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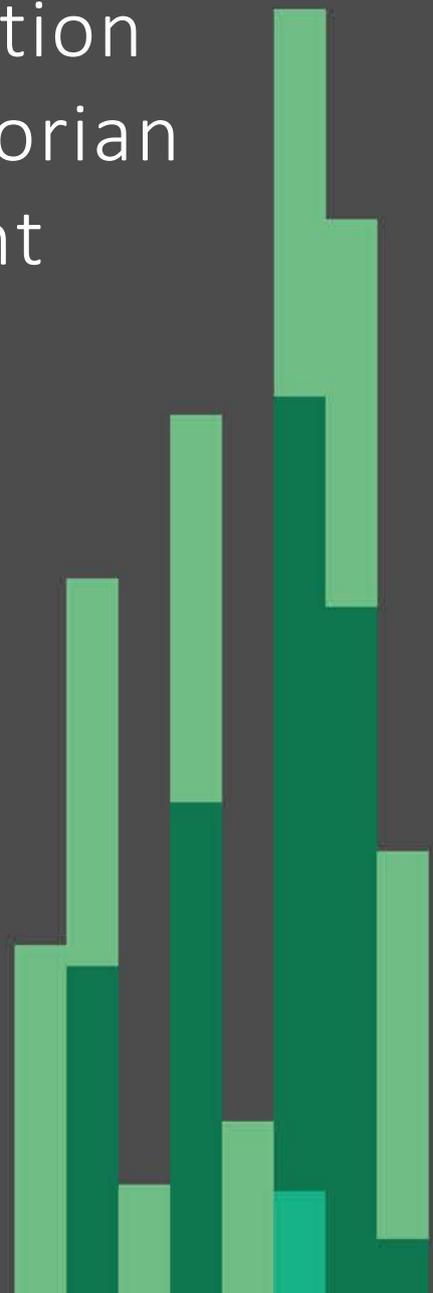
Victorian  
Independent  
Remuneration  
Tribunal

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# Review of Superannuation Arrangements for Victorian Members of Parliament

Issues Paper

May 2020



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## Glossary

Term or abbreviation	Definition
Additional salary	Salary payable to MPs who are 'specified parliamentary office holders' as defined in s3 of the VIRTIPS Act.
Basic salary	Salary payable to all Victorian MPs.
Basic salary portion	The basic salary portion set under s17(5)(b) of the VIRTIPS Act, used to calculate contributions and benefits for MPs in the Existing and New Benefits Schemes.
ESSSuper	Emergency Services and State Super, which administers the defined benefit schemes under Part 3 of the PSAS Act.
Existing Benefits Scheme	A defined benefit scheme provided to MPs under Part 3, Division 2 of the PSAS Act for MPs elected before 1996.
Hazell Review	Hazell, M. Independent Review of Victorian MPs' Salary Entitlements, Allowances and Other Arrangements. Report prepared for the Department of Premier and Cabinet. Victoria, 2013.
MP	Member of Parliament
New Benefits Scheme	A defined benefit scheme provided to MPs under Part 3, Division 3 of the PSAS Act for MPs elected after 1996 – closed to new entrants in 2004.
Parliament	Parliament of Victoria
PCSF	Parliamentary Contributory Superannuation Fund – the defined benefit fund which applies to MPs in the Existing and New Benefits schemes.
PSAS Act	<i>Parliamentary Salaries, Allowances and Superannuation Act 1968</i> (Vic)
Separation payment	A payment made to a Victorian MP, who is not a member of a defined benefit scheme.
Superannuation Guarantee (SG)	The minimum rate of employer contributions, as specified in the <i>Superannuation Guarantee (Administration) Act 1992</i> (Cth).
Tribunal	Victorian Independent Remuneration Tribunal
VIRTIPS Act	<i>Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019</i> (Vic)

# 1 Introduction

Under section 39(1) of the Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019 (Vic) (VIRTIPS Act), the Tribunal is required to:

review and report on the superannuation arrangements for Victorian Members of Parliament (MPs) under Parts 3 and 4 of the *Parliamentary Salaries, Allowances and Superannuation Act 1968* (Vic) (PSAS Act), including potential inequalities and irregularities between the superannuation arrangements.

The Tribunal's report must be completed by 20 September 2020.

Under section 39(2) of the VIRTIPS Act, the Tribunal:

is not to consider any option that would result in an existing MP or former MP being in an overall position that is less favourable than before the making of the report.

The Tribunal invites affected and interested persons or parties to make a submission. The Tribunal has a preference for written submissions. Requests to make an oral submission will be considered.

To support interested parties to make a submission, the Tribunal has summarised in this issues paper the matters it will be considering.

**Written submissions must be made by 5pm on Friday, 3 July 2020.** Written submissions may be emailed to the Tribunal Secretariat at [enquiries@remunerationtribunal.vic.gov.au](mailto:enquiries@remunerationtribunal.vic.gov.au)

Those wishing to make an oral submission are to advise the Tribunal by 5pm on Friday, 19 June 2020 by email to [enquiries@remunerationtribunal.vic.gov.au](mailto:enquiries@remunerationtribunal.vic.gov.au)

The dates for making an oral submission will be published on the Tribunal's website.

