

Parliamentary Superannuation Amendment Bill 2011

Explanatory Memorandum

The main changes in the *Parliamentary Superannuation Amendment Bill 2011* (the Bill) involve removal of a number of discriminatory and inequitable provisions in the spouse pension rules of the Parliamentary Pension Scheme (the scheme) to bring the scheme into line with contemporary superannuation standards.

Discriminatory provisions exist in current scheme rules concerning pension qualification requirements by spouses where the relationship between the spouse and former Member of Parliament (Member) commenced after the Member's retirement from Parliament. In this regard, a minimum age of 55 years applies to the spouse of a deceased former Member to qualify for a spouse pension. This contrasts to the scheme rules with regard to relationships commencing before a former Member's retirement from Parliament, where there is no minimum spouse pension qualification age.

The Bill will establish new spouse qualification requirements where a spouse commences their relationship with a former Member after the former Member's retirement from Parliament. In this regard a spouse will automatically qualify for a pension on the death of the former Member if the period of relationship at the time of the former Member's death was a minimum of five years, or there exists a dependent child from the relationship. Where these qualification criteria are not met, the Bill provides the Parliamentary Superannuation Board with discretion to pay a pension to a spouse in special circumstances, such as in cases of financial hardship or financial dependency on the former Member by the spouse. The new pension qualification criteria are modelled on existing State Pension Scheme spouse pension rules applying to relationships commencing after retirement by a contributor to that scheme.

The Bill also removes penalties in current scheme rules that apply when a spouse in receipt of a pension following a Member's death remarries or commences a de facto relationship. For example, in circumstances where the relationship between the spouse and deceased Member commenced after the Member's retirement from Parliament, a spouse would permanently lose their pension under current rules if they remarry or commence a de facto relationship.

Changes to spouse pension commutation arrangements in the Bill will extend the right to commute a pension to a lump sum to all spouses who become entitled to a spouse pension after the Bill's enactment. Under current arrangements, the right to commutation by a spouse applies only in limited circumstances. Further, the Bill will increase the maximum amount of pension that can be commuted to a lump sum from the current cap of 50% to 100%. The financial impact of the commutation changes are expected to be cost neutral in the longer term, with some costs being brought forward where commutation is exercised, but will be offset from a reduction in future pension costs.

Other changes in the Bill will:

- increase Parliamentary Superannuation Board membership to include a parliamentary pensioner representative;
- incorporate appropriate Tribunal Determinations into the *Parliamentary Superannuation Act 1970* (the Act); and
- delete provisions in the Act that no longer have effect.

Key Features (In Order Of Appearance In The Bill)

New member appointed to the Parliamentary Superannuation Board

Reference

Bill	Page No	2,3,4	4
	Clause No	5	6

Comment

This change in the Bill will increase membership of the Parliamentary Superannuation Board (the Board) from five members to six members by the addition of a parliamentary pensioner representative. The new Board member will be appointed by the Minister, with his or her term on the Board expiring at the end of the term of Parliament in line with the other members of the Board.

The quorum for a meeting of the Board will increase from three to four as a consequence of the new appointment.

There are no changes to current arrangements with respect to appointment of the Board Chairperson or the other four members of the Board.

Deletion of section 10 which no longer has effect

Reference

Bill	Page No	4
	Clause No	7

Comment

Section 10 of the Act (inserted into the Act by legislation changes in 2000) provided Members elected to Parliament at the election held on 14 December 1996 with the right to make an election to withdraw from the Parliamentary Pension Scheme within a limited time frame ending 30 June 2001. Members who made an election in this regard became a member of the new superannuation arrangements introduced after closure of the scheme, and were entitled to a termination benefit from the scheme when they retired from Parliament.

As there is no Member in the current Parliament who made an election pursuant to section 10 and therefore no pending termination benefit to be paid to a Member as a consequence, section 10 no longer has effect and can be removed from the Act.

Changes to spouse pension arrangements

Reference

Bill	Page No	5,6	7
	Clause No	10	11

Comment

In relation to deaths of former Members occurring on or after the Bill's enactment date, the Bill will remove age restrictions on a spouse qualifying for a reversionary spouse pension and also penalties resulting in suspension or loss of spouse pension if a spouse pensioner remarries or commences a de facto relationship. These provisions mainly impact on spouses who commenced a relationship with a former Member after the former Member's retirement from Parliament.

