

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA
HOUSE OF REPRESENTATIVES

Presented and read a first time

(Finance)

SUPERANNUATION LAWS AMENDMENT BILL 1994

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AMENDMENT OF THE PARLIAMENTARY
CONTRIBUTORY SUPERANNUATION ACT 1948
CONSEQUENT UPON A.C.T. SELF-GOVERNMENT

1993-94

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

Presented and read a first time

(Finance)

A BILL

FOR

An Act to amend the law relating to superannuation

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

5 **1.** This Act may be cited as the *Superannuation Laws Amendment Act 1994*.

Commencement

- 2.(1)** Subject to subsection (2), this Act commences on 1 July 1994.
(2) Division 8 of Part 2 is taken to have commenced on 1 July 1990.

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**PART 2—AMENDMENT OF THE PARLIAMENTARY
CONTRIBUTORY SUPERANNUATION ACT 1948**

Division 1—Principal Act

Principal Act

3. In this Part, “**Principal Act**” means the *Parliamentary Contributory Superannuation Act 1948*¹.

*Division 2—Amendments to bring the parliamentary
contributory superannuation scheme into line
with the superannuation industry supervision legislation*

Object 10

4. The object of this Division is to bring the parliamentary contributory superannuation scheme into line with the vesting, preservation and disclosure requirements of the superannuation industry supervision legislation.

Interpretation 15

5. Section 4 of the Principal Act is amended by inserting in subsection (1) the following definition:
“**‘superannuation guarantee safety-net amount’** has the meaning given by section 16A;”.

Insertion of new section 20

6. After section 16 of the Principal Act the following section is inserted:

Superannuation guarantee safety-net amount

Superannuation guarantee safety-net amount

“16A.(1) For the purposes of this Act, the **superannuation guarantee safety-net amount** in relation to a person is the sum of the following amounts: 25

- (a) the contributions made by the person during so much of the person’s period of service as occurred after 30 June 1992;
- (b) the interest that would have accrued on the contributions covered by paragraph (a) if it were assumed that: 30
 - (i) the contributions had been member contributions made under the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (ii) interest on those contributions had accrued in accordance with determinations by the Commonwealth Superannuation Board 35
of Trustees No. 1 under that scheme as to rates of interest and the method of allocating interest; and

- (iii) no interest on those contributions had accrued during any period when the person was not entitled to a parliamentary allowance;
 - (c) the total of the minimum amounts that the Commonwealth would have had to contribute to a complying superannuation fund or scheme for the benefit of the person in order to avoid having any individual superannuation guarantee shortfalls in respect of the person if it were assumed that:
 - (i) the only capacity in which the person was, or had ever been, an employee of the Commonwealth (within the meaning of the *Superannuation Guarantee (Administration) Act 1992*) were the person's capacity as a member (see subsection 12(4) of that Act); and
 - (ii) the scheme constituted by the provisions of this Act did not exist; and
 - (iii) those contributions were made on a monthly basis;
 - (d) the interest that would have accrued on the contributions covered by paragraph (c) if it were assumed that:
 - (i) the contributions had been member contributions made under the superannuation scheme established by deed under the *Superannuation Act 1990*; and
 - (ii) interest on those contributions had accrued in accordance with determinations by the Commonwealth Superannuation Board of Trustees No. 1 under that scheme as to rates of interest and the method of allocating interest; and
 - (iii) no interest on those contributions had accrued during any period when the person was not entitled to a parliamentary allowance;
 - (e) if:
 - (i) the person was entitled to a parliamentary allowance at all times since the end of 30 June 1992; and
 - (ii) an amount (the '**lump sum amount**') would have been payable to the person under subsection 18(4) if it were assumed that the person had retired voluntarily at the end of 30 June 1992;
- the sum of the following amounts:
- (iii) the lump sum amount;
 - (iv) the interest that would have accrued on the lump sum amount if it were assumed that:

(A) the lump sum amount had been a member contribution made on 1 July 1992 under the superannuation scheme established by deed under the *Superannuation Act 1990*; and

(B) interest on the contribution had accrued in accordance with determinations by the Commonwealth Superannuation Board of Trustees No. 1 under that scheme as to rates of interest and the method of allocating interest.

Refund of contributions

“(2) For the purposes of this Act, if a superannuation guarantee safety-net amount is paid to a person, so much of that amount as is attributable to the person’s contributions is taken to be a refund of the contributions.

Definitions—superannuation guarantee charge

“(3) In this section:

‘**complying superannuation fund or scheme**’ has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*;

‘**individual superannuation guarantee shortfall**’ has the same meaning as in the *Superannuation Guarantee (Administration) Act 1992*.”

