



Australian Government
Department of Finance

PARLIAMENTARY CONTRIBUTORY SUPERANNUATION SCHEME

HANDBOOK

Department of Finance
February 2019

PREFACE

The Department of Finance provides advice and assistance to the Parliamentary Retiring Allowances Trust (the Trust) and administers the Parliamentary Contributory Superannuation Scheme (PCSS).

The PCSS is established under the *Parliamentary Contributory Superannuation Act 1948* (the Act). This Handbook is intended to provide a guide to the main provisions of the Act as it applies to members of Parliament who became members before 9 October 2004.

The Handbook is an illustrative guide only and therefore is unable to be exhaustive in its coverage of the complete range of possible situations faced by members of the PCSS. Accordingly, before actually taking any action or making any elections in relation to the PCSS, members are strongly advised to seek specific information based on their own individual circumstances from the Department of Finance and their own financial advice. Members are advised not to rely solely on the contents of the Handbook when considering such decisions.

Further information about the PCSS may be obtained from:

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Funds and Superannuation
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PART I – MEMBERSHIP AND ADMINISTRATION

MEMBERSHIP

1. The *Parliamentary Contributory Superannuation Act 1948* (the Act) provides a contributory superannuation scheme under which benefits are paid to former members of Parliament, their spouses and orphan children. Membership of the Parliamentary Contributory Superannuation Scheme (the PCSS) is compulsory for all persons who entered Parliament prior to closure of the scheme to new members from 9 October 2004.
2. Persons who enter Parliament after 8 October 2004, including former parliamentarians who return to Parliament and former State parliamentarians who join the Australian Parliament, are not eligible to join the PCSS. Similarly, sitting parliamentarians who leave Parliament and become entitled to a parliamentary retiring allowance and are re-elected to Parliament in the future will not be eligible to rejoin the PCSS, except where the circumstances that are described in paragraph 3 apply.
3. A serving parliamentarian 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. The three month period is taken from the date of dissolution of the House of Representatives or resignation from the Senate, whichever is appropriate, to the date of the polling day, notwithstanding that the person may not take their place in Parliament until a later time.

ADMINISTRATION OF THE SCHEME

4. The PCSS is administered by the Department of Finance on behalf of the Minister for Finance. The Parliamentary Retiring Allowances Trust (the Trust) has responsibility for matters where discretion has been given under the Act. The Trust consists of five trustees - the Minister for Finance (or a Minister authorised by the Minister for Finance) who is the presiding trustee, plus two Senators and two Members of the House of Representatives appointed by their respective Houses. The current trustees are:

Minister authorised by the Minister for Finance

Senator the Hon Zed Seselja

The Senate:

Senator the Hon Ian Macdonald
Senator Gavin Marshall

The House of Representatives:

The Hon Joel Fitzgibbon MP
The Hon Warren Entsch MP

5. The Trustees, with the exception of the Minister for Finance, are appointed, and may be removed, by the House of which they are members.
6. The day to day administration of the Scheme is undertaken by the Department of Finance, One Canberra Avenue, FORREST ACT 2603.

The Parliamentary Superannuation Team can be contacted by telephone on (02) 6215 3676 or by email to parlsuper@finance.gov.au

PART II - OUTLINE OF THE MAIN PROVISIONS OF THE SCHEME

DETERMINATION OF PARLIAMENTARY SALARIES

7. The Remuneration Tribunal has the power to determine a range of allowances and entitlements for parliamentarians including certain components of parliamentary salaries.
8. The Remuneration Tribunal also has the power to determine that portions of the parliamentary salaries paid to sitting parliamentarians do not count for contributions and benefits under the PCSS. The salaries paid to sitting parliamentarians and the salaries for superannuation under the PCSS are therefore no longer linked.
9. References to the parliamentary allowance, salary for Ministers of State and allowance by way of salary for office holders (including references to “Ministerial or office holder salary” or “salary”) in this Handbook should be read as the superannuation salaries applicable to the PCSS where relevant.

CONTRIBUTIONS

10. Contributions are a fixed percentage of:
 - a) parliamentary allowance; and
 - b) salary for Ministers of State; and
 - c) allowance by way of salary for office holders.

Contributions are paid to the Consolidated Revenue Fund.

