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Parliamentary (Choice of Superannuation) Bill 2003

Explanatory Memorandum

Circulated by Mr Andren

Parliamentary (Choice of Superannuation) Bill 2001

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Parliamentary (Choice of Superannuation) Bill 2003

Outline

The Bill amends the *Parliamentary Contributory Superannuation Act 1948* (the Act) to give Senators and Members of the House of Representatives the freedom to opt out of the compulsory parliamentary superannuation scheme.

Retiring Members and Senators currently receive superannuation benefits from the Commonwealth, administered by the Parliamentary Retiring Allowances Trust (the Trust), as established under the Act. The day-to-day administration is undertaken by the Department of Finance and Administration.

From the first day a Senator or Member becomes entitled to a parliamentary allowance, he or she is automatically obliged to make contributions to the Commonwealth under the provisions of the Act.

The Bill allows new Senators or Members to elect not to make contributions to the Commonwealth under the provisions of the Act upon first taking office, and instead, to make contributions to a complying superannuation fund or Retirement Savings Account (RSA) of their choice. The Bill gives current Senators and Members the same choice, but will also allow them to have any superannuation benefit accrued under the parliamentary scheme rolled-over into a complying fund or RSA of their choice.¹ Once a new, current, or returning Senator or Member has exercised the right to choose not to make contributions to the Commonwealth under the provisions of the Act, he or she will not be able to make such contributions in the future.

If a Senator or Member elects to opt out of the Parliamentary scheme, he or she will also have superannuation contributions paid into their chosen fund or RSA by the Commonwealth. These contributions will be made in accordance with the *Superannuation Guarantee (Administration) Act 1992*.

The *Superannuation Guarantee (Administration) Act 1992* currently determines how the majority of Australian workers have their employer contributions made to their superannuation. Therefore, those Members or Senators who exercise the freedom of choice the Bill provides will have their superannuation arrangements brought into line with those applying to the wider community.

The Government last year introduced the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002*, designed to give employees greater choice and control over their superannuation arrangements. Senators and Members are, however, exempted from the Government's proposed choice of fund arrangements. By allowing Senators and Members to choose the complying fund or RSA into which their contributions are paid, the Bill seeks to give parliamentarians the same freedom of choice the Government has already sought to give other workers.

¹ The Bill proposes that a Member or Senator's benefit on exercising their choice to opt out of the Trust will be the 'superannuation guarantee safety-net amount' as defined by section 16A of the Act.

Financial Impact

The Bill will result in the funding of future superannuation accruals for new and existing Senators and Members who elect to join another complying superannuation fund or an RSA. It is difficult to estimate the outlays that might be required as this will depend on how many Senators and Members choose not to contribute to the Commonwealth under the provisions under the Act. However, any increased cash flows do not represent additional costs to the Commonwealth.

According to the submission of the Department of Finance and Administration to the Senate Select Committee on Superannuation and Financial Services' inquiry into the *Parliamentary (Choice of Superannuation) Bill 2001* (the predecessor to the current bill), the financial impact was described in general terms as:

- There will be an immediate negative impact on the underlying cash budget once the first Senator or Member exercises choice because of the payment of employer contributions to a funded superannuation arrangement for the Senator or Member during their parliamentary service and also, where relevant, the proposed early roll-out of PCSS benefit will be a positive impact on the underlying cash budget due to higher potential benefits at retirement having been foregone;
- There will be a positive impact on the fiscal balance from the effect of the changes on the PCSS average employer cost and the unfunded liabilities for the PCSS. This reflects the improvement in the fiscal balance because of reduced accruing superannuation liabilities and notional interest expense in relation to members who opt out of the PCSS and have their superannuation immediately funded.

There will be a long-term benefit to consolidated revenue, and hence to the taxpayer.

Members and Senators who opt out of the parliamentary scheme will reduce the Commonwealth's liability from an unfunded commitment to be paid out of consolidated revenue to the amount required under the superannuation guarantee scheme (currently 9 per cent of salary).

Rationale for the Bill

A Senate Inquiry in 1997 concluded the parliamentary scheme lacks transparency, is out of step with superannuation practice in the wider community and is in some cases excessively generous. In 2001, a minor change was made, limiting *new* Senators and Members access to their retirement allowances after reaching 55 years of age. No changes have been made to address the excessive generosity of the PCSS.

