payment of the <a href="#">Commonwealth Supplement</a> the <a href="#">superannuation guarantee safety-net amount</a> .	Eligibility in Row 4 does not apply and he or she is classified as a Class 3 invalid.
Senator or member— if not entitled to retiring allowance	Involuntary	Lump sum comprising the higher of— a refund of contributions plus <a href="#">a supplement</a> or a lump sum representing the <a href="#">superannuation guarantee safety-net amount</a> .	
Senator or member— if not entitled to retiring allowance or superannuation benefit; have joined the Parliament at or since the November 2001 election.	Involuntary	<a href="#">Resettlement Allowance</a> — equal to 12 weeks of the base salary that is current on the date Parliament is prorogued prior to the election.	Payable only after ceases to be a senator or member. Involuntary retirement when: did not stand for re-election due to loss of party endorsement for reasons other than misconduct; was defeated at an election, including when stood for different electorate or Chamber.
Senator or member— if not entitled to retiring allowance	Voluntary	Lump sum comprising the higher of— a refund of contributions plus <a href="#">a supplement</a> or a lump sum representing	

Senator or member	Mode of retirement	Benefit	Eligibility requirements
		the <a href="#">superannuation guarantee safety-net amount</a> .	
Senator or member—entitled to retiring allowance except for reasons of ill-health	Voluntary or involuntary as per above	<a href="#">Commutation</a> of retiring allowance. Up to 50 per cent of the retiring allowance may be commuted to a lump sum. The lump sum is equal to the annual amount of retiring allowance commuted, multiplied by the <a href="#">commutation factor</a> .	
Spouse—of a serving senator or member who dies while entitled to a Parliamentary Allowance or would have been entitled to a retiring allowance had they not died. <sup>11</sup> ‘Spouse’ is defined as someone who had a marital relationship with a senator or member. ‘Marital relationship’ is defined as living with the senator or member on a “permanent and bona fide domestic basis”...“whether or not legally married” for a continuous period of at least three years (or less in some circumstances) <sup>12</sup>	If a serving senator or member has served less than eight years at the time of death, the annuity is calculated on the benefit that would have been payable had eight years service been completed.	Annuity 5/6 of the rate of the retiring allowance which would have been applicable. Commutation is allowed to pay surcharge liability.	Irrespective of length of service. The spouse and deceased having had a marital relationship.
Spouse—of a retired senator or member who dies.		Annuity 5/6 of the rate of the retiring allowance which would have been applicable. Commutation is allowed to pay surcharge liability.	Deceased Senator or Member was in receipt of a retiring allowance and: Marital relationship commenced before retirement; or commenced at least five years before death; or commenced prior to parliamentary attaining 60 years of age. <sup>13</sup>
Orphaned children		Annuity The rate of annuity payable is an amount calculated by dividing the spouse’s annuity that was, or would have been	Deceased senator or member was in receipt of, or eligible for, a retiring allowance or Deceased spouse was in receipt of an annuity and A child must be under 16, or under 25

11. Essentially a ‘parliamentary allowance’ or ‘salary’ see [Parliamentary Contributory Superannuation Act 1948](#) (the PCSS Act) Section 4 Interpretation, accessed 15 April 2014.

12. The *PCSS Act 1948*, [Section 4B Marital relationship](#), accessed 16 April 2014.

13. *ibid.*, Section [4C Spouse who survives a deceased person](#), accessed 15 April 2014.

Senator or member	Mode of retirement	Benefit	Eligibility requirements
		payable, by four—or by the number of children in respect of which an annuity is payable, if there are more than four children.	if a full-time student, and has been dependent on the senator or member, or former senator or member, or spouse, at the time of death. There are also other qualifications see <a href="#">Section 19AA</a> of the Act.

### **Occasions**

An 'occasion' occurs on the dissolution or expiration of the Senate or House of Representatives or at the expiration of a senator's or member's term of office.

Senators who have six year terms achieve an 'occasion' after the completion of three years of that term, as well as when their term expires.

