Chapter 1

Introduction

The inquiry

1.1 On 17 June 2009 the Senate, on the recommendation of the Selection of Bills Committee (Report No. 8 of 2009), referred the Parliamentary Superannuation Amendment (Removal of Excessive Super) Bill 2009 (the bill) to the Finance and Public Administration Legislation Committee (the committee) for inquiry and report by 8 September 2009. The inquiry was advertised in *The Australian* and also through the Internet. The committee invited submissions from the Australian Government and interested organisations and individuals. No submissions were received.

1.2 The committee held a public hearing in Canberra on 14 August 2009. Appendix 1 lists the witnesses who appeared and the additional information received. The Hansard transcript of evidence may be accessed through the committee's website at www.aph.gov.au/senate/committee/fapa_ctte/index.htm.

1.3 The committee wishes that thank all those who assisted with this inquiry.

Purpose of the bill

1.4 The objectives of the bill are threefold:

- to terminate the retirement scheme constituted by the *Parliamentary Contributory Superannuation Act 1948* (the Parliamentary Contributory Superannuation Scheme or PCSS); and
- to require existing members of the PCSS to choose a complying superannuation fund in line with the arrangements applying to new parliamentarians since 2004, under the *Parliamentary Superannuation Act 2004*; and
- to require the Commonwealth to pay into the complying superannuation funds chosen by existing members their respective commuted superannuation benefits and ongoing superannuation contributions.[1]

1.5 The Parliamentary Superannuation Amendment (Removal of Excessive Super) Bill 2009 would require the Parliamentary Retiring Allowances Trust[2] to

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1 Parliamentary Superannuation Amendment (Removal of Excessive Super) Bill 2009, cl.3.

2 The Parliamentary Retiring Allowances Trust (the Trust) has responsibility for matters where discretion has been given under the *Parliamentary Contributory Superannuation Act 1948*. The Trust consists of five trustees: the Minister for Finance and Deregulation who is the presiding trustee, plus two Senators and two Members of the House of Representatives appointed by their respective Houses.

calculate the monetary value of a PCSS member's entitlement as at 30 June 2009, with this amount being transferred to either the member's chosen superannuation fund or a default fund.[3] The Commonwealth must then make future contributions to the member's chosen superannuation fund.[4] Proposed section 18D would ensure that members are not entitled or required to make further contributions to the PCSS.

Background to Parliamentary superannuation arrangements[5]

1.6 Currently, there are two parliamentary superannuation schemes in operation for members and senators (MPs). The first is the Parliamentary Contributory Superannuation Scheme (PCSS), which commenced operation in 1948 and was closed to new members from date of the 2004 election, which was held on 9 October 2004.

1.7 The second is constituted by the arrangements made under the *Parliamentary Superannuation Act 2004*. These relatively new arrangements only apply to MPs first entering, or former MPs re-entering, Parliament as a result of the 2004 election or subsequent elections. These arrangements require a percentage of a member’s or senator’s parliamentary income to be paid into a superannuation fund of their choice.[6]

1.8 The new arrangements originated during the lead up to the 2004 election when the then Leader of the Opposition, Mr Mark Latham MP, announced that a Labor Government would close down the current superannuation schemes for Federal MPs, judges and the Governor-General. In the press release that accompanied the announcement, Mr Latham stated that along with the Parliamentary scheme, the judges’ and Governor-General’s schemes:

> ...are well outside the community standard in Australia and have become out-of-date. They offer superannuation benefits seven times more generous than the current contribution scheme available to the general public.
>
> Parliamentary superannuation has become a major source of public dissatisfaction and cynicism in modern politics. That is why a Labor Government will pass legislation closing the scheme to new entrants.[7]

1.9 On 12 February 2004, the then Prime Minister, the Hon John Howard MP announced in response that the government would close the PCSS and establish new

3 Proposed sections 18C and 22BB–22BE.

4 Proposed section 32.

5 This section is based on the Parliamentary Library's *Bills Digest no. 131, 2003–04, Parliamentary Superannuation Bill 2004*, May 2004, www.aph.gov.au/library/pubs/bd/2003-04/04bd131.pdf (accessed 21 August 2009) and *Bills Digest no. 42, 2006–07, Parliamentary Superannuation Amendment Bill 2006*, October 2006, www.aph.gov.au/library/pubs/bd/2006-07/07bd042.pdf (accessed 21 August 2009).

