



This Digest replaces an earlier version dated 23 June 2008, including some additional reference material.

Governor-General Amendment (Salary and Superannuation) Bill 2008

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Governor-General Amendment (Salary and Superannuation) Bill 2008

Date introduced: 18 June 2008

House: House of Representatives

Portfolio: Prime Minister

Commencement: On the day that the Royal Assent is given.

Links: The [relevant links](#) to the Bill, Explanatory Memorandum and second reading speech can be accessed via BillsNet, which is at <http://www.aph.gov.au/bills/>. When Bills have been passed they can be found at ComLaw, which is at <http://www.comlaw.gov.au/>.

Purpose

To amend the *Governor-General Act 1974* (the Governor-General Act) to set the salary for the next Governor-General who is to be sworn-in on 5 September 2008.

Background

Constitutional provisions

The office of Governor-General was created by the Commonwealth Constitution at Federation. The Governor-General is the Queen's representative in the Commonwealth of Australia. The office of Governor-General has a range of powers and functions conferred on it by the Constitution, most notably the executive power of the Commonwealth.

Before 1974 the office of the Governor-General was regulated only by the Constitution. Section 3 of the Constitution states that

- the Governor-General is to be paid an annual salary of 'ten thousand pounds' until the Parliament otherwise provides and
- the salary of the Governor-General is not to be altered during the period of appointment to the office.¹

1. Although the appointment is at The Queen's pleasure, a five year term is considered usual.

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The Governor-General Act

Payments remained unchanged until the introduction of decimal currency in February 1966 when an equivalent payment of \$20 000 per annum was made.

In enacting the Governor-General Act, the Whitlam government acknowledged that appointment to the office of Governor-General should not depend on a candidate's personal wealth or the availability of other income. The former Prime Minister also put forward two principles that are still applied when Parliament considers salary:

- salary should be dealt with in a non-partisan way and
- salary should recognise the importance and place of this high office.²

Under the newly enacted Governor-General Act, the salary was increased to \$30 000 for the incoming Governor-General, Sir John Kerr. Whilst the actual salary had increased very little, it was noted that in 1925-26 the appropriations made for the Governor-General's establishment and office amounted to \$38 150 which had increased markedly to \$708 047 in 1972-73.³

Further background, including information about the salaries of former Governor's-General, can be found in [Research Note No. 12 2003-04](#).⁴

Setting the salary

By convention, the Governor-General's salary is linked to the salary of the [Chief Justice](#) of the High Court although the reasons for that particular choice are unclear. The Chief Justice's salary is determined annually by the Remuneration Tribunal and so is determined by a statutory body which is independent of the Government. This satisfies the requirement that salary be determined in a non-partisan way. Although the link was not mentioned in debate on the 1974 Bill or 1977 amendments, this convention has been outlined in Parliament by the responsible Ministers since 1982.⁵

Prior to 2001, salary was set by calculating the after-tax equivalent of the Chief Justice's salary at the time of appointment. The average after-tax salary of the Chief Justice over a notional five year term was estimated taking into account future possible increases. The

2. Hon. G E Whitlam, Prime Minister, 'Second reading speech: Governor-General Bill 1974', House of Representatives, *Debates*, 9 April 1974, p. 1248.

3. Senator R C Wright, Senate, *Debates*, 10 April 1974, p. 879.

4. Some of the factual information contained in the preceding background section of this Bills Digest has been derived from the Research Note.

5. Hon. W Fife, Minister for Education, 'Second reading speech: Governor-General Amendment Bill 1982', House of Representatives, *Debates*, 29 April 1982, p. 2085.

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vice-regal salary was then set to moderately exceed this average.⁶ The salary is now set to moderately exceed the estimated average before-tax salary of the Chief Justice over the notional five year term of office.⁷

There is no legislative requirement on Governors-General to reduce their salary to take account of any other income or allowances they may be entitled to receive. At his own instigation, Sir William Deane's salary was reduced to take account of the pension he received as a former justice of the High Court. It was reported that the current Governor-General, His Excellency Major-General Michael Jeffery AC CVO MC would donate his military pension of more than \$50 000 per year to a range of charities during his term.⁸

According to the Explanatory Memorandum, the salary for the Governor-General Designate, Ms Bryce, will be reduced to take account of her entitlement to a Commonwealth-funded pension from prior employment.⁹ However it should be noted that there is neither a provision of the Governor-General Act which requires such a reduction nor a provision setting out the method by which any reduction is calculated.

Taxation

The *Income Tax Assessment Act 1997* was amended in 2001 to allow the taxation of the Governor-General's salary.

Governors-General had been exempt from taxation on official salary since at least 1922 and on any overseas income since 1936.¹⁰ The exemption was removed on the grounds that:

- it was introduced at a time when vice-regal appointees customarily came from the United Kingdom and were treated, for tax purposes, the same as non-diplomatic representatives of foreign governments or organisations¹¹ and
- the Governor-General is the Queen's representative and, since 1993, the Queen has been paying income tax in the United Kingdom.

6. Hon. P Reith, 'Second reading speech: Governor-General Legislation Amendment Bill 2001', House of Representatives, *Debates*, 6 June 2001, p. 27339.