Members achieve an 'occasion' when they cease to be a Member upon the dissolution or expiration of the House or upon the expiration of the Member's term of office.

### **Supplements**

Involuntary retirement—the supplement is 2½ times the member's contributions

Voluntary retirement—the supplement is 1<sup>1</sup>/<sub>6</sub> times the member's contributions

### **Retiring Allowance**

A retiring allowance is paid as a percentage of the parliamentary allowance as determined by the Remuneration Tribunal and is currently \$154,400 per annum. The applicable percentage is linked to a parliamentarian's years of service as follows:

#### **Retiring Allowance Rates**

Years of service	Percentage of parliamentary allowance (%)	Years of service	Percentage of parliamentary allowance (%)
8	50	14	65
9	52.5	15	67.5
10	55	16	70
11	57.5	17	72.5
12	60	18 or more	75
13	62.5		

The table represents an additional retiring allowance of 0.00685 per cent of the parliamentary allowance for each additional day's service between eight and 18 years.

### **Retiring allowances for Ministers and Office holders**

The Scheme provides an additional retiring allowance for those parliamentarians paid a salary of office. This means that these parliamentarians may become eligible, in effect, for two retiring allowances—the first may be gained by virtue of being an eligible senator or member in the manner described above, the second accrues by way of being a Minister, or holding a parliamentary office such as chair of a committee. Offices are determined by the Remuneration Tribunal.<sup>14</sup> The Tribunal also reports on Ministerial salary.<sup>15</sup>

The additional retiring allowance is expressed as a percentage of the additional salary paid. It accrues at the rate of 6.25 per cent of the additional salary for each year the office is held. Put another way, each day as an Office holder attracts a benefit of 0.0171 per cent of additional salary.<sup>16</sup> Where a senator or member has served in more than one office, the additional pensions in respect of those offices are aggregated.

14. Remuneration Tribunal, Determination 2013/13, op. cit.

15. Remuneration Tribunal, Report No 1 of 2013 [Report on Ministers of State-salaries additional to basic parliamentary salary](#), 19 September 2013, accessed 15 April 2014.

16. D Kehl, [Parliamentary Contributory Superannuation Amendment Bill 2001](#), Bills Digest no. 51, 2001–02, p. 3, accessed 15 April 2014.

### **Maximum additional pension entitlement**

A ‘maximum additional pension entitlement’ limit applies to additional retirement benefits. This is a limit whereby a senator’s or member’s additional retiring allowance must not total more than 75 per cent of the salary payable for the highest paying office they have held. Note that if a parliamentarian holds more than one office concurrently, only the highest salary of office is paid.

### **Retirement for reasons of ill-health**

A retiring parliamentarian who has not qualified for a retiring allowance under the Act may gain entitlement if their retirement is caused by ill-health. The retiring parliamentarian can write to the Trust and ask for a determination to be made on invalidity retirement. Section 15A of the Act requires the parliamentarian to provide a medical certificate and any other documentation the Trust requires. The medical certificate must include a statement setting out the medical practitioner’s opinion about the percentage of the person’s incapacity in relation to non-parliamentary employment.<sup>17</sup> To issue a determination, the Trust must be satisfied that the member is unlikely ever to be able to again perform the duties of a parliamentarian because of physical or mental impairment. The determination on invalidity must specify the nature of these impairments.

The Trust must also classify the member’s invalidity in terms of the percentage of the person’s incapacity in relation to non-parliamentary employment. Classifications and associated benefits are:

#### **Invalidity Classification Sect 15B of the Act**

Percentage of incapacity in relation to non-parliamentary employment	Classification	Benefit if have served less than eight years or three occasions	Amount
60% or more	Class 1 invalid	Retiring allowance	50% of parliamentary allowance
30% or more but less than 60%	Class 2 invalid	Retiring Allowance	30% of parliamentary allowance
Less than 30%	Class 3 invalid	Lump sum	The greater of the following: Refund of his or her contributions together with a payment of the <a href="#">Commonwealth Supplement</a> the <a href="#">superannuation guarantee safety-net amount</a>
Percentage of Incapacity in relation to non-parliamentary employment	Classification	Benefit if have served not less than eight years’ or three occasions	Amount
Not applicable in terms of benefit	Not applicable in terms of benefit	Retiring Allowance	50% of parliamentary allowance