If you require assistance to make a submission, please contact the Tribunal Secretariat at [enquiries@remunerationtribunal.vic.gov.au](mailto:enquiries@remunerationtribunal.vic.gov.au)

All submissions will be published in full or in summary form as appropriate on the Tribunal's website, unless the person making the submission seeks confidentiality or the submission contains information that is identified as commercially sensitive. In this instance, the submission will be published in a form which protects the confidentiality or commercial sensitivity.

Further information on how to make a submission is available on the Tribunal's website.

## Schemes under review

Part 3 of the PSAS Act provides the rules for two defined benefit schemes:

- an Existing Benefits Scheme, closed to new members on 2 July 1996
- a New Benefits Scheme, closed to new members on 10 November 2004.

A defined benefit scheme is a superannuation scheme which guarantees its members a defined (i.e. fixed) benefit upon retirement, such as a pension or lump sum. For former MPs, the value of the benefit is determined by a formula which takes into account several factors, including their length of service in the Parliament and a value known as the basic salary portion (see [Appendix A](#)). In most cases members are required to contribute a portion of their salary to the Parliamentary Contributory Superannuation Fund (PCSF), which is administered by Emergency Services and State Super (ESSSuper). Member contributions are pooled and invested by ESSSuper and used to pay the superannuation entitlements of members of the schemes. The State of Victoria may contribute additional funds to the PCSF from time to time, to ensure that it can continue to meet its liabilities.

Part 4 of the PSAS Act provides the rules for an accumulation scheme. Under the accumulation scheme, the State of Victoria makes superannuation contributions to an MP's nominated fund on their behalf. The superannuation balance, including investment returns and any additional contributions, are accessible once the MP (or former MP) reaches their preservation age (which ranges from 55-60 depending on date of birth).

As at April 2020, there were no existing MPs in the Existing Benefits Scheme and 17 existing MPs in the New Benefits Scheme. The other 111 existing MPs are members of the accumulation scheme. Approximately 200 individuals (former

MPs or their partners or eligible children) are currently receiving a pension under the defined benefit schemes.

Further information on the MP superannuation schemes can be found in section 4, and a more detailed explanation of how the defined benefit schemes operate has been included at [Appendix A](#).

## Particular questions for consideration

Without limiting the matters on which persons or parties might wish to make submissions, the Tribunal is particularly interested in receiving submissions on the following questions, which are discussed in this issues paper:

- i. **Analytical framework:** Is the Tribunal's proposed analytical framework for identifying potential inequalities and irregularities, and for considering options to address these, appropriate and complete? If not, why?
- ii. **Comparing schemes:** How (if at all) should the Tribunal compare the outcomes for MPs who are members of the defined benefit schemes and the accumulation scheme respectively? For example, is the Tribunal's proposed actuarial modelling approach, outlined in section 5, appropriate? Moreover, is the Tribunal's proposal to focus on a comparison of the accumulation and New Benefits schemes appropriate? If not, why?
- iii. **Inequalities:** What inequalities should the Tribunal consider? Has the Tribunal identified the main inequalities in this paper? What reforms are needed to address these inequalities? What factors should the Tribunal take into account when considering potential changes?
- iv. **Irregularities:** What irregularities should the Tribunal consider? Has the Tribunal identified the main irregularities in this paper? What reforms are needed to address these irregularities? What factors should the Tribunal take into account when considering potential changes?
- v. **Commonwealth legislation:** What is the impact of Commonwealth legislation on Victorian MP superannuation schemes, and what options should the Tribunal consider to address these impacts?

## 2 The Tribunal's proposed analytical framework

The Tribunal intends to focus its review on the New Benefits Scheme and the accumulation scheme, as:

- all existing MPs are members of either the New Benefits Scheme or the accumulation scheme
- a 2013 review of the salary entitlements, allowances and other arrangements for Victorian MPs identified a need to 'bridge the gap' between the New Benefits Scheme and the accumulation scheme.

However, the Tribunal will also be mindful of potential impacts on the Existing Benefits Scheme, particularly as these may affect former MPs (and their partners or eligible children) who continue to receive a pension under this scheme.

The VIRTIPS Act requires the Tribunal to consider 'potential' inequalities and irregularities. The Tribunal understands this to mean inequalities and irregularities which may exist at the present time, in addition to those that may arise in the future as a result of changes in MP circumstances or economic conditions.

To assess potential inequalities between the superannuation schemes, the Tribunal proposes to consider whether differences between the superannuation schemes are leading to the inequitable treatment of some existing or former MPs. In line with previous Australian superannuation reviews, the Tribunal proposes to consider the principle of equity in terms of:<sup>1</sup>

- horizontal equity – individuals in similar circumstances should be treated similarly (i.e. receive similar superannuation benefits), notwithstanding the limitations of this principle, discussed below
- vertical equity – differences in the treatment of individuals should reflect, and be proportionate to, relevant differences in their circumstances.