6 If the member or senator does not choose a particular fund – the payments are made into the Australian Government Employees Superannuation Trust (AGEST).

7 Mr Mark Latham MP, *Statement by Federal Labor Leader Mark Latham: Parliamentary Superannuation*, Press Release, 10 February 2004.

superannuation arrangements for new Members and Senators elected from the next federal election. The Prime Minister justified his decision on the basis of:

> ...a community perception that this super's too generous, I think the overall package is not too generous but people think the super's generous and rather than this thing drift on for months as the subject of a partisan political debate I've decided to act immediately to get it off the agenda as a partisan political issue…[8]

1.10 Prior to the 2004 election, the government introduced, and the Parliament passed, the bills which established the new superannuation arrangements. A broad overview of the pre-2004 and post-2004 arrangements is provided below.

Parliamentary Contributory Superannuation Scheme[9]

1.11 The *Parliamentary Contributory Superannuation Act 1948* (the Act) provides a compulsory superannuation scheme under which benefits are paid to former members of Parliament, their spouses, and orphan children. Membership of the PCSS is compulsory for all Members of Parliament (MPs) who entered Parliament before 9 October 2004.[10]

1.12 The scheme is administered by the Department of Finance and Deregulation on behalf of the Minister for Finance and Deregulation. The Parliamentary Retiring Allowances Trust (the Trust) is responsible for matters where discretion has been provided under the Act. There are five trustees of the Trust – the Minister for Finance and Deregulation (or Minister authorised by the Minister for Finance and Deregulation) as presiding trustee, plus two Senators and two Members of the House of Representatives appointed by their respective Houses.[11]

History of the scheme

1.13 The PCSS was established in 1948. A 1997 report of the Senate Select Committee on Superannuation detailed the following reasons for the scheme's establishment:

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8 The Hon John Howard MP, Prime Minister, *Transcript of the Prime Minister the Hon John Howard MP*, Press Conference, Parliament House, Canberra, 12 February 2004.

9 This section is based on the Department of Finance and Deregulation's *Parliamentary Contributory Superannuation Scheme Handbook*, April 2009, www.finance.gov.au/superannuation/docs/parliamentary-superannuation-handbook.pdf (accessed 20 August 2009).

10 Department of Finance and Deregulation, *Parliamentary Contributory Superannuation Scheme Handbook*, April 2009, p. 1.

11 Department of Finance and Deregulation, *Parliamentary Contributory Superannuation Scheme Handbook*, April 2009, p. 1.

- entering Parliament often meant foregoing potential superannuation payouts from previous employers due to leaving that employer prior to retirement age;
- electoral and 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 otherwise not come.[12]

Eligibility

1.14 Membership of the PCSS is restricted to MPs who entered Parliament before the closure of the scheme to new members from 9 October 2004.13 Parliamentarians who enter Parliament after this time, including former MPs who return to Parliament and former State Parliamentarians who join the Australian Parliament, are not eligible to joint the PCSS. Similarly, sitting MPs who leave Parliament and become entitled to a parliamentary retiring allowance and are re-elected to Parliament in the future are not eligible to rejoin the PCSS.[14]

Contributions

1.15 Contributions to the scheme are a fixed percentage of:

(a) the backbench salary payable from time to time; and

(b) any additional salary, or allowance in the nature of salary, received from time to time for service as Prime Minister, a Minister or office-holder in Parliament.[15]

1.16 Contributions are paid into the Consolidated Revenue Fund.

1.17 Ms Campbell, Deputy Secretary, Department of Finance and Deregulation described the contribution arrangements in the following manner:

> The Parliamentary Contributory Superannuation Scheme requires members of parliament to contribute to their superannuation. Members are required

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12 25th Report of the Senate Select Committee on Superannuation, *The Parliamentary Contributory Superannuation Scheme and the Judges' Pension Scheme*, September 1997, p. 9.

