Equal Retirement Treatment and Parliamentary Privilege Abolition Policy 2026 — ERT-P 2026/01

v6 · Mandatory parity for every taxpayer-funded parliamentary retirement benefit

One country. One taxpayer. One set of financial rules.

Companion instruments: Parliamentary Retirement Equality and Privilege Abolition Bill 2026 and Explanatory Memorandum EM-ERT 2026/01. 23 September 2026.

1 Determination

This paper is Australian Government policy on taxpayer-funded parliamentary retirement treatment. It converts the public demand for equal financial rules into an operative instrument. Serving in Parliament is a privilege. It is not a licence to create a protected financial class at public expense. Parliamentarians are citizens, not a special species of legal or economic person. Matching another public-sector class on 15.4 per cent is not equality. Equality is the ordinary Superannuation Guarantee rate and maximum contribution base that the Commonwealth already imposes on ordinary employers.

This paper is the single parent of the Parliamentary Retirement Equality and Privilege Abolition Bill 2026. That Bill is a principal Act. It does not establish another review, justification or exemption process. It imposes an operative equality rule directly upon existing and future payments.

Departments administering the Parliamentary Contributory Superannuation Act 1948, the Parliamentary Superannuation Act 2004, the Superannuation Guarantee (Administration) Act 1992, the Social Security Act 1991 and the Social Security (Administration) Act 1999, and Services Australia, the Commonwealth Superannuation Corporation and the Department of Finance, are to give effect to this paper.

2 Human rights mandate

This policy is a human-rights implementation measure. It gives practical domestic effect to the equality, non-discrimination, social-security and adequate-living-standard obligations Australia voluntarily accepted under the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

Australia ratified the International Covenant on Economic, Social and Cultural Rights on 10 December 1975 and the International Covenant on Civil and Political Rights on 13 August 1980. From those dates Australia carried continuing international obligations governing the laws it maintained, amended, financed and enforced. The Parliamentary Contributory Superannuation Scheme began in 1948, but Australia continued to maintain, amend and finance it after ratification. Continuing public expenditure and each future payment are present governmental acts. Historical origin does not immunise future taxpayer-funded payments from an equality law enacted now.

The Covenants are not commentary. They supply the equality purpose, guide interpretation and require Parliament to remove the economic hierarchy created when ordinary pensioners face strict public-benefit tests while publicly financed parliamentary retirement advantages escape them.

- International Covenant on Civil and Political Rights, article 26 — equality before the law and equal protection of the law without discrimination, including discrimination connected with property or other status.
- International Covenant on Economic, Social and Cultural Rights, article 2 — the rights recognised by the Covenant are to be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
- International Covenant on Economic, Social and Cultural Rights, article 9 — the right of everyone to social security, including social insurance.

- International Covenant on Economic, Social and Cultural Rights, article 11 — the right of everyone to an adequate standard of living for himself and his family and to the continuous improvement of living conditions.
- Committee on Economic, Social and Cultural Rights, General Comment No. 19 — social-security benefits must be available, accessible and provided without discrimination.
- Human Rights Committee, General Comment No. 18 — article 26 is an autonomous guarantee of equality and non-discrimination in law and is not confined to the rights enumerated in the Covenant. Equality and non-discrimination apply to legislation and to the design and administration of social-security systems.

2.1 Treaty instruments written out

Every treaty named in this paper is written out in full before any short name is used. Administrators are on notice that a short name does not reduce the obligation.

No.	Instrument	Accepted by Australia	Articles applied
1	International Covenant on Economic, Social and Cultural Rights	10 December 1975	2, 9, 11
2	International Covenant on Civil and Political Rights	13 August 1980	26
3	Committee on Economic, Social and Cultural Rights, General Comment No. 19 (E/C.12/GC/19)	Interpretive aid	Availability, accessibility, non-discrimination
4	Human Rights Committee, General Comment No. 18	Interpretive aid	Autonomous equality guarantee