11. In respect of contributions under 10a) above, for members whose period of parliamentary service is less than 18 years, the rate of contribution is eleven and one-half per cent of the monthly amount of the parliamentary allowance. Once a member has completed 18 years service the contribution rate reduces to five and three-quarter per cent.
12. In respect of 10b) and c) above, members who have not attained their maximum additional pension entitlement (refer to paragraph 56) are required to pay contributions, in addition to the contributions under 10a) above, at the rate of eleven and one-half per cent of the monthly amount of the Ministerial or office holder salary. Members who have attained their maximum additional pension entitlement have a reduced contribution rate of five and three-quarter per cent while that maximum applies. The contributions under 10b) and c) above cease to be payable when the Ministerial or office holder salary ceases to be received.
13. Salary sacrifice arrangements are not allowed under the PCSS.
14. From 1 July 2017, the value of unfunded employer contributions in relation to the PCSS will be counted towards the concessional contributions cap, a limit on the amount of contributions that receive concessional tax treatment in a scheme.
15. From the 2017-18 financial year the annual concessional contributions cap will be lowered to \$25,000. Where the value of these contributions exceed the cap they will not be treated as excess concessional contributions. This is because these contributions are subject to taxation when the member’s benefit is paid.
16. Non-concessional contributions are personal post-tax (member) contributions for which a tax deduction is not claimed. The non-concessional contributions cap is a limit on the amount of non-concessional contributions that can be made into a superannuation scheme or fund. The annual non-concessional contributions cap is four times the annual concessional contributions cap. This equals \$100,000 (4 x \$25,000) in the 2017-18 financial year.
17. However, where an individual has a total superannuation balance of \$1.6 million or more as at 30 June of the previous financial year, (that is, 30 June 2017 in respect of the 2017-18 financial year) the cap is reduced to zero. Member contributions are required to be made to the Parliamentary Contributory Superannuation Scheme, even if the non-concessional contributions cap is zero.

18. The total superannuation balance includes the accumulation phase value which is required to be reported every year to the ATO by the Scheme. This is the superannuation benefit that would become payable under the *Parliamentary Contributory Superannuation Act 1948* if a person voluntarily ceased their superannuation interest at 30 June, even though the interest is not currently in the retirement phase.

PERIOD OF SERVICE

19. For the purpose of determining entitlements under the Scheme, a member's period of service means the period during which he or she was entitled to receive a parliamentary allowance plus any other allowable service such as previous service, state service or purchased service.

BENEFIT PAYABLE TO MEMBERS

20. On retirement from Parliament, a member is entitled to a pension if:

- a) 12 or more years service has been completed; or
- b) the member has on four occasions, ceased* 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 (refer to paragraph 42) and the member has completed not less than eight years service or has on three occasions, ceased* 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. A member with less than eight years service, who qualifies for a retiring allowance under b) or c) above, is deemed to have completed eight years service.

22. For the purpose of reckoning "occasions", a Senator whose term of office was six years is regarded as having an "occasion" after the completion of three years of that six year term, in addition to an occasion on the expiration of that six year term.

* 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 parliamentary allowance in respect of that term.

Transfer balance cap

23. PCSS pensions are counted towards the transfer balance cap. The transfer balance cap is \$1.6 million for the 2018-19 financial year. Where the value of the pension exceeds the transfer balance cap the availability of a 10 per cent tax offset applicable after age 60 may be restricted. In addition, there may be tax impacts on other superannuation interests a PCSS pensioner holds if the transfer balance cap is exceeded. The transfer balance cap will apply from 1 July 2017 to those receiving a pension from the PCSS, or when a pension commences to be paid from the scheme.

Special value of pension

24. The Department of Finance will calculate a value for a pension being paid from the PCSS and report this to the Australian Taxation Office. A pension will not have a new value calculated each time the pension increases. Generally, only the commencing value (or the value at 30 June 2017 for existing pensioners) will be reported against the transfer balance cap.

Taxation of pension

25. Where a PCSS pension member is at least 60 years of age, the first \$100,000 per annum of the pension may be eligible for a 10 per cent tax offset, subject to the amounts of the tax-free and untaxed amounts. However, the 10 per cent offset will not apply to the amount of a pension over \$100,000.

26. This tax outcome is in place of pension members of the PCSS having to remove amounts from the scheme to reduce an excess transfer balance. This is because a capped defined benefit pension such as a PCSS pension cannot result in an excess transfer balance.

27. The \$100,000 threshold is reduced where a pension is commenced part way through a financial year.

28. If you are under 60 years of age, the tax-free amount is not assessable income. The untaxed amount of your pension is included in your assessable income with no offset.

Invalidity Benefit

29. The Trust may determine that the retirement of a member is to be treated as an invalidity retirement, if satisfied that the person is unable to perform the duties of a member because of physical or mental impairment. Where such a determination is made, the retirement is deemed to be involuntary. Therefore, where sufficient service has been achieved, benefits would be payable under the provisions outlined in paragraph 20.

30. If sufficient service has not been achieved, ie less than eight years or three occasions, the nature of the invalidity benefit will depend on the extent of the person's incapacity in relation to non-parliamentary employment. The Trust must determine the percentage of incapacity having regard to criteria specified in the Act.

31. The three classes of invalidity are as follows:

- Class 1 - 60% to 100% incapacity;
- Class 2 - 30% to 59% incapacity;
- Class 3 - less than 30% incapacity.

32. The Class 1 and 2 benefits will be expressed as non commutable pensions of 50 per cent and 30 per cent of parliamentary allowance respectively.

33. The Class 3 benefit is a lump sum benefit of three and one third times the member's own contributions. Some of this benefit is subject to preservation requirements (refer to paragraphs 44 to 52). Under the Superannuation Industry (Supervision) (SIS) legislation arrangements, only total and permanent invalidity lump sum benefits are not subject to preservation.