The parliamentary scheme had its origins in an era when people contemplating public office were considered more likely to face job insecurity than the rest of the workforce. However, in 2001 there is no such thing as 'job security' or a 'job for life' for the vast majority of the Australian workers.

The nature of modern parliamentary life means many ex-parliamentarians are now at a competitive advantage when they re-enter the general workforce after time in politics.

By giving Members and Senators the freedom to opt out of the parliamentary scheme the Bill simply implements one of the key conclusions reached by the Government members of the Senate Select Committee on Superannuation in 1997.

Freedom of choice is basic to Government policy in other fields such as health, education and indeed in superannuation for the general community. Such standards should also apply to Members of Parliament who should not be forced to be members of a superannuation scheme which they consider fails the tests of equity, fairness, transparency and compatibility with community standards.

Background

On the 25th of November 1996 the Senate asked its Select Committee on Superannuation to inquire and report on the appropriateness of the parliamentary superannuation scheme.²

The Committee received 46 submissions and held three public hearings before handing down its report on 1 September 1997. In the report, entitled *The Parliamentary Contributory Superannuation Scheme and the Judges' Pension Scheme*, the Committee concluded that:

- change to the parliamentary superannuation scheme was desirable;
- the scheme was out of step with superannuation practice in the wider community;
- the scheme lacked transparency, and this lack of transparency gave rise to much of the public criticism it attracted; and
- there was convincing evidence the scheme was excessively generous to a small group of retiring parliamentarians.³

According to its report:

The Committee agreed that the scheme has many significant shortcomings. It does not necessarily serve its members well, may be outdated in some of its provisions and attempts to achieve too much in relation to what a superannuation scheme can fairly be expected to provide.

² The full Terms of Reference the Committee was asked to inquire and report on were:

- 1) The appropriateness of the current unfunded defined benefit superannuation schemes' application to judges and parliamentarians, including but limited to:
 - (a) the equity between members;
 - (b) the cost to the Commonwealth and members;
 - (c) the impact of unfunded liabilities on future budgets;
 - (d) the advantage or otherwise of member choice of fund or investment strategy;
 - (e) the flexibility of existing schemes, including in respect of portability, in the context of their working arrangements and those applying in the general work force;
 - (f) the appropriateness of replacing such schemes with a fully-funded accumulation scheme;
 - (g) the appropriateness of the application of preservation rules and taxation on benefits taken prior to age 55 to such schemes;
 - (h) the capacity for making superannuation arrangements less complex than current arrangements; and
 - (i) the administrative cost of such arrangements and their alternatives.
- 2) That for the purpose of the inquiry the committee take evidence from the public, Government agencies and State, Territory and Federal government departments, and conduct public hearings as appropriate.

³ *The Parliamentary Contributory Superannuation Scheme & Judges Pension Scheme*, Senate Select Committee on Superannuation, 25th Report, Parliament of the Commonwealth of Australia, Canberra, 1 September 1997, p. 41.

There is also a lack of transparency in parliamentary superannuation that gives rise to much of the criticism of the PCSS. Further, there is also clearly a negative perception in the mind of the public about the scheme, and an uneasy relationship between the PCSS and superannuation in the broader community. In light of these findings, the Committee considers that reform is desirable.⁴

Regarding issues of flexibility, portability and choice the Committee said:

The result of the inflexible nature of the PCSS is a lack of choice for individual parliamentarians. In view of the increasing prospect of new members bringing to their parliamentary life substantial superannuation as a result of other employment, it seems inefficient as well as unnecessary to be requiring them to contribute to a scheme which may result in them exceeding the Reasonable Benefit Limits or exceeding their own superannuation requirements ...

The Committee also recognises the lack of portability involved in the parliamentary scheme. While it is possible for a member of the PCSS to purchase notional past service that will be taken into account in determining future entitlements under the PCSS, this option is generally not taken up. Then, on leaving parliamentary service, there is no transferability of a PCSS pension entitlement to another scheme.