The parliamentary allowance being the salary for superannuation purposes, currently \$154,400.<sup>18</sup>

### **Commonwealth supplement**

The Commonwealth Supplement is defined as 2 ½ times the contributions paid during parliamentary service or, if service exceeds eight years, the contributions paid in the last eight years of that service.<sup>19</sup> This explanation simplifies the operation of Section 16. Readers should consult the Act for further information.

### **Superannuation guarantee safety-net amount**

The Superannuation guarantee safety-net amount is described in Section 16A of the Act. It is the sum of—certain member contributions, plus interest earned on contributions, plus any government-funded ‘top-up’ benefit provided for under the *Superannuation Guarantee (Administration) Act 1992* designed to cover potential superannuation guarantee shortfalls. It is, in essence, a minimum benefit or ‘vested benefit’.

17. The *PCSS Act 1948*, op. cit., section 15A.

18. Remuneration Tribunal, Determination 2013/13, op. cit.

19. The *PCSS Act 1948*, op. cit., section 16.

## ***Increases to retiring allowance***

Until 2012 retiring allowances were increased in line with increases in the base salary for serving senators and members. With the passing of the *Remuneration and Other Legislation Amendment Act 2011* the Remuneration Tribunal was given the power to determine a portion of base salary (annual allowance) which was not salary for superannuation purposes for parliamentarians covered by the *Parliamentary Contributory Superannuation Act 1948*. On 13 March 2012 the Remuneration Tribunal issued Determination 2012/02 Members of Parliament—base salary and related matters, effective 15 March 2012, which set the portion at \$38,620. Effective from 1 July 2012 the portion of the base salary which is not salary for superannuation purposes increases to \$39,770.<sup>20</sup> The salary for superannuation purposes will probably increase annually in line with the annual adjustment to the base salary for parliamentarians. In June 2013 the Tribunal set the portion of salary not to be counted for superannuation purposes as \$40,730, when the base salary increased to \$195,130 from 1 July 2013.

## ***Retiring Allowance for those elected for the first time at the 2001 general election***

Senators and members who joined Parliament on or after the 2001 election and become eligible for a retiring allowance have the benefit deferred until they reach 55 years of age, or until they reach their deferring day, commonly called ‘preservation age’. Benefits commuted to a lump sum are also deferred until the retiring allowance is paid.

## ***Commutation of retiring allowance to lump sum***

Up to 50 per cent of a retiring allowance can be commuted to a lump sum. The lump sum is equal to the amount of retiring allowance commuted, multiplied by the commutation factor.

The commutation factor, for ages up to and including 65 years, is 10. The commutation factor reduces by 0.5 per year until reducing to zero at age 85. The commutation factor applicable at selected ages is as follows:

### **Commutation factor**

<b>Age</b>	<b>Factor</b>
65 or less	10.0
70	7.5
75	5.0
80	2.5
85 or over	0.0

## ***Preservation of Lump Sum Benefits***

Parliamentarians who were elected for the first time at the 2001 election and become eligible for a retiring allowance, are required to preserve any lump sum commutation benefit until their preservation age. The amounts commuted and preserved will naturally vary in each case.

Parliamentarians who retired after 1<sup>st</sup> July 1999, but before the 2001 election, could commute fifty per cent of their retiring allowance to a lump sum, but were required to preserve *part of this amount* until their preservation age.

Parliamentarians who retired before 1<sup>st</sup> July 1999, except for reasons of ill-health, had the option of taking a full retiring allowance or commuting up to fifty per cent of this amount to a lump sum that was immediately accessible. In other words the preservation age rules do not generally apply to those elected prior to 1<sup>st</sup> July 1999. If the retired parliamentarian is subsequently re-elected, however, the rules may apply.

