Explanatory Memorandum

Parliamentary Retirement Equality and Privilege Abolition Bill 2026

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This memorandum explains the Parliamentary Retirement Equality and Privilege Abolition Bill 2026. It gives effect to Equal Retirement Treatment and Parliamentary Privilege Abolition Policy ERT-P 2026/01 (v6). Companion instruments: ERT-P 2026/01 and PREPA 2026.

1 Outline

The Bill ends preferential taxpayer-funded parliamentary retirement treatment. It does not confiscate verified member contributions or ordinary Superannuation Guarantee amounts. It classifies everything above those amounts as a Parliamentary Pension Component and pays that component only after Services Australia applies the qualification, maximum-rate, income, assets, partner, residence and overseas rules that already apply to Age Pension claimants and recipients.

For members covered by the Parliamentary Superannuation Act 2004, the Commonwealth employer contribution is split at source. The ordinary Superannuation Guarantee rate and maximum contribution base go to the member's chosen fund. The excess—presently 15.4 per cent minus 12 per cent, plus any amount levied above the ordinary maximum contribution base, plus earnings on that excess—is credited to a statutory Parliamentary Pension Account. Credit is not a vested right. Payment follows the Age Pension tests, including the cap in new section 55A of the Social Security Act 1991: payable amount is the lesser of the gross component and the notional Age Pension; nil if the notional rate is nil.

Matching another public-sector class on 15.4 per cent is not a defence. The comparator is the rule the Commonwealth imposes on ordinary employers and ordinary pensioners.

2 Human rights compatibility

2.1 Prepared under the Human Rights (Parliamentary Scrutiny) Act 2011

This statement assesses the Bill against the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011.

The Bill is compatible with those rights. It implements rights Australia accepted and then left without a domestic court action for this subject.

2.2 Rights engaged

The Bill engages:

- article 26 of the International Covenant on Civil and Political Rights—equality before the law and equal protection of the law;
- article 2 of the International Covenant on Economic, Social and Cultural Rights—rights guaranteed without discrimination of any kind as to other status;
- article 9 of that Covenant—the right of everyone to social security, including social insurance; and
- article 11 of that Covenant—the right of everyone to an adequate standard of living and to the continuous improvement of living conditions.

It also engages property interests only so far as section 51(xxxi) of the Constitution may apply. The Bill does not concede that prospective regulation of a taxpayer-funded statutory payment is an acquisition of property. Section 21 confines any constitutionally required compensation to that acquisition and excludes disappointment, lost expectation and removal of preference.

2.3 Why the present arrangements engage those articles

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. After those dates the Commonwealth continued to finance parliamentary retirement arrangements on terms unavailable to ordinary Age Pension recipients: unfunded defined-benefit guarantees under the 1948 Act; a locked 15.4 per cent employer rate under the 2004 Act after the national Superannuation Guarantee reached 12 per cent; salary-linked indexation; and payment without the ordinary qualification and means tests.

That is status-based access to public money. Relabelling the excess as superannuation does not convert a status preference into ordinary employment remuneration.

2.4 Why the Bill's own limits clear

The Bill limits a statutory preference. It does not take verified member contributions. It does not take ordinary Superannuation Guarantee amounts. It applies tests that already exist for other publicly funded retirement payments. Those limits are necessary, proportionate and directed at the same articles the present system breaches.

The dualist character of Australian law is recorded in clause 3B(5). Ratification created international obligations. It did not create a federal cause of action. The Human Rights (Parliamentary Scrutiny) Act 2011, section 8, states that a statement of compatibility is not binding on any court. This Bill is the domestic implementation. An identified person may later take an article 26 communication to the Human Rights Committee under the First Optional Protocol. Those Views are not an Australian court order. Australia has not accepted the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, so articles 9 and 11 cannot be taken to that Committee as an individual complaint.