One possible solution to these dilemmas is for membership of the PCSS to be optional, to the extent that every parliamentarian is a member until he or she opts out.⁵

Government members of the Committee recommended, among other things, that upon taking office new parliamentarians should be offered the choice of opting out of the parliamentary scheme in favour of a fully funded accumulation scheme or retirement savings account of their choice.⁶

The Australian Labor Party Members of the Committee did not recommend specific changes to the scheme but concluded the Remuneration Tribunal was the appropriate body to make recommendations for reform.⁷

⁴ *The Parliamentary Contributory Superannuation Scheme & Judges Pension Scheme*, Senate Select Committee on Superannuation, 25th Report, Parliament of the Commonwealth of Australia, Canberra, 1st September 1997, p.3.

⁵ *ibid*, at p.27.

⁶ *ibid*, at p.42.

⁷ *ibid*, at p.43.

In a dissenting report on behalf of the Australian Democrats, Senator Lyn Allison expressed the view that the scheme was too generous and was in urgent need of reform.⁸

On the 1st of December 1997 the Minister for Finance the Hon. John Fahey formally responded to the report in a letter to the Committee's Chair Senator John Watson. In his response the Minister stated that:

*The Government welcomes your Committee's report on its inquiry into the superannuation arrangements for parliamentarians and judges. I note the committee members were all of the view that the Remuneration Tribunal should be involved in setting parliamentary superannuation.*⁹

The Minister went on to say that the Government would give further consideration to the Committee's findings in the context of changes then proposed to the way Members of Parliament were paid. These involved setting parliamentarians' remuneration by reference to classifications determined by the Remuneration Tribunal, rather than by direct linkage to public service Senior Executive Service salaries.

Following the 3rd of October 1998 Federal election it was revealed that 33 year old Queensland Senator Bill O'Chee, who had lost his seat after nine years service, would leave Parliament entitled to an indexed lifetime pension of approximately \$45,000 a year. On the 7th of October 1998, in response to the public outcry over these revelations, the Minister for Finance was reported to have pledged to review the Parliamentary Superannuation Scheme.¹⁰

On the 12th of November 1998, the Minister for Financial Services & Regulation the Hon. Joe Hockey introduced to Parliament the *Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 1998*. That Bill proposed to amend the *Superannuation Guarantee (Administration) Act 1992* to give ordinary employees a choice as to which fund their superannuation contributions are paid. In his Second Reading Speech to the Bill the Minister said among other things:

The choice of fund arrangements are about giving employees greater choice and control over their superannuation savings, which in turn will give them greater sense of ownership of these savings. The arrangements will increase competition and efficiency in the superannuation industry, leading to improved returns on superannuation savings ...

⁸ Senator Lyn Allison, Dissenting Report, Senate Select Committee on Superannuation, 25th Report, *The Parliamentary Contributory Superannuation Scheme & Judges Pension Scheme*, Parliament of the Commonwealth of Australia, 1 September 1997, p.1.

⁹ The Hon. John Fahey, Minister for Finance, Government Response to Senate Select Committee on Superannuation's, 25th Report, *The Parliamentary Contributory Superannuation Scheme & Judges Pension Scheme*, 1 December 1997.

¹⁰ Peatling, Stefanie, "Fahey Pledges Super Review", Sydney Morning Herald, 7 October 1998, p.10.

*The fundamentals of this reform are that employees get a genuine choice as to which fund their superannuation is paid.*¹¹

This legislation sought to implement a key recommendation of Stan Wallis' 1997 report on the Australian Financial System. Recommendation 88 of that report said in part:

*Employees should be provided with choice of fund, subject to any constraints necessary to address concerns about administrative costs and funding liquidity.*¹²

The Government's choice of superannuation legislation stalled in the Senate, since its introduction there in February 1999, and lapsed with the proroguing of the 39th Parliament in 2001. The current version of this bill was introduced to the House on the 27 June 2002, and the second reading debate is due to be resumed in this spring sitting.

However, parliamentarians are excluded from the choice arrangements proposed by the Government's legislation. In other words, while the Government is of the view that ordinary workers should have a genuine choice when it comes to their superannuation arrangements, it has not sought to extend the same freedom of choice to parliamentarians.