2.2 How the present system breaches those articles

No.	Violation in the present system	Instrument and article	How breached	Bill clause
1	A closed statutory class receives taxpayer-funded retirement support free of the income, assets, partner, residence, overseas and qualification rules imposed on Age Pension claimants and recipients.	ICCPR art 26; ICESCR art 2	Legal preference attached to parliamentary status and former public office.	ss 7, 7A, 7B, 8
2	Ordinary pensioners lose public retirement support because of household finances while parliamentary beneficiaries retain the publicly funded excess, including amounts above the Age Pension maximum rate.	ICESCR arts 9 and 11	A privileged public-benefit class escapes restrictions imposed on ordinary recipients. Fiscal restraint is imposed downward.	ss 9–9D, 11–14
3	The 1948 scheme continued to be	ICCPR art 26; ICESCR art 2	Continuing state conduct after 1975 and	ss 3A–3D

	maintained, amended, financed and paid after ratification. Each future instalment is a present governmental act.		1980, not only the 1948 origin.	
4	Post-2004 employer contributions of 15.4 per cent exceed the ordinary Superannuation Guarantee rate and maximum contribution base and vest in a private fund.	ICESCR arts 2, 9 and 11	A statutory excess is labelled superannuation so that ordinary pension tests never apply.	ss 9A–9D
5	Indexation linked to parliamentary or ministerial salary preserves a status-based escalation unavailable to Age Pension recipients.	ICCPR art 26	A parliamentary label produces a superior taxpayer-funded outcome.	s 13
6	Waiver, compromise, relabelling, trusts, spouses, commutation and artificial residence can restore the preference.	ICESCR art 2; ICCPR art 26	Form is allowed to defeat substance.	ss 15–18A
7	No compensation is required for the loss of a statutory preference; just terms apply only if s 51(xxxi) is engaged. Prospective regulation of a taxpayer-funded statutory payment is not conceded to be an acquisition of property.	ICCPR art 26; Constitution s 51(xxxi)	The Bill confines compensation to the constitutional minimum and does not buy back the privilege.	s 21

2.3 Limits this instrument itself imposes — and why they clear

The companion Bill limits a future statutory entitlement to a Commonwealth-funded excess. It does not confiscate independently verified member contributions or ordinary Superannuation Guarantee amounts. International Covenant on Civil and Political Rights article 26 and International Covenant on Economic, Social and Cultural Rights articles 2, 9 and 11 require equal treatment of publicly funded retirement support. Those articles do not require the Commonwealth to maintain a superior class.

Paragraph 51(xxxi) of the Constitution requires that an acquisition of property by the Commonwealth be on just terms. Clause 21 of the Bill states that rule and confines liability to the amount a final court judgment determines is constitutionally required. Clause 21 does not create compensation for disappointment, loss of expectation or removal of preferential statutory treatment. The legislation does not concede that prospective regulation of a taxpayer-funded statutory payment is an acquisition of property.

The Bill does not create a new human-rights cause of action. It uses the Covenants as the test the Parliament already applies to its own legislation under the Human Rights (Parliamentary Scrutiny) Act 2011. On that

test the present concentration of taxpayer-funded preference does not survive. The limits the Bill itself imposes clear.

3 Policy position

This policy abolishes preferential taxpayer-funded retirement treatment for current and former federal parliamentarians. It replaces review, justification and discretionary-exemption models with a binding rule: taxpayer-funded parliamentary retirement benefits are subject to the same qualification, maximum-rate, financial, relationship, residence and overseas restrictions Parliament imposes upon ordinary Age Pension claimants and recipients.

The Commonwealth will preserve genuine personal property: verified member contributions, ordinary employer superannuation and attributable investment return. Everything above ordinary employment superannuation that is financed or guaranteed by the Commonwealth is a Parliamentary Pension Component. It is public retirement support. A person whose income, assets, partner circumstances, residence, overseas absence or age would produce no Age Pension receives no Parliamentary Pension Component.

The policy rejects a justification model. No Minister, parliamentary committee, administrator or tribunal may preserve preferential treatment by calling it historical, accrued, reasonable, proportionate, administratively convenient or superannuation. The statutory outcome is equality.

The Bill does not ask Parliament to justify preferential treatment. It abolishes it.

4 Economic disparity being corrected

The relevant disparity is not merely that two schemes have different names. An ordinary person seeking taxpayer-funded retirement support must disclose household income, assets, investments, controlled entities, gifts, overseas property, relationship status, residence history and overseas absence. Payment may be reduced to nil. Parliament created and maintained retirement advantages for its own members that escaped equivalent restrictions.