34. Where a Class 1 or 2 benefit is paid, the level of pension is subject to review in the medical and employment contexts. Both upward and downward reclassification is possible depending on individual circumstances. Where a member is reclassified to Class 3 he or she is entitled to the difference, if any, between the pension payments made and the lump sum benefit as calculated in paragraph 18. An important consideration in the review context is the income (if any) being earned from personal exertion.

35. Where an invalid pensioner dies without eligible dependents and the pension payments have not exceeded the greater of the lump sum of three and one third times his or her own contributions over the last eight years of service and the superannuation guarantee benefit, the balance is payable to the person's estate.

36. The Trust has the power to provide information to a member who is considering retirement on invalidity grounds. The information can, for example, relate to options other than resignation that are available to the member (accessing leave of absence, medical treatment, etc). Any member who is concerned about his or her ability to continue in the Parliament on medical grounds should seek information from the Trustees.

37. The PCSS does not allow for additional death and invalidity or Total and Permanently Disabled (TPD) cover.

BENEFIT PAYABLE TO MEMBERS NOT ENTITLED TO A PENSION

38. A member, other than a member referred to in paragraph 43, who does not qualify for a pension is entitled to a lump sum payment (refer to paragraphs 44-52 regarding preservation). The lump sum comprises a refund of contributions plus a supplement. The amount of the supplement is:

- a) if the retirement is involuntary (defined at paragraph 42) - two and one third times the contributions paid by the person during their period of service, or if that period exceeds eight years, the last eight years of service, or
- b) if retirement is deemed to be voluntary (defined at paragraph 41) - one and one sixth times the contributions paid by the person during the last eight years of service.

39. Lump sum benefits, however, will be increased where the minimum level of superannuation required under the Superannuation Guarantee (SG) legislation has not been provided by the payment of the lump sums described at either 24 (a) or (b).

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 PSS* interest until retirement.

40. The relevant SG amounts, expressed as a percentage of salary for superannuation purposes, are:

• 1 July 1992 - 31 Dec 1992	4%
• 1 Jan 1993 - 30 June 1995	5%
• 1 July 1995 - 30 June 1996	6%
• 1 July 1996 - 30 June 1997	6%
• 1 July 1997 - 30 June 1998	6%
• 1 July 1998 - 30 June 1999	7%
• 1 July 1999 - 30 June 2000	7%
• 1 July 2000 - 30 June 2001	8%
• 1 July 2001 - 30 June 2002	8%
• 1 July 2002 - 30 June 2013	9%
• 1 July 2002 - 30 June 2013	9%
• 1 July 2013 - 30 June 2014	9.25%
• 1 July 2014 - 30 June 2021	9.50%

* The relevant interest rate to be used is the rate that would be applied to member contributions of members of the Public Sector Superannuation (PSS) scheme. The interest rates applicable to the PSS have been used in accumulation of lump sum benefits as the SG legislation requires that lump sum benefits accumulate with interest. The PSS is a large fund with diversified assets and is regarded as a "representative" fund in the Commonwealth public sector.

MEANING OF VOLUNTARY AND INVOLUNTARY RETIREMENT

41. Retirement is deemed to be **voluntary**:

- a) where the member resigns before the expiration of his or her term of office and fails to satisfy the Trust that the resignation was:
- (i) due to invalidity;
 - (ii) for the purpose of submitting for re-election by the electors of the former electorate;
 - (iii) for the purpose of securing election for another electorate or State (ie in the Senate); or
 - (iv) for the purpose of securing election to the other House;
- b) where the member was not a candidate for re-election to Parliament and does not satisfy the Trust that failure to be a candidate was due to:
- (i) invalidity;
 - (ii) non-support of a political party from which the member reasonably sought support; or
 - (iii) expulsion from a political party;
- c) where the member was a candidate for re-election to Parliament but the Trust considers that the member did not genuinely desire to be elected; or

- d) where the member's place becomes vacant due to a breach of any of the following sections of the Constitution:
- s20 and s38 - concerning failure to attend the Senate or the House for two consecutive months of any session, without the permission of the Senate or House as appropriate; or
 - s44 para (iv) - concerning offices of profit under the Crown; or
 - para (v) - concerning any direct or indirect pecuniary interest; or
 - s45 para (iii) – as it relates to any fee or honorarium for services rendered to the Commonwealth.

42. Retirement is **involuntary** where the member:

- a) is defeated at an election (except where paragraph 41c) applies);
- b) retires after having attained age 60; or
- c) satisfies the Trust that his or her retirement was not voluntary under the terms of paragraph 41a) or b) or where paragraph 41d) does not apply.

43. A member whose place becomes vacant through the operation of the Constitution's section 44 paragraph (i) concerning citizenship of a foreign power, or paragraph (ii) concerning treason or conviction for an offence, or through section 45 paragraph (iii), as it relates to services rendered to the Parliament, is entitled to a refund of contributions only.

PRESERVATION OF LUMP SUM BENEFITS

44. The Superannuation Industry (Supervision) (SIS) Legislation requires that certain lump sum benefits be preserved in a superannuation fund or an approved deposit fund until beneficiaries reach the preservation age (generally age 55)¹ and retire from the workforce.