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<sup>1</sup> John Harrison, 'Assessing the Taxation of Superannuation in Terms of Horizontal and Vertical Equity', *Journal of the Australasian Tax Teachers Association* 13, no. 1 (2018): 114-151; Anthony Asher, 'Equity in Retirement: Are All Australians Getting a Fair Deal?', *The Economic and Labour Relations Review* 22, no. 3 (2011): 65-84; Ross Clare, *Equity and Retirement Income Provision in Australia* (Association of Superannuation Funds Australia: Sydney, February 2001).

The principle of horizontal equity appears to be more relevant for this review. This is because the superannuation scheme that applies to an MP is determined by the date on which they first entered the Parliament.<sup>2</sup> For example, an MP in the accumulation scheme may have the same duties and characteristics (e.g. age, years of service) as another MP in the New Benefits Scheme, yet may receive significantly different superannuation benefits because they entered the Parliament at a later date.

When considering these principles, the Tribunal will also be mindful that the Parliament of Victoria retains the power to change laws when appropriate (e.g. to reflect changing community standards and expectations), even if that results in the different treatment of individuals in comparison to their predecessors. Further, when MP superannuation arrangements have been changed in a disadvantageous manner in the past, these changes have generally been subject to grandfathering so that they do not unfairly impact on individuals that made decisions based on previous arrangements.

The Tribunal is also required to review and report on potential irregularities between the superannuation arrangements. The term “irregularity” is not defined in the VIRTIPS Act. In assessing irregularities, the Tribunal proposes to consider matters such as:

- unforeseen differences in the application of certain Commonwealth tax laws to members of the defined benefit and accumulation schemes and the net benefits of being a member of each scheme
- circumstances where the rules of the schemes are leading to outcomes that are undesirable or unexpected
- inconsistencies or ambiguities in the legislation, such as when the intended meaning of a rule relating to the operation of one of the schemes is not readily apparent (i.e. is open to multiple interpretations).

Unlike its Determinations of MP salaries and allowances, the Tribunal’s review does not have the power to make changes to superannuation arrangements for

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<sup>2</sup> Exceptions are: (a) MPs who were in the Parliament in 1996 and elected to transfer into the New Benefits Scheme, and (b) MPs in defined benefit schemes who leave the Parliament and, upon returning, join the accumulation scheme.



MPs. However, the Tribunal may choose to recommend options to address any potential inequalities and irregularities it identifies.

The Tribunal must not consider any option that would result in an existing or former MP being in a less favourable position overall. In addition, the Tribunal proposes that, in considering options, it will take account of factors such as:

- the rationale for the closure of defined benefit schemes
- the costs and benefits of options, for example, the cost to the State of Victoria
- superannuation arrangements provided for MPs in other jurisdictions and across the public sector, as well as those available in the broader economy (e.g. private sector)
- economic and financial conditions
- views expressed in submissions to the issues paper
- taxation implications
- whether the option would create inequalities or irregularities in the future (e.g. for MPs joining the Parliament of Victoria after the change is made).

## Implications of grandfathering arrangements

Under Commonwealth law, superannuation contributions made by employers on behalf of their employees are usually treated as ‘concessional contributions’. If an employee exceeds their concessional contributions cap (\$25,000 for the 2019-20 financial year), they may be required to pay additional tax.

While an employer may be required to contribute funds to a defined benefit fund to ensure it has sufficient assets to meet its liabilities, these contributions are generally not linked to individual members. Instead, the superannuation fund is required to calculate the notional taxed contributions (NTCs) for members of the fund, which are treated as concessional contributions for taxation purposes.<sup>3</sup>

For existing members of defined benefit schemes, grandfathering arrangements are in place which ensure that, where members have NTCs that exceed the concessional contributions cap, they will be deemed to be at the cap and will not be subject to any excess contributions tax. The Tribunal understands that these

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<sup>3</sup> Emergency Services and State Superannuation Board, *Parliamentary Contributory Superannuation Fund Member Handbook - New Benefits Scheme (Division 3)* (ESSSuper: Melbourne, 2017), 9.

arrangements typically only apply where a defined benefit account was opened prior to 12 May 2009.

Changes to the current defined benefit schemes may result in the loss of these grandfathering arrangements. The Tribunal may thus be unable to consider any option which would have this effect, due to the requirement that it not consider any option that would result in an existing or former MP being in a less favourable position overall than before the making of the report (s39(2) of the VIRTIPS Act).

### 3 Key historical events

The State of Victoria first introduced a superannuation scheme for its MPs in 1946.<sup>4</sup> MP superannuation arrangements have subsequently been changed on several occasions (table 1 overleaf).

Key reforms were made in 1968, when the Government moved MPs across to a defined benefits scheme, which is now known as the Existing Benefits Scheme.