Deferral of benefits is not required if retirement is on invalidity grounds, regardless of the age of the member.<sup>21</sup>

## ***Deferral of Retiring Allowance and Preservation of Benefits***

In 1994, the *PCSS Act 1948* was amended to make the Scheme subject to the same preservation age rules applying to members of other superannuation funds.<sup>22</sup> In effect, this meant that many members of the Scheme were required to preserve any lump sum benefit, but were still able to access a retiring allowance immediately after retirement. From 2001, certain retiring parliamentarians became ‘deferring members’ under the Act and

20. Remuneration Tribunal, Determination 2012/15, op. cit.

21. D Kehl, op. cit., p. 5.

22. Section 26B of the *PCSS Act 1948* was inserted by [the Superannuation Laws Amendment Act 1994](#), accessed 15 April 2014.

they are required to preserve *all* benefits, including their retiring allowance, until their ‘deferral day’, generally the day they reach age 55.

Preservation is a prudential regulatory requirement under the [Superannuation Industry \(Supervision\) Act 1993](#) (SIS Act) and associated [Regulations](#) whereby certain superannuation benefits (superannuation contributions, including member contributions, and superannuation fund investment earnings) must be maintained either in a superannuation or roll-over fund until permanent retirement, or until the member reaches preservation age.

### **Preservation Age**

Preservation age is that at which a member can gain access to preserved benefits that have accumulated in their superannuation fund or Retirement Savings Account, provided that they have permanently retired from the workforce.

In the 1997 Commonwealth Budget, the Howard Government announced 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 preservation age being reduced by one year for each year that a birthday occurs before 1 July 1964. This means that persons born before 1 July 1960 will continue to have a preservation age of 55 under the SIS Act.<sup>23</sup>

#### **Preservation Age—Phase-in Timetable**

<b>For a person born</b>	<b>Preservation age (years)</b>
before 1 July 1960	55
1 July 1960–30 June 1961	56
1 July 1961–30 June 1962	57
1 July 1962–30 June 1963	58
1 July 1963–30 June 1964	59
after 30 June 1964	60

### **Hardship**

The Trust can determine to allow early payment of part of a deferred retiring allowance in circumstances of severe financial hardship or on compassionate grounds. When the retiring allowance ultimately becomes payable at age 55 it will be reduced to take account of these payments.

### **Resettlement Allowance**

The resettlement allowance is determined by the Remuneration Tribunal in [Determination 2012/04](#) Clauses 9.6 to 9.8:

Resettlement Allowance

**9.6 Eligibility:** A senator or member will be paid a Resettlement Allowance if the senator or member:

(a) retires involuntarily from the Parliament, meaning retirement through:

- (i) electing not to stand for re-election following loss of party endorsement, for reasons other than misconduct; or
- (ii) defeat at an election (including defeat at an election where he or she has campaigned to be elected to represent a different electoral division or to the other House of the Parliament);

(b) and was:

- (i) first elected before 9 October 2004, and whose retiring allowance under the *Parliamentary Contributory Superannuation Act 1948* is not payable immediately on retirement because of the deferral provisions of that Act; or
- (ii) first elected on or after 9 October 2004, and declares in writing to the Clerk of the relevant House of Parliament that it is his or her intention to seek employment on leaving Parliament.

23. Summary courtesy of Kehl, op. cit., p. 9.

**9.7 Basic Payment:** A senator or member who fulfils the eligibility criteria in clause 9.6 will, on retirement, be paid three months of the base salary at the rate current on the date that the Parliament is prorogued prior to the election.

**9.8 Additional Payment:** A senator or member who receives a payment under clause 9.7 will, on retirement, also be paid an additional three months of the base salary, at the same rate as the payment under clause 9.7, if he or she is:

(a) a senator for a state, and has served more than three full years in the Parliament, or

(b) a member, or a senator for a territory, and has served more than one full term in the Parliament.

