



## Superannuation Legislation Amendment Bill 2004

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## Superannuation Legislation Amendment Bill 2004

**Date Introduced:** 17 November 2004

**House:** House of Representatives

**Portfolio:** Finance and Administration

**Commencement:** With Royal Assent

### Purpose

The purpose of the Superannuation Legislation Amendment Bill 2004 is to amend the *Superannuation Act 1976* (the CSS Act) in respect of the Commonwealth Superannuation Scheme (CSS) and the Rules of the Public Sector Superannuation Scheme (PSS) in relation to the superannuation salary for Departmental Secretaries and certain other statutory officer holders who are members of the CSS and PSS.<sup>1</sup>

### Background

This Bill was originally introduced into the House of Representatives on 11 August 2004, but lapsed when Parliament was prorogued for the general election. The Bill as reintroduced is substantially similar to the lapsed Bill, however, it now extends to all determinations made under the *Remuneration Tribunal Act 1973*.

A condition of employment for the majority of employees of the Commonwealth Government is membership of the Commonwealth's superannuation schemes. Employees of the Commonwealth, other than Defence Force personnel, are either members of the CSS – closed to new members from 1 July 1990 – or the PSS.<sup>2</sup>

The generous benefits provided by the schemes to their members are defined by formulas in the PSS's trust deed and the relevant legislation governing the CSS. The formulas are dependent on the length of service of members, a salary component (for the CSS final salary and for the PSS final average salary based on the average of their salary as at their previous three birthdays) and the reason for ceasing their Commonwealth employment (for example retirement, resignation, involuntary redundancy or invalidity).

Generally, for the CSS the annual rate of salary used to calculate a member's benefit is defined in subsection 5(2) of the *Superannuation Act 1976* (the 1976 Act). The annual rate of salary is used to determine the contributions made to the CSS by members and some of the types of benefits a member is entitled to, including when they retire from the workforce. Subsection 5(1) in the 1976 Act defines salary, for the definition of annual rate of salary, as:

salary or wages and includes any allowance, or the value of any allowance, or any fee, that is an allowance or fee of a kind that, under the regulations, is to be treated as

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salary for the purposes of this Act, but does not include any part of any salary or wages that, under the regulations, is not to be treated as salary for the purposes of this Act.

For the PSS, a member's benefit is determined in accordance with the PSS Rules. A member's average salary is calculated using a member's basic salary and recognised allowances.

Both schemes, the CSS and PSS, allow the superannuation salary for some Australian Government office holders to be determined by the Remuneration Tribunal. The purpose of this Bill is to provide for superannuation salary and the use of the remuneration of Secretaries and certain Australian Government office holders as made by determinations of Ministers and Presiding Officers of the Parliamentary Departments.<sup>3</sup>

## Main Provisions

### Schedule 1 – Amendment of the *Superannuation Act 1976*

**Item 1 of Schedule 1** inserts new subsections into section 5 of the 1976 Act. **Proposed subsection 5(3AB)** expands the definition of annual rate of salary to include the remuneration of office holders whose remuneration is made by:

- a ministerial determination under the Act in respect of which the person is appointed
- a determination made by the Commonwealth Parliament's Presiding Officers<sup>4</sup> in respect of a person appointed under the *Parliamentary Services Act 1999*, or
- a Remuneration Tribunal determination in respect of a person employed under an Act.

**Proposed subsection 5(3AC)** ensures that where a person's remuneration is set by a determination identified in **proposed subsection 5(3AB)**, the remuneration in the specified in the determination is used to calculate a person's annual rate of salary in the CSS.

**Subitem 2(1)** provides that the amendments made by **item 1** apply to determinations made by a minister, a presiding officer under the *Parliamentary Services Act 1999* or under the *Remuneration Tribunal Act 1973* (other than determinations made under section 12C of the Act) after the item commences. The subitem further deals with the setting of superannuation salary for Commonwealth Superannuation Scheme (CSS) members' determinations under the *Remuneration Tribunal Act 1973* (including under section 12C of the *Remuneration Tribunal Act 1973*). Section 12C of the *Remuneration Tribunal Act 1973* provides that the employing body for a principal executive officer may determine the terms and conditions which apply to the office, providing that the terms and conditions are not inconsistent with the Principal Executive Officer Framework determined by the Remuneration Tribunal.<sup>5</sup>

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**Items 2(2) and (3)** provide the amendments made by **item 1** apply to determinations made prior to the commencement of **item 1** and will not reduce any CSS benefits already being paid.

## Schedule 2 – Amendment of the Rules for the Administration of the Public Sector Superannuation Scheme

**Item 1** amends the definition of basic salary in the PSS Rules so as to include amounts identified in accordance with **proposed Rules 1.2.3** and **1.2.4** and amounts agreed to between a member and their designated employer.

**Item 2** amends the definition of recognised allowances in the PSS Rules so as to include amounts identified in accordance with **proposed Rules 1.2.3** and **1.2.4** and amounts agreed to between a member and their designated employer.

**Item 3** inserts **proposed Rules 1.2.3** and **1.2.4** into the PSS Rules. **Proposed Rule 1.2.3** includes as basic salary and recognisable allowance, remuneration or elements of remuneration relating to a member, identified under a determination by the Minister (currently the Minister for Finance) as basic salary or recognisable allowance in relation to a member.

**Proposed Rule 1.2.4** includes as basic salary and recognisable allowance, remuneration or elements of remuneration relating to a member, identified under:

- a ministerial determination under the Act in respect of which the person is appointed
- a determination made by the Commonwealth Parliament's Presiding Officers in respect of a person appointed under the *Parliamentary Services Act 1999*, or
- a Remuneration Tribunal determination in respect of a person employed under an Act.

**Item 4** provides the amendments made by **items 1** to **3** apply to determinations made prior to the commencement of the amendments in **items 1** to **3** and will not reduce any PSS benefits already being paid.

## Concluding Comments

This bill achieves the Government's objective of amending the 1976 Act and the PSS Rules to include for superannuation salary purposes the remuneration of Departmental Secretaries and certain other statutory officer holders who are members of the CSS and PSS.

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## Endnotes

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- 1 Peter Slipper, Parliamentary Secretary to the Minister for Finance and Administration, ‘Second Reading Speech: Superannuation Legislation Amendment Bill 2004’, House of Representatives, *Debates*, 11 August 2004, p. 32384. Similar: Dr Sharman Stone, Parliamentary Secretary to the Minister for Finance and Administration, ‘Second Reading Speech: Superannuation Legislation Amendment Bill 2004’, House of Representatives, *Debates*, 17 November 2004, p. 1.
- 2 Defence Force personnel are either members of the Defence Force Retirement and Death Benefits Scheme – closed to new members from 1 October 1991 – or the Military Superannuation and Benefits Scheme.
- 3 Slipper, op. cit.
- 4 The Presiding Officers of the Commonwealth Parliament are the Speaker of the House of Representatives and the President of the Senate.
- 5 Principal Executive Officers, Remuneration Tribunal, Determination 1999/15.

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