Benefits to members

7. Section 18 of the Principal Act is amended:

(a) by omitting paragraph (2)(b) and substituting the following paragraph:

“(b) in any other case—the greater of the following:

(i) a refund of his or her contributions together with a payment of the Commonwealth supplement;

(ii) the superannuation guarantee safety-net amount.”;

(b) by inserting after subsection (2) the following subsection:

“(2AA) If the amount referred to in subparagraph (2)(b)(i) is equal to the amount referred to in subparagraph (2)(b)(ii), paragraph (2)(b) has effect as if the amount referred to in subparagraph (2)(b)(i) were greater than the amount referred to in subparagraph (2)(b)(ii).”;

(c) by omitting from subsection (4) all the words after “shall be” and substituting the following words and paragraphs:

“the greater of the following:

(a) a refund of his or her contributions together with a payment of 50% of the Commonwealth supplement;

(b) the superannuation guarantee safety-net amount.”;

(d) by inserting after subsection (4) the following subsection:

“(5) If the amount referred to in paragraph (4)(a) is equal to the amount referred to in paragraph (4)(b), subsection (4) has effect as if the amount referred to in paragraph (4)(a) were greater than the amount referred to in paragraph (4)(b).”.

Benefits payable to personal representative

8. Section 19AB of the Principal Act is amended:

(a) by omitting from subsection (1) all the words after “by which” and substituting the following words and paragraphs:

“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 person before the death of that person.”;

(b) by inserting after subsection (1) the following subsection:

“(1A) If the amount referred to in paragraph (1)(c) is equal to the amount referred to in paragraph (1)(d), subsection (1) has effect as if the amount referred to in paragraph (1)(c) were greater than the amount referred to in paragraph (1)(d).”;

(c) by omitting paragraph (2)(b) and substituting the following paragraph:

“(b) the greater of the following:

(i) the sum of:

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

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

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

exceeds the sum of any benefits under this Act:

(iii) paid to, or accrued due to, the deceased person before the death of that person; or

(iv) paid or payable to:

(A) a spouse of the deceased person; or

(B) a child or children of the deceased person or of a spouse, or former spouse, of the deceased person.”;

(d) by inserting after subsection (2) the following subsection:

“(2A) If the amount referred to in subparagraph (2)(b)(i) is equal to the amount referred to in subparagraph (2)(b)(ii), paragraph (2)(b) has effect as if the amount referred to in subparagraph (2)(b)(i) were greater than the amount referred to in subparagraph (2)(b)(ii).”.

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Re-election to the Parliament

9. Section 20 of the Principal Act is amended:

(a) by inserting before subsection (1) the following subsection:

“(1A) In this section:

‘eligible lump sum amount’ means:

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- (a) a refund of contributions or a payment of the whole or a part of the Commonwealth supplement, or both; or
- (b) the superannuation guarantee safety-net amount.”;

(b) by omitting from subsection (1) “amount being a refund of contributions or a payment of the whole or a part of the Commonwealth supplement, or both,” and substituting “eligible lump sum amount”.

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Members who pay to Commonwealth transfer values received from previous employment

10. Section 22Q of the Principal Act is amended:

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(a) by omitting subsection (5) and substituting the following subsection:

“(5) If:

- (a) a refund of the whole or any part of the contributions paid by the member to the Commonwealth, together with the whole or any part of the Commonwealth supplement, is payable to or in respect of the member; or
- (b) the superannuation guarantee safety-net amount is payable to or in respect of the member;

25

the sum of the following amounts is payable to or in respect of the member by the Commonwealth:

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(c) so much of the amount paid to the Commonwealth under subsection (1) as is equal to the employer component of the transfer value or the sum of the employer components of the transfer values, as the case may be;

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(d) the interest that would have accrued on the amount worked out under paragraph (c) if it were assumed that:

- (i) the amount had been a member contribution made under the superannuation scheme established by deed under the *Superannuation Act 1990*; and

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- 5 (ii) interest on that contribution had accrued in accordance with determinations by the Commonwealth Superannuation Board of Trustees No. 1 under that scheme as to rates of interest and the method of allocating interest; and
- (iii) no interest on that contribution had accrued during any period when the member was not entitled to a parliamentary allowance; and
- 10 (iv) if the amount paid to the Commonwealth under subsection (1) was so paid before 1 July 1992—that contribution was made on 1 July 1992.”;

(b) by inserting in paragraph (6)(c) “or the superannuation guarantee safety-net amount” after “Commonwealth supplement”.

Insertion of new section

15 **11.** After section 26A of the Principal Act the following section is inserted:

Preservation of benefits and disclosure of information to members

Regulations to which section applies

20 “26B.(1) This section applies to the Superannuation Industry (Supervision) Regulations in so far as they deal with:

- (a) the preservation of benefits; or
- (b) the disclosure of information to members of regulated superannuation funds.

Regulations apply to the parliamentary contributory superannuation scheme

25 “(2) Those regulations apply, with any necessary modifications, to:

- (a) the Trust; and
- (b) the scheme constituted by the provisions of this Act;

as if that scheme were a regulated superannuation fund.

Regulations to prevail over inconsistent provisions of this Act

30 “(3) If those regulations are inconsistent with a provision of this Act, the regulations prevail and that provision, to the extent of the inconsistency, is of no effect.