45. The main effect is that, from 1 July 1999, all superannuation contributions, including member contributions, will be preserved until retirement from the workforce after a member reaches their preservation age (generally age 55)¹, except where the benefit is a complying pension² or special circumstances apply.

Members who retire with a lump sum benefit

46. The new preservation arrangements mean that all lump sum benefits accruing after 1 July 1999, including member contributions, will have to be preserved until preservation age.

47. From 1 July 1999, the amount of the lump sum benefit that exceeds the amount of benefit that was payable to the member in cash as at 30 June 1999 (ie the non-preserved amount), must be preserved until retirement from the workforce after reaching the preservation age. The non-preserved amount will not be indexed.

48. New members elected after 1 July 1999, and who do not qualify for a pension upon retirement, will be required to preserve all their contributions and the Government supplement until retirement from the workforce after reaching the preservation age.

¹A phased increase in the preservation age from 55 to 60 applies between the years 2015 and 2025. This will mean that, for someone born before 1 July 1960, the preservation age will remain at 55 years, while for someone born after 30 June 1964 the preservation age will rise to 60.

²The preservation rules do not apply to pension benefits payable from any superannuation scheme, provided the pension is a complying pension under the Superannuation Industry Supervision (SIS) regulations dealing with preservation. The pension paid by the parliamentary scheme is a complying pension for the purposes of the SIS preservation arrangements. However, for new members elected on or after the 2001 general election, see the section on Deferral of Pension Benefits to Age 55.

49. These preserved amounts will be paid into a rollover fund of the member's choice.

Members who retire with a pension benefit

50. The same rules apply after 30 June 1999, to lump sums received from the conversion of a portion of a pension benefit.

51. Members who retire after 1 July 1999 with a pension entitlement, and who wish to convert up to 50 per cent of the pension to a lump sum, will be required to preserve part of that lump sum until the preservation age is reached. The amount of the lump sum that would be available in cash (ie the non-preserved amount) before the preservation age is reached is that part of the lump sum, based on the level of pension converted to a lump sum that relates to the pension accrual as at 30 June 1999.

52. New members elected on or after 1 July 1999 will be required to preserve the whole of their lump sum benefit if they elect to convert part of their pension to a lump sum on retirement before their preservation age.

RATES OF PENSION

53. The rates of pension payable are expressed as a percentage of the parliamentary allowance payable from time to time to members of Parliament. The rates are as follows:

COMPLETE YEARS OF SERVICE	PERCENTAGE OF PARLIAMENTARY ALLOWANCE
8	50
9	52.5
10	55
11	57.5
12	60
13	62.5
14	65
15	67.5
16	70
17	72.5
18 or more	75

54. Where a person has served for more than eight years but less than 18 years, and his or her period of service includes an incomplete year, the percentage in the above table is increased by 0.00685% for each additional day of service. For example, the percentage applicable to a PCSS member who has completed 15 years and 50 days service is 67.50% + 0.343%, that is 67.843% of the parliamentary allowance.

ADDITIONAL PENSION FOR SERVICE AS A MINISTER OR OFFICE-HOLDER

55. A member:

- a) who is entitled to a pension; and
- b) whose period of service included a period or periods of service as a Minister or office holder in the Commonwealth Parliament, in respect of which salary was payable,

is entitled, in addition to the pension described in paragraphs 53 and 54, to an additional pension in respect of his or her service in each such office.

56. The additional pension for each office is expressed as a percentage of the Ministerial or office holder salary for that office. The appropriate percentage is obtained by multiplying 6.25% by the number of years the member served in the office. Where a member has served in more than one office, the additional pensions in respect of those offices are aggregated. A limit applies on the additional entitlement and a parliamentarian's additional pensions may not total more than 75% of the Ministerial or office holder salary for the highest paying office held.

57. Service before 12 June 1978 as a Minister or other office holder, in respect of which salary was payable, will be recognised for the purpose of calculating the additional pension only where:

- the member was a parliamentarian on 12 June 1978 and he or she elected, before 12 September 1978, to have that service taken into account and agreed to pay the additional contributions required; or
- the member was not a parliamentarian on 12 June 1978 but again became a member after that date and he or she elected, within 3 months of again becoming a member, to have that service taken into account, and agreed to pay the additional contributions required.

58. The following hypothetical example illustrates the calculation of the additional pensions for a member who held the office of a Chairman of a Committee for two years, was a Minister in Cabinet for four years 80 days and Treasurer for 200 days. The additional pensions would be:

in respect of service as a Chairman of a Committee:

$6.25\% \times 2 \text{ years}$, ie 12.5% of the current salary for a Chairman of a Committee;

in respect of service as a Minister in Cabinet:

$6.25\% \times \left(4 + \frac{80}{365} \right) \text{ years}$, ie 26.37% of the current salary for a Minister in Cabinet;

in respect of service as Treasurer:

$6.25\% \times \frac{200}{365} \text{ years}$, ie 3.425% of the current salary for the Treasurer.