When asked in Parliament on the 24th of November 1998 whether he supported a review of the parliamentary superannuation scheme the Prime Minister replied: "*I never close my mind to reviews of superannuation, be it parliamentary or otherwise*", but went on to conclude, "*that you will never really solve the problem. I say to those who have recently joined this place – I say this to people on both sides – that if you imagine you will solve the anomalies of all this within a short space of time, you will not.*"¹³

On the 8th of February 1999, in response to a Question on Notice seeking confirmation about the review he was reported to have proposed, the then Minister for Finance said: "*the Government has not decided at this time on any review of the Parliamentary Superannuation Scheme.*"¹⁴

On the 9th of March 1999 in response to another Question without Notice the Prime Minister said: "*I have never ruled, nor has the Government ever ruled out, further examination of parliamentary superannuation arrangements.*"¹⁵

On the 7th of December 1999 the Remuneration Tribunal reported to the Government on the remuneration of Senators and Members. In its report the

¹¹ The Hon. Joseph Hockey, Minister for Financial Services and Regulation, House of Representative Hansard, 12th November 1998, p.261.

¹² *Australian Financial System Inquiry*, Final Report (Wallis Report), Canberra, Australian Government Publishing Service, March 1997.

¹³ The Hon. John Howard, Prime Minister, House of Representatives Hansard, 24th November 1998, p.481.

¹⁴ The Hon. John Fahey, Minister for Finance and Administration, House of Representatives Hansard, 8th February 1999, p.2165.

¹⁵ The Hon. John Howard, Prime Minister, House of Representatives Hansard, 9th March 1999, p.3443.

Tribunal recommended that the method for setting the remuneration of Members of Parliament should no longer be linked to the salaries of Senior Executive Service Commonwealth public servants. Instead, the Tribunal proposed a new base payment for backbenchers (\$90,000 pa) and Office Holders to be adjusted twice yearly in accordance with increases in Average Weekly Ordinary Time Earnings index (the AWOTE). The Tribunal concluded that with these changes it was *'satisfied that the remuneration package for Senators and Members (salary, superannuation, and vehicle) is now competitive'*.¹⁶ However, the Tribunal gave no justification as to why parliamentarians' superannuation arrangements were considered appropriate.

The predecessor to this bill, the *Parliamentary (Choice of Superannuation) Bill 2001*, was introduced to the House of Representatives on 5 March 2001. It was not given a second reading, but was referred to the Senate Select Committee on Superannuation and Financial Services for review.

The Committee invited public submissions through its website and advertisements in the *Australian Financial Review* and the *Weekend Australian* between 20-21 April 2001. The inquiry was also featured on Channel 9's *A Current Affair* on 17 May 2001.

The Committee received 2,649 submissions and heard from 16 witnesses at a public hearing on 11 July 2001 in Sydney. Below are extracts from just two public submissions:

No.1823: *Inflation Proofing is for Politicians Only: If my superannuation is not INFLATION PROOF why should the politicians be so protected? If their superannuation was being eroded at the rate mine has been they would be more responsible in their control of inflation.*¹⁷ (B. Hughes, Tinana, QLD).

No.1848: *I am writing to lodge my objection to the manner in which politicians receive their superannuation payouts. Politicians are public servants and as such should be treated the same as all Australians. The public should not subsidise their super and they should not be able to take early payouts.*¹⁸ (G. McLean, Kingston, QLD).

The Committee recommended "that in order to achieve a cohesive and consistent approach, the issue of parliamentary superannuation be considered by the remuneration tribunal as part of a consolidated package comprising salaries, superannuation and allowances"¹⁹. This recommendation marked no departure from previously stated government and opposition statements in this regard.

¹⁶ *Report on Senators and Members of Parliament, Ministers and Holders of Parliamentary Office – Salaries and Allowances For Expenses of Office*, Remuneration Tribunal, December 1999, p.10.

¹⁷ *Provisions of the Parliamentary (Choice of Superannuation) Bill 2001 Submissions No. 1670-1897 Vol.8*, Senate Select Committee on Superannuation and Financial Services, August 2001, p.2324.

¹⁸ *ibid*, at p.2354.

¹⁹ *Report on the provisions of the Parliamentary (Choice of Superannuation) Bill 2001*, Senate Select Committee on Superannuation and Financial Services, August 2001, p.21 at 4.16.