Preserved benefits to be paid into a regulated superannuation fund or an approved deposit fund or used to buy a deferred annuity

35 “(4) If the whole or a part of a benefit payable under this Act in respect of a person is required by those regulations to be preserved, the whole or the part of the benefit, as the case requires, must be paid to:

- (a) if the person nominates a regulated superannuation fund within 90 days after the benefit became payable—the regulated superannuation fund; or
- (b) if the person nominates an approved deposit fund within 90 days after the benefit became payable—the approved deposit fund; or 5
- (c) if:
- (i) the person nominates a deferred annuity within 90 days after the benefit became payable; and
 - (ii) the deferred annuity is issued by a life insurance company or a registered organisation for the benefit of the person or for the benefit of the dependants of the person in the event of the death of the person; and 10
 - (iii) the annuity cannot be surrendered or assigned before the person turns 55; and
 - (iv) the annuity does not provide for the payment of amounts except in the following circumstances: 15
 - (A) the person retires from the workforce after reaching the age of 55 years;
 - (B) the person retires from the workforce before reaching the age of 55 years on the ground of permanent incapacity or permanent invalidity; 20
 - (C) the person leaves Australia permanently;
 - (D) the person dies;
 - (E) such other circumstances (if any) as the Insurance and Superannuation Commissioner approves; 25
- the life insurance company or the registered organisation, as the case requires, in respect of the purchase of the deferred annuity; or
- (d) in any other case—an approved deposit fund nominated by the Trust.

Preserved benefits taken to have been received

“(5) For the purposes of this Act (other than this section), if an amount is paid to a fund, a life insurance company or a registered organisation under subsection (4), the person concerned is taken to have received the amount. 30

Definitions

“(6) In this section:

‘**approved deposit fund**’ has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*; 35

‘**dependant**’ has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*;

‘**life insurance company**’ has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*; 40

‘registered organisation’ has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*;

‘regulated superannuation fund’ has the same meaning as in the *Superannuation Industry (Supervision) Act 1993*.”.

5 **Division 3—Amendments relating to invalidity**

Object

12. The object of this Division is to provide for a new system of invalidity benefits.

Interpretation

10 13. Section 4 of the Principal Act is amended:

(a) by inserting in subsection (1) the following definitions:

“ **‘class 1 invalid’** means a person who is classified by the Trust as a class 1 invalid under Part V;

15 **‘class 2 invalid’** means a person who is classified by the Trust as a class 2 invalid under Part V;

‘class 3 invalid’ means a person who is classified by the Trust as a class 3 invalid under Part V;

‘medical practitioner’ means a person registered as a medical practitioner under a law of a State or Territory;

20 **‘non-parliamentary employment’** means any employment, profession or paid occupation, other than as a member;”;

(b) by adding at the end the following subsection:

25 “(6) For the purposes of this Act, if a person ceases to be entitled to a parliamentary allowance, the cessation is taken to be an invalidity retirement if, and only if, the Trust makes a determination under section 15A in relation to that cessation.”.

Insertion of new section

14. After section 4C of the Principal Act the following section is inserted:

30 **Incapacity**

“4D. In determining the percentage of a person’s incapacity in relation to non-parliamentary employment, the Trust or a medical practitioner, as the case may be, must have regard to all relevant matters, including, but not limited to, the following:

35 (a) the vocational, trade and professional skills, qualifications and experience of the person;

(b) the kinds of non-parliamentary employment which a person with the skills, qualifications and experience referred to in paragraph (a) might reasonably undertake;

- (c) the degree to which any physical or mental impairment of the person has diminished his or her capacity to undertake the kinds of non-parliamentary employment referred to in paragraph (b);
- (d) the income (if any) derived by the person from personal exertion.”.

Insertion of new sections

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15. After section 15 of the Principal Act the following sections are inserted:

Invalidity retirement

When section applies

“15A.(1) This section applies to a person who:

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(a) ceases to be a member because of his or her having resigned his or her place before the expiration of his or her term of office; or

(b) ceases to be a senator upon the expiration of the term of office of a class of senators or the dissolution of the Senate and is not, at the time of an election to fill places in the Senate that became vacant when his or her place becomes vacant:

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(i) a candidate for election as a senator; or

(ii) if elections of members of the House of Representatives are held, or an election of a member of the House of Representatives is held, at the same time as such a Senate election—a candidate for election either as a senator or as a member of the House of Representatives; or

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(c) ceases to be a member of the House of Representatives upon the dissolution or expiration of that House and is not, at the time of the next ensuing elections for the House of Representatives:

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(i) a candidate for election to that House; or

(ii) if elections of senators are held, or an election of a senator is held, at the same time as those elections for that House—a candidate for election either as a senator or as a member of the House of Representatives; or

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(d) ceases to be a senator because of the election of a successor under section 15 of the Constitution and is not, at the time of the election at which his or her successor is elected:

(i) a candidate for election as a senator; or

(ii) if his or her successor is elected at a general election of members of the House of Representatives—a candidate for election either as a senator or as a member of the House of Representatives.

