

The Senate

Finance and Public Administration
Legislation Committee

Parliamentary Superannuation Amendment (Removal
of Excessive Super) Bill 2009

September 2009

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ISBN 978-1-74229-173-4

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Printed by the Senate Printing Unit, Parliament House, Canberra.

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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 to 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 Trust² to

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 arrangements⁵

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 Scheme⁹

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:

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 join 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

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 investments¹⁹ 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;

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, ceased²⁰ 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, ceased²⁰ 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

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 arrangements²⁴

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.

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);

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.

Chapter 2

Key Issues

2.1 The committee has identified three key issues that emerged from this inquiry: financial implications; the principle of non-retrospectivity; and compensation.

Financial implications

2.2 Very little information is available regarding the possible financial implications that will result if the bill is passed. The Explanatory Memorandum to the original 2004 legislation provided an estimate of the fiscal impact of closing the PCSS to contributing members. The estimate ranged from an annual financial saving of between \$0.9–5.3 million, between 2004–05 and 2007–08. However, to extrapolate this figure to the current bill may be to significantly overstate its fiscal impact, as the bill would only apply to little over half of current MPs.¹ The committee notes that as the PCSS is now closed to new members, the number of sitting MPs that are contributing PCSS members will naturally decline over time. As a result, there will be fewer and fewer MPs entitled to the more generous PCSS, until a time is reached when there will be no more contributing members.

2.3 The Department of Finance and Deregulation provided the committee with an estimated cash cost of \$317 million to close the PCSS in accordance with the approach described in bill. According to the department:

This cost estimate was derived by Mercer [which provides actuarial advice to the department] based on the assumption that members would become entitled to a pension from the date of closing the PCSS (assumed 1 July 2010), and would receive a lump sum amount that represents the fair value of that pension to transfer to a superannuation scheme of their choice.²

2.4 The committee heard evidence from the Department of Finance and Deregulation that an estimate for the unfunded liability for current PCSS contributors is in the order of \$220 million.³

2.5 The Department explained the reason for this discrepancy:

The estimated cash cost of closing the PCSS [\$317 million] is higher than the \$220 million referred to in the hearings, which was based on unfunded

1 There are currently 126 sitting MPs that are members of the PCSS. This means that 100 of a total of 226 members and senators that are now covered by the new arrangements.

2 Department of Finance and Deregulation, answer to question on notice, 11 September 2009, p. 23.

3 Mr Alan Greenslade, First Assistant Secretary, Department of Finance and Deregulation, *Committee Hansard*, 14 August 2009, p. 7.

superannuation liability attributed to PCSS contributors, due to the different assumptions that are applied in deriving the two figures. In particular, the approach proposed in the Bill requires the value of benefits payable to existing contributors to be calculated from 1 July 2010 rather than from the expected retirement date of members. It also requires an assumption that all members receive their full entitlement as a pension from that date.⁴

Committee view

2.6 The committee acknowledges that in theory there could be some cost saving resulting from moving contributing members of the PCSS to the new arrangements, as the PCSS is a more generous scheme. However, this theoretical possibility is unlikely to eventuate because of a compensation liability that is likely to arise. As is discussed below, if the government is required to compensate contributing members on just terms for the removal of their PCSS entitlements, these potential savings will be severely eroded. If the compensation claims are sufficiently large then there will be an overall cost to the measure at the detriment of both the government and the taxpayer.

2.7 The committee also notes the actuarial advice from the Department of Finance and Deregulation that the immediate cost of closing the PCSS is in the order of \$100 million greater than the current unfunded liabilities of the PCSS. It would be a perverse outcome that in order to bring the superannuation entitlements of 'pre-2004 MPs' into line with the majority of Australians, the bill would impose an initial expense to taxpayers of approximately \$100 million.

2.8 The committee is also of the view that MPs' superannuation entitlements should not be reviewed in isolation of other aspects of their remuneration. As discussed below the committee supports a holistic approach to MPs' entitlements.

Non-retrospectivity

2.9 The committee first considered this issue back in June 2004 when it inquired into the originating legislation; the Parliamentary Superannuation Bill 2004. In its report, the committee expressed concerns regarding the proposition put at that time, to extend the new arrangements to all sitting MPs. The committee reiterates its earlier remarks:

The Committee, however, is concerned that expanding coverage of the proposed arrangements to current parliamentarians may be at odds with the principle of non-retrospectivity.⁵

4 Department of Finance and Deregulation, answer to question on notice, 11 September 2009, p. 23.

5 Senate Finance and Public Administration Legislation Committee, *Provisions of the Parliamentary Superannuation Bill 2004 and the Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004*, June 2004, p. 13.