The Bill will establish new spouse pension qualification criteria in respect of post-retirement relationships, based on the status of the relationship between the spouse and former Member at the time of the former Member's death. In this regard a spouse will automatically qualify for a pension if the relationship period was at least 5 years at the date of death, or there exists a dependent child from the relationship. The Board will have discretion under the changes to pay a pension to a spouse who does not automatically qualify for a pension if special circumstances exist, for example, where the spouse is financially dependent on the deceased Member or in cases of financial hardship. The new spouse pension qualification rules have been modelled on those of the State Pension Scheme under the *Superannuation and Family Benefits Act 1938* applying to relationships between a spouse and contributor commencing after the contributor's retirement.

A 'no worse off' provision is contained in the Bill to protect the interests of spouses in post-retirement relationships that commenced before the enactment date of the Bill who may not automatically qualify for a pension under the new rules. This provision will allow spouses in these circumstances to be subject to the pension qualification requirements under the 'old' rules if it results in pension qualification by the spouse that otherwise would not automatically occur under the new rules.

The other major spouse pension change in the Bill concerns commutation rights by a spouse. In this regard the Bill will extend the right to commute a pension to a lump sum to all spouses who become entitled to a spouse pension after the Bill's enactment, compared to limited availability of commutation rights by a spouse under current rules. Further, the Bill will increase the maximum amount of pension that can be commuted to a lump sum from the current cap of 50% to 100%. The new commutation rules will not apply in respect of spouse pensions that are being paid, or become payable, before the Bill is enacted.

Incorporation of appropriate Salaries and Allowances Tribunal Determinations into the Act

Reference

Bill	Page No	7,8	8
	Clause No	12	13

Comment

Many aspects of scheme rules fall within the jurisdiction of the Salaries and Allowances Tribunal (the Tribunal) where specified in the Act. The Tribunal has issued various Parliamentary Superannuation Determinations in this regard, some of long standing. In order to determine the rules of the scheme, the Act must be read in conjunction with the relevant Tribunal Determination.

Taking the opportunity provided by the Act being amended as a result of the other changes, it is appropriate that scheme rules contained in two current Tribunal Determinations be inserted into the body of the Act. These Tribunal Determinations are:

- (1) Tribunal Determination dated 5 August 2008 that increased the child allowance rate in the scheme from 3% to 5% of basic parliamentary salary in the case of a child with one surviving parent, and from 6% to 10% of basic salary in the case of a child with no surviving parent; and
- (2) Tribunal Determination dated 30 September 2004 on how the minimum benefit payable in the scheme is to be calculated taking into account requirements under the Commonwealth's *Superannuation Guarantee* legislation.

Clause Notes

Outlined below is an examination of the contents of the Bill on a clause by clause basis.

PART 1 – PRELIMINARY	
Clause 1 <i>Short title</i>	This clause titles the legislation as the <i>Parliamentary Superannuation Amendment Act 2011</i> (the Amendment Act).
Clause 2 <i>Commencement</i>	This clause provides for the Amendment Act to come into operation as follows – <ul style="list-style-type: none"> (a) sections 1 and 2 – on the day on which this Act receives the Royal Assent; and (b) the rest of the Act – on a day fixed by proclamation, and different days may be fixed for different provisions.
PART 2 – PARLIAMENTARY SUPERANNUATION ACT 1970 AMENDED	
Clause 3 <i>The Act amended</i>	This clause clarifies that the Amendment Act amends the <i>Parliamentary Superannuation Act 1970</i> (the Act).
Clause 4 <i>Section 5 amended</i>	<p>Section 5 deals with interpretation.</p> <p>This clause inserts in Section 5(1), in alphabetical order, the following terms used for interpreting the Act:</p> <p>SG(A) Act means the <i>Superannuation Guarantee (Administration) Act 1992</i> (Commonwealth)</p> <ul style="list-style-type: none"> • This term is moved from section 29 to section 5(1), to be together with other terms used for interpretation in the Act. <p>benefit certificate has the meaning given in the SG(A) Act section 10</p> <ul style="list-style-type: none"> • This is a new term used in new section 24 inserted by the Amendment Act to replace existing section 24 (see clause 13), and is terminology used in relation to actuarial certification of minimum benefits under the Commonwealth's <i>Superannuation Guarantee</i> legislation. <p>complying superannuation fund has the meaning given in the SG(A) Act section 7</p> <ul style="list-style-type: none"> • This term is moved from section 29 to section 5(1), to be together with other terms used for interpretation in the Act. <p>individual superannuation guarantee shortfall has the meaning given in the SG(A) Act section 19</p> <ul style="list-style-type: none"> • This term is moved from section 29 to section 5(1), to be together with other terms used for interpretation in the Act.