In 1996, the Government introduced a new defined benefit scheme for MPs (known as the New Benefits Scheme) largely based on the MP superannuation scheme used at the time by the Commonwealth Government.<sup>5</sup> The Existing Benefits Scheme was closed to new members.

The New Benefits Scheme was in turn closed to new members that were elected as an MP after November 2004, following a similar move by the Commonwealth Government. MPs first elected after 2004 are now members of an accumulation scheme. This change was made to bring Victorian MP superannuation arrangements into line with those available to the broader community.<sup>6</sup>

Generally speaking, under the rules for the New Benefits Scheme, eligibility for the pension is based on the time that a former MP served in the Parliament and their reason for leaving.

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<sup>4</sup> *Parliamentary Contributory Retirement Fund Act 1946* (Vic). For context, this was in the same year as New South Wales, but several years after Western Australia became the first state to do so in 1941. The Commonwealth did not introduce a superannuation scheme for its MPs until 1948.

<sup>5</sup> *Miscellaneous Acts (Omnibus Amendments) Act 1996* (Vic), s28.

<sup>6</sup> Victoria, *Parliamentary Debates*, Legislative Council, 3 November 2004, 1007 (John Lenders, Minister for Finance).

There are complex rules which apply to former MPs who return to Parliament. Former MPs covered by defined benefit schemes that become an MP again after November 2004 join the accumulation scheme, and their pension (if they were eligible to receive one) is suspended. They resume receiving the pension, if previously eligible, once they leave the Parliament again. However, exceptions apply where a person ceases to be an MP as a result of resigning from one House of the Parliament of Victoria and being elected to the other House within the space of 3 months. In that case, their time as an MP is treated as if it was uninterrupted.<sup>7</sup>

**Table 1: highlights in the history of Victorian MP superannuation**

Year	Description
1925	First contributory superannuation scheme introduced for Victorian public service employees. Prior to this, schemes were non-contributory and only covered individuals appointed before December 1881.
1946	Superannuation for Victorian MPs introduced: <ul style="list-style-type: none"> <li>• £1 compulsorily deducted from the fortnightly pay of each MP</li> <li>• Eligible former MPs (or in some cases, their spouses) provided with a pension equal to the “basic wage” for Melbourne</li> <li>• Former MPs not eligible for a pension provided with a one-off retirement allowance.</li> </ul>
1948-1962	Several minor changes made to the MP superannuation scheme (e.g. increases to contributions and rate of pension). Short-lived successor scheme introduced in 1962.
1968	The Parliamentary Contributory Superannuation Fund (PCSF) is established, and a new superannuation scheme (now known as the Existing Benefits Scheme) is introduced for MPs modelled on arrangements for Victorian public service employees. Under the Existing Benefits Scheme, contributions and pension entitlements are tied to current MP salaries.
1993	Victoria’s public sector defined benefit schemes are closed to most new employees. Changes made to the future accrual of former MP pension entitlements to achieve cost savings for the State.
1996	New Benefits Scheme is introduced for Victorian MPs, based on the scheme for Commonwealth MPs. The Existing Benefits Scheme is closed to new members.
2004	New Benefits Scheme is closed to new members, following the Commonwealth’s decision to close its MP defined benefit scheme. New MPs are members of an accumulation scheme.

<sup>7</sup> PSAS Act, ss14A and 21A.

Year	Description
2012-2013	<p>Changes made to MP superannuation and allowances following the Hazell Review:<sup>8</sup></p> <ul style="list-style-type: none"> <li>• resettlement allowance is introduced for former MPs that are not in a defined benefit scheme</li> <li>• employer superannuation contributions for MPs in the accumulation scheme are increased to the Commonwealth Superannuation Guarantee charge percentage plus 6 per cent (at the time reflecting an overall increase from 9 per cent to 15 per cent).</li> </ul>
2019	<p>The Tribunal is established. Legislative changes are made to ensure that increases to MP salaries do not 'flow through' to contributions and pension entitlements under the defined benefit schemes, by instead tying them to the 'basic salary portion'. The Tribunal sets the basic salary portion in the <i>Members of Parliament (Victoria) Determination No. 01/2019</i>, which is used to calculate contributions and pension entitlements for members of the defined benefit schemes going forward.</p>

## Reforms following Hazell Review

In 2012, the Victorian Government commissioned Malcolm Hazell CVO AM to conduct a review into the salary entitlements, allowances and other arrangements for Victorian MPs (Hazell Review). The Hazell Review identified a need to 'bridge the gap' between the superannuation arrangements of MPs in the pre-2004 defined benefit schemes and those in the post-2004 accumulation scheme. However, it concluded that a return for all MPs to the pre-2004 scheme would be unjustifiable given prevailing community values and expectations and the likely cost (estimated at \$6-7 million per annum).