That disparity divides Australians into two publicly funded retirement classes. One class must continually prove financial need. The other receives statutory protection because of former public office. Public office is not a separate species of legal person and is not a valid basis for superior access to public retirement funding.

This reform does not confiscate personal savings. It separates private retirement property from public subsidy, then subjects the public subsidy to the rules governing comparable public retirement support.

5 Failure being corrected

The Parliamentary Contributory Superannuation Scheme began under the Parliamentary Contributory Superannuation Act 1948. It remains an unfunded defined-benefit scheme for qualifying parliamentarians who entered before 9 October 2004. Qualifying pensions can begin at 50 per cent of the relevant parliamentary allowance after eight years and increase with further service, subject to statutory conditions and maximums. Additional ministerial and office-holder benefits may apply. Commonwealth revenue meets the statutory promise when scheme contributions and investment value do not fund the benefit.

Ordinary pensioners are subjected to minimum-age and qualification conditions, income tests, assets tests, partner tests, deeming, residence conditions, overseas portability rules, reporting duties and continuing reassessment. Historical parliamentary beneficiaries are not subjected to an equivalent comprehensive regime. Closing the scheme to new entrants from 9 October 2004 did not remove the preferential treatment enjoyed by the protected pre-2004 group.

Parliamentarians covered by the Parliamentary Superannuation Act 2004 currently receive a Commonwealth employer contribution of 15.4 per cent of total parliamentary salaries. The ordinary national Superannuation

Guarantee rate is 12 per cent. The excess, and earnings attributable to it, is a Parliamentary Pension Component. It must no longer be deposited wholly into a privately controlled superannuation fund.

6 Non-negotiable equality standard

No person may receive a Commonwealth-funded parliamentary retirement benefit on terms more favourable than those applying to an ordinary Age Pension claimant or recipient in materially corresponding circumstances.

The rule applies automatically. It does not depend upon a Minister, parliamentary committee, department, actuary or tribunal deciding that equality would be convenient. No authority may excuse compliance by declaring the disparity objective, reasonable, necessary, proportionate, historical, accrued or administratively efficient.

- The same minimum age and qualification conditions apply.
- The same personal and partner income tests apply.
- The same personal and partner assets tests apply.
- The same deeming, deprivation, trust, company and controlled-entity rules apply.
- The same residence, portability and overseas-absence rules apply.
- The same claim, disclosure, reporting, verification and reassessment duties apply.
- The same reduction, suspension, cancellation, debt-recovery, set-off and garnishee mechanisms apply.
- The maximum taxpayer-funded parliamentary payment cannot exceed the Age Pension rate payable to the person on their actual circumstances.
- No Pension Supplement, Energy Supplement, Rent Assistance or other supplement is added unless the person independently qualifies for it under the ordinary law.

6.1 Same national Superannuation Guarantee rate

The protected employer contribution for a parliamentarian is the amount required to avoid a Superannuation Guarantee shortfall and no more. In 2026–27 that is 12 per cent of qualifying earnings, only up to the ordinary maximum contribution base. The 15.4 per cent rate in section 8 of the Parliamentary Superannuation Act 2004 is the preference. The 3.4 percentage points, every dollar levied on salary above the ordinary maximum contribution base, and the earnings attributable to those amounts, are the Parliamentary Pension Component.

That component is not a separately named bonus. It is extra public money written into the same employer contribution. Relabelling it superannuation does not convert a status preference into ordinary employment remuneration.

The fact that some Australian Public Service accumulation arrangements and some MOP(S) Act staff arrangements also use 15.4 per cent is not an answer. Matching another publicly funded class does not cure unequal treatment of ordinary people. The comparator required by this policy, and by article 26 of the International Covenant on Civil and Political Rights, is the rule the Commonwealth imposes on the public, not the rule a public institution wrote for itself.

Everybody receives the same publicly funded retirement treatment, or the arrangement remains a status preference. There is no third option in which Parliament keeps the extra 3.4 points and still satisfies articles 26, 2, 9 and 11.