59. The member would be entitled to receive the aggregate of the additional pensions in respect of his or her service as a Chairman of a Committee, a Minister in Cabinet and the Treasurer, provided this amount does not exceed 75% of the salary for the Treasurer (the position with the highest salary of the three positions).

CONVERSION TO A LUMP SUM

60. A member entitled to a pension, other than a person who retired from Parliament by reason of invalidity and who became entitled to a Class 1 or 2 invalidity pension in accordance with paragraph 30-32, may elect to convert up to 50% of the pension, including any additional pension, to a lump sum payment (refer to paragraphs 44-52 regarding preservation). An election to convert to a lump sum may be made not earlier than three months before, and not later than three months after becoming entitled to a pension.

61. The lump sum is calculated by multiplying the annual amount of the pension the retired PCSS member elects to convert by a factor of ten if the person is under age 66 or has attained age 66 but retires from Parliament at the expiration of the term of office during which he or she attained that age. In any other case the factor of ten is reduced by one twenty-fourth for each whole month by which the parliamentarian's age at retirement exceeds 65. By way of illustration the following table sets out the conversion factors for those who are exactly the ages specified at the time of becoming entitled to a pension:

AGE	FACTOR	AGE	FACTOR	AGE	FACTOR
65 or less	10	72	6.5	79	3
66	9.5	73	6	80	2.5
67	9	74	5.5	81	2
68	8.5	75	5	82	1.5
69	8	76	4.5	83	1
70	7.5	77	4	84	0.5
71	7	78	3.5	85	0

DEFERRAL OF PENSION TO AGE 55 FOR CERTAIN MEMBERS

62. Certain categories of PCSS members are not entitled to receive their parliamentary pension before the age of 55 (the age 55 restriction). These categories are as follows.

- PCSS members who joined the Parliament on or after 10 November 2001.
 - The age 55 restriction does not apply to PCSS members who joined the scheme before 2001 and have continuously remained in the Parliament. If they qualify for a pension they can receive this regardless of age from the time of their retirement.
- PCSS members who were re-elected to Parliament after 2001 and were previously entitled to a pension under the PCSS before the age of 55.

63. When the age 55 restriction applies, the option to convert part of the pension to a lump sum benefit is also deferred until age 55. The rate of pension payable at age 55 will be based on the salaries payable at that time and from time to time thereafter.

64. The age 55 restriction does not apply if the member's retirement is on invalidity grounds, regardless of age. The arrangements at page 3 will continue to apply.

65. A pension that has been deferred may be paid before age 55 if the Trust considers that, because of ill health, the member is incapable of performing the duties of a parliamentarian. Any decision to activate the pension would be subject to review on a regular basis by the Trust.

66. Also, the Trust can decide to pay part of the deferred pension early in special circumstances where the former member is in severe financial hardship or on compassionate grounds. When the pension ultimately becomes payable at age 55 it will be reduced to take account of these payments.

67. Reversionary benefits will continue to be available to the eligible spouse or eligible children of all members who die in service. Also, eligible spouse or eligible children will receive a reversionary pension on the death of a former parliamentarian whose pension is deferred before age 55.

FAMILY LAW AND THE PCSS

68. Family Law legislation allows for superannuation to be treated like property and to be divided on relationship breakdown.

69. The PCSS was amended with effect from 18 May 2004 to provide an approach for dealing with the splitting of superannuation on relationship breakdown under the Family Law regime. This allows for the former spouse of a member to become entitled to their own superannuation benefit under the Act.

70. Exceptions to this include where the parliamentarian or former parliamentarian's benefit is not a splittable benefit under the Family Law regime (for example, an orphan's pension), where one or both of the parties dies after the agreement or Court Order is made, but before it takes effect, or where the value of the amount to be transferred to the former spouse's account is larger than the value of the amount calculated under the Family Law regime.

VALUING SUPERANNUATION

71. For a binding agreement or Court Order to be made regarding a superannuation interest it is necessary to value that superannuation.

72. Couples can seek superannuation information from the scheme administrators to help them make binding agreements. This information can be used by the couple and the Court to value superannuation as part of a property settlement. A valuation method specific to the PCSS applies to the valuation of benefits for Family Law purposes.

73. When the administrator of the PCSS is served with an agreement by the separating parties, or a Court Order, a separate interest will be created for the former spouse, and an amount will be transferred to the former spouse's account to give effect to the agreement or Court Order. A member in receipt of a pension will have their benefit reduced.

74. Where the relationship breakdown occurs before the member becomes entitled to a benefit, an amount is transferred from the member's account to an account in the name of the former spouse and will be indexed until it becomes payable. The member's final benefit is reduced to take account of this transfer.

75. The former spouse's benefit may become payable from age 55 on request and subject to the general rules governing the preservation of superannuation benefits; if and when the trustee decides that the non-member is permanently incapacitated; at age 65; or to a legal personal representative on death.

76. Where the former spouse's account is created after the member has become entitled to a pension, the former spouse's benefit becomes payable immediately and the former member's pension will be reduced. The former spouse's benefit is payable for the lifetime of the former spouse and is indexed in the same way and at the same time as the member's benefit.