3 Financial impact

The Bill reduces future outlays of the taxpayer-funded parliamentary component to the amount an Age Pension claimant in corresponding circumstances could receive. Protected member-funded amounts and ordinary Superannuation Guarantee contributions continue. Transitional costs are the independent actuarial determinations, record transfer, Parliamentary Pension Account administration and Services Australia assessments. The Auditor-General must publish verified Commonwealth savings annually under clause 20.

4 Notes on clauses

Part 1—Preliminary

Clause 1—Short title

Names the Act.

Clause 2—Commencement

Sections 1 to 6, Part 3 and Schedule 1 items 31 to 33 commence on Royal Assent so the actuary can be appointed and records transferred. Parts 2, 4, 5 and 6 and Schedule 1 items 1 to 30 commence on the first quarterly commencement day at least 180 days after Assent. A missed announcement does not delay commencement.

Clause 3—Objects

Sets the operative aims: abolish the preference; apply Age Pension qualification and maximum-rate tests to the excess; preserve only verified member money and ordinary Superannuation Guarantee amounts; cap future employer contributions at the national rate; prevent avoidance; implement the Covenants.

Clause 3A—Human rights purpose

Writes the four articles into the statute so every calculation is an implementation act. Subsection (3) rejects the public-service comparison: matching another publicly funded class on 15.4 per cent is not equal treatment of ordinary persons.

Clause 3B—Parliamentary findings

Records the ratification dates, the continued financing of the preference after those dates, the 15.4 versus 12 per cent gap, and the dualist gap. Subsection (5) is not rhetoric. It is why the Bill exists.

Clause 3C—Binding human rights interpretation

Requires the reading that most effectively eliminates the preference. Historical entitlement, scheme closure, alignment with another public-sector rate and the word superannuation cannot authorise a departure. No balancing exercise may restore the preference.

Clause 3D—Constitutional basis

Relies on paragraph 51(xxix) for implementation of the Covenants, paragraph 51(xxxix), and the powers supporting Commonwealth employment, benefits, appropriations and recovery. Each provision has the maximum supported operation.

Clauses 4 and 5—Crown and extraterritorial operation

The Act binds the Crown in each capacity and applies to overseas income, assets and arrangements. Parliamentary beneficiaries living abroad are not outside the tests.

Clause 6—Definitions

Defines Age Pension rules to include both the 1991 Act and the Social Security (Administration) Act 1999. Defines ordinary Superannuation Guarantee rate as the charge percentage on the relevant day, so the cap moves if the national rate moves. Defines Parliamentary Pension Component as every publicly funded excess above that rate and the ordinary maximum contribution base. The taxpayer-funded parliamentary component is that excess for post-2004 members and the amount above the protected member-funded amount for pre-2004 members.

Part 2—Equal Retirement Treatment Standard

Clause 7—Mandatory equality

A binding rate-calculation rule. Not a principle awaiting further review. No exemption power.

Clause 7A—Human rights equality duty

Places a reviewable duty on every Commonwealth authority exercising power under the Act, including qualification and maximum-rate equality.

Clause 7B—Prohibition of economic status preference

Makes a law, instrument, decision or arrangement inoperative to the extent it produces more favourable taxpayer-funded treatment because of parliamentary status. Subsection (4) states that alignment with an Australian Public Service or MOP(S) Act 15.4 per cent rate is not a defence. Protected personal contributions and ordinary superannuation are not reduced.

Clause 8—Existing and future beneficiaries

Applies to benefits accrued before commencement and to persons already in payment, including pre-2004 members. No grandfathering of instalments payable after commencement.

Part 3—Protected member-funded amount

Clause 9—Independent determination

An independent actuary, appointed by open competition and free of a five-year parliamentary engagement, determines the protected amount. Only verified member contributions, attributable net return, a vested

ordinary employer amount comparable with the employment standard of the day, and anti-double-recovery adjustments may be included. Unfunded guarantees, parliamentary salary indexation, office-holder enhancement, longevity subsidy and Commonwealth-met actuarial shortfall are excluded. The methodology must be published before provisional determinations. Each beneficiary receives a comprehensible calculation. The Auditor-General audits the method and a sample within 12 months.