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Invalidity retirement

“(2) The Trust may determine that the person’s resignation or failure to be such a candidate is to be treated as an invalidity retirement if:

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- (a) a written application is made by or on behalf of the person for such a determination; and
- (b) the Trust is satisfied that the person is unlikely, because of physical or mental impairment, ever to be able to perform the duties of a member again.

The determination must specify the physical or mental impairment or impairments concerned.

Application to be accompanied by medical certificates

“(3) The application must be accompanied by:

- (a) such additional information (if any) as the Trust requires; and
- (b) a certificate given by a medical practitioner nominated by the Trust; and
- (c) a certificate given by a medical practitioner nominated by or on behalf of the person; and
- (d) such additional documents (if any) as the Trust requires.

Medical certificates—contents

“(4) Each certificate must include:

- (a) a statement to the effect that, in the opinion of the medical practitioner concerned, the person is unlikely, because of physical or mental impairment, ever to be able to perform the duties of a member again; and
- (b) a statement setting out the medical practitioner’s opinion about the percentage of the person’s incapacity in relation to non-parliamentary employment.

Consultation about nominated medical practitioner

“(5) The Trust must consult a Senior Commonwealth Medical Officer about the identity of a medical practitioner nominated under paragraph (3)(b).

Trust to notify applicant of decision

“(6) If the Trust makes a decision refusing an application under subsection (2), the Trust must give the applicant a written notice of the refusal.

Invalidity classification

When section applies

“15B.(1) This section applies if the Trust determines under subsection 15A(2) that a person’s resignation or failure to be a candidate, as the case may be, is to be treated as an invalidity retirement.

Trust to determine percentage of incapacity

“(2) The Trust must determine the percentage of the person’s incapacity in relation to non-parliamentary employment.

Trust to classify person

“(3) The Trust must also classify the person in accordance with the following table:

TABLE	
% of incapacity	Classification
60% or more	Class 1 invalid
30% or more but less than 60%	Class 2 invalid
Less than 30%	Class 3 invalid

Trust to notify person of classification

“(4) If the Trust makes a decision under this section, it must give the person a written notice setting out the decision. 5

Review of invalidity classification*Persons to whom section applies*

“15C.(1) This section applies to a person if the person is entitled to a retiring allowance under paragraph 18(2AA)(c) or (d). 10

Review of invalidity classification

“(2) The Trust may, from time to time, review the person’s current classification as a class 1 invalid or a class 2 invalid, as the case may be.

How review is initiated

“(3) The Trust may review the person’s classification: 15

- (a) on its own initiative; or
- (b) if it is requested to do so by or on behalf of the person.

Request for review

“(4) A request under paragraph (3)(b) must: 20

- (a) be in writing; and
- (b) be accompanied by:
 - (i) a written submission in support of the request; and
 - (ii) a certificate given by a medical practitioner nominated by or on behalf of the person.

Medical certificate in support of request for review 25

“(5) The certificate mentioned in subsection (4) must set out the medical practitioner’s opinion about the percentage of the person’s incapacity in relation to non-parliamentary employment.

Notification of refusal of request for review

“(6) If the Trust makes a decision refusing a request under paragraph (3)(b), the Trust must give the person a written notice of the refusal. 30

Trust may request attendance at a medical examination

“(7) For the purposes of the review, the Trust may, by written notice given to the person, request the person:

- 5 (a) to submit himself or herself for medical examination by a specified medical practitioner at a time and place specified in the notice; or
- (b) to give to the Trust, within the period specified in the notice, specified information that is relevant to the review; or
- (c) to produce to the Trust, within the period specified in the notice, specified documents that are relevant to the review.

10 *Multiple notices*

“(8) The Trust may give 2 or more notices under subsection (7) in relation to the review.

Senior Commonwealth Medical Officer to be consulted about medical practitioners

15 “(9) The Trust must consult a Senior Commonwealth Medical Officer about the identity of a medical practitioner specified in a notice under subsection (7).

Consequences of failure to attend medical examination, to give information or to produce documents

20 “(10) If the person fails to comply with a notice under subsection (7), the Trust may, by written notice given to the person, suspend the person’s retiring allowance with effect from a specified date. The date must not be earlier than the day on which the notice was given.

25 *Reimbursement of reasonable expenses incurred in attending medical examination*

“(11) If:

- (a) the person submits himself or herself for medical examination in accordance with a notice under subsection (7); and
- 30 (b) the person incurs, in respect of attendance at that examination, expenses in respect of:
 - (i) transport; or
 - (ii) accommodation; or
 - (iii) the purchase of food or drink; or
 - (iv) incidental matters;

35 the Trust may determine that the person is entitled to be paid by the Commonwealth an amount equal to so much of those expenses as the Trust considers reasonable. The Consolidated Revenue Fund is appropriated for the purposes of this subsection.

Decision on review

“(12) For the purposes of the review, the Trust must make a decision:

- (a) confirming the person’s classification; or
- (b) if the person is a class 1 invalid—re-classifying the person as a class 2 invalid or as a class 3 invalid; or
- (c) if the person is a class 2 invalid—re-classifying the person as a class 1 invalid or as a class 3 invalid.

