



New South Wales

# Parliamentary Superannuation Legislation Amendment Bill 2005

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The object of this Bill is to amend the *Parliamentary Contributory Superannuation Act 1971* and the *Parliamentary Remuneration Act 1989* as follows:

- (a) to close the Parliamentary Contributory Superannuation Scheme to new members of Parliament elected at or after the 2007 State general election,
- (b) to provide for new members of Parliament elected at or after that State general election to receive an accumulation style superannuation benefit in line with entitlements of public sector employees under the First State Superannuation Scheme (being no less than the minimum entitlements under Commonwealth superannuation guarantee legislation),
- (c) to enable those members to make additional superannuation contributions by way of salary sacrifice,
- (d) to provide for superannuation contributions for a new member of Parliament to be paid to the First State Superannuation Fund, or paid to another complying superannuation fund, complying approved deposit fund or retirement savings account nominated by the new member,

- (e) to enable continuing members of the Parliamentary Contributory Superannuation Scheme to cease to contribute after the age of 65 years if they have completed 20 years' service,
- (f) to enable former members of Parliament to make an election to convert a deferred pension under the Parliamentary Contributory Superannuation Scheme to a lump sum benefit within 3 months of the pension being payable, rather than within 3 months of ceasing to be a member,
- (g) to enable certain benefits payable to de facto partners or spouses of former members under the Parliamentary Contributory Superannuation Scheme to be reduced to meet superannuation contribution surcharge obligations of the former members,
- (h) to provide that a continuing member of the Parliamentary Contributory Superannuation Scheme seeking re-election who dies on polling day before the polls close is taken to be a member for the purposes of the Scheme,
- (i) to make other consequential amendments and to enact consequential savings and transitional provisions.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on the date of assent.

**Clause 3** is a formal provision that gives effect to the amendments to the *Parliamentary Contributory Superannuation Act 1971* set out in Schedule 1.

**Clause 4** is a formal provision that gives effect to the amendments to the *Parliamentary Remuneration Act 1989* set out in Schedule 2.

## **Schedule 1      Amendment of Parliamentary Contributory Superannuation Act 1971**

### **Closure of Parliamentary Contributory Superannuation Scheme**

**Schedule 1 [1]** inserts proposed Part 1A (proposed section 4A) into the Principal Act. Proposed section 4A closes the Parliamentary Contributory Superannuation Scheme to members of Parliament elected at or after the 2007 general election, other than continuing members. A member does not cease to be a continuing member because of a break of 3 months or less as a member of parliament.

**Schedule 1 [7]** omits a provision that enables benefits to be paid into a Commonwealth Parliamentary superannuation scheme, as a result of the closure of that scheme.

### **Other amendments affecting continuing members of the Parliamentary Contributory Superannuation Scheme**

**Schedule 1 [2]** inserts proposed section 18B into the Principal Act. The proposed section enables a member who has reached the age of 65 years, and has received salary for an aggregate period of 20 years or more, to elect to cease to have deductions made from his or her salary. When the person is entitled to be paid the benefit (on ceasing to be a member) it is to be calculated as if the person had ceased to be entitled to receive salary when the election took effect rather than on the day the person ceased to be a member.

**Schedule 1 [5]** amends section 20 of the Principal Act to make it clear that an election to convert a pension to a lump sum benefit is to be made within 3 months of the benefit becoming payable, rather than within 3 months of a member ceasing to be a member. **Schedule 1 [3] and [4]** make consequential amendments.

**Schedule 1 [8]** amends section 26D of the Principal Act to include a pension payable to the spouse or de facto partner of a former member, being a pension based on a percentage of the member's salary, in the benefits that may be reduced to meet superannuation contribution surcharge liabilities. **Schedule 1 [6]** makes a consequential amendment.

**Schedule 1 [9]** inserts proposed section 32C into the Principal Act. The proposed section provides that a member is taken to be a member at the time of his or her death if the person was a member before an election and dies while seeking election before the close of polls on polling day. Currently, such a person is treated as a former member. One consequence of the amendment is that the spouse or de facto partner of any such person may elect to convert a pension entitlement arising out of the death to a lump sum benefit.

**Schedule 1 [11]** makes it clear that certain provisions applying to the commutation of pensions apply, and have always done so, to pensions previously commuted by members after reaching the age of 65 or 70.

### **Savings and transitional provisions**

**Schedule 1 [10]** enables savings and transitional regulations to be made as a result of the enactment of the proposed Act.

**Schedule 1 [12]** inserts proposed clause 10 into Schedule 1 to the Principal Act to validate previous reductions of the pensions to which section 26D is extended by the amendment made by **Schedule 1 [8]**.