For the purposes of this clause the period of service referred to is the period of continuous service that ceases when the senator or member retires involuntarily.<sup>24</sup>

## **Administration**

The Resettlement Allowance is administered and paid by the Department of the Senate or the Department of the House of Representatives. The allowance is not a redundancy payment—it is an amount determined as appropriate to provide re-skilling and re-employment assistance to those parliamentarians who do not have access to superannuation benefits at the point of losing office. The allowance is fully tax assessable.

For further information, please refer to the 2006 and 2007 sections in *The Parliamentary Retiring Allowances Act 1948: Debates, Committee Reports, Remuneration Tribunal Reviews and a Chronology of Legislative Amendments*.

## **Reversionary Benefit—paid as an Annuity**

### **Benefit**

Benefits payable to the spouse of a deceased parliamentarian under the Scheme are outlined in Part V, Sections 19 to 19AB of the Act.<sup>25</sup>

Upon the death of a serving MP, their spouse receives an annuity equal to  $\frac{5}{6}$  of the rate of the retiring allowance which would have been payable had the MP not died.

If the MP has served less than eight years at the time of death, the retiring allowance is calculated as if they had served eight years.

Upon the death of a former MP already in receipt of a retiring allowance, the spouse receives  $\frac{5}{6}$  of the rate of the retiring allowance being paid.

Annuities continue to be paid if a spouse remarries. Annuities are also paid if the spouse is subsequently elected to Commonwealth Parliament.

In summary, a spouse will be paid an annuity for their lifetime, equivalent to  $\frac{5}{6}$  of the retiring allowance to which the deceased parliamentarian would have been entitled.

### **Spouse**

For the purposes of the Act, a person is a *spouse* if the person has, or had, a marital relationship with the deceased person at the time of the death of the deceased person.

Where the deceased was a retired member at the time of death, a *spouse* is one where:

- the marital relationship began before the member retired **or**
  - the marital relationship began after the member retired but before they reached 60 years **or**
  - where the marital relationship had continued for a period of at least five years up to the time of death.
- [Section 4C]

In certain other circumstances under subsection 4(3), a person will be a *spouse* if, in the Trust's opinion, the person was wholly or substantially dependent upon the deceased person at the time of the death.<sup>26</sup>

24. Remuneration Tribunal, [Determination 2012/04, Members of Parliament – entitlements](#), 15 March 2012, accessed 17 April 2014.

25. The *PCSS Act 1948*, op. cit., [Part V](#), accessed 17 April 2014.

## Marital relationship

Under Section 4B, a relationship, at a particular time, is a *marital relationship* if a couple lived together on a permanent and bona fide domestic basis at that particular time—whether or not the couple were legally married. The time a couple spent living on this basis must be of at least three continuous years in duration. However, the Trust has some discretion in this matter and ss 4B(4) provides guidance on relevant evidence that can be used to inform the Trust’s opinion. A deceased MP may have both a legally married spouse and a de facto spouse and the Trust will apportion the reversionary benefit amongst more than one spouse on a needs basis.<sup>27</sup>

## Orphaned children

If a deceased parliamentarian has no spouse, orphan children are entitled to an annuity equal to— $\frac{1}{4}$  of an annuity that would have been payable to a spouse or equal to the spouse’s annuity divided by the number of children if there are more than four. In effect the annuity payable to orphaned children is  $\frac{1}{4}$  of  $\frac{5}{6}$  of the deceased parliamentarian’s retiring allowance. Orphan children are also eligible for an annuity if the spouse of a deceased parliamentarian dies while in receipt of a reversionary benefit—they are eligible to receive  $\frac{1}{4}$  of the annuity their parent had received upon the death of the parliamentarian.

Ss19AA(5) --

**child** ... means a child (including an adopted child or an ex-nuptial child) of the deceased MP.

**eligible child** means: (a) a child who has not attained the age of 16 years; or (b) a child who: (i) has attained the age of 16 years but has not attained the age of 25 years; and (ii) is receiving full-time education at a school, college or university.