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The re-classification must be in accordance with the classification table set out in section 15B according to the percentage of the person’s incapacity in relation to non-parliamentary employment.

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Decision on review to be made on the basis of the original physical or mental impairment

“(13) In determining, for the purposes of this section, the percentage of the person’s incapacity in relation to non-parliamentary employment, the Trust or a medical practitioner, as the case may be, is to ignore any physical or mental impairment of the person unless the impairment is of a kind that:

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- (a) was specified in the determination made under section 15A in relation to the person; or
- (b) is related to an impairment of a kind that was specified in that determination.

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When re-classification takes effect

“(14) If the Trust decides to re-classify the person, the Trust must specify a date as the date on which the re-classification takes effect. The date must not be earlier than the date on which the decision was made.

Re-classification to be treated as a classification

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“(15) If the Trust decides to re-classify the person, the Trust is taken to have classified the person accordingly on the day on which the re-classification takes effect.

Notification of decision on review

“(16) If the Trust makes a decision under subsection (12), the Trust must give the person a written notice setting out the decision.

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Re-classification as a class 3 invalid—reduction of benefit

“(17) If the Trust decides to re-classify the person as a class 3 invalid, the benefit payable to the person under paragraph 18(2AA)(e) is to be reduced (but not below 0) by the total of the payments of retiring allowance paid to the person under paragraph 18(2AA)(c) or (d) before the re-classification took effect.”

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Meaning of voluntary retirement

16. Section 17 of the Principal Act is amended:

- (a) by omitting subsection (3) and substituting the following subsection:

“(3) A member who resigns his or her place before the end of his or her term of office is taken to have retired voluntarily if:

- 5 (a) the Trust does not determine under section 15A that the resignation is to be treated as an invalidity retirement; and
 (b) he or she fails to satisfy the Trust that his or her resignation was made *bona fide*:
- 10 (i) for the purpose of securing election for another electorate or for another State; or
 (ii) for the purpose of submitting himself or herself for re-election by the electors of his or her former electorate; or
 (iii) for the purpose of securing election as a member of the House of which he or she was not a member.”;

- (b) by omitting from paragraph (4)(a) all the words after “and” and substituting the following word and subparagraphs:

“both:

- 20 (iii) the Trust does not determine under section 15A that his or her failure to be such a candidate is to be treated as an invalidity retirement; and
 (iv) he or she does not satisfy the Trust that his or her failure to be such a candidate was due to:
- 25 (A) his or her failure to secure the support of a political party from which he or she reasonably sought support; or
 (B) his or her expulsion from a political party; or”.

Benefits to members

17. Section 18 of the Principal Act is amended:

- 30 (a) by inserting in subsection (2) “and whose retirement is not an invalidity retirement” after “does not retire voluntarily”;
 (b) by inserting after subsection (2) the following subsections:

“(2AA) In the case of a member (other than a member to whom subsection (1A) or (1B) applies) whose retirement is an invalidity retirement, the benefit is:

- 35 (a) if the member’s period of service is not less than 8 years—a retiring allowance during his or her life-time at the rate applicable in accordance with the scale set out in subsection (6); or

- (b) if the member's period of service is less than 8 years but he or she has, on each of at least 3 occasions (including occasions before the commencement of this subsection), ceased to be a member upon:
- (i) the dissolution or expiration of the House of which he or she was then a member; or 5
 - (ii) the expiration of his or her term of office; a retiring allowance during his or her life-time at the rate of 50% of parliamentary allowance for the time being payable to a member; or 10
- (c) if:
- (i) neither of the preceding paragraphs applies; and
 - (ii) he or she is a class 1 invalid; a retiring allowance during his or her life-time at the rate of 50% of parliamentary allowance for the time being payable to a member; or 15
- (d) if:
- (i) none of the preceding paragraphs applies; and
 - (ii) he or she is a class 2 invalid; a retiring allowance during his or her life-time at the rate of 30% of parliamentary allowance for the time being payable to a member; or 20
- (e) if:
- (i) none of the preceding paragraphs applies; and
 - (ii) he or she is a class 3 invalid; 25
- the greater of the following:
- (iii) a refund of his or her contributions together with a payment of the Commonwealth supplement;
 - (iv) the superannuation guarantee safety-net amount.
- “(2AB) If the amount referred to in subparagraph (2AA)(e)(iii) is equal to the amount referred to in subparagraph (2AA)(e)(iv), paragraph (2AA)(e) has effect as if the amount referred to in subparagraph (2AA)(e)(iii) were greater than the amount referred to in subparagraph (2AA)(e)(iv). 30
- “(2AC) If: 35
- (a) a person is entitled to a retiring allowance under paragraph (2AA)(c) or (d); and
 - (b) under section 15C, the Trust reviews the person's current classification as a class 1 invalid or a class 2 invalid, as the case may be; and 40

(c) the Trust decides to re-classify the person under section 15C; the following provisions have effect from the date on which the re-classification takes effect:

(d) the person ceases to be entitled to a retiring allowance under whichever of paragraph (2AA)(c) or (d) was applicable;

(e) the person becomes entitled to a retiring allowance or benefit under whichever of paragraph (2AA)(c), (d) or (e) is applicable to the person as a result of the re-classification.”;

(c) by omitting from subsection (2A) “paragraph (2)(aa)” and substituting “paragraphs (2)(aa) and (2AA)(b)”;

(d) by omitting from subsection (3) “paragraph (2)(aa)” and substituting “paragraphs (2)(aa) and (2AA)(b)”.