2.10 The Minister's second reading speech for that bill, which sets out the government's rationale for not supporting its retrospective application, is also worth restating:

The government does not support retrospective changes to accrued superannuation. Of course, retrospectivity in most circumstances is a most undesirable thing. Such changes would not be in line with the superannuation arrangements applying generally in the community, which protect accrued superannuation entitlements. Existing senators and members will have made financial arrangements and commitments based on the expectation of continued membership of the current scheme. It would be unfair and inequitable to reduce their entitlements retrospectively.⁶

Committee view

2.11 The committee reaffirms its earlier comments regarding the principle of non-retrospectivity and endorses the proposition that it would be unfair and inequitable to reduce MPs' existing superannuation entitlements retrospectively.

Compensation

2.12 The Department of Finance and Deregulation raised the potential legal vulnerabilities of enacting the changes proposed by the bill. Officials told the committee:

There is also the issue of the legal risks. There is a risk under the Constitution about the unjust acquisition of property. Clearly members have different considerations of how valuable a pension is versus a lump sum, depending on a number of factors including lifestyle, age and length of service. But it is open that members may wish to challenge in the High Court on the fact that their property had been unjustly acquired. In the bill as it is currently drafted there is not guidance on how the pension would be converted to a lump sum and how that amount would be paid to another fund.⁷

2.13 This risk would seem to be heightened due to the acknowledgement by the department that '[t]here would be a significant change to the member's entitlements.'⁸

6 The Hon Peter Slipper MP, Parliamentary Secretary to the Minister for Finance and Administration, *House of Representatives Hansard*, 12 May 2004, p. 28334.

7 Ms Kathryn Campbell, Deputy Secretary, Department of Finance and Deregulation, *Committee Hansard*, 14 August 2009, p. 4.

8 Ms Kathryn Campbell, Deputy Secretary, Department of Finance and Deregulation, *Committee Hansard*, 14 August 2009, p. 5.

Committee view

2.14 The committee is concerned about the prospect of exposing the Commonwealth to a potentially lengthy and expensive legal challenge over the proposed changes. Ultimately, any legal costs incurred by the Commonwealth would be borne by the Australian taxpayer. Given that the number of MPs contributing to the PCSS will naturally diminish over time, the committee sees little value in pursuing the arrangements proposed in this bill, particularly when it poses the risk of a drawn out legal battle over commuted benefits.

2.15 In closing, the committee reflects back to the conclusions of its 2004 report on this subject. In that report the committee commented:

...the Committee considers that assessing parliamentary superannuation in isolation from the remainder of the parliamentary remuneration package has limitations. The Committee's view is that a holistic approach to parliamentarians' remuneration is required. To ensure that the approach is transparent and accountable in the eyes of the public, the Committee considers that there is a case for referring parliamentarians' remuneration as a whole...for inquiry and report...⁹

2.16 In this regard the committee notes the recent announcement by the Special Minister of State and Cabinet Secretary, Senator the Hon Joe Ludwig, of an independent review of the entire Parliamentary entitlements framework.¹⁰ The review will trace out the path for the next stage of reform of Parliamentary entitlements and will report to government within six months of commencement. The report and recommendations of the panel will be reported publicly and will be considered by the government as a basis for reform of the Parliamentary entitlements system.¹¹

2.17 The terms of reference of the independent review specify that, amongst other things, 'the review should have regard to...remuneration and allowances...' which will clearly include superannuation entitlements. The review's terms of reference are reproduced in full at Appendix 4.

2.18 The committee supports this holistic approach to parliamentarians' remuneration and looks forward to the publication of the review's findings.

9 Senate Finance and Public Administration Legislation Committee, *Provisions of the Parliamentary Superannuation Bill 2004 and the Parliamentary Superannuation and Other Entitlements Legislation Amendment Bill 2004*, June 2004, p. 13.

10 Senator the Hon Joe Ludwig, Cabinet Secretary and Special Minister of State, 'Reform of parliamentary entitlements', Press release 35/2009, 8 September 2009.