To receive these benefits, a child:

- must not have a surviving natural or adoptive parent, including where that parent was a former spouse of the deceased MP
- must be an ‘eligible child’ (see definition above)
- must have been dependent on the deceased MP
- must not have been born or adopted after the MP became eligible for a retiring allowance or reached the age of 60 years—unless their parents’ marriage lasted for five years or more
- must not have been born or adopted after the member’s death—unless the Trust is of the opinion that the child would have been dependent on that member had they lived.

Section 19ABA allows the commutation of such a benefit to pay a surcharge liability.

## Reversionary benefit to personal representative

With no spouse or children to receive benefits, the personal representative of a deceased MP may receive the following benefit to disperse in accordance with the terms of the member’s will as follows<sup>28</sup>:

Section 19AB(1)(c) --

...the amount (if any) by which the greater of the following:

(c) the sum of:

(i) the contributions paid by the deceased person; and

(ii) the Commonwealth supplement in relation to the deceased person;

(d) the superannuation guarantee safety net amount in relation to the deceased person;

exceeds the sum of any benefits under this Act paid to, or accrued due to, the deceased MP before their death.<sup>29</sup>

26. *PCSS Act 1948*, op. cit., [Section 4C ss 2\(a\) and ss 3\(d\)](#), accessed 17 April 2014.

27. Department of Finance, *Handbook*, op. cit., p. 11.

28. *Ibid.*

Certain other conditions surround the position of the deceased MP's surcharge debt account and the payment of any benefit.

### ***Annuities from deferred benefits***

Part VA of the Act defers payment of retirement benefits to certain members of the Scheme.<sup>30</sup> Finance's [Parliamentary Contributory Superannuation Scheme Handbook states](#):

Reversionary benefits will continue to be available to the eligible spouse or eligible children of all PCSS members who die in service. Also, eligible spouses or eligible children will receive a reversionary pension on the death of a former Member of Parliament whose pension is deferred before age 55.<sup>31</sup>

### ***Family Law and the Scheme***

Since 18 May 2004, the Scheme has allowed for the splitting of superannuation when marriages break down. Under Part VAA, with some exceptions, former spouses may become entitled to their own superannuation benefit.<sup>32</sup>

### **Reduction of benefit**

#### ***Office of Profit held subsequent to parliamentary service***

Where former senators and members who are entitled to a retiring allowance—or their spouses in receipt of an annuity—are held to be the 'holders of an office of profit' under a State or the Commonwealth, their benefit may be reduced. Section 21B of the Act defines the 'holder of an office of profit' as:

- Governors-General and state Governors
- federal court and state court justices or judges
- appointments to any public office made by Governors and Ministers
- federal magistrates
- judges or justices of Territory Supreme Courts (or others of that status)
- an office of Head of Administration or Associate Head of Administration under section 49 of the [Australian Capital Territory \(Self-Government\) Act 1988](#) [Note that section 49 appears to have been repealed in 1994]
- secretaries within the meaning of the Public Service Act 1999
- Head of a diplomatic mission or Head of a Consular post under Schedules to the [Diplomatic Privileges and Immunities Act 1967](#) and the [Consular Privileges and Immunities Act 1972](#)
- holder of a public office within the meaning of Part II of the [Remuneration Tribunal Act 1973](#)<sup>33</sup>

In these circumstances, the retiring allowance is reduced, above a threshold of 20 per cent of backbench salary, at the rate of 50 cents in the dollar. The maximum reduction that may apply is 50 per cent of the retiring allowance before commutation.

Section 21B does not apply to members of state parliaments. In Section 21, however, the Act does allow for reductions in benefit for those who subsequently serve in other legislatures.<sup>34</sup>

#### ***Prior and subsequent parliamentary service***

Those parliamentarians who become eligible for a retiring allowance under the Scheme—and who are already in receipt of a retiring allowance or annuity by virtue of prior service in a state legislature—have their retiring allowance reduced by the amount already received. Those parliamentarians in receipt of a retiring allowance under the Act, who are subsequently elected to a state legislature, will have this benefit reduced by the amount of any state retiring allowance they later receive.<sup>35</sup>

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29. *PCSS Act 1948*, op. cit., [Part V](#), accessed 17 April 2014.