The Hazell Review made three recommendations to the Government to address the discrepancy between the superannuation schemes, each of which has been implemented:

- increasing the employer superannuation contributions for MPs in the accumulation scheme from 9 per cent to 15 per cent<sup>9</sup> (implemented in 2013, when the superannuation contribution rate for MPs was increased to the

<sup>8</sup> Malcolm Hazell, *Independent Review of Victorian MPs' Salary Entitlements, Allowance and Other Arrangements* (Government of Victoria: Melbourne, 2013).

<sup>9</sup> The proposed increase was justified on the basis that MPs do not accrue recreation or long-service leave. Malcolm Hazell noted that, for an MP in the accumulation scheme who has served for two terms, the increase in employer contributions would "provide a benefit roughly equivalent to the long-service and annual leave entitlements that other public officials may expect to accrue over the same period". Malcolm Hazell, *Independent Review of Victorian MPs' Salary Entitlements, Allowance and Other Arrangements*, 32.

Commonwealth Superannuation Guarantee charge percentage plus 6 per cent)

- introducing a resettlement allowance for former MPs that are not members of the defined benefit schemes and that lose their seat in the Parliament (introduced in 2013, and replaced by the separation payment in 2019)
- revising the MP basic salary based on an objective and comprehensive work-value assessment (completed by the Tribunal in 2019).

## 4 Current superannuation arrangements for Victorian MPs

The superannuation arrangements of Victorian MPs are outlined in Parts 3 and 4 of the PSAS Act. Existing and former MPs are either members of a defined benefit scheme (Part 3), or an accumulation scheme (Part 4).

### Defined benefit schemes

There are two defined benefit schemes operating in respect of existing and former Victorian MPs – the ‘Existing Benefits Scheme’ and the ‘New Benefits Scheme’. Both schemes are now closed to new members.

While the Existing and New Benefits Schemes have different rules regarding pension eligibility and the rate of pension payable, they share some common features. For example, existing MPs in both schemes are required to contribute a portion of their salary to the PCSF in exchange for the provision of a defined benefit upon leaving the Parliament. Eligible former MPs receive a pension upon leaving the Parliament, while those who are ineligible instead receive a lump sum payment of up to 3½ times their contributions. Upon the death of an MP, a reduced pension is payable to their partner or eligible children. The common features of the defined benefit schemes are summarised in table 2 overleaf.

**Table 2: common features of MP defined benefit schemes**

**Features**

Existing MPs are required to contribute a set portion of their salary to the PCSF.

All contributions are paid into the PCSF as after-tax deductions.

Former MPs who meet certain eligibility requirements when they leave the Parliament are eligible to receive an annual pension regardless of their age.

When former MPs leave the Parliament, they may cash out all or part of their pension for a lump sum payment (subject to Commonwealth preservation laws, which place some restrictions on when superannuation can be accessed).

Former MPs who are not eligible for a pension upon leaving the Parliament receive a lump sum payment of up to 3½ times their contributions.

Following the death of an existing or former MP, a reduced pension may be paid to their partner or eligible children.

In 2019, legislation was passed which changed the way contributions and benefits were calculated for existing and former MPs in the defined benefit schemes. The primary outcome of these changes is that the contributions and benefits for existing and former MPs who are in the defined benefit schemes are no longer tied to the current basic salary of MPs and the additional salaries of office holders. Instead, the contributions and benefits are tied to a value set by the Tribunal in the *Members of Parliament (Victoria) Determination No. 01/2019*, referred to as the basic salary portion. The basic salary portion will be automatically indexed each financial year in accordance with a formula set out in s10 of the PSAS Act and cannot be changed by the Tribunal. Further information about these changes and the operation of each scheme is provided in [Appendix A](#).

**Accumulation scheme**

MPs elected after 9 November 2004 are members of the accumulation scheme. MPs are required to nominate a complying fund for their contributions to be paid into, otherwise contributions are paid into the default fund.

Section 31 of the PSAS Act requires the State to make superannuation contributions that are equal to the greater of:

- the ‘prescribed percentage’ (currently 15.5 per cent) of the basic salary and additional salary (if any)
- the minimum amount necessary to avoid a Superannuation Guarantee shortfall under Commonwealth law (since the ‘prescribed percentage’

method will typically produce the higher figure, this method will not ordinarily apply).

The 'prescribed percentage' is equal to the minimum percentage required under Commonwealth law (referred to in Commonwealth legislation as the 'charge percentage', currently 9.5 per cent) plus 6 per cent. The charge percentage is set to increase to 10 per cent in the 2021-22 financial year, meaning that Victorian MPs will receive contributions of 16 per cent of their basic and any additional salary.

From 16 September 2019, the employer contributions received by MPs in the accumulation scheme will ordinarily exceed the concessional contributions cap (currently \$25,000), thereby resulting in an additional tax liability. Under the PSAS Act, MPs can request in writing that the State limit their employer contributions so as to avoid exceeding the cap.

MPs in the accumulation scheme may also elect to enter into a salary sacrifice arrangement to increase the contributions made to their nominated superannuation fund.