11 Senator the Hon Joe Ludwig, Cabinet Secretary and Special Minister of State, *Proof Senate Hansard*, 8 September 2009, p. 43.

Recommendation 1

2.19 The committee recommends that the Senate not pass the bill.

Senator Helen Polley

Chair

Family First Dissenting Report

1.1 In 2004, the Howard Government took a step in the right direction by putting an end to the outrageous superannuation payments to new federal politicians.

1.2 This was an action too long in coming and one that did not go far enough.

1.3 The changes implemented in 2004 were inadequate because those politicians elected before 2004 still continued to remain eligible for excessive superannuation payouts on their retirement.

1.4 The *Parliamentary Superannuation Amendment (Removal of Excessive Super) Bill 2009* would bring the superannuation entitlements of those politicians still on the Parliamentary Contribution Superannuation Scheme (PCSS) into line with more acceptable standards.

1.5 This is acknowledged explicitly by the committee in the report:

The committee notes that while the two sets of arrangements are inherently difficult to compare, the new arrangements have aligned the superannuation entitlements of MP's elected post-2004, much more closely with the arrangements of the majority of Australians.¹

1.6 Importantly, this Bill would remove the effective golden handshake that many federal politicians currently receive on retirement and bring all those politicians elected pre-2004 into a scheme more closely in line with the broader community.

1.7 Under the current PCSS, members of Parliament elected prior to 2004 who have completed a minimum of 12 years service or 4 terms are entitled to a lifetime pension upon their retirement. In the case of members of Parliament who retire involuntarily due to the loss of preselection or loss at an election, they are able to qualify for a lifetime pension after completing only eight years of service or three terms.

1.8 When a member dies, the pension continues to be collected by the member's spouse for an amount of five-sixths of the entitlement that was payable to the member.

1.9 According to Ms Katherine Campbell, Deputy Secretary of the Department of Finance and Deregulation,

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.²

1.10 This means that a politician elected prior to 2004 in a by-election who gets re-elected on three more occasions and retires in 2010, having only ever served as a

1 Senate Finance and Public Administration Legislation Committee, *Parliamentary Superannuation Amendment (Removal of Excessive Super) Bill 2009*, September 2009, p. 10.

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

backbencher would receive a pension of \$63 000 for the rest of their life. This is an outrageous amount and a blatant rort of taxpayers' dollars.

1.11 Furthermore, unlike other superannuation schemes which are exposed to market risks, and in many cases, have produced negative returns in the 2008–09 financial year, the PCSS has zero exposure to market risks. Instead, this is borne entirely by Australian taxpayers.

1.12 In response to a question on notice, the Department of Finance and Deregulation stated:

The Parliamentary Contributory Superannuation Scheme (the pre 2004 arrangements) is an unfunded defined benefits superannuation scheme, where benefits are based on length of parliamentary service and salary. Member benefits are not affected by investment returns.

Under the post 2004 arrangements, MPs become members of accumulation funds (or defined contribution funds) where member benefits are affected by the level of contributions made by the employer and the employee and investment earnings on those contributions.³

1.13 Australians are tightening their belts and its time all politicians did the same. The government must surely lead by example. Just as the government is now looking to tighten those payments for fat cats who make their termination payments on the backs of hard-working Australians, so too must the same standards apply to politicians.

1.14 It is hypocritical for the Rudd Government to expect Australians to accept enormous government cuts in spending on vital services whilst they themselves remain immune to this pain. The first cuts in spending should be in pollied super.

1.15 The next time the Government asserts that it is unable to adequately fund important community projects, they ought to look in their own backyard for this money.

1.16 This bill will send a powerful message to Australians that their elected representatives are not feathering their own nest. Family First is genuinely passionate about the financial security and welfare of Australians. This Bill offers those politicians who believe in a fair go for all and who genuinely want to improve the lives of their fellow Australians the opportunity to demonstrate this through their actions and not just through their words.

Recommendation 1

1.17 Family First recommends that the bill be passed.

Senator Steve Fielding

3 Department of Finance and Deregulation, answer to question on notice, 11 September 2009, p. 22.

Appendix 1

Additional Information Received

Answers to Questions on Notice taken by Department of Finance and Deregulation at a public hearing on 14 August 2009.