13 Department of Finance and Deregulation, *Parliamentary Contributory Superannuation Scheme Handbook*, April 2009, p. 1. The Parliamentary Contributory Superannuation Scheme Handbook notes an exception to this general principle where a serving MP who ceases to be a member of the House of Representatives on dissolution of the House to stand for the Senate, or resigns from the Senate to stand for election to the House of Representatives, and is elected to that other House within three months will remain a member of the PCSS.

14 Department of Finance and Deregulation, *Parliamentary Contributory Superannuation Scheme Handbook*, April 2009, p. 1.

15 Department of Finance and Deregulation, *Parliamentary Contributory Superannuation Scheme Handbook*, April 2009, p. 2.

> to contribute 11.5 per cent of post-tax salary for the first 18 years of their term and after that 5.75 per cent of post-tax salary. When members leave the parliament after having completed a minimum of 12 years service or four terms they are entitled to a pension. The minimum pension is 50 per cent of a backbencher’s salary and the maximum pension is 75 per cent of a backbencher’s salary. The amount that is paid depends on the years of service and there is also an element of pension paid for extra responsibilities, such as ministerial responsibilities. However, if retirement is involuntary due to the loss of preselection or loss at an election, a member qualifies after completing eight years of service or three terms.[16]

1.18 Ms Campbell went on to explain that, based on a backbencher’s current salary of $127 060, eligible MPs would receive a taxable annual pension of $63 530 for the rest of their lives.[17]

1.19 Salary sacrifice arrangements are not allowed under the PCSS.[18]

Benefits payable to former Senators and Members

1.20 The PCSS is an unfunded defined benefit scheme. Therefore, when a pension becomes payable, benefits are funded from an appropriation within the Commonwealth Budget, and the member's entitlement is, generally, a multiple of years of service and a percentage of salary. Thus, the amount of benefit is fixed by a formula rather than by market returns on investments[19] as is the case for accumulation superannuation funds.

1.21 The PCSS Handbook notes that on retirement from Parliament, a PCSS member is entitled to a retiring allowance (or pension) if:

(a) 12 or more years of service has been completed;

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16 Ms Kathryn Campbell, Deputy Secretary, Department of Finance and Deregulation, *Committee Hansard*, 14 August 2009, p. 1.

17 Ms Kathryn Campbell, Deputy Secretary, Department of Finance and Deregulation, *Committee Hansard*, 14 August 2009, pp 1–2. Ms Campbell also explained that if the MP were elected after 2001, then a preservation age of 55 applies. Because pension entitlements are expressed as a percentage of the backbench salary as payable from time to time, the actual amount of the pension will increase as the backbench salary (and any other relevant additional salary) is increased (Department of Finance and Deregulation, *Parliamentary Contributory Superannuation Scheme Handbook*, April 2009, p. 12).

18 Department of Finance and Deregulation, *Parliamentary Contributory Superannuation Scheme Handbook*, April 2009, p. 2.

19 Parliamentary Library, *Superannuation Benefits for Senators and Members*, June 2007, p. 2, www.aph.gov.au/library/intguide/POL/Super.htm (accessed 20 August 2009).

(b) the member has on four occasions, ceased[20] to be a member on the dissolution or expiration of the House of which he or she was then a member or on the expiration of a term of office; or

(c) retirement is involuntary (due to the loss of pre-selection or loss of an election) and the member has completed not less than 8 years service or has on three occasions, ceased[20] to be a member on the dissolution or expiration of the House of which he or she was then a member or on the expiration of a term of office.[21]

1.22 According to the Handbook, a PCSS member with less than 8 years service who qualifies for a retiring allowance under (b) or (c) above, is deemed to have completed 8 years of service.

1.23 Where the scheme member is not entitled to a pension, they are entitled to a lump sum comprising a refund of contribution plus a supplement, the amount of which is:

- two and one-third times the member contributions if the retirement is involuntary;
- one and one-sixth times the member contributions during the past 8 years of service if retirement is deemed to be voluntary.[22]

1.24 Where, however, the minimum level of superannuation required under the Superannuation Guarantee (SG) legislation has not been provided by the payment of the lump sums described above, lump sum benefits will be increased. The SG minimum amount is calculated on the following basis:

- member's voluntary retirement benefit as at 30 June 1992; plus
- member's own contributions from 30 June 1992; plus
- minimum SG employer contributions from 30 June 1992;
- all accumulated with Public Sector Superannuation scheme interest until retirement.[23]

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20 A member is considered to have ceased to be a member on the dissolution of the House of which he or she was a member or on the expiration of a term of office on the day on which he or she ceases to receive his or her backbench salary in respect of that term.