If a dollar, asset, relationship, age or financial arrangement counts against an ordinary pensioner, it counts against the taxpayer-funded parliamentary component in the same way.

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7 Persons and benefits covered

The equality standard applies to:

- serving and former parliamentarians under the Parliamentary Contributory Superannuation Act 1948;
- existing recipients, deferred beneficiaries, preserved-benefit holders and future recipients;
- spouses, partners, dependants and reversionary beneficiaries;
- members covered by the Parliamentary Superannuation Act 2004;
- ministerial, office-holder and additional parliamentary remuneration and retirement advantages; and
- any benefit converted, transferred, commuted, substituted, assigned or renamed to avoid the equality standard.

The equality standard applies to payments made after commencement regardless of when service occurred or the statutory entitlement arose. No grandfathering clause preserves preferential future public payments. Entry before 9 October 2004 does not create a permanent immunity from laws subsequently enacted to protect equality and public revenue.

8 Protected member-funded amount

For every pre-2004 benefit, an independent Commonwealth actuary selected through an open competitive process must determine the protected member-funded amount. The actuary must be independent of recent parliamentary, political-party or beneficiary employment during the preceding 5 years and must apply a published methodology. The calculation is limited to:

- verified compulsory and voluntary member contributions actually paid;
- net investment return reasonably attributable to those contributions;
- an ordinary employer-funded amount that had vested and was comparable with the employment superannuation standard applying during the service period; and
- less lump sums, commutations, refunds and pension payments already recovered from those protected amounts.

The protected amount excludes the Commonwealth guarantee, unfunded actuarial shortfall, parliamentary-salary linkage, ministerial or office-holder enhancement, longevity subsidy and every other amount not independently funded as ordinary remuneration-based superannuation. Protected property remains payable. Only the taxpayer-funded excess is subjected to the public-benefit regime. Review is available for genuine calculation error. Review must not become a route to special treatment.

9 Post-2004 contribution split at source

The Parliamentary Superannuation Act 2004 contribution must be split before payment. The existing statutory total may continue to be calculated, but it must no longer be deposited wholly into a privately controlled superannuation fund.

1. Calculate the total Commonwealth contribution under the Parliamentary Superannuation Act 2004, including amounts attributable to parliamentary, ministerial and office-holder salary.
2. Calculate the ordinary employer superannuation amount required for the Commonwealth to avoid a Superannuation Guarantee shortfall, subject to the ordinary maximum contribution base and generally applicable law.
3. Pay only that ordinary employer amount to the member’s nominated or default complying superannuation fund.
4. Credit every excess Commonwealth amount to a separate statutory Parliamentary Pension Account as the member’s Parliamentary Pension Component.

5. Keep earnings, debits, adjustments and payments for the excess separately accounted for. Service in Parliament does not itself vest an unconditional right to that public component.

Genuine personal and salary-sacrifice contributions from the member's own remuneration remain ordinary superannuation, subject to the laws applying generally. A special statutory ability to salary sacrifice does not permit contributions exceeding generally applicable taxation and contribution limits. Dividing salary among parliamentary, ministerial and office-holder labels cannot increase the protected public contribution beyond ordinary rules.

10 Pre-2004 benefit split and payment gate

Every benefit under the Parliamentary Contributory Superannuation Act 1948 must be divided into:

- the protected member-funded amount; and
- the taxpayer-funded Parliamentary Pension Component.

The protected member-funded amount remains payable according to its lawful form. The Parliamentary Pension Component cannot be paid unless Services Australia has made a current determination under the same factual and legal tests used for an Age Pension claim. The Commonwealth Superannuation Corporation may calculate the gross statutory entitlement but cannot override, waive or soften the equality reduction.

11 Separate Parliamentary Pension Account

The Parliamentary Pension Component must not be deposited into a parliamentarian's privately controlled superannuation account. It must be credited to a separate statutory account administered by the Commonwealth and remain conditional until payment.

1. The ordinary Superannuation Guarantee component continues to the nominated complying fund.
2. The excess percentage is credited to the statutory Parliamentary Pension Account.
3. Earnings and adjustments attributable to the excess are accounted for separately.
4. No vested right to payment arises merely from service in Parliament.
5. Services Australia applies the ordinary Age Pension tests when payment is sought and at every later reassessment.
6. Only the amount remaining after those tests, and after the maximum-rate cap in section 14, may be paid.