Public Hearing and Witnesses

CANBERRA, FRIDAY 14 AUGUST 2009

CAMPBELL, Ms Kathryn, Deputy Secretary,
Department of Finance and Deregulation

GREENSLADE, Mr Alan, First Assistant Secretary,
Department of Finance and Deregulation

SOTIROPOULOS, Mr George, Branch Manager, Superannuation,
Department of Finance and Deregulation

Appendix 2

Assumptions made by the Department of Finance and Deregulation in the example provided on 11 September 2009

In order to make comparisons between the superannuation arrangements, the following assumptions have been made:

- the member retires from Parliament in August 2010 at age 60;
- the backbench salary at the time of the member's retirement is the same as the current rate of \$127,060 per annum;
- the member had received the backbench salary (per historic salary data) for the duration of his/her service;
- the PCSS member's retirement is considered involuntary for the purpose of calculating benefits for service periods that are less than 12 years (and thus qualifying the member for a pension entitlement after eight years of service or three occasions);
- for a member covered by the post 2004 arrangements:
 - the member had received employer contributions of 15.4% each year (notwithstanding that Superannuation Guarantee was introduced progressively from 1992) and in addition, has salary sacrificed an amount each year equivalent to the after tax contribution of 11.5% (or 5.75% after 18 years of service) made by a member in the PCSS;
 - the salary sacrificed amounts were calculated based on historic backbench salary and income tax rates (to which a Medicare levy of 1.5% was added);
 - administration fees and insurance fees that are charged by AGEST were applied;
 - 15% contributions tax on employer contributions was applied; and
 - a fund earnings rate, after investment fees and taxes, of 6% (this is based on the target asset return for the Balanced investment option in AGEST of CPI plus 3.5% per annum over the investment timeframe);
 - for the purpose of calculating the after tax superannuation benefits:
 - the member does not have any other assessable income besides the superannuation entitlement; and
 - the tax rates for superannuation benefits in 2009-10 (plus a Medicare levy of 1.5%) were applied.

Based on these assumptions, the tables below provide a comparison of the superannuation entitlements payable from the PCSS and the post 2004 arrangements for a backbencher, given the duration of service.

Under eight years of service (lump sum entitlements only for PCSS members)

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

Eight years of service or over

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

Note: 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.

Appendix 3

Comparison of death and ill-health benefits from the PCSS and AGEST

Details of the death and invalidity arrangements for the PCSS are provided at Attachment A, and those for AGEST are at Attachment B.

The following table summarises the general features of the two arrangements.

Summary Table - Death and Ill-Health Benefits from the PCSS and AGEST

	PCSS	AGEST
Commencement of cover	Cover starts on day the MP becomes entitled to parliamentary salary.	Subject to certain conditions, automatic cover commences when an employer contribution is received. Member is able to opt out of automatic cover. Also cover is not available for those over age 70.
Benefits	<p>Death</p> <p>A pension is payable to an eligible partner equal to five sixths of the rate of pension that the deceased member was being paid or is deemed to have been payable.</p>	<p>Death</p> <p>Amount in the member's superannuation account plus death cover, if any.</p>
	<p>Invalidity</p> <p>Applies where the Parliamentary Retiring Allowances Trust is satisfied that the MP is unlikely, because of physical or mental impairment, ever to be able to perform the duties of an MP again.</p> <p><i><u>At least 8 years service or 3 terms¹</u></i></p>	<p>Invalidity</p> <p>Applies where the MP is totally and permanently disabled (TPD) within the terms of the insurance policy (see page 18 of attached document).</p>

	<p>Pension equal to the retirement pension that the member would be entitled to. The minimum pension would be 50% of backbench salary.</p> <p><u>Less than 8 years service or 3 terms¹</u></p> <p>60% or more incapacity - pension of 50% of backbench salary.</p> <p>30% to 60% incapacity – pension of 30% of backbench salary.</p> <p>Less than 30% incapacity - lump sum equal to three and one third times the member's contributions.</p> <p>¹ A term occurs on the dissolution or expiration of the relevant house or the expiration of the MP's term of office. Senators, who are elected for six years, achieve a term after completing three years and another term at the completion of the six years.</p>	<p>The TPD benefit comprises the amount in the member's account plus any TPD Cover.</p> <p>TPD Cover is available either as:</p> <ul style="list-style-type: none"> – <u>unit based cover</u>, where the level of cover decreases with age for the same level of premium; or – <u>fixed cover</u>, where the cost of obtaining the same level of cover increases with age.
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ATTACHMENT A

Death and invalidity arrangements in respect of PCSS members

For the PCSS, the relevant provisions relating to invalidity and death benefits are contained in Part V of the *Parliamentary Contributory Superannuation Act 1948*.