SUPERANNUATION SURCHARGE

77. The superannuation surcharge legislation imposes a surcharge on a member's surchargeable contributions, where the member's adjusted taxable income, ie adjusted taxable income plus surchargeable contributions, is greater than the surcharge threshold. In 1996-97 the minimum threshold was \$70,000 and had risen to \$99,710 for the year 2004-2005. For 1996-97, the full 15% surcharge only applied where the member's adjusted taxable income was \$85,000 or more. The corresponding amount for 2004-2005 is \$121,075.

78. The maximum surcharge rates are:

- 15% from 1996-97 to 2002-03
- 14.5% in 2003-04
- 12.5% in 2004-05
- the surcharge was abolished for superannuation accruing after 1 July 2005.

79. Superannuation that accrued during the superannuation surcharge period of 20 August 1996 to 30 June 2005 will have surchargeable contributions which may result in an assessment being issued by the Australian Taxation Office (ATO).

80. The PCSS, like other defined benefit schemes, applies a Notional Surchargeable Contributions Factor (NSCF) developed by the scheme's actuary to derive the surchargeable "employer" contributions. The NSCF represents the cost of "employer financed" benefits accruing in respect of the member.

81. Members are identified for surcharge purposes by their Tax File Number (TFN) and the ATO cross matches the information supplied by the Department of Finance with tax returns lodged by taxpayers. The ATO determines the member's adjusted taxable income, calculates a surcharge (if applicable), advises the member directly and forwards a report to the superannuation provider (ie the scheme).

82. The Department of Finance maintains a surcharge debt account for each member which accumulates all surcharge assessments during the member's period of membership. Interest at the ten year Treasury bond rate is also applied to the balance of this account at the end of each financial year.

83. When a benefit becomes payable, the total accrued amount in the surcharge debt account will be paid to the ATO and the member's benefit reduced, having regard to the accumulated surcharge debt. Alternatively, members may choose to pay any surcharge liability as it accrues by cheque or cash direct to the Department of Finance for on-forwarding to the ATO. In this case, the amount paid will be credited to the member's surcharge debt account and the member advised of the revised balance of that account.

84. A member's benefit must not be reduced by more than the maximum surcharge rate for each financial year applied to the employer-financed component of the benefit accrued for that year by the member since 20 August 1996, the date the superannuation surcharge was introduced. The reduction in benefit will be made in accordance with the methodology agreed by the Trust on the advice of an Actuary. In respect of each year that there has been a surcharge assessment, a member's benefit will be reduced by the assessed surcharge rate applied to the employer-financed component of the benefit accrued in that year, if the member has not paid any of the surcharge debt account during parliamentary service.

REDUCTION OF TAX CONCESSIONS ON SUPERANNUATION CONTRIBUTIONS OF VERY HIGH INCOME EARNERS

85. The Government announced in the 2012-13 Budget that it would reduce the superannuation tax concessions of very high income earners, on concessional superannuation contributions from **1 July 2012**.

86. The concessional superannuation contributions for the purpose of the measure is the amount of 'defined benefit contributions' in the relevant financial year. The 'defined benefit contributions' is calculated using a methodology set out in regulations and actuarial factors, and is reported to the ATO after the end of each financial year.

87. Tax is imposed at a rate of 15 per cent on PCSS members whose income and 'defined benefit contributions' exceed \$250,000 in a financial year. The amount of the tax, which applies to the defined benefit contributions above the \$250,000 threshold, is determined by the Commissioner of Taxation following assessment of the individual's tax return.

88. The ATO establishes a debt account for the amount of tax assessed on the individual, where their income and defined benefit contributions exceed \$250,000 in a financial year.

89. Any outstanding amount in a debt account becomes liable for payment by the individual when a benefit becomes payable from the superannuation interest.

90. **However, where a PCSS member retires and commences their PCSS benefit, before the tax has been assessed for a financial year, any tax liability needs to be paid by the individual directly to the ATO.** The legislation does not permit money to be advanced, or released from the PCSS, to pay this tax liability if the member has commenced drawing a PCSS benefit.

91. Where a tax liability has been assessed **prior** to a PCSS member's retirement, the member has the option to:

- pay some or all of the amount of their debt account to the ATO before their PCSS benefit becomes payable; or
- wait until their PCSS benefit becomes payable to pay their debt account.

92. If the ATO has begun keeping a debt account for a PCSS member, the member must notify the ATO within 21 days of seeking the payment of their retirement benefit, of the request.

93. Where a PCSS contributor elects to wait until their PCSS benefit becomes payable to pay their debt, the member has the option of providing to the PCSS, a 'release authority' that they have received from the ATO.

94. Under a release authority, a lump sum amount is paid to the Commissioner of Taxation in respect of the debt account and there is a corresponding reduction to the PCSS benefit.

95. The amount that is paid to the Commissioner of Taxation under a release authority will depend upon the amount of the debt account (which would be stated in the release authority), and the amount of PCSS benefit that is available after any other applicable deduction under the PCSS legislation (for example, following a surcharge deduction or a family law split).