21 Department of Finance and Deregulation, *Parliamentary Contributory Superannuation Scheme Handbook*, April 2009, p. 2.

22 Department of Finance and Deregulation, *Parliamentary Contributory Superannuation Scheme Handbook*, April 2009, p. 3.

23 Department of Finance and Deregulation, *Parliamentary Contributory Superannuation Scheme Handbook*, April 2009, p. 4.

Post-2004 arrangements[24]

1.25 The new arrangements, which began operation after the 2004 general election, introduced wholesale changes to the system governing Federal MPs' superannuation entitlements. This section describes the new arrangements while the following section seeks to compare the entitlements under each arrangement.

1.26 The new arrangements involve a 9 per cent government contribution up to 30 September 2006 and 15.4 per cent from 1 October 2006,[25] payable into a superannuation fund chosen by the 'new MP'.[26] The government contribution is calculated on total parliamentary salaries.

1.27 One of the key features of the post-2004 arrangements appears to be greater flexibility. Ms Campbell told the committee:

> The pre-2004 scheme was a defined benefit very structured around the pension and the availability of a lump sum. The post-2004 scheme is...an accumulation system which allows members to make their own decisions about where their money is placed, including how it is invested, as well as portability—so it can be transferred into other schemes and members can also include other superannuation funds or elements that they have already accrued or are going to accrue into the future...[27]

1.28 There is no requirement for personal after tax contributions (as there is in the PCSS), however MPs are able to salary sacrifice up to 50 per cent of parliamentary salary. This enables them to supplement the government contribution.

1.29 One of the major differences between the pre- and post-2004 arrangements is the allocation of risk. As described above, the PCSS is a defined benefit scheme whereby a member's final benefit is calculated on a predetermined formula unrelated to the fund’s investment earnings performance. Thus if investment returns decline, as has occurred so dramatically over the past 12 months, the fund is still required to meet the members' prescribed entitlements.

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24 This section is based on the Department of Finance and Deregulation's *Parliamentary Superannuation Arrangements for New Members of Parliament* website, www.finance.gov.au/superannuation/parliamentary-superannuation/new-parliamentary-superannuation-arrangements.htm (accessed 25 August 2009).

25 The 9 per cent figure corresponds to the minimum required employer contributions under the Superannuation Guarantee provisions whereas the 15.4 per cent figure corresponds to the Commonwealth’s notional contribution rate of the Commonwealth public servant’s superannuation schemes (the Public Sector Superannuation Scheme and the Public Sector Superannuation Scheme – Accumulation Plan).

26 For the purpose of this discussion, 'new MP' refers to an MP first entering or re-entering Parliament, at or after the 2004 election.

27 Ms Kathryn Campbell, Deputy Secretary, Department of Finance and Deregulation, *Committee Hansard*, 14 August 2009, p. 3.

1.30 The post-2004 arrangements on the other hand, place new MPs superannuation savings into accumulation funds. The final benefit under accumulation schemes is made up of contributions to the funds, plus any investment earnings, less administration costs. As a result, for accumulation schemes the financial risk of retirement saving is borne by the MP rather than the Treasury.

1.31 Under the new arrangements, MPs are able to choose a complying superannuation fund or Retirement Savings Account to receive their government contribution.[28] As a result, MPs' superannuation entitlements are now managed by a range of different funds, each offering different superannuation products, benefits, fee structures and returns. So the superannuation entitlements of each new MP will vary depending on which fund they select and the performance of that fund. This is one reason why it is very difficult to directly compare the pre- and post-2004 arrangements.

1.32 In the event that a new MP does not choose a preferred fund, a default fund, as nominated by the Minister for Finance and Administration,[29] becomes the MP's superannuation fund.

Comparison of entitlements

1.33 It is worth noting at the outset that due to the high number of variables, it is very difficult to make a meaningful comparison between the pre- and post-2004 arrangements. Variables such as retirement age, returns on investment, co-benefits (e.g. insurance and spouse benefits), and post-tax contributions, make the task of comparing entitlements under the two sets of arrangements a little like comparing apples and oranges.