Repeal of section 18A

18. Section 18A of the Principal Act is repealed.

15 **Commutation of retiring allowance**

19. Section 18B of the Principal Act is amended:

(a) by omitting paragraph (1)(b) and substituting the following paragraph:

“(b) becomes entitled to that allowance under paragraph 18(2AA)(a), (b), (c) or (d).”;

(b) by omitting subsection (2).

Insertion of new section

20. After section 24C of the Principal Act the following section is inserted:

25 **Trust may give advice to members who are contemplating invalidity retirement**

When section applies

“24D.(1) This section applies to a member who is considering:

(a) ceasing to be a member; and

(b) making an application for a determination under section 15A in relation to that cessation.

Member may ask Trust for advice

“(2) The member may ask the Trust for advice that would be likely to assist the member’s consideration of those matters.

35 *Trust may give advice*

“(3) The Trust may give the member such advice as it thinks appropriate.

Kinds of advice that may be given

- “(4) The advice may include, but is not limited to, the following:
 - (a) recommending that the member undertake medical treatment;
 - (b) recommending that the member seek leave of absence from the Parliament;
 - (c) advising the member about the provisions of this Act relating to invalidity retirement;
 - (d) advising the member to submit himself or herself for medical examination by a medical practitioner nominated by the Trust.

5

Consultation about medical practitioners

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“(5) The Trust must consult a Senior Commonwealth Medical Officer about the identity of a medical practitioner nominated under paragraph (4)(d).

Definition

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“(6) In this section:

‘**medical treatment**’ includes medical treatment within the meaning of the *Safety, Rehabilitation and Compensation Act 1988*.”.

Application

21. The amendments made by this Division (other than the amendment inserting section 24D into the Principal Act) apply to a person who ceases to be a member after the commencement of this section.

20

Division 4—Amendments relating to former members etc. who hold offices of profit

Objects

- 22.** The objects of this Division are:
 - (a) to provide for a monetary threshold for the reduction of benefits payable to former members etc. who hold offices of profit; and
 - (b) to provide for the grossing-up of tax-free salaries when calculating the reduction of benefits payable to former members etc. who hold offices of profit; and
 - (c) to abolish the rule requiring the reduction of benefits payable to former members etc. who are receiving pensions arising out of service in offices of profit.

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Effect of the holding of offices of profit—reduction of certain retiring allowances and annuities

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23. Section 21B of the Principal Act is amended:

- (a) by omitting from subsection (1) the definition of “pension”;

(b) by inserting in subsection (1) the following definitions:

“ ‘**annual after-tax income**’, in relation to a hypothetical taxpayer and in relation to a year of income, means the hypothetical taxpayer’s taxable income for the year of income, reduced by the income tax and the medicare levy imposed on that taxable income;

‘**assessable income**’ has the same meaning as in the *Income Tax Assessment Act 1936*;

‘**fortnightly grossed-up amount**’, in relation to particular remuneration, means the amount of assessable income that a hypothetical taxpayer would have to derive during each fortnight in the year of income concerned in order that the hypothetical taxpayer’s annual after-tax income for the year of income would equal the annual rate of the remuneration;

‘**hypothetical taxpayer**’ means a hypothetical taxpayer where the following assumptions are made:

(a) that the taxpayer is an individual;

(b) that the taxpayer is not a trustee;

(c) that the taxpayer is a resident for the purposes of the *Income Tax Assessment Act 1936*;

(d) that the taxpayer has no entitlement to a rebate or credit under that Act;

(e) that no deductions are allowable to the taxpayer under that Act;

‘**income tax**’ has the same meaning as in the *Income Tax Assessment Act 1936*;

‘**medicare levy**’ has the same meaning as in Part VIIB of the *Income Tax Assessment Act 1936*;

‘**taxable income**’ has the same meaning as in the *Income Tax Assessment Act 1936*;

‘**year of income**’ has the same meaning as in the *Income Tax Assessment Act 1936*.”;

(c) by omitting subsections (2) and (3) and substituting the following subsections:

“(2) Subject to subsection (4), if the following conditions are satisfied in relation to a person who is entitled to a relevant benefit:

(a) the person is:

(i) the holder of an office of profit under the Commonwealth; or

(ii) the holder of an office of profit under a State;

(b) the person receives remuneration in respect of the office;

(c) the fortnightly rate of the remuneration exceeds 20% of the fortnightly rate of parliamentary allowance for the time being payable to a member;

the fortnightly rate at which the relevant benefit would otherwise be payable to the person is to be reduced by 50 cents for each \$1 of the excess.