Invalidity Retirement Benefits under the PCSS

Members of the PCSS are entitled to an invalidity benefit if the Parliamentary Retiring Allowances Trust is satisfied that the MP is unlikely, because of physical or mental impairment, ever to be able to perform the duties of an MP again.

Where the member has completed at least eight years service or three terms he or she will be entitled to a pension. The pension is based on the service completed by the member with the minimum pension being equal to 50% of backbench salary.

Where the member has not completed sufficient service or terms, the form and value of the invalidity benefit will depend on the extent of the person's incapacity in relation to non-parliamentary employment.

The three classes of invalidity are:

- class 1 – 60 per cent to 100 per cent incapacity, with a benefit of a non-commutable pension of 50 per cent of backbench salary, which is subject to review;
- class 2 – 30 per cent to 59 per cent incapacity, with a benefit of a non-commutable pension of 30 per cent of backbench salary, which is subject to review; or
- class 3 – less than 30 percent incapacity, with a benefit of a lump sum of three and one third times the member's own contributions.

Death benefits under the PCSS

Benefits payable to an eligible partner

A reversionary pension is payable to an eligible partner of a member. The reversionary pension is equal to five sixths of the rate of the pension to which the member is being paid or would have been entitled to be paid.

If the member died while a MP and had not completed eight years service, he or she is deemed to have completed eight years service for the purpose of calculating the amount of the pension.

Benefits payable to orphan children

A reversionary pension is payable to any eligible children of a member who dies while a MP or is being paid a pension, provided the member is not survived by an eligible partner who is the natural or adoptive parent of the child and who is entitled to a reversionary pension.

To be eligible child, a child must be under 16, or under 25 if a full-time student, and have been dependent on the member, at the time of his or her death.

Benefits payable to a personal representative

In accordance with the formula specified in section 19AB of the *Parliamentary Contributory Superannuation Act 1948*, a lump sum may be payable to the personal representative of a deceased member who is not survived by an eligible partner or eligible child.

ATTACHMENT B

Death and Invalidity Benefits for MPs who are AGEST members

AGEST is the default fund for parliamentarians who entered Parliament on or after 9 October 2004.

For AGEST members the benefits payable on death or total and permanent disablement comprise the member's superannuation account balance plus any insurance cover that they have purchased.

Specific information on insurance cover available for members of AGEST can be found at pages 15 to 24 of the AGEST Product Disclosure Statement dated 1 January 2009. The relevant pages are attached.

If a Parliamentarian chooses a fund other than AGEST, insurance will depend on the specific arrangements that are available within that scheme.

Appendix 4

Terms of Reference for a Review of the Parliamentary Entitlements Framework

The review will provide advice and recommendations to Government addressing issues such as:

- developing a single principles-based legislative basis that authorises the provision of specified entitlements, identifies who is eligible to access these entitlements and in what circumstances, and the purposes for which these entitlements may be used;
- recommending framework changes that remove instances or overlap, duplication, inconsistency and gaps in the provision of entitlements;
- defining in regulations and/or legislative instruments, key terms and the scope and any limits on entitlements use;
- improving transparency in the use of taxpayer funded parliamentary entitlements;
- enabling accountability processes to be mandated; and
- recommending possible improvements to the protocol for handling allegations of misuse of entitlements.

In formulating advice and recommendations, the review should have regard to:

- the development of a new simplified framework;
- appropriate use of entitlements during election campaigns;
- the inter relationship with the *Members of Parliament (Staff Act) 1984* employment framework;
- entitlements provided at Parliament House;
- remuneration and allowances (including the current electorate allowance):
- private plated vehicles;
- overseas study travel;
- entitlements to Life Gold Pass and severance travel;
- entitlements of former Prime Ministers (including a head of authority to provide any entitlements), Governors-General and former Parliamentarians;
- production of postal vote applications under the printing entitlement; and
- other matters considered relevant to the review.

The Review is to report to Government within six months of commencement.