30. *PCSS Act 1948*, op. cit., [Part VA](#), accessed 17 April 2014.

31. Department of Finance, *Handbook*, op. cit., p. 8.

32. [Superannuation Legislation Amendment \(Family Law and Other Matters\) Act 2004](#), accessed 17 April 2014.

33. *PCSS Act 1948*, op. cit., [Section 21B](#), accessed 17 April 2014.

34. *PCSS Act 1948*, op. cit., [Section 21](#), accessed 17 April 2014.

35. *PCSS Act 1948*, op. cit., [Part V Sections 20, 20A, 21 and 21B](#), accessed 17 April 2014.

## **Re-election to the Commonwealth Parliament**

Former Commonwealth parliamentarians who are re-elected to federal Parliament are required to repay any lump sum benefit received.

If a former senator or member is re-elected to the Commonwealth Parliament after June 2004 their PCSS pension is cancelled, and they cannot accrue further PCSS benefits. Once they again leave Federal Parliament their pension recommences, but at the level it would have otherwise been had they not returned to political life.<sup>36</sup>

## **Taxation of contributions and benefits**

Contributions payable under PCSS Act are subject to a range of specific tax arrangements that mirror elements in place for the superannuation system generally, and those that apply to most other defined benefit superannuation arrangements. The taxation of benefits is also broadly similar to those that apply to most defined benefit superannuation arrangements.

### **Contributions**

Contributions of members of the PCSS are subject to taxation. This includes amounts that are applied under income-based thresholds between 1996 and 2005 and from 1 July 2012.

### **Superannuation surcharge**

The superannuation surcharge was in place from 20 August 1996 to 30 June 2005. Initially based on an income threshold of \$70,000, the surcharge imposed additional tax on superannuation contributions at a maximum rate of 15 per cent. Superannuation contributions during this period may have given rise to a surcharge debt for PCSS members. Given the defined benefits nature of the PCSS, the surcharge debt is calculated on an actuarial basis and is maintained for each PCSS member by the Department of Finance.<sup>37</sup>

When a benefit becomes payable, the total accrued amount in the surcharge debt account will be paid to the Australian Taxation Office (ATO) and the member's benefit reduced, having regard to the accumulated surcharge debt. Alternatively, members may choose to pay a surcharge liability prior to their retirement from the Parliament, by cheque or cash direct to the Department of Finance for on-forwarding to the ATO.<sup>38</sup>

### **Reduction of tax concessions on superannuation contributions of very high income earners**

Members of the PCSS are also potentially subject to the payment of an additional 15 per cent tax on the employer contributions, from 1 July 2012, above an income and contributions-based threshold of \$300,000.<sup>39</sup> Under this tax measure, a debt account is maintained by the ATO for affected PCSS members, that may be extinguished when the final benefit becomes payable. A PCSS member with a debt account at the time the benefit becomes payable may request a release of money from their final benefit to pay this tax liability.<sup>40</sup>

### **Benefits**

Benefits paid under the PCSS generally consist of a tax-free portion (comprising the contributions made by members from their after-tax income) and an untaxed portion (the employer component). The untaxed portion is taxed at the time the benefit is paid. Tax paid will depend on the age of the member and whether the benefit is taken as a lump sum or an income stream.<sup>41</sup> In general, PCSS pensions are taxed at marginal tax rates and those aged 60 and over are entitled to a 10 per cent tax offset.

## **Notional Commonwealth Employer Contribution Rate**

A notional employer contribution rate is actuarially calculated to illustrate the effective cost of the superannuation benefits being provided by the employer in unfunded schemes, the Commonwealth, as a percentage of the salaries of scheme members. It represents the contribution rate that would be required if benefits were fully funded and is presented as a percentage of the total salaries of Scheme members.