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“(2A) For the purposes of working out the reduction of a relevant benefit under subsection (2), if the remuneration referred to in that subsection is exempt from income tax, the fortnightly rate of the remuneration is taken to be the fortnightly grossed-up amount of the remuneration.

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“(3) If the remuneration by reference to which the relevant benefit is to be reduced under subsection (2) is payable otherwise than on a fortnightly basis, the fortnightly rate of the remuneration is taken to be the rate that the Trust determines in writing is the equivalent of a fortnightly rate.

15

“(3A) For the purposes of working out the reduction of a relevant benefit under subsection (2), the fortnightly rate of parliamentary allowance payable to a member is the amount worked out using the formula:

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$$\frac{\text{Annual rate of parliamentary allowance}}{365} \times 14$$

”;

(d) by omitting from subsection (4) “subsections (2) and (3)” and substituting “subsection (2)”;

(e) by omitting from subsection (4) “those subsections” (wherever occurring) and substituting “that subsection”;

25

(f) by adding at the end of paragraph (5)(a) “or”;

(g) by omitting from paragraph (5)(b) “or”;

(h) by omitting paragraph (5)(c).

Application

24. The amendments made by this Division apply to payments of relevant benefits made after the commencement of this section.

30

Division 5—Amendments relating to members who have previously served in State or Territory Parliaments

Object

25. The object of this Division is to bring the rules relating to recognition of prior service in State or Territory Parliaments into line with the rules relating to prior employment.

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Interpretation

26. Section 4 of the Principal Act is amended by inserting after subsection (4) the following subsection:

“(4A) For the purposes of this Act:

- 5 (a) a member of the Parliament of a State is taken to be employed by the State; and
- (b) a member of the Legislative Assembly for the Australian Capital Territory is taken to be employed by the Australian Capital Territory; and
- 10 (c) a member of the Legislative Assembly of the Northern Territory of Australia is taken to be employed by the Northern Territory of Australia.”.

Members who were in the Parliament on 1 July 1994—recognition of prior service in a State or Territory Parliament

15 27. Section 20A of the Principal Act is amended:

(a) by inserting before subsection (1) the following subsections:

“(1AA) For the purposes of this section, a person is an **eligible member** if:

- 20 (a) he or she was a member as at the commencement of this subsection; and
- (b) at any time before that commencement, the person was a member of:
- 25 (i) the Parliament of a State; or
- (ii) the Legislative Assembly for the Australian Capital Territory; or
- (iii) the Legislative Assembly of the Northern Territory of Australia.

“(1AB) Subject to subsection (1AC), this section does not apply in relation to a member unless the member is an eligible member.

30 “(1AC) An eligible member may elect, in writing, that this section does not apply in relation to him or her. The election has effect accordingly.

“(1AD) An election under subsection (1AC) must be given to the Trust before whichever is the earlier of the following times:

- 35 (a) the end of the period of 12 months after the commencement of this subsection;
- (b) immediately before the day on which a general election is first held after the commencement of this subsection.”;

(b) by adding at the end the following subsections:

“(4) If an eligible member makes an election under subsection (1AC) of this section:

(a) paragraph 22Q(1)(b) has effect, in relation to the eligible member, as if the reference in that paragraph to 3 months after the date on which he or she became a member were a reference to the earlier of the times referred to in subsection (1AD) of this section; and 5

(b) paragraph 22Q(1)(c) has effect, in relation to the eligible member, as if the reference in that paragraph to the expiration of that period of 3 months were a reference to the earlier of the times referred to in subsection (1AD) of this section. 10

“(5) If an eligible member does not make an election under subsection (1AC) of this section, section 22Q has effect, in relation to the eligible member, as if subsection 4(4A) had not been enacted.

“(6) In this section: 15

‘**general election**’ means a general election of the members of the House of Representatives.”.

Division 6—Amendments relating to the rule requiring reduction of a retiring allowance or annuity payable to a person receiving a State or Territory parliamentary pension 20

Object

28. The object of this Division is to abolish the rule requiring the reduction of a retiring allowance or annuity payable to a person receiving a State or Territory parliamentary pension.

Reduction of benefits as a result of membership of a State Parliament, the Northern Territory Legislative Assembly or the A.C.T. Legislative Assembly 25

29. Section 21 of the Principal Act is amended:

(a) by omitting subsection (1) and substituting the following subsections: 30

“(1) Subject to this section, if:

(a) a person is entitled to a retiring allowance or annuity; and

(b) the person is or becomes a person in receipt of a salary, or an allowance in the nature of a salary, as:

(i) a member of the Parliament of a State (whether by virtue of holding some special position in that Parliament or not); or 35

(ii) a Minister of State of a State;

the rate of retiring allowance or annuity otherwise payable to the person is to be reduced by the rate of the salary or allowance, as the case requires.