### Separation payment

Former MPs in the defined benefit schemes who have met the eligibility requirements will receive a pension when they leave the Parliament, regardless of their age.

In contrast, Commonwealth law ordinarily precludes individuals, including MPs in the accumulation scheme, from accessing their superannuation benefit until they reach a certain age, known as their 'preservation age' (see [Appendix A](#)).

However, former MPs that are not members of the defined benefit schemes are eligible to receive a separation payment upon leaving the Parliament, provided they have not been found guilty of corrupt conduct or a wilful breach of their duties.

This separation payment is equal to up to six months' basic salary. In the event that an MP dies while serving in the Parliament, the separation payment is made to a beneficiary.

The separation payment was introduced in 2019 to replace the former 'resettlement allowance', which was only provided to former MPs who lost their seat at a general election or did not seek re-election due to not being endorsed by their party.

The separation payment is considered relevant for the review, as it:<sup>10</sup>

- was introduced to address a discrepancy between how the superannuation schemes operate
- is provided to former MPs when they leave the Parliament, to facilitate the completion of their parliamentary and electorate business and to support them as they transition from working as an MP.

Table 3, overleaf, summarises the key features of the defined benefit and accumulation schemes.

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<sup>10</sup> Malcolm Hazell, *Independent Review of Victorian MPs' Salary Entitlements, Allowance and Other Arrangements*.



Table 3: features of the MP superannuation schemes

Defined benefit schemes	Accumulation scheme
<b>Employer contributions</b>	
<ul style="list-style-type: none"> <li>The State is not required to make contributions in respect of particular MPs. Instead, contributions are automatically taken from the MP's post-tax salary and paid into the PCSF.</li> <li>The State has been required to contribute to the PCSF to ensure sufficient funds are provided for entitlements to be paid.</li> </ul>	<ul style="list-style-type: none"> <li>The State is required to contribute 15.5% of the MP's basic salary (currently \$182,413 per annum) and additional salary (if any) to their nominated fund, unless the MP elects to receive a reduced contribution.</li> </ul>
<b>Employee contributions</b>	
<ul style="list-style-type: none"> <li>MPs are required to contribute 11.5% of the basic salary portion (currently \$168,901 per annum) to the PCSF for the first 20.5 years of service.</li> <li>Parliamentary office holders are also required to contribute a set percentage of their additional salary during all years of service.<sup>(a)</sup></li> </ul>	<ul style="list-style-type: none"> <li>MPs are not required to make contributions, although they may choose to do so, subject to Commonwealth law.</li> </ul>
<b>Risk and control over investments</b>	
<ul style="list-style-type: none"> <li>MPs' contributions are paid into the PCSF and invested on their behalf by ESSSuper.</li> <li>The superannuation benefit provided following the former MP leaving the Parliament is not affected by the performance of investment markets.</li> <li>Pension provides eligible former MPs with financial certainty in retirement (i.e. payment will continue for the duration of the former MP's life).</li> </ul>	<ul style="list-style-type: none"> <li>Depending on their chosen fund, MPs may have a significant degree of control over how their superannuation is invested, and the risk it is exposed to.</li> <li>The superannuation benefit provided to existing and former MPs reflects contributions made by them and the State, and the performance of the MP's chosen investment options.</li> <li>No guarantee the accumulated benefit will last for the duration of an existing or former MP's life, whether taken in instalments or as a lump sum.</li> </ul>
<b>Eligibility for separation payment</b>	
<ul style="list-style-type: none"> <li>Former MPs are not eligible for the separation payment.</li> </ul>	<ul style="list-style-type: none"> <li>Former MPs are eligible for the separation payment, as long as they are not also a member of one of the defined benefit schemes.</li> </ul>

Note: (a) The contribution payable by an MP on their additional salary is calculated as 11.5 per cent of the basic salary portion multiplied by the relevant additional salary percentage (as specified in the PSAS Act). Further information is at [Appendix A](#).

## 5 Comparing the schemes

Generally speaking, the factors determining the value of the superannuation benefit received by members of the defined benefit schemes (and their partners or eligible children) include:

- years served as an MP, and any additional parliamentary offices held
- the basic salary portion during the years that a pension is paid
- how long the former MP (and their partner) lives after the former MP leaves the Parliament
- the age of the former MP's children (if any) at the time that the former MP and/or their partner dies.<sup>11</sup>

In comparison, the factors which determine the superannuation benefit received by members of the accumulation scheme include:

- years served as an MP, and any additional parliamentary offices held
- the former MP's basic salary and any additional salaries they received while serving in the Parliament
- any voluntary superannuation contributions made by the former MP while serving in the Parliament (e.g. under a salary sacrifice arrangement)
- how the superannuation balance is invested, the performance of that investment option and any applicable superannuation fees or insurance premiums.

These factors all influence which superannuation scheme would provide an existing or former MP with the greatest superannuation benefit in their particular circumstances.