Payment as a lump sum, income stream, rollover, commutation or substituted benefit does not avoid the tests. The legislation must trace and classify the economic value of the public component through any replacement form.

12 Ministerial and office-holder coverage

The ordinary rate and maximum contribution base apply across base salary, ministerial salary and office-holder salary. A higher legitimate salary may produce a larger ordinary contribution only within the ordinary national rules. Any Commonwealth contribution above those rules is a Parliamentary Pension Component. Dividing remuneration into different statutory labels does not avoid the classification.

13 Taxpayer-funded parliamentary component

For the pre-2004 scheme, every amount exceeding the protected member-funded amount is the taxpayer-funded parliamentary component. For the post-2004 scheme, every Commonwealth contribution exceeding the ordinary Superannuation Guarantee amount required to avoid a shortfall, subject to the ordinary maximum contribution base, and every attributable earning, is the taxpayer-funded parliamentary

component. Both are Parliamentary Pension Components subject to the Equal Retirement Treatment Standard.

14 Age Pension qualification and maximum-rate cap

Services Australia must determine the person's notional Age Pension position using the person's actual age, qualification, payability, relationship status, personal and partner income, personal and partner assets, residence and overseas absence. The payable Parliamentary Pension Component is the lesser of:

- the gross taxpayer-funded parliamentary component otherwise calculated; and
- the notional Age Pension rate payable to that person on the same day under the ordinary law.

If the notional Age Pension rate is nil, the Parliamentary Pension Component is nil. If ordinary portability or overseas-absence rules reduce, suspend or cease the corresponding payment or supplement after a specified period, the Parliamentary Pension Component is reduced, suspended or ceased at the same time and on the same terms. Permanent departure produces the same immediate consequence imposed on an ordinary recipient.

No Pension Supplement, Energy Supplement, Rent Assistance or other social-security supplement is added to the Parliamentary Pension Component unless the person independently qualifies for that supplement under the ordinary law.

15 Identical financial tests

The taxpayer-funded parliamentary component must be calculated, reduced, suspended, cancelled, recovered and reviewed using the corresponding Age Pension rules for personal income; partner income; personal assets; partner assets; financial investments and deemed income; trusts, companies, controlled entities and beneficial interests; overseas income and overseas assets; gifts, asset transfers and deprivation arrangements; relationship status and changes in household circumstances; and disclosure, verification and continuing reporting.

16 Identical residence and overseas rules

The same residence, portability and overseas-absence rules apply to the taxpayer-funded parliamentary component. A reduction, suspension or cessation affecting an Age Pension payment or supplement after a specified period overseas must take effect for the parliamentary component after the same period and on the same terms.

Permanent departure from Australia produces the corresponding result immediately where that is the result imposed upon an ordinary pensioner. A temporary return to Australia, a nominal address or an artificial arrangement does not interrupt an absence unless it would interrupt the absence under the corresponding Age Pension rule.

17 Indexation, salary links and commutation

No taxpayer-funded Parliamentary Pension Component may rise merely because parliamentary base salary, ministerial salary or office-holder salary rises. Its ceiling moves only as the corresponding Age Pension ceiling moves. Future indexation cannot exceed the corresponding indexation available to ordinary retirement-income recipients.

A lump sum, commutation, rollover or conversion cannot be used to escape tests. The legislation must trace and classify the economic value of the public component through any replacement form.

18 Claims, disclosure and continuing administration

A person seeking payment of a Parliamentary Pension Component must lodge the prescribed claim and provide the information required of an ordinary Age Pension claimant, including partner information and evidence about income, assets, controlled entities, overseas holdings, residence and travel. Continuing recipients must report changes within the ordinary reporting period.

- Services Australia administers qualification, means, relationship, residence and portability rules.
- The responsible parliamentary scheme administrator supplies contribution and entitlement records and cannot create exemptions.
- Information-gathering, data-matching and verification powers equivalent to those used in social security apply.
- Payment may be reduced, suspended or cancelled for changed circumstances, failure to disclose or failure to provide information.
- Internal review and Administrative Review Tribunal review may correct factual or legal error, but cannot grant a preferential exemption.