<p>Clause 5 <i>Section 6 amended</i></p>	<p>Section 6 deals with the Parliamentary Superannuation Board.</p> <ul style="list-style-type: none"> • <u>Subclause 5(1)</u> deletes existing subsection 6(3)(b) dealing with composition of the Board and replaces it with a new subsection 6(3)(b) providing for an additional member on the Board. Existing Board appointees from the Legislative Council and Legislative Assembly are governed by paragraphs (i) and (ii) respectively of new subsection 6(3)(b). Paragraph (iii) of the new subsection provides that the additional Board member will be “appointed by the Minister from former members to whom the scheme applies”, meaning the new appointee will be a former Member in receipt of a parliamentary pension. • <u>Subclause 5(2)</u> amends subsection 6(4), which refers to the appointment process of Board members appointed under subsection 6(3). This is a consequential amendment as a result of the amendments under subclause 5(1) relating to Board appointees from the Council and Assembly. • <u>Subclause 5(3)</u> inserts new subsection (5A) to follow subsection 6(4), which provides for the Minister to appoint a parliamentary pensioner to the Board when a vacancy for this Board representative arises. • <u>Subclause 5(4)(a)</u> amends subsection 6(6) dealing with circumstances in which the period of office as a Board member are terminated. This is a consequential amendment as a result of amendments under subclause 5(1) relating to Board appointees from the Council and Assembly. • <u>Subclause 5(4)(b)</u> amends subsection 6(6) dealing with circumstances in which the period of office as a Board member are terminated. This amendment inserts the word ‘and’ as a grammatical lead in to circumstances of termination of office for the new Board member provided in the amendment in the next subclause. • <u>Subclause 5(5)</u> inserts new subsection 6(7) dealing with circumstances in which the period of office of the new parliamentary pensioner Board member are terminated.
<p>Clause 6 <i>Section 7 amended</i></p>	<p>Section 7 deals with Proceedings of the Parliamentary Superannuation Board.</p> <p>This clause increases the quorum for a Board meeting from three members to four members, as a consequence of appointment of an additional Board member under the previous clause.</p>
<p>Clause 7 <i>Section 10 deleted</i></p>	<p>Section 10 provides Members elected on 14 December 1996 the right to make an election to withdraw from the scheme. This right ended by Tribunal Determination on 30 June 2001. Persons making an election in this regard are entitled to a termination benefit under this section when they retire from Parliament.</p> <p>There is no Member in the current Parliament who made an election pursuant to section 10 and therefore no pending termination benefit to be paid to a Member as a consequence.</p> <p>This clause removes section 10 from the Act because it longer has any effect.</p>