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<sup>11</sup> Children under the age of 18 (under the age of 25 in the case of a full-time student) are eligible for a pension upon the MP's death. Children aged 18 or over who are not studying full time, but who have a disability as defined in the *Disability Services Act 1986* (Cth) and who are wholly or partially dependent on the MP for financial support, are also eligible.

## Proposed actuarial modelling

The Tribunal intends to undertake actuarial modelling of different scenarios in order to compare the schemes, incorporating:

- *a backward-looking approach*: estimating the accrued superannuation benefit of an MP that joined the accumulation scheme in 2004, compared to the benefit they would have received as a member of the New Benefits Scheme for the same period
- *a forward-looking approach*: forecasting the total superannuation benefit provided to an MP joining the accumulation scheme in 2020 and serving a given number of years, compared to the superannuation they would have received had they instead been a member of the New Benefits Scheme for those years.

In conducting modelling, the Tribunal will look at a range of scenarios based on available data, for example:

- the average age at which MPs first join the Parliament
- the average length of time served by MPs in the Parliament.

## 6 Other jurisdictions and Victorian public sector roles

In conducting the review, the Tribunal also intends to consider the superannuation arrangements of MPs in other Australian jurisdictions, as well as those provided to Victorian public sector employees.

### Members of Parliament in other Australian jurisdictions

Accumulation schemes currently operate in the Commonwealth and in every state and territory and are mandatory for all new MPs. Like Victoria, all other jurisdictions previously provided defined benefit schemes for their MPs, but these have since been closed to new entrants (the last jurisdiction to close its MPs' defined benefit scheme, Queensland, did so in 2008). Out of all Australian jurisdictions, Victoria's accumulation scheme provides MPs with the highest employer contribution in percentage terms (currently 15.5 per cent of salary).

Superannuation arrangements for new MPs in all Australian jurisdictions are summarised in table 4.

**Table 4: summary of superannuation arrangements for new MPs in Australian jurisdictions**

Jurisdiction	Required contribution	
	% of salary (or equivalent)	
	Employer contribution	Employee contribution
Victoria	15.5 <sup>(a)</sup>	N/A
Commonwealth	15.4	N/A
New South Wales	9 <sup>(b)</sup>	N/A
Queensland	12.75	5
South Australia	15.4 <sup>(c)</sup>	N/A
Western Australia	15.4	N/A
Tasmania	9.5	N/A
Northern Territory	9 <sup>(d)</sup>	N/A
Australian Capital Territory	14	N/A <sup>(e)</sup>

Notes: (a) Equal to the Superannuation Guarantee charge rate plus 6 per cent; (b) While this figure is below the Commonwealth Superannuation Guarantee charge rate, the salary used to calculate superannuation contributions for NSW MPs is taken to be the greater of:

- the 'maximum contribution base' under Commonwealth law; or
- the total of the following amounts:
  - the remuneration payable to the MP by way of basic and additional salary
  - the cost of any employment benefits provided
  - the amount of any additional superannuation contributions made by way of salary sacrifice.

(c) South Australian MPs only receive 15.4 per cent if they remain in the default fund – MPs who transfer to a different fund receive contributions according to the Commonwealth Superannuation Guarantee; (d) or the minimum required under Commonwealth law, whichever is greater; (e) If an MP chooses to contribute 3% or more of their salary, the Territory will contribute an additional 1%.

Sources: *Parliamentary Salaries, Allowances and Superannuation Act 1968* (Vic); *Parliamentary Superannuation Act 2004* (Cth); *Parliamentary Remuneration Act 1989* (NSW); *Members' Remuneration Handbook* (Qld); *Parliamentary Superannuation Act 1974* (SA); *Parliamentary Superannuation Act 1970* (WA); *Parliamentary Salaries, Allowances and Superannuation Act 2012* (Tas); *Legislative Assembly Members' Superannuation Contributions Act 2004* (NT); *Legislative Assembly (Members' Superannuation) Act 1991* (ACT).

With the exception of New South Wales and Tasmania, all states and territories provide a resettlement allowance (or equivalent) to former MPs that leave the Parliament under particular circumstances.

## Superannuation arrangements for Victorian public sector employees

Most Victorian public sector employees employed from 1994 are members of accumulation superannuation schemes. These individuals receive superannuation contributions in accordance with the Superannuation Guarantee (currently 9.5 per cent), but may elect to make additional contributions as part of a salary sacrifice arrangement.

Defined benefit schemes and pensions remain open only to a limited number of public sector roles. In particular, the Emergency Services Superannuation Scheme defined benefit fund remains open to operational employees in a small number of entities.<sup>12</sup> Former judges of the Supreme Court and County Court of Victoria, and the Chief Magistrate of the Magistrates' Court of Victoria, may also be eligible for a judicial pension.<sup>13</sup>

## 7 Impact of Commonwealth legislation

The operation of Victoria's MP superannuation schemes is affected by Commonwealth legislation, including several Commonwealth taxes that apply to contributions and benefits.