19 Anti-avoidance, debts and recovery

Regard must be had to the economic substance of an arrangement rather than its name, legal form or payment pathway. Anti-avoidance rules apply according to substance. Benefits routed through spouses, associates, trusts, companies, controlled entities, lump sums, office-holder payments or replacement schemes remain classified by their public economic source. Nominal addresses, short return visits and artificial arrangements do not manufacture residence or conceal resources.

A scheme has no effect to the extent its dominant purpose or effect is to avoid, reduce or defer application of the Act. Overpayments are debts due to the Commonwealth. Recovery, set-off, garnishee, interest, write-off and waiver rules must be no more favourable than those applying to social-security debts. Deliberate concealment and false statements are referred for investigation and prosecution where the ordinary criminal threshold is met and where the corresponding conduct by an Age Pension recipient would be referred.

20 No exemptions, grandfathering or compensation for lost preference

- No ministerial, parliamentary-resolution or special-circumstances exemption.
- No exemption based on former office, scheme closure, historical expectation or reliance on earlier preferential treatment.
- No accrued-rights or transitional clause preserving a more favourable rate for future taxpayer-funded payments.
- No regulation may delay equality, enlarge the protected member-funded amount, exempt a class or compensate the loss of privilege.
- No voluntary compensation for a reduction, suspension, cap or cessation caused by equal treatment.

Any compensation constitutionally required by section 51(xxxi) of the Constitution is confined to the minimum amount a final court judgment determines is legally required. The legislation does not concede that prospective regulation of a taxpayer-funded statutory payment is an acquisition of property.

21 Administration outside Parliament

Services Australia will administer the qualification, means, relationship, residence and portability tests. The Commonwealth Superannuation Corporation may calculate the underlying parliamentary entitlement but cannot waive or alter the equality reduction and must give effect to every reduction notified by Services

Australia. A parliamentary department, Minister or parliamentarian must not direct either body in an individual case.

22 Covenant duties applied to every measure

- Equality is the operative rule. A parliamentary label cannot produce a superior taxpayer-funded outcome.
- Non-discrimination applies to the design, calculation, payment, suspension, recovery and review of retirement benefits.
- The right to social security requires public retirement systems to be administered fairly and without a protected parliamentary class.
- The right to an adequate standard of living requires fiscal restraint to be imposed without shifting a disproportionate burden onto ordinary pensioners while preserving political advantages.
- Economic status, property, former public office and membership of a closed statutory scheme cannot create immunity from equal public-funding rules.
- No Minister, parliamentary committee or administrator may revive unequal treatment through discretion, waiver, relabelling or subordinate legislation.

A decision-maker must record how a decision gives effect to articles 26, 2, 9 and 11. A decision is not compliant merely because it applies the same procedure if its legal or economic effect preserves a preferential taxpayer-funded parliamentary benefit.

23 No human-rights justification escape

The policy does not establish a process for Parliament to declare its own preference reasonable, proportionate or justified. It legislates a clear equality standard that is more protective than the minimum international test. Once the Commonwealth chooses to finance a retirement benefit above ordinary superannuation, the excess is pension and faces the same public-benefit tests, including the Age Pension maximum-rate cap.

24 Legislative package

The policy is implemented through the Parliamentary Retirement Equality and Privilege Abolition Bill 2026 and Schedule 1 to that Bill. The amendments must operate together across the following Acts:

- Parliamentary Contributory Superannuation Act 1948 — benefit split, actuarial determination, payment gate, cap, application to existing beneficiaries and abolition of preferential salary-linked public components.
- Parliamentary Superannuation Act 2004 — at-source division of the statutory employer contribution and creation of the Parliamentary Pension Account.
- Social Security Act 1991 — corresponding qualification, rate, means, deeming, relationship, residence and portability rules.
- Social Security (Administration) Act 1999 — claims, notices, information collection, decisions, review, suspension, cancellation, debts and recovery.
- Human Rights (Parliamentary Scrutiny) Act 2011 — compulsory disclosure of any future difference from ordinary Age Pension treatment and its economic and distributional effect.