Clause 9A—Post-2004 ordinary superannuation limit

Caps the protected ordinary component at personal contributions, genuine salary sacrifice, employer contributions at no more than the ordinary Superannuation Guarantee rate and maximum contribution base, and attributable earnings. A special statutory salary-sacrifice power does not authorise amounts above generally applicable tax and contribution limits.

Clause 9B—Classification of excess as pension

The 3.4 percentage points, and any amount levied above the ordinary maximum contribution base, and earnings on those amounts, are pension. The name used on the payslip does not change the classification.

Clause 9C—Separate statutory account

The excess must not go into a privately controlled fund. It is credited to a Parliamentary Pension Account maintained by the Secretary of the Department of Finance. Credit is not an unconditional or vested right. Earnings must not beat the prescribed public-sector accumulation benchmark. Unique parliamentary administration costs cannot be charged against the protected ordinary component. Interests cannot be assigned or used as security. Death, family-law splitting and incapacity remain subject to the Act.

Clause 9D—Payment only after ordinary pension tests

Services Australia applies Parts 4 and 5, including the section 55A cap, before any payment and at every reassessment. A lump sum, rollover or commutation does not avoid the tests.

Clause 10—Provisional determination and review

Provisional determinations within 180 days of Assent. Merits review is confined to factual or actuarial error. Review cannot create an exemption or enlarge clause 9(3).

Part 4—Application of ordinary pension rules

Clause 11—Income, assets and partner tests

Services Australia applies the corresponding Age Pension rules. If those rules would reduce, suspend or cancel an Age Pension, they do the same to the component.

Clause 12—Residence and overseas absence

Portability, overseas-absence and permanent-departure rules apply for the identical period. A nominal address or short return does not interrupt an absence unless it would do so for Age Pension.

Clause 13—Indexation

The component cannot be indexed to parliamentary, ministerial or office-holder salary. Indexation cannot exceed Age Pension indexation.

Clause 14—Disclosure and reporting

The same statements, documents and notifications, with the same suspension, cancellation, debt, civil-penalty and prosecution consequences.

Clause 14A—Data matching and verification

Authorises matching with the Taxation Office, Home Affairs, Services Australia, ASIC, the Australian Business Register, land-title offices, superannuation providers and prescribed authorities, only for administration, audit, review, recovery or enforcement. An annual de-identified report is required.

Part 5—Anti-avoidance, recovery and enforcement

Clause 15—Substance over form

The economic substance of an arrangement governs, not its name or payment pathway.

Clause 16—Anti-avoidance

A scheme whose dominant purpose or effect is avoidance has no effect to that extent. Transfers, lump-sum conversions, relabelling, artificial residence and fragmentation are included.

Clause 17—Debts and recovery

Overpayments are debts on terms no less effective than social-security debts. False or misleading information is referred where the corresponding Age Pension conduct would be referred.

Clause 18—No administrative waiver

Waiver, write-off, deferral and compromise cannot be more favourable than for an ordinary social-security debtor.

Clause 18A—Covenant compliance is mandatory

Decision-makers must record how a decision gives effect to the four articles. Same procedure with preferential economic effect is not compliance. No subordinate instrument may create an exception.

Part 6—Administration, accountability and constitutional operation

Clause 19—Administration

Services Australia administers Parts 4 and 5. The Commonwealth Superannuation Corporation may calculate the gross benefit but must apply every notified reduction. No parliamentary direction in an individual case.

Clauses 20 and 20A—Annual reports

The Auditor-General publishes de-identified totals and a separate human-rights and economic-equality statement covering qualification, the maximum-rate cap, and whether any beneficiary received treatment unavailable to an ordinary pensioner.