## **Schedule 2      Amendment of Parliamentary Remuneration Act 1989**

**Schedule 2 [5]** inserts proposed Division 2 of Part 3A (proposed sections 14B–14F) into the Principal Act.

Proposed section 14B applies the proposed Division to members other than continuing members of the Parliamentary Contributory Superannuation Fund.

Proposed section 14C contains definitions of words and expressions used in the proposed Division.

Proposed section 14D requires the State of New South Wales to make a superannuation contribution for members of 9% per annum of the salary of the members (or such greater percentage as may be prescribed by the regulations). Salary is to be taken to be the greatest of the maximum contribution base (determined under the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth) or the basic salary and additional salary (if any) of a member or such other salary as may be prescribed by the regulations.

Proposed section 14E requires the superannuation contribution to be paid to the First State Superannuation Fund, or paid to a complying superannuation fund, complying approved deposit fund or retirement savings account nominated by the member concerned.

Proposed section 14F enables members to make additional superannuation contributions by way of salary sacrifice. The contributions are to be paid to a complying superannuation fund, complying approved deposit fund or retirement savings account nominated by the member concerned.

**Schedule 2 [1]–[4]** make consequential amendments.

**Schedule 2 [6]** enables savings and transitional regulations to be made as a result of the enactment of the proposed Act.

First print



New South Wales

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New South Wales

# Parliamentary Superannuation Legislation Amendment Bill 2005

No. , 2005

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## **A Bill for**

An Act to amend the *Parliamentary Contributory Superannuation Act 1971* and the *Parliamentary Remuneration Act 1989* to close the Parliamentary Contributory Superannuation Scheme to new members from the 2007 State general election and to provide instead for an accumulation style superannuation benefit for new members of Parliament; and for other purposes.

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<b>The Legislature of New South Wales enacts:</b>	1
<b>1 Name of Act</b>	2
This Act is the <i>Parliamentary Superannuation Legislation Amendment Act 2005</i> .	3 4
<b>2 Commencement</b>	5
This Act commences on the date of assent to this Act.	6
<b>3 Amendment of Parliamentary Contributory Superannuation Act 1971 No 53</b>	7 8
The <i>Parliamentary Contributory Superannuation Act 1971</i> is amended as set out in Schedule 1.	9 10
<b>4 Amendment of Parliamentary Remuneration Act 1989 No 160</b>	11
The <i>Parliamentary Remuneration Act 1989</i> is amended as set out in Schedule 2.	12 13



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<b>Schedule 1</b>	<b>Amendment of Parliamentary Contributory Superannuation Act 1971</b>	1 2
	(Section 3)	3
[1] <b>Part 1A</b>		4
	Insert after Part 1:	5
	<b>Part 1A Closure of Scheme from 2007 general election</b>	6 7
	<b>4A Closure of Parliamentary Contributory Superannuation Scheme</b>	8
	(1) The Parliamentary Contributory Superannuation Scheme is closed to members elected at or after the 2007 general election, other than continuing members.	9 10 11
	(2) Accordingly, a member elected at or after the 2007 general election who is not a continuing member is not entitled:	12 13
	(a) to have deductions made from the member's salary under this Act, or	14 15
	(b) to have any period of service during which the member is not a continuing member after that election taken into account in determining any benefit payable to or in respect of the member under this Act.	16 17 18 19
	(3) For the purposes of this Act, a person is a <i>continuing member</i> if:	20
	(a) the person was a member of either House of Parliament at any time within the period of 3 months before polling day at the 2007 general election, and	21 22 23
	(b) the person was elected to either House of Parliament at the 2007 general election or within 3 months after polling day at that election, and	24 25 26
	(c) since polling day at that election, the person has not ceased to be a member of either House of Parliament for a continuous period exceeding 3 months.	27 28 29
	(4) In this Part, <i>2007 general election</i> means the first State general election held after the commencement of this section.	30 31