“(1AA) Subject to this section, if:

- 5 (a) a person is entitled to a retiring allowance or annuity; and
- (b) the person is or becomes a person in receipt of a pension arising out of:
 - 10 (i) former membership of the Parliament of a State (whether by virtue of holding some special position in that Parliament or not); or
 - (ii) having been a Minister of State of a State; and
 - (c) either:
 - 15 (i) the person is in receipt of the pension immediately before the commencement of this subsection; or
 - (ii) the person is an eligible member (within the meaning of section 20A) who has not made an election under subsection 20A(1AC);

the rate of retiring allowance or annuity otherwise payable to the person is to be reduced by the rate of the pension.”;

- 20 (b) by inserting in subsections (1A) and (2) “or (1AA)” after “(1)”.

Division 7—Amendments relating to A.C.T. self-government

Object

30 30. The object of this Division is to make certain amendments consequent upon A.C.T. self-government. The amendments are identical to modifications made by regulations under the *A.C.T. Self-Government (Consequential Provisions) Act 1988*.

Amendments

31. The Principal Act is amended as set out in the Schedule.

Division 8—Amendments to update the definition of “parliamentary allowance”

Object

32. The object of this Division is to update the definition of “parliamentary allowance”.

Interpretation

35 33. Section 4 of the Principal Act is amended by adding at the end of the definition of “parliamentary allowance” in subsection (1) the following word and paragraph:

“; or (c) an allowance by way of salary under clause 1 of Schedule 3 to the *Remuneration and Allowances Act 1990*.”

Division 9—Amendment relating to spouse benefits

Object

34. The object of this Division is to abolish the rule restricting access to spouse benefits in cases where a spouse becomes a member. 5

Re-election to the Parliament

35. Section 20 of the Principal Act is amended by omitting subsection (4).

PART 3—AMENDMENT OF THE PARLIAMENTARY CONTRIBUTORY SUPERANNUATION AMENDMENT ACT 1981 10

Object

36. The object of this Part is to repeal certain unproclaimed amendments. The amendments are superseded by Divisions 5 and 6 of Part 2. 15

Principal Act

37. In this Part, “**Principal Act**” means the *Parliamentary Contributory Superannuation Amendment Act 1981*².

Commencement

38. Section 2 of the Principal Act is amended by omitting subsection (3). 20

Period of service as a member of State Parliament or Northern Territory Legislative Assembly to be taken into account in certain circumstances

39. Section 10 of the Principal Act is amended by omitting subsection (2). 25

Reduction of benefits by reason of membership of State Parliament or Northern Territory Legislative Assembly

40. Section 11 of the Principal Act is amended by omitting subsection (2).

Repeal of section 12 30

41. Section 12 of the Principal Act is repealed.

PART 4—AMENDMENT OF THE PARLIAMENTARY CONTRIBUTORY SUPERANNUATION AMENDMENT ACT 1983

Object

42. The object of this Part is to repeal certain unproclaimed amendments. The amendments are superseded by Division 5 of Part 2. 35

Principal Act

43. In this Part, “**Principal Act**” means the *Parliamentary Contributory Superannuation Amendment Act 1983*³.

Commencement

5 44. Section 2 of the Principal Act is amended by omitting subsection (3).

Repeal of section 10

45. Section 10 of the Principal Act is repealed.

SCHEDULE

Section 31

**AMENDMENT OF THE PARLIAMENTARY
CONTRIBUTORY SUPERANNUATION ACT 1948
CONSEQUENT UPON A.C.T. SELF-GOVERNMENT**

Subsection 20A(1A):

After “references to” insert “the Legislative Assembly for the Australian Capital Territory and”.

Subsection 21(1A):

- (a) After “references to” insert “the Legislative Assembly for the Australian Capital Territory,”.
- (b) After “Minister of” (second occurring) insert “the Australian Capital Territory or of”.

Subsection 21B(1) (definition of “holder of an office of profit under a State”):

- (a) Omit from sub-subparagraph (d)(ii)(B) “State,”, substitute “State; or”.
- (b) Add at the end of subparagraph (d)(ii):
“; or (iii) an office of Head of Administration or Associate Head of Administration under section 49 of the *Australian Capital Territory (Self-Government) Act 1988*;”.

Subsection 21B(1) (definition of “Parliament”):

After “in relation to” insert “the Australian Capital Territory means the Legislative Assembly for the Australian Capital Territory, and in relation to”.

NOTES

Parliamentary Contributory Superannuation Act 1948

- 1. No. 89, 1948, as amended. For previous amendments, see No. 3, 1952; No. 30, 1955; No. 20, 1959; No. 72, 1964; No. 35, 1965; No. 71, 1966; No. 103, 1968; No. 47, 1973; No. 37, 1976; Nos. 36 and 41, 1978; Nos. 19 and 131, 1979; No. 37, 1981; No. 74, 1983; and Nos. 94 and 185, 1992.

Parliamentary Contributory Superannuation Amendment Act 1981

- 2. No. 37, 1981.

Parliamentary Contributory Superannuation Amendment Act 1983

- 3. No. 74, 1983.