<p>Clause 8 <i>Section 14 amended</i></p>	<p>Section 14 deals with Members' superannuation benefits, etc.</p> <ul style="list-style-type: none"> • <u>Subclause 8(1)</u> has been inserted by the drafter of the Bill to correct a previous grammatical error by inserting in section 14(1)(b) the word "or" after each of subparagraphs (i), (ia) and (ii). • <u>Subclause 8(2)</u> has been inserted by the drafter of the Bill to correct a previous grammatical error by inserting the word "and" after paragraph (a) in section 14(1aa). • <u>Subclause 8(3)</u> has been inserted by the drafter of the Bill to correct a previous grammatical error by inserting the word "and" in section 14(1a)(b) after each of subparagraphs (i) and (iii). • <u>Subclause 8(4)</u> inserts in section 14(3) after the words "at the rate" the current Tribunal determined interest rate of 10% per annum, which is the interest rate for benefit calculation purposes. This is in line with the adopted approach in the Bill of incorporating appropriate Tribunal Determinations into the Act.
<p>Clause 9 <i>Section 16 amended</i></p>	<p>Section 16 deals with commutation of certain pensions.</p> <p>This clause has been inserted by the drafter of the Bill to correct a previous grammatical error by inserting the word "and" between paragraphs (a) and (b) of subsection 16(2).</p>
<p>Clause 10 <i>Section 19 amended</i></p>	<p>Section 19 deals with the payment of pensions to spouses or de facto partners generally.</p> <p>This clause deletes existing sections 19(4) and (5) containing the 'old' rules in relation to spouse pension qualification for spouses who commenced their relationship with a former Member after the former Member's retirement from Parliament. New section 19(4) replaces these two sections, which contains the new post-retirement spouse pension rules based on the relationship status between the spouse and former Member at the time of the former Member's death.</p> <p>New subsection 19(4)(a) contains the 'old' spouse pension qualification rules for relationships commencing after a Member's retirement from Parliament, but minus the remarriage penalty resulting in loss of pension that previously existed under these rules. This is necessary to provide entitlement to a pension by a spouse where a former Member's dies before the enactment date of the Bill.</p> <p>New subsection 19(4)(b) sets out the 'new' spouse pension qualification rules based on relationship status at the time of death of a former Member. Paragraphs (i) and (ii) of the new subsection provide automatic pension qualification where the relationship period is at least 5 years at the time of a former Member's death, or there exists a dependent child from the relationship. Paragraph (iii) provides the Board discretion to pay a pension to a spouse in special circumstances, where automatic pension qualification is not obtained through either paragraphs (i) or (ii).</p> <p>New subsection 19(4)(c) is a 'no worse off' provision, providing that spouses who were in a post-retirement relationship with a former Member that commenced before the enactment date of the Bill would qualify for a pension under the 'old' spouse pension rules if they would not automatically qualify for a pension under the new rules pursuant to new subsection 19(4)(b). The 'old' rules provide automatic pension qualification by the spouse if they are aged at least 55 years of age, or the pension becomes payable from age 55 if the spouse is less than this age at the time of the former Member's death.</p>

<p>Clause 11 <i>Section 19B amended</i></p>	<p>Section 19B deals with the commutation of certain spouses' or de facto partners' pensions.</p> <ul style="list-style-type: none"> • <u>Subclause 11(1)</u> amends the wording of subsection 19B(1) to exclude spouse pensions that become payable prior to the enactment date of the Bill from being subject to the new commutation rules. • <u>Subclause 11(2)</u> inserts new subsection 19B(2A), which is only relevant to spouse pensions that become payable on or after the Bill's enactment. The provisions under this new subsection extend commutation rights to <u>all</u> spouses who qualify for a pension under the amended Act (under current rules, only spouses whose pension is payable as a result of the death of a Member in <u>office</u> have the right to commute up to 50% of their pension to a lump sum). <p>With regard to the amount of pension that can be commuted, new subsection 19B(2A) provides that this amount can be 'all or part of the annual pension entitlement'. This provision lifts the commutable portion of the spouse pension from the current cap of 50% to 100%.</p> <ul style="list-style-type: none"> • <u>Subclause 11(3)</u> is a consequential amendment as a result of insertion of new subsection 19B(2A) above.
<p>Clause 12 <i>Section 23 amended</i></p>	<p>Section 23 deals with childrens' allowances.</p> <p>This clause amends sections 23(1)(c) and 23(1)(d) to incorporate the Tribunal Determination dated 5 August 2008, which increased child allowances payable in the event of death of a Member or former Member. The child allowance rates were increased by the Tribunal in this Determination from 3% to 5% of basic salary where there is one surviving parent, and from 6% to 10% of basic salary where there is no surviving parent.</p>
<p>Clause 13 <i>Section 24 replaced</i></p>	<p>Section 24 deals with minimum benefits.</p> <p>This clause deletes old section 24 and inserts a new section 24 containing the Tribunal Determination dated 30 September 2004 on how the minimum benefit payable in the scheme is to be calculated taking into account requirements under the Commonwealth's <i>Superannuation Guarantee</i> legislation.</p>
<p>Clause 14 <i>Section 29 amended</i></p>	<p>Section 29 deals with State contributions for Members who are not participants in the scheme.</p> <p>The amendment in this clause is as a consequence of the terms previously used for interpretation in this section being moved to section 5(1) of the Act under the changes in clause 4 of the Amendment Act. Only the term 'non-participant' is retained in the interpretative terms specified in subsection 29(1).</p>
<p>Clause 15 <i>Various provisions amended</i></p>	<p>This clause in the Bill has brought together in a table all required amendments to delete gendered language in the Act and replacement with gender neutral language, as appropriate.</p>