Clause 21—No compensation for loss of preference

No compensation for reduction of a future taxpayer-funded component. If section 51(xxxi) is engaged, only the constitutionally required amount is payable. Subsection (4) records that the Act does not concede prospective regulation of a statutory payment is an acquisition.

Clause 22—Severability

Maximum supported operation. Invalidity in one application does not affect another.

Clause 23—Supremacy

The Act applies despite inconsistent provisions of both the 1948 Act and the 2004 Act, and despite instruments, trusts and administrative practice.

Clause 23A—Express override required

A later Act does not restore a preference unless it expressly repeals or overrides this clause and names the preference. A statement of compatibility, explanatory memorandum, appropriation or implication is insufficient. A legislative instrument cannot displace the Act.

Clause 24—Covenant implementation review

Joint review by the Australian Human Rights Commission and the Auditor-General after two years. The review must not recommend restoration of the preference.

Clause 25—Regulations

Machinery regulations only. They cannot exempt, preserve a preferential rate, enlarge the protected amount, delay equality or authorise compensation for lost preference.

Schedule 1—Consequential amendments

Part 1—Parliamentary Contributory Superannuation Act 1948 (items 1–6)

Every 1948 Act benefit is divided into the protected member-funded amount and the taxpayer-funded component. The component is paid only on a Services Australia determination and must first sit in the Parliamentary Pension Account. Salary links are disapplied to the component. Existing section 21B reductions are additional, not a substitute. Appropriation cannot authorise a prohibited payment. Application is to every instalment payable after commencement, whenever the service occurred.

Part 2—Parliamentary Superannuation Act 2004 (items 7–13)

Substitutes section 8(1). Each fortnight the Commonwealth calculates the total parliamentary contribution (still using the 15.4 per cent formula on total parliamentary salaries), pays only the ordinary employer superannuation amount to the chosen fund, and credits the balance to the Parliamentary Pension Account. The ordinary amount is the lesser of that total and the amount needed to avoid an individual base Superannuation Guarantee shortfall, applying the national rate and maximum contribution base. Ministerial and office-holder salary do not lift the ordinary amount above that cap. Credit is not a vested fund contribution. The appropriation is split accordingly. Application is to QE days on or after commencement, including members whose entry time was earlier.

Part 3—Social Security Act 1991 (items 14–20)

New section 55A is the maximum-rate cap. The Secretary determines the Age Pension that would be payable if the beneficiary had claimed, using actual circumstances and Pension Rate Calculator A. The component payable is the lesser of the gross component and that notional rate. If the person would not qualify, or the rate would be nil, the component is nil. Supplements are not added unless independently qualified. Debts under clause 17 are brought into the 1991 Act recovery table. Write-off and waiver cannot be more favourable than for an Age Pension debt.

Part 4—Social Security (Administration) Act 1999 (items 21–26)

The Secretary administers Parts 4 and 5 of the principal Act. For that purpose a beneficiary is treated as an Age Pension claimant or recipient and the component as a social security payment, so payment, information, rate, suspension, cancellation, internal review, Administrative Review Tribunal review, information-gathering, secrecy and offence provisions apply with necessary modifications. New section 11A is the claim gate: no payment without a claim in the approved form and the information needed for section 55A. New section 80A removes any discretion to preserve a higher amount because of parliamentary service. Sections 192A and 192B support information-gathering and data-matching.

Part 5—Human Rights (Parliamentary Scrutiny) Act 2011 (items 27–28)

Future statements of compatibility for Bills or instruments affecting parliamentary retirement treatment must separately state any treatment unavailable to an Age Pension recipient, its economic value, and compliance with the four articles. Parliamentary service, scheme closure, another public-sector rate or the word superannuation is not, by itself, a sufficient compatibility basis.

Part 6—Application, preservation and information transfer (items 29–33)

Existing instruments continue only so far as consistent. No grandfathering