25 Human rights scrutiny for future laws

Every statement of compatibility for a Bill or legislative instrument affecting parliamentary retirement benefits must identify each material difference from Age Pension treatment, quantify the affected public

expenditure and distributional effect, and address International Covenant on Civil and Political Rights article 26 and International Covenant on Economic, Social and Cultural Rights articles 2, 9 and 11. Parliamentary status, historical expectation, closure of a scheme or use of the label superannuation is not a sufficient human-rights answer and cannot authorise a statutory exception from parity.

26 Human rights accountability

The Auditor-General must report annually, in de-identified totals, on gross benefits, protected member-funded amounts, taxpayer-funded components, reductions, suspensions, overseas cases, debts, recoveries, compliance action, verified Commonwealth savings and distributional effects. The report must separately state the distribution of protected ordinary superannuation and Parliamentary Pension Components, the effect of the ordinary tests including the maximum-rate cap, whether any parliamentary beneficiary received treatment unavailable to an ordinary pensioner in corresponding circumstances, action taken to correct any disparity, and compliance with each right identified in section 2. Reporting supports enforcement. It does not replace the binding equality rule.

A person affected by an administrative decision must be able to seek ordinary merits and judicial review, including review by the Administrative Review Tribunal. Review may correct error and enforce equal treatment. It may not create a political exemption from equal treatment.

After 2 years the Australian Human Rights Commission and the Auditor-General must jointly review whether economic disparity has been eliminated in practice and whether the Act effectively implements International Covenant on Civil and Political Rights article 26 and International Covenant on Economic, Social and Cultural Rights articles 2, 9 and 11. The review must not recommend restoration of preferential parliamentary treatment. The report must be tabled in each House within 15 sitting days after completion.

27 Commencement and transition

1. On Royal Assent, anti-avoidance, record-preservation, information-gathering and actuarial-preparation provisions commence.
2. Within 60 days, parliamentary scheme administrators transfer all required contribution, entitlement and payment records to Services Australia and the independent actuary.
3. Within 90 days, every affected person receives a compulsory disclosure and claim notice.
4. Within 180 days, a provisional protected member-funded amount is determined for each pre-2004 beneficiary.
5. On the first quarterly commencement day after 180 days (1 January, 1 April, 1 July or 1 October), the equality standard applies to every future payment, including payments to existing beneficiaries.
6. Within 12 months, the Auditor-General reports on implementation, savings, debts, implementation costs and compliance failures. De-identified results are then published annually.

Existing instruments survive only to the extent they are consistent with the equality standard. Transitional regulations expire after 24 months and may deal only with machinery. They cannot exempt a person, delay parity, enlarge protected amounts or replace a lost preference with another public benefit.

The Bill is expected to reduce Commonwealth expenditure. It does not invent a savings figure. Savings depend upon individual beneficiary income, assets, relationships, residence, overseas absence, actuarial attribution and existing payment history. Implementation requires actuarial determinations and Services Australia administration. Those costs are necessary to apply the same scrutiny Parliament already requires for ordinary pensioners.

28 Final principle

Ordinary superannuation remains protected. Anything Parliament awards above the ordinary national standard is pension and faces the ordinary pension tests, including the Age Pension maximum-rate cap.

One country. One taxpayer. One standard for public retirement support. Parliamentary service is a privilege. It does not create a superior class of retiree.

29 Same rate or the preference remains

This policy does not bargain the 3.4 points down to 14 per cent or 13 per cent. It does not accept a phase-out that leaves sitting members on 15.4 per cent for the rest of their service. Future Commonwealth employer contributions for parliamentary service are capped at the ordinary Superannuation Guarantee rate and maximum contribution base applying to an ordinary employee on the same day.

Anything above that cap stays classified as a Parliamentary Pension Component. It is held in the statutory account. It is payable only after Services Australia applies the Age Pension qualification, rate, means, partner, residence and overseas tests, including the maximum-rate cap in section 14. If those tests produce a nil Age Pension, the component is nil.

A future law that restores 15.4 per cent, or any other rate above the ordinary national standard, is a fresh status preference. A statement of compatibility that treats parliamentary service, historical expectation, alignment with the Australian Public Service or the label superannuation as sufficient justification fails section 25.