7. Explanatory Memorandum, p. 1.

8. Farah Farouque, 'Incoming G-G's salary increased by \$55,000' *Age*, 25 June 2003, p. 4; Brian Toohey, 'G-G can best serve us by keeping quiet', *Australian Financial Review*, 28 June 2003, p. 49.

9. Explanatory Memorandum, p. 1.

10. Hon P Reith, 'Second reading speech: Governor-General Legislation Amendment Bill 2001', House of Representatives, *Debates*, 6 June 2001, p. 27339.

11. *ibid.*

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Pension

A pension scheme for retired Governors-General was introduced with the Governor-General Act in 1974. Earlier governments had sometimes found it necessary to provide ex-gratia payments to former Governors-General and their widows.¹² The scheme is non-contributory, that is, Governors-General do not contribute a percentage of their salary to the scheme that provides their pension. The pension is paid out of the Consolidated Revenue Fund as an annual allowance for life.

The annual allowance is also subject to income taxation. The amount of annual allowance payable does not depend upon length of tenure. Similarly, the manner in which a Governor-General leaves office does not affect the allowance in any way.

Ms Bryce's appointment

The Prime Minister, the Hon. Kevin Rudd announced that the Queen had, on his recommendation, approved the appointment of Ms Quentin Bryce as the next Governor-General of Australia.¹³ Ms Bryce will succeed His Excellency Major General Michael Jeffery on 5 September 2008. She will be Australia's 25th Governor-General and its first female Governor-General.¹⁴

Ms Bryce was appointed in July 2003 as the 24th Governor of Queensland. She will bring to the role of Governor-General, her previous experience as Director of the Queensland Women's Information Service, Queensland Director of the Human Rights and Equal Opportunity Commission, Federal Sex Discrimination Commissioner, and CEO of the National Child Care Accreditation Council.¹⁵

Financial implications

According to the Explanatory Memorandum there will be a financial cost from increasing the Governor-General's salary. However, the net financial impact of the new arrangements is unquantifiable as it is not possible to estimate the exact taxation liabilities

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12. Hon. G E Whitlam, Prime Minister, 'Second reading speech: Governor-General Bill 1974', House of Representatives, *Debates*, 9 April 1974, p. 1248.
 13. Hon. Kevin Rudd, Prime Minister, 'Australia's New Governor-General', *Media Release*, Canberra, 13 April 2008.
 14. *ibid.*
 15. Dr Patricia Edgar, 'Bryce an inspired choice', *Courier Mail*, 19 April 2008, p. 53.

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which will depend on the individual financial circumstances of the Governor-General and State Governors.¹⁶

Main provisions

Part 1 of Schedule 1 of the Bill amends existing section 3 of the Governor-General Act to increase the annual salary payable to the Governor-General from \$365 000 to \$394 000.

According to **Item 2** of the Bill, the increase in salary will not apply to the current Governor-General.

Part 2 of Schedule 1 of the Bill is about superannuation. **Items 3-10** amend existing subsection 2A of the Governor-General Act to repeal eight separate definitions which relate to the superannuation surcharge provisions. The rationale for the change is that the Superannuation Surcharge was discontinued in 2005 in accordance with the *Superannuation Laws Amendment (Abolition of Surcharge) Act 2005*. Whilst that Act did make consequential amendments to a number of Acts to give effect to the abolition of the surcharge, the Governor-General Act was not among them.

Item 13 deletes existing subsections 4(3) to 4(7) and inserts **proposed subsections 4(3) and 4(4)**. The rate of annual allowance which is payable as a pension to a former Governor-General is 60% of the rate of the salary payable to the Chief Justice of the High Court of Australia at that time: **proposed paragraph 4(3)(a)**. The rate of annual allowance which is payable to the surviving spouse of a deceased former Governor-General is five-eighths of the amount which would have been payable to the former Governor-General: **proposed paragraph 4(3)(b)**.

Under **proposed subsection 4(4)** the amount of annual allowance payable to a former Governor-General, or a deceased former Governor-General's spouse is to be reduced by the amount of any pension or retiring allowance payable whether under any law or otherwise.

Existing section 4A is about the amount payable when a Governor-General dies leaving more than one spouse. Under subsection 4A(1) the Commissioner must allocate any allowance payable to a spouse of the deceased person among the spouses. **Item 14** repeals existing paragraph 4A(3)(b) and inserts **proposed paragraph 4A(3)(b)** which places a cap on the amount which can be paid. The proposed paragraph provides that the aggregate of the allowances payable to the former spouses cannot exceed 100% of the allowance that would have been payable to the deceased person, that is, 60% of the rate of the salary payable to the chief Justice of the High Court of Australia.

16. Explanatory Memorandum, p. 1.

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Item 16 repeals existing section 5A which relates to the trustee of a scheme under the *Superannuation Contributions Tax (Assessment and Collection) Act 1997*. As the superannuation surcharge has been abolished, this provision is no longer necessary.

Item 17 provides that the repeals and amendments contained in this Bill do not apply to any person who held the office of Governor-General after 29 June 2001 and before the commencement of the Bill. This means that the changes do not affect those former Governors-General to whom the superannuation surcharge did apply.

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