96. The reduction to a PCSS benefit in respect of a payment under a release authority is permanent (including to any reversionary pension to a spouse or child that later becomes payable) and irreversible.

97. Where a PCSS member wishes to convert part of their benefit to a lump sum at the time of their retirement, this election must be made before or at the same time as any release authority is received from the member. Where money is paid under a release authority, the member will not be able to make a later election to commute part of their benefit to a lump sum.

98. Calculation of the reduction to the PCSS benefit is undertaken based on a formula set out in the scheme legislation and depends upon the amount released and a factor based on the person's age and gender.

REVERSIONARY BENEFITS

99. Eligible reversionary beneficiaries of the PCSS are set out in the Act and therefore there is no provision for making Binding Death Nominations.

100. A pension is payable to:

- a) the spouse of a member who dies while a parliamentarian, irrespective of the length of the deceased person's service in Parliament; and
- b) the spouse of a member entitled to a pension, provided that:
 - (i) the marital or couple relationship commenced before the member's retirement from Parliament; or
 - (ii) if the marital or couple relationship commenced after the person's retirement from Parliament and before their 60th birthday, the relationship commenced at least three years before his or her death or if the relationship commenced after the members' 60th birthday, the relationship commenced at least five years before his or her death.

101. A pension continues to be payable whether or not the spouse commences a new relationship. The definition of marital or couple relationship includes both legally married, de facto spouses or a partner of a person with a relationship as a couple (whether the persons are the same sex or different sexes). The primary criteria for the payment of a reversionary benefit will be that the couple lived together on a permanent and bona fide domestic basis at the time of the death of the member or pensioner.

102. A relationship will be considered to be permanent and bona fide where the relationship existed for the minimum period or there is other evidence that the relationship is permanent and bona fide, including (but not limited to) the existence of a legal marriage, the relationship was registered under a law of a State or Territory prescribed as a kind of relationship prescribed for the purposes of that section, a child of the relationship, a jointly owned home which is the usual residence of the couple, or dependency.

103. A reversionary pension is five-sixths of the rate of the pension and additional pension to which the member would have been entitled. If the member died while a parliamentarian 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.

104. Recognition of de facto spouses and relationships could mean that a person has both a legally married spouse and another couple or marital relationship. The Trust will apportion the reversionary benefit, on a needs basis, amongst more than one eligible person. The Trust will also apportion the benefit amongst spouses and orphans where the member is survived by a spouse or spouses who are not natural or adoptive parents of any surviving eligible children.

105. A spouse who is in receipt of a pension will continue to receive that pension if the spouse is elected to the Commonwealth Parliament. Similarly, a spouse's pension will continue to be paid to a person who is also in receipt of a pension resulting from their own service in the Commonwealth Parliament.

106. If a person who is in receipt of a spouse's pension is elected to a State or Territory Parliament, the pension will be reduced by the salary received by virtue of holding that position.

107. A person in receipt of a spouse's pension following the death of a person first elected after 1 July 1994, will not have that pension reduced in respect of any State or Territory spouse pension payable.

BENEFITS PAYABLE TO ORPHAN CHILDREN

108. Subject to the qualifications in paragraphs 104, 109 and 110, pensions are payable to any eligible children (including adopted and ex-nuptial children) of:

- a) a member who dies while a parliamentarian; or
- b) a member who dies while entitled to a pension,

provided the member is not survived by a spouse who is the natural or adoptive parent of the child and who is entitled to a pension. A pension is also payable to any eligible children on the death of a spouse who was in receipt of a pension.

109. No benefit is payable in respect of a child who was born to or adopted by a member after retirement from Parliament and after the member attained age 60, unless the child is a child of a marital relationship that lasted for five years. No benefit is payable in respect of a child of the spouse of a deceased member who is born or adopted after the date of death of the member, unless the Trust is of the opinion that the child would have been dependent on the member had he or she lived.

110. To be eligible for a pension, a child must be under 18, or under 25 if a full-time student, and have been dependent on the member, at the time of his or her death.

111. Subject to paragraph 104, the rate of pension payable in respect of a child is an amount calculated by dividing the pension that was or would have been payable to the spouse by four, or by the number of children in respect of which an annuity is payable if more than four.

112. The pension payable in respect of a child is payable in such manner, to such persons and subject to such conditions as the Trust determines.

BENEFIT PAYABLE TO PERSONAL REPRESENTATIVE

113. On the death of a member who is not survived by an eligible spouse or an orphan who is entitled to a pension, a lump sum is payable to the personal representative of the deceased person, to be dispersed in accordance with the terms of his or her will. The lump sum consists of:

- a) a refund of the former member's contributions plus a supplement equal to two and one third times the contributions paid during the last eight years of service; or the superannuation guarantee safety-net amount (whichever is the higher) less the superannuation surcharge deduction amount

less –

- b) the amount of any benefits paid to the member.

114. If a reversionary pension or orphan's pension was payable on the death of a member but the total amount paid to the member, the spouse or orphan is less than the amount in paragraph 113, the balance is payable to the personal representative of the member.