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<b>[2] Section 18B</b>	1
Insert after section 18A:	2
<b>18B Election to cease salary deductions on reaching age 65</b>	3
(1) A member may elect, by notice in writing served on the trustees, to cease to have deductions from salary instalments made under section 18 if:	4
(a) the member is 65 years or more of age, and	5
(b) the member has been entitled to salary in respect of an aggregate period of 20 years or more (including any period before the commencement of this section).	6
(2) A member may not revoke an election made under this section.	7
(3) An election made under this section takes effect when it is approved by the trustees.	8
(4) On the election taking effect, deductions from the member's salary are not required to be made under this Act.	9
(5) An election under this section continues to have effect if, after ceasing to be a member, the person again becomes a member.	10
(6) A benefit payable under this Act to or in respect of a member who makes an election under this section is to be calculated as if the member ceased to be entitled to receive salary on the day the election took effect.	11
(7) A benefit is not payable under this Act to or in respect of a member who makes an election under this section until it is payable under another provision of this Act.	12
<b>[3] Section 19B Deferral of certain pensions</b>	13
Omit section 19B (2).	14
<b>[4] Section 20 Right to convert pension to lump sum entitlement</b>	15
Insert in alphabetical order in section 20 (1):	16
<i>entitled</i> to a pension means that a pension is payable by the trustees under this Part.	17
<b>[5] Section 20 (11) (a)</b>	18
Omit "after the former member ceases to be a member".	19
Insert instead "after the former member becomes entitled to a pension under this Part".	20
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<b>[6] Section 23 Pension for spouses or de facto partners</b>	1
Insert “(1) (paragraph (a) excepted),” before “(2)” in section 23 (12).	2
<b>[7] Section 26A Arrangements for transfer to Commonwealth scheme</b>	3
Omit the section.	4
<b>[8] Section 26D Power of trustees to adjust benefits in relation to certain liabilities</b>	5
Omit “23 (2) or (3), 26A” from section 26D (6).	7
Insert instead “23 (1) (paragraph (a) excepted), (2) or (3)”.	8
<b>[9] Section 32C</b>	9
Insert after section 32B:	10
<b>32C Member who dies on polling day</b>	11
For the purposes of this Act and the regulations, a person is taken to have been a member at the time of his or her death if:	12
(a) the person dies on the day of, and before the close of, a poll for an election of one or more members of the Legislative Assembly or the Legislative Council, and	14
(b) the person was a member for the purposes of the <i>Parliamentary Remuneration Act 1989</i> immediately before the day of the poll, and	17
(c) the person was seeking election on that day as a member (whether or not to represent the same electorate or to the same House of Parliament).	20
<b>[10] Schedule 1 Savings, transitional and other provisions</b>	23
Insert at the end of clause 1 (1):	24
<i>Parliamentary Superannuation Legislation Amendment Act 2005</i>	25
<b>[11] Schedule 1, clause 6 (1A) and (1B)</b>	26
Insert after clause 6 (1):	27
(1A) Sections 21A, 21B and 23 apply, and are taken always to have applied, to and in respect of a person paid a pension under section 22C before its repeal (and to any such pension continued by this clause) in the same way as those sections apply to and in respect of a person who commutes a pension under section 20.	28
(1B) Nothing in subclause (1A) limits the operation of any other provision of this clause or clause 7.	33

<b>[12] Schedule 1, clause 10</b>	1
Insert after clause 9:	2
<b>10 Surcharge reductions for certain spouse pensions</b>	3
A reduction of a benefit payable under section 23 (1) (paragraph (a) excepted), on the basis set out in section 26D, that is made before the commencement of this clause is taken to have been validly made, if it would have been valid if made after the commencement of the <i>Parliamentary Superannuation Legislation Amendment Act 2005</i> .	4 5 6 7 8 9

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<b>Schedule 2</b>	<b>Amendment of Parliamentary Remuneration Act 1989</b>	1
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	(Section 4)	3
<b>[1]</b>	<b>Section 2A Purpose of Act</b>	4
	Insert at the end of section 2A (1) (d):	5
	, and	6
	(e) superannuation arrangements are provided for members who are not continuing members of the closed Parliamentary Contributory Superannuation Fund.	7
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<b>[2]</b>	<b>Section 3 Definitions</b>	10
	Insert at the end of the section:	11
	(2) Notes in the text of this Act do not form part of this Act.	12
<b>[3]</b>	<b>Part 3A, Division 1, heading</b>	13
	Insert before section 14A:	14
	<b>Division 1 Approval of amendments to Parliamentary Contributory Superannuation Act 1971</b>	15
		16
<b>[4]</b>	<b>Section 14A Superannuation approvals</b>	17
	Omit “Part” from section 14A (5). Insert instead “Division”.	18
<b>[5]</b>	<b>Part 3A, Division 2</b>	19
	Insert after section 14A:	20
	<b>Division 2 Superannuation arrangements for post-2007 members</b>	21
		22
<b>14B</b>	<b>Application of Division</b>	23
	(1) This Division applies to members, other than continuing members under the <i>Parliamentary Contributory Superannuation Act 1971</i> .	24
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		26
	<b>Note.</b> Section 4A of the <i>Parliamentary Contributory Superannuation Act 1971</i> closes the Parliamentary Contributory Superannuation Scheme to members elected at or after the 2007 general election (other than existing members who are re-elected).	27
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- (2) In this section, a **continuing member** includes a member who has elected to cease to have deductions of salary made under section 18B of the *Parliamentary Contributory Superannuation Act 1971*. 1  
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**14C Definitions** 5