1.34 The Department of Finance and Deregulation was asked to prepare a practical comparison between the pre- and post-2004 arrangements. The department provided the following instructive example which demonstrates that under this specific scenario there is little difference between the superannuation entitlements payable under the two schemes. The assumptions used to generate this example include, that the MP:

- retires from Parliament in August 2010 at age 60;
- the member had received the backbench salary for the duration of his/her service which is currently $127 060 per annum; and

the post-2004 member had:

- received employer contributions of 15.4 per cent per annum (notwithstanding that Superannuation Guarantee was introduced progressively from 1992);

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28 However, the fund must not be a self managed superannuation fund.

29 The Finance Minister has identified the Australian Government Employees Superannuation Trust (AGEST) as the default fund.

- salary sacrificed an amount each year equivalent to the after tax contribution of 11.5 per cent (or 5.75 per cent after 18 years of service) made by a member in the PCSS;
- 15 per cent contributions tax on employer contributions was applied; and
- a fund earnings rate, after investment fees and taxes, of 6 per cent.

1.35 The full list of assumptions is reproduced in Appendix 2.

Table 1—Comparison of pre- and post-2004 arrangements (less than 8 years service)

Years of service	PCSS Entitlement – Involuntary Lump Sum Benefit (after tax)	Value of benefit under post 2004 arrangements (after tax)
1	$43,081	$38,525
2	$86,162	$81,070
5	$208,159	$212,494
7	$279,676	$306,670

Source: Department of Finance and Deregulation, answer to question on notice, 11 September 2009, p. 3.

Table 2—Comparison of pre- and post-2004 arrangements (10–30 years service)

Years of service	PCSS Entitlement - full pension	PCSS Entitlement - 50% pension, 50% lump sum		Value of benefit under post 2004 arrangements (after tax)
	Pension pa (after tax)	Pension pa (after tax)	Lump Sum benefit (after tax)	
10	$62,764	$33,912	$302,322	$455,485
15	$75,847	$41,043	$372,526	$723,596
20	$83,390	$44,943	$414,326	$996,809
30	$83,222	$44,882	$413,558	$1,458,796

Source: Department of Finance and Deregulation, answer to question on notice, 11 September 2009, p. 3.

1.36 The department acknowledged that 'the above results are dependent on specific assumptions. Changes to any of the assumptions listed above may lead to a significant change in the results.'[30]

1.37 Despite the above example which shows a large degree of similarity between the benefits accrued under the two arrangements, a number of commentators have expressed the view that the benefits provided under the two schemes are not equivalent. The Parliamentary Library has observed that the post-2004 arrangements are 'far less generous than the PCSS scheme.'[31] The Library's 2006 report goes on to

30 Department of Finance and Deregulation, answer to question on notice, 11 September 2009, p. 3.

31 Parliamentary Library, *Bills Digest no. 42, 2006–07, Parliamentary Superannuation Amendment Bill 2006*, October 2006, p. 3.

note that the Commonwealth's notional contribution to the PCSS is about 70 per cent of a parliamentarian's income whereas the comparable rate under the new arrangements is 15.4 per cent.[32]

1.38 Another significant difference between the pre- and post-2004 arrangements is death and invalidity benefits. The benefits under the PCSS are well defined, for example death benefits equal to five sixths of the rate of pension that the deceased member was being paid or would be entitled to, is payable to an eligible partner.

1.39 By contrast the post-2004 arrangements will vary from MP to MP depending on which superannuation fund they choose, as it depends on the nature of the insurance arrangement for the particular superannuation scheme that the member is in. Typically, death benefits will equate to the amount in the member's account plus any applicable death cover. The Department of Finance and Deregulation's comparison of the death and invalidity benefits provided by the PCSS and AGEST is reproduced in Appendix 3.

Committee view

1.40 The committee notes that while the two sets of arrangements are inherently difficult to compare, the new arrangements have aligned the superannuation entitlements of MPs elected post-2004, much more closely with the arrangements of the majority of Australians.

32 Parliamentary Library, *Bills Digest no. 42, 2006–07, Parliamentary Superannuation Amendment Bill 2006*, October 2006, p. 3.