36. *PCSS Act 1948*, op. cit., [Schedule 1](#), accessed 17 April 2014.

37. *PCSS Act 1948*, op. cit., section 4E.

38. *Ibid.*, section 22SC.

39. *Income Tax Assessment Act 1997*, Division 293.

40. *PCSS Act 1948*, op. cit., Part VC.

41. *Income Tax Assessment Act 1997*, op. cit., Division 301.

The Australian Government Actuary reports to the Department of Finance on the long-term cost of benefits provided under the *PCSS Act 1948*. At each of these reviews, the notional employer contribution rate is reported. In accordance with common practice this advice is normally provided every three years. A full actuarial review was undertaken in 2011. The notional employer contribution rate to the Parliamentary Contributory Superannuation Scheme is quoted at 40 per cent down from 47.9 per cent in 2008.<sup>42</sup>

A comparative table of rates for other commonwealth schemes is provided:

Scheme	Legislation	Calculation date	Notional contribution rate—% of salaries
Parliamentary Contributory Superannuation Scheme (PCSS)	<a href="#">Parliamentary Contributory Superannuation Act 1948</a>	30 June 2011 <sup>43</sup>	40
Judge's Pension Scheme	<a href="#">Judges' Pensions Act 1968</a>	30 June 2011 <sup>44</sup>	68.9
Public Sector Superannuation Scheme (PSS) <sup>45</sup>	<a href="#">Superannuation Act 1990</a>	30 June 2011 <sup>46</sup>	18.8
Commonwealth Superannuation Scheme (CSS) <sup>47</sup>	<a href="#">Superannuation Act 1976</a> and <a href="#">Superannuation Act 1922</a>	30 June 2011 <sup>48</sup>	20.3
Military Superannuation and Benefits Scheme (MSBS)	<a href="#">Military Superannuation and Benefits Act 1991</a>	30 June 2011 <sup>49</sup>	30.4
Defence Force Retirement and Death Benefits Scheme (DFRDB) <sup>50</sup>	<a href="#">Defence Force Retirement and Death Benefits Act 1973</a>	30 June 2011 <sup>51</sup>	29.7
Superannuation Guarantee	<a href="#">Superannuation Guarantee Charge Act 1992</a> and <a href="#">Superannuation Guarantee (Administration) Act 1992</a>	from 1 July 2002 <sup>52</sup>	9

42. Mercer Consulting Australia Pty Ltd, [Parliamentary Contributory Superannuation Scheme—Long term cost report 2011](#), Department of Finance, accessed 17 April 2014; C J Stevenson, Principal, Mercer Human Resources Consulting Pty Ltd, [Evidence to Senate Finance and Public Administration Legislation Committee](#), Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004; Parliamentary Superannuation Bill 2004, 31 May 2004, p. 21, accessed 17 April 2014.

43. Mercer, *ibid.*

44. Department of Finance, [The Judges' Pension Scheme: Long term cost report 2011](#), p. 13, accessed 17 April 2014.

45. The government announced changes to the PSS on 17 October 2003, with an exposure draft of proposed changes being issued in December 2003. The proposed changes applied to new members of the scheme from 1 July 2005. See N Minchin (Minister for Finance and Administration), [New superannuation arrangements for Australian government employees](#), media release, 17 October 2003, accessed 17 April 2014.

46. Mercer, *op. cit.*, pp. 2 and 21.

47. Scheme closed to new entrants.

48. Mercer, *op. cit.*

49. Australian Government Actuary, [Military Superannuation and Benefits Scheme and Defence Force Retirement and Death Benefits Scheme \(MSBS and DFRDB\): A report on long-term costs carried out by the Australian Government Actuary using data to 30 June 2011](#), Canberra, 2012, p. vi., accessed 17 April 2014.

50. Scheme closed to new entrants.

51. Australian Government Actuary, *op. cit.*

52. Kehl, *op. cit.*

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