The Parliamentary Superannuation Scheme

Much of this section has been extracted from the 25th Report of the Senate Select Committee on Superannuation, *The Parliamentary Contributory Superannuation Scheme & the Judges' Pension Scheme*. For full details of the parliamentarians' superannuation arrangements readers are directed to that report²⁰.

Establishment and Purpose

The parliamentary superannuation scheme provides for the superannuation benefits of Commonwealth parliamentarians. Membership is compulsory and member contributions are required. Benefits are paid to former Members of Parliament or, on their death, to their surviving spouse or orphan children.

The scheme is administered by the Department of Finance under the direction of the Parliamentary Retiring Allowances Trust. There are five trustees – the Minister for Finance who is the presiding trustee, plus two Senators and two Members of the House of Representatives appointed by their respective Houses.

History

The parliamentary superannuation scheme was established in 1948 under the *Parliamentary Contributory Superannuation Act* of that year. Reasons for the establishment of the scheme included:

- entering Parliament often meant foregoing potential superannuation pay-outs from previous employers due to leaving that employer prior to retirement age;
- electoral or parliamentary demands reduced members' chances to re-establish careers when their parliamentary term was over; and
- the need to entice people to enter Parliament who would not otherwise nominate.

When then Prime Minister and Treasurer Ben Chifley introduced the legislation in 1948 he said:

*It has frequently been said that the loss and insecurity which attend upon service in Parliament deter men and women capable of making a worthwhile contribution to the service of the Commonwealth from offering themselves for election. It is hoped that this measure will help in overcoming difficulties of this nature.*²¹

²⁰ *The Parliamentary Contributory Superannuation Scheme and Judges Pension Scheme*, Senate Select Committee on Superannuation, 25th Report, Parliament of the Commonwealth of Australia, Canberra, 1 September 1997.

²¹ The Hon. Ben Chifley, Prime Minister and Treasurer, House of Representatives Hansard, 1 December 1948, p. 3738.

Originally the scheme was funded to the extent of the member contributions, and was framed along the lines of the Commonwealth Public Service Superannuation Scheme.

Contributions were three pounds per week (about 10.4 per cent of salary) and a fixed annuity of eight pounds per week was payable when a member qualified for a pension, an amount which, according to Prime Minister Chifley was in 1948: “*much less than the maximum pension provided under many private and public superannuation schemes*”.²²

Between 1948 and 1973, the main amendments to the scheme were:

- in 1955, the three occasions rule was introduced (see below);
- from 1959, the age at retirement became a factor in fixing the rate of pension;
- orphan benefits were introduced in 1959; and
- from 1963, pensions changed from a fixed amount to being based on salary.

In 1973 the scheme underwent major changes. The fund was abolished and its assets transferred to the Consolidated Revenue Fund (CRF). Contributions were then paid into the CRF, out of which benefits were also paid.

The maximum benefit payable to a member was increased from 50 per cent to 75 per cent of the parliamentary salary, and pensions accrued according to the length of service rather than age at retirement. Also, the minimum age requirement of 40 years for the pension on involuntary retirement was removed, and the minimum age on voluntary retirement was raised from 40 to 45 years (eventually removed in 1978). Provisions for invalidity pensions, indexation of pensions and the recognition of State parliamentary service were also introduced.

Since 1973, various amendments have been made including the introduction of a 50 per cent commutation of pension option in 1978. This option was increased to a 100 in 1979. Further changes in the same period included:

- reducing the 100 per cent commutation option back to 50 per cent in 1983; and
- the provision for reducing a pension, on the basis of the former parliamentarian receiving remuneration from an Office of Profit under the Crown, was reintroduced in 1983 (it had been removed in 1973).

Generosity of the Scheme

The level of the superannuation contributions made for parliamentarians by the Commonwealth is set by the *Parliamentary Contributory Superannuation Act 1948*. Members and Senators must contribute at the rate of 11.5 per cent of their Parliamentary Allowances for the first 18 years in office and at 5.75 per cent for

²²ibid, at p. 3739.

subsequent years. In addition, they must contribute the same percentage of their Additional Office Holder Allowance if they hold a higher office (such as ministerial).