INCREASES IN PENSIONS

115. Because pensions and additional pension entitlements are expressed as a percentage of salaries as determined from time to time, the actual amount of the pension or additional pension will increase each time salaries are increased (see also paragraphs 7-9 as to the salaries applicable to the PCSS).

116. The pension being paid to a spouse will also be increased by five-sixths of the increase that would have applied to the deceased person's pension or additional pensions had he or she lived.

117. A corresponding adjustment will apply to orphans' pensions.

PART III – SPECIAL PROVISIONS

BENEFICIARIES WHO ARE RE-ELECTED TO PARLIAMENT

118. Where a member who is entitled to a pension is re-elected, the pension is suspended while the person is a sitting parliamentarian. The person will not be entitled to further accrual of benefits under the PCSS.

119. The pension will be recommenced once they have again retired from the Parliament and they reach age 55 at the same rate as when the pension was suspended but based on the salaries at time of payment..

BENEFICIARIES WHO ARE ELECTED TO STATE PARLIAMENTS

120. Where a beneficiary who is in receipt of a pension becomes a member of, or a Minister in, a State Parliament or the Northern Territory Legislative Assembly or the Australian Capital Territory Assembly, the pension is reduced by the rate of salary, or allowance in the nature of salary, received in respect of that State or Territory parliamentary service.

BENEFICIARIES WHO TAKE UP OFFICES OF PROFIT UNDER THE CROWN

121. Where a beneficiary who is entitled to a pension holds an office of profit under the Crown, the pension may be reduced on a fortnightly basis depending on the amount of the remuneration received for the holding of such office(s). The Act specifies a range of State and Commonwealth Government positions that constitute an office of the profit (see the definitions of “holder of an office of profit under a State” and “holder of an office of profit under the Commonwealth” in section 21B of the Act).

122. There is no reduction in the pension unless the remuneration from the office of profit exceeds 20 per cent of the fortnightly rate of parliamentary allowance (currently this threshold is \$1,257.08 per fortnight). For every dollar the office of profit remuneration exceeds this threshold, the pension is reduced by 50 cents. The maximum amount by which the pension can be reduced is 50 per cent of the pension entitlement before any decision to convert a portion to a lump sum.

123. The following example illustrates the reductions in pension that would occur with different levels of salary from an office of profit. In this example, the varying pension reductions are shown for a PCSS pension entitlement of \$90,000 per annum (\$3,452.05 per fortnight). In this example, the maximum reduction that can be made to the PCSS pension is \$1,726.03 per fortnight (50% of the fortnightly payment of \$3,452.05).

Office of profit Salary:	Office of profit Salary:	Pension threshold:	Pension reduction:
<i>Per annum</i>	<i>Per fortnight</i>	<i>Per fortnight</i>	<i>Per fortnight</i>
\$	\$	\$	\$
60,000.00	2,300.32	\$1,257.08	521.50
70,000.00	2,683.71	\$1,257.08	713.00
80,000.00	3,067.09	\$1,257.08	905.00
90,000.00	3,450.48	\$1,257.08	1096.50
100,000.00	3,833.87	\$1,257.08	1288.00
110,000.00	4,217.25	\$1,257.08	1480.00
120,000.00	4,600.64	\$1,257.08	1671.50
130,000.00	4,984.03	\$1,257.08	1,726.03 (maximum)

124. Any tax-free salaries will be grossed up to a pre-tax equivalent before application of the “Office of Profit” provisions. This provision would apply to a person holding the office of Governor-General or involved in the administration of Norfolk Island.

125. There will be no reduction to the pension for any *pension* payments derived from the holding of an office of profit.

126. For the purpose of this provision, a beneficiary who is appointed to an office of profit is required to notify the Secretary to the Department of Finance in writing of that appointment within 14 days of being appointed irrespective of the level of salary applicable.

A penalty is prescribed in the Act for contravention of this requirement.

PART IV - GENERAL PROVISIONS

PAYMENT OF BENEFITS

127. Benefits are paid from the Consolidated Revenue Fund. Payments are made by the Department of Finance, One Canberra Avenue, FORREST ACT 2603.

128. Pensions and additional pensions are paid fortnightly and are subject to income tax. A Payment Summary is provided at the end of each financial year.

129. Payments will be credited to an Australian bank, building society or credit union account in the name of the recipient.

130. Benefits under the Act are inalienable but, if an overpayment should occur, it may be deducted from future payments.

131. In special circumstances, for example where the person entitled to the benefit is incapacitated, the Trust may authorise payment of the benefit to another person to be used for the benefit of the person entitled.

ELECTIONS OR OPTIONS

132. An election, or the exercise of an option, may be revoked before a payment has been made in accordance with the election or option. However, once a payment has been made the election is irrevocable.

REVIEW OF DECISIONS

133. A person who is affected by a decision of the Trust and who is dissatisfied with the decision may request, within 30 days of being notified of the decision or such longer period as the Trust allows, that the Trust reconsider the matter. Upon receipt of the request, the Trust will review its decision and may confirm, revoke or vary the earlier decision. If, after this review, the person is still dissatisfied, he or she may apply to the Administrative Appeals Tribunal for a further review of the Trust's decision.