The Commonwealth laws that impact MP superannuation schemes are:

- taxes on concessional and non-concessional contributions
- taxes on benefits
- superannuation preservation rules.

Some of these laws apply differently to defined benefit and accumulation schemes, which can impact the net benefits of being a member of a particular superannuation scheme. Several differences that may contribute to irregularities between the MP superannuation schemes are outlined below.

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<sup>12</sup> Victoria Police, Metropolitan Fire and Emergency Services, Ambulance Victoria, Country Fire Authority, Department of Environment, Land, Water and Planning (certain positions).

<sup>13</sup> *Constitution Act 1975* (Vic), s83; *County Court Act 1958* (Vic), s14; *Magistrates' Court Act 1989* (Vic), s10A.

## Impact of the concessional contributions cap on MPs in the accumulation scheme

Under Commonwealth law, superannuation contributions are treated as being either concessional (pre-tax) or non-concessional (post-tax).

Concessional contributions include:

- employer contributions (including contributions made under a salary sacrifice arrangement)
- personal contributions claimed as a tax deduction.

Concessional contributions are ordinarily taxed at a rate of 15 per cent. An additional 15 per cent tax (referred to as Division 293 tax) may apply to the contributions of some high-income earners.

The Commonwealth has introduced a cap on the concessional contributions that can be made in respect of each person (\$25,000 for the 2019-20 financial year). From 1 July 2018, some individuals are able to carry forward unused portions of the cap for up to 5 years. If the concessional contribution cap is exceeded, the excess is included in the individual's taxable income (i.e. it is taxed at their marginal tax rate) and an excess concessional contributions charge applies. Individuals may choose to withdraw part of their excess concessional contributions from their superannuation fund to meet this additional tax liability.

If an MP is in the accumulation scheme, the State is required to make concessional superannuation contributions to their nominated fund. By default, the State's contributions are equal to 'the prescribed percentage' (15.5 per cent for the 2019-20 financial year) multiplied by the MP's salary. Given current salary levels for MPs, the concessional contributions paid to an accumulation scheme on an MP's behalf will typically exceed the concessional contributions cap.

Following amendments to the PSAS Act in 2019, MPs who are members of the accumulation scheme may be required to choose between either:

- the State paying the full superannuation contribution to their nominated fund, such that the MP is liable for additional tax; or
- the State paying a reduced superannuation contribution to the MP's nominated fund (which is at a level that avoids additional tax being payable) and the MP forfeiting their entitlement to that contribution.

The Tribunal understands that employers in the broader Victorian private and public sector may provide employees with other options for structuring their total remuneration package (e.g. superannuation contributions that would exceed the concessional contributions cap are instead paid to the employee as salary).

### **Effect of superannuation balance limits on members of the defined benefit schemes**

Under the PSAS Act, MPs in the defined benefit schemes are required to make non-concessional contributions to the PCSF (although MPs who have served more than 20.5 years are only required to make contributions if they receive an additional salary). MPs do not have the option of reducing their contribution rate or making contributions on a concessional (i.e. before-tax) basis.

The Commonwealth has introduced a cap on the non-concessional contributions that can be made each year. The non-concessional contributions cap for the 2019-20 financial year is \$100,000. 'Bring forward' arrangements may apply to some individuals, which allow them to have a combined cap for up to a 3-year period.

If a person exceeds the non-concessional contributions cap, they are required to pay 47 per cent tax on their excess contributions. Some individuals may be able to instead withdraw the excess contributions and any associated earnings. However, some defined benefit schemes may not allow members to make these withdrawals.

In addition, if an individual's total superannuation balance is equal to or greater than the 'general transfer balance cap' set by the Commonwealth (\$1.6 million for the 2019-20 financial year), their non-concessional contributions cap is reduced to zero.

As a result of these rules, MPs in the defined benefit schemes that have a total superannuation balance equal to or greater than the transfer balance cap may be required to pay additional tax equal to 47 per cent of their contribution to the PCSF.

The Tribunal invites feedback on whether this is an issue that should be considered by the review. For example, the Tribunal seeks feedback on whether

the defined benefit schemes should be amended to change how MPs whose total superannuation balance is equal to or greater than the general transfer balance cap make contributions to the PCSF.



## References

### Legislation

*Constitution Act 1975* (Vic).

*County Court Act 1958* (Vic).

*Legislative Assembly (Members' Superannuation) Act 1991* (ACT).

*Legislative Assembly Members' Superannuation Contributions Act 2004* (NT).

*Magistrates' Court Act 1989* (Vic).

*Miscellaneous Acts (Omnibus Amendments) Act 1996* (Vic).

*Parliamentary Contributory Retirement Fund Act 1946* (Vic).

*Parliamentary Remuneration Act 1989* (NSW).

*Parliamentary Salaries, Allowances and Superannuation Act 1968* (Vic).

*Parliamentary Salaries, Allowances and Superannuation Act 2012* (Tas).

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