The parliamentary scheme is also an unfunded defined benefit scheme. 'Unfunded' means that the scheme funds its benefit payments from annual Commonwealth appropriations. 'Defined benefit' means that members' entitlements are, in general, multiples of years of service and a percentage of salary. In such a defined benefit scheme, the employer is responsible for providing the difference between the benefit actually paid and what the member has contributed toward the benefit.

Every three years the Australian Government Actuary provides the Department of Finance with details of the long-term cost to the Commonwealth of funding parliamentarians' superannuation. At each review, the notional employer contribution rate is reported. This rate illustrates the effective cost of parliamentary superannuation benefits as a percentage of the total salaries of scheme members. As at the 30th of June 1996 the rate was 69.1 per cent.²³ The Parliamentary Retiring Allowances Trust Annual Report for the financial year 2000-2001 puts this figure at 69.4 per cent.²⁴

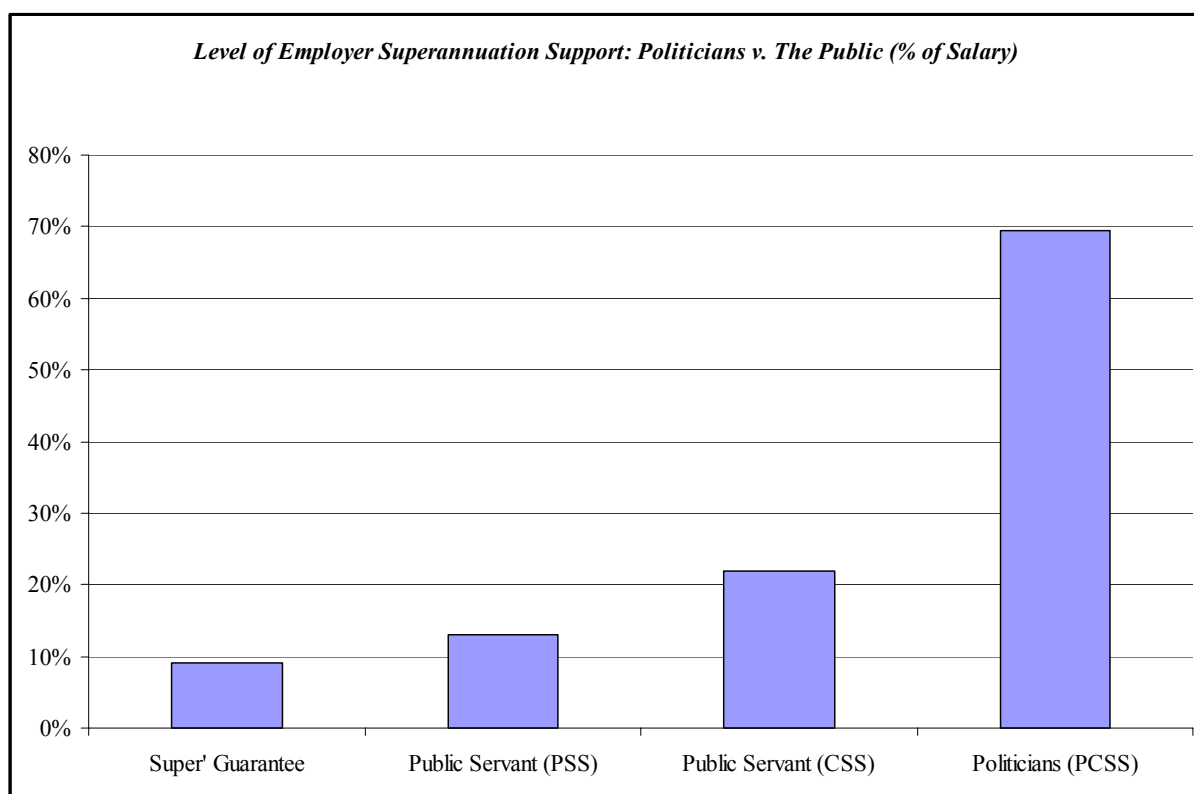
This is the notional employer contribution from the Commonwealth needed to meet the lump sums and pensions payable to retired members under the scheme. In other words it is a three-yearly snapshot by the Government actuary of the projected cost of scheme.