In this Division: 6

**complying approved deposit fund** means a complying approved deposit fund for the purposes of section 47 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth. 7  
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**complying superannuation fund** means a complying superannuation fund for the purposes of section 45 of the *Superannuation Industry (Supervision) Act 1993* of the Commonwealth. 10  
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**First State Superannuation Fund** has the same meaning as **Fund** has in the *First State Superannuation Act 1992*. 14  
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**retirement savings account** has the same meaning as in the *Retirement Savings Accounts Act 1997* of the Commonwealth. 16  
17

**salary** of a member means: 18

(a) the maximum contribution base within the meaning of the *Superannuation Guarantee (Administration) Act 1992* of the Commonwealth, or 19  
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(b) the remuneration payable to the person by way of basic salary and additional salary (if any), or 22  
23

(c) the salary of the member prescribed by the regulations for the purposes of this definition, 24  
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whichever is the greatest. 26

**2007 general election** means the first State general election held after the commencement of this section. 27  
28

**14D Superannuation contributions for members** 29

- (1) The State of New South Wales must make, for each member, a superannuation contribution equivalent to the salary contribution percentage for the person for each financial year, or part, for which the person is a member of Parliament. 30  
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- (2) A contribution is not required to be made in respect of any period before the 2007 general election. 34  
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- (3) The superannuation contribution payable under this section, and any additional contributions under section 14F, are payable out of the Consolidated Fund, which, to the necessary extent, is appropriated accordingly. 36  
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|------------|--|----------------------------------|
| (4)        | In this section:   | 1                                |
|            | <i>salary contribution percentage</i> for a person means:  | 2                                |
| (a)        | 9% of the salary, unless paragraph (b) applies, or   | 3                                |
| (b)        | such other greater percentage of the salary of the person as may be prescribed by the regulations for the purposes of this definition.   | 4<br>5<br>6                      |
| <b>14E</b> | <b>Payment of superannuation contributions</b>   | 7                                |
| (1)        | The contribution payable under section 14D for a member is to be paid:   | 8<br>9                           |
| (a)        | to the First State Superannuation Fund, or   | 10                               |
| (b)        | if a nomination is in force under this section, to the nominated complying superannuation fund, complying approved deposit fund or retirement savings account.   | 11<br>12<br>13                   |
| (2)        | A member may, by notice in writing to the Treasurer, nominate a complying superannuation fund other than the First State Superannuation Fund or a complying approved deposit fund or retirement savings account as the fund or account to which the contribution is to be paid.  | 14<br>15<br>16<br>17<br>18       |
| (3)        | A member may, by notice in writing to the Treasurer, revoke or vary a nomination under this section at any time.   | 19<br>20                         |
| (4)        | The regulations may make provision for or with respect to matters relating to membership of the First State Superannuation Fund of members for whom contributions are paid to the Fund under this section and other ancillary matters. The regulations may, for that purpose, apply provisions of the <i>First State Superannuation Act 1992</i> with any necessary modifications. | 21<br>22<br>23<br>24<br>25<br>26 |
| <b>14F</b> | <b>Salary sacrifice arrangements</b>   | 27                               |
| (1)        | A member may elect, by notice in writing to the Treasurer, to make additional superannuation contributions by way of salary sacrifice.   | 28<br>29<br>30                   |
| (2)        | An election under this section does not affect the amount that would otherwise constitute the salary of a member for the purposes of employer contributions to superannuation under section 14D.   | 31<br>32<br>33<br>34             |
| (3)        | An election may be made at any time, but only in respect of future salary payments.  | 35<br>36                         |
| (4)        | An election is to specify the percentage or amount of the member's basic salary and additional salary (if any) payable to  | 37<br>38                         |
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Parliamentary Superannuation Legislation Amendment Bill 2005

Schedule 2 Amendment of Parliamentary Remuneration Act 1989

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the member that is to be used to make the additional superannuation contributions. The percentage or amount so specified is not to exceed 50%, or a greater percentage prescribed by the regulations, of the total basic salary and any additional salary of the member.	1 2 3 4 5
(5) An election is to be in the form approved by the Treasurer and to be accompanied by the information required by the Treasurer.	6 7
(6) A member may elect, by notice in writing to the Treasurer, to vary or revoke an election.	8 9
(7) An election takes effect when it is approved by the Treasurer and the trustee or administrator of the superannuation fund or account concerned.	10 11 12
(8) If an election is in force under this section:	13
(a) the basic salary and additional salary (if any) otherwise payable to the member is to be reduced by the amount of the contributions (despite any other provision of this Act), and	14 15 16 17
(b) any such contributions are to be paid to the First State Superannuation Fund, or to another complying superannuation fund, a complying approved deposit fund or a retirement savings account nominated by the member for that purpose.	18 19 20 21 22
<b>[6] Schedule 3 Savings, transitional and other provisions</b>	23
Insert at the end of clause 1:	24
<i>Parliamentary Superannuation Legislation Amendment Act 2005</i>	25