30 Domestic courts, the Commission and the United Nations

30.1 What an Australian court can and cannot do

Australia ratified the International Covenant on Economic, Social and Cultural Rights on 10 December 1975 and the International Covenant on Civil and Political Rights on 13 August 1980. Ratification created international obligations. It did not, by itself, create a domestic cause of action.

Australia is a dualist system. Treaty rights are enforceable in an Australian court only where a statute says so. The Human Rights (Parliamentary Scrutiny) Act 2011 requires a statement of compatibility. Section 8 of that Act says the statement is not binding on any court or tribunal and that failure to prepare one does not affect validity. The Parliamentary Joint Committee on Human Rights reports to Parliament. It cannot strike down section 8 of the Parliamentary Superannuation Act 2004.

There is no comprehensive federal Human Rights Act. A member of the public cannot take the Commonwealth to the Federal Court or the High Court on the ground that 15.4 per cent “violates the Covenants” and obtain an order deleting the rate. Constitutional challenge on this disparity would have to fit a head of power or a constitutional implication. Unequal taxpayer-funded superannuation is not, on present authority, a constitutional invalidity.

The Australian Human Rights Commission may inquire and report because the International Covenant on Civil and Political Rights is scheduled to the Australian Human Rights Commission Act 1986. A Commission report is not an order. Conciliation cannot rewrite the 2004 Act.

Judicial review can correct an administrative decision under this policy once the companion Act is in force. It cannot invent the Act. That is why the companion Bill is the domestic remedy. Either Parliament enacts equal treatment or the preference continues under colour of “superannuation.”

30.2 What can go to the United Nations

Australia acceded to the First Optional Protocol to the International Covenant on Civil and Political Rights on 25 September 1991. From 25 December 1991 the Human Rights Committee may receive an individual communication alleging a violation of the Covenant, including article 26.

The communication cannot be a popular complaint by “the public.” The author must be a victim: an identified person subject to Australia’s jurisdiction who is actually affected by the unequal rule. Domestic remedies that exist must first be exhausted. An actio popularis will be found inadmissible.

Views of the Human Rights Committee are an authoritative interpretation of the Covenant by the body established to supervise it. They are not a judgment of an Australian court and they are not self-executing. Australia has complied with some Views, including Toonen, by legislating afterwards. It has declined to give effect to others. A successful article 26 communication would not, by itself, reduce the 15.4 per cent rate. It would create international findings and political pressure. Parliament would still have to pass the statute.

Australia has not accepted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights. An individual cannot take articles 9 or 11 of that Covenant to the Committee on Economic, Social and Cultural Rights. Periodic reporting and Universal Periodic Review remain available. They are political processes, not orders.

30.3 The rights exist. The domestic remedy was withheld.

The Covenants bind Australia internationally. The dualist gap is not evidence that the rights are decorative. It is evidence that successive Parliaments accepted the obligations and then refused to give ordinary people a court in which to enforce them against a scheme written for Parliament itself.

This policy closes that gap for taxpayer-funded parliamentary retirement treatment. The companion Bill converts articles 26, 2, 9 and 11 into a binding domestic rate rule, a payment gate and a maximum-rate cap. Until that Bill is law, the disparity continues as a present governmental act each time the 15.4 per cent contribution is paid.

Either everybody is under the same publicly funded retirement rules, or the arrangement remains a status preference. Human rights that cannot be used against the institution that writes them are not a completed domestic implementation. They are an unpaid account.

31 Sources and references

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- International Covenant on Economic, Social and Cultural Rights, especially articles 2, 9 and 11.
- Human Rights Committee, General Comment No. 18, Non-discrimination.
- Committee on Economic, Social and Cultural Rights, General Comment No. 19, The right to social security, E/C.12/GC/19.

- Australian Government Solicitor, Legal Briefing No. 100, human rights treaties and Australian domestic law.
- Attorney-General’s Department, Complaints mechanisms under human rights treaties (First Optional Protocol to the ICCPR accepted 25 September 1991; Optional Protocol to the ICESCR not accepted).
- Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), section 8 — statements of compatibility are not binding on any court or tribunal.
- Australian Human Rights Commission Act 1986 (Cth) — International Covenant on Civil and Political Rights scheduled; Commission reports are not orders.