Compared to the majority of Australian workers this level of employer contribution for superannuation is very generous. The generosity of the scheme is demonstrated by comparing it with other superannuation schemes operated by the Commonwealth for its public servants and the wider public. Based on the 1996 figures, under the Commonwealth Superannuation Scheme (CSS) the notional employer contribution was 23 per cent, while for the Public Sector Superannuation Scheme (PSS) it was 13 per cent.

The generosity of the parliamentary scheme is further demonstrated when it is compared with the level of compulsory superannuation paid by most employers under the Superannuation Guarantee (SG) scheme. The SG scheme requires all employers to make a minimum superannuation contribution on behalf of employees (with limited exceptions). The minimum level of employer-supported superannuation is currently 9 per cent. When compared with the contributions under the SG, the level of support parliamentarians receive is very generous as the following table illustrates.

²³ *The Parliamentary Contributory Superannuation Scheme & Judges Pension Scheme*, Parliament of the Commonwealth of Australia, 1st September 1997, p. 15.

²⁴ *Parliamentary Retiring Allowances Trust Annual Report 2000/2001*, p.7.



Early Access

In 1994 the parliamentary superannuation scheme was amended to make it subject to the same preservation rules applying to other superannuation funds. New preservation rules, administered by the Australian Prudential Regulation Authority, took effect from 1 July 1999. From this date, all superannuation contributions (including member contributions) and superannuation fund investment earnings have been preserved until fund members reach their preservation ages.²⁵

In the 1997 Budget the Government announced that the preservation age would be increased from 55 to 60 on a phased in basis. By 2025, the preservation age will be 60 years for anyone born after June 1964, with the age 60 preservation age being reduced by one year for each year that person's birthday is before 1 July 1964. This means that a person born before 1 July 1960 will continue to have a preservation age of 55.

For the general public, preserved superannuation benefits can usually only be accessed on limited compassionate and severe financial hardship grounds. However, under the new preservation rules, a person continues to be allowed to have early access to preserved benefits where they are taken in the form of a non-commutable²⁶ lifetime pension or annuity on termination of gainful employment. It is this feature that has allowed parliamentarians elected before 2001 to gain early access to their

²⁵ Preservation Age is the age at which a fund member can gain access to benefits that have accumulated in a superannuation fund or RSA, provided the member has permanently retired from the workforce.

²⁶ Commutation refers to the taking of a benefit in a lump sum.

superannuation entitlements. Such early access is, however, generally not an option for most other workers until they are very close to retirement.

This is because the generosity of the Parliamentary Scheme (69.4 per cent of total parliamentary salaries) provides Members and Senators with a much larger entitlement after 8 or 12 years of service compared with a worker only receiving the SG minimum amount (currently 9 per cent of salary). The generosity of the parliamentary scheme thus ensures that on conclusion of his or her parliamentary service, a Senator or Member can access a much larger non-commutable lifetime pension or annuity than other workers.

It also means a member losing either pre-selection or an election at his or her “third occasion” (the third election subsequent to initial election) can access the full benefits of the scheme. In this way the scheme rewards relatively short-term members to a far greater degree than long serving MPs. Apart from this it encourages the “pensioning-off” of non-performing Members or Senators.

Notes on clauses

Clause 1 – Short title

Clause 1 provides for the short title of the Act to be *Parliamentary (Choice of Superannuation) Act 2003*.

Clause 2 – Commencement

Subclause 2(1) provides for the Act to commence on the day that it is proclaimed.

Subclause 2(2) provides that the proclamation cannot be made unless the Parliament has appropriated funds for the purposes of the Act.

This measure is necessary because a private Member may not introduce a bill requiring the appropriation of public revenue, as an appropriation must first be recommended to the House by message of the Governor-General. This requirement reflects the constitutional and parliamentary principle of the financial initiative of the Crown. As Parliament considers the Bill it may then provide for the appropriation of funds for the payments to be made to the superannuation funds or RSAs of the Members of Parliament who choose not to make contributions to the Parliamentary Contributory Superannuation Scheme (PCSS). After the appropriation is made the proclamation can be issued.

Clause 3 – Schedule

Clause 3 provides that the Acts specified in the schedule are amended or repealed as set out in the applicable items in the Schedule.

Schedule 1 – Amendment of the Parliamentary Contributory Superannuation Act 1948

Item 1 – Subsection 4(1) definition of *member*

Item 1 repeals the existing definition of *member* and replaces it with a new extended definition.

Item 2 – Subsection 4(1) definition of *non PCSS contributor*

Item 2 inserts a definition of the term *non PCSS contributor*.

Item 3 – Paragraph 4(4A)(aa) deeming a Member of Parliament to be employed by the Commonwealth

Item 3 repeals the existing deeming provision and replaces it with a new extended provision.

Item 4 – New sections 4G and 4H provision of choice of superannuation fund and providing for Commonwealth contributions to the chosen fund

Item 4 inserts **new section 4G** into the Act to enable a Senator or Member to choose not to contribute to the PCSS. **New subsection 4G(1)** provides that a Member of Parliament may continue to be or become a member of another complying superannuation fund or the holder of a Retirement Savings Account (an RSA).

New subsection 4G(2) provides that a serving Senator or Member may cease to contribute to the PCSS on or after 1 July 2003. **New paragraph 4G(2)(a)** requires a Member or Senator's decision to be given in writing to the Trust and stipulates that if written notice is given, the earliest the Senator or Member could become a non PCSS contributor is the date of that written notice.

New paragraph 4G(2)(b) applies to new Senators and Members, and allows them to forego being a PCSS contributor upon first entering parliament.

New subsection 4G(3) allows Senators or Members to make their decision to opt out on first becoming entitled to a parliamentary allowance or at any time they are a Member of Parliament. A parliamentary allowance is any allowance as defined by section 4(1) of the Act and is typically payable to a Member or Senator from and including the day of his or her election to office.

New subsection 4G(4) stipulates that once a Member or Senator has exercised their choice under the Act, they must maintain membership of a complying superannuation fund or be the holder of an RSA for the whole time they remain a Member of Parliament.

New subsection 4G(5) has the effect that once a Member or Senator exercises their choice under the Act, they will not be able to reverse their decision. The decision to opt out of contributing to the Parliamentary Contributory Superannuation Scheme will be permanent.

New subsection 4G(6) provides for definitions of complying superannuation fund and RSA.

New subsection 4G(7) provides for regulations to be made to put in place detailed arrangements for the making of a choice under the Act and administrative matters related to such a choice.

New section 4H compels the Commonwealth to make contributions for the benefit of non PCSS contributors, to the complying superannuation fund or RSA chosen by the individual Senator or Member, in accordance with the *Superannuation Guarantee*

(Administration) Act 1992. This measure means that Members and Senators who choose not to contribute to the PCSS will have superannuation contributions paid on their behalf by the Commonwealth at the minimum rate payable, and on the terms necessary, to avoid a superannuation guarantee shortfall under the superannuation guarantee scheme.

Item 5 – Subsection 13(9) definitions

Item 5 repeals the existing definition provision for section 13 and replaces it with a new extended provision. In **new subsection 13(9)** definitions of *Minister of State*, *office holder* and *person* applying only in section 13 have been inserted. Each definition has a common requirement for the person to be a PCSS contributor. The effect of the definitions is to limit the scope of section 13 to those persons entitled to a parliamentary allowance, Ministers of State and office holders who make PCSS contributions. Those persons who elect not to make PCSS contributions are excluded from the requirement to make contributions.

Item 6 – Section 18C benefits for members who cease to make contributions to the PCSS

Item 6 inserts **new section 18C** into the Act stating that the only Commonwealth benefit for Senators and Members who choose to stop making PCSS contributions is the superannuation guarantee safety-net amount. However, as is the case for all other employees, this benefit must be rolled over into the complying superannuation fund or Retirement Savings Account of the Senator or Member.

The superannuation guarantee safety-net amount has the meaning given by section 16A of the Act.

New subsection 18C(3) puts in place arrangements for the circumstance where a person and his or her spouse are both members of Parliament and one of the couple opts out of the PCSS and the other chooses to remain in the PCSS. If the partner who remains in the PCSS dies, his or her spouse would remain eligible for payment of the spouse benefits applying in relation to the death of the person, in spite of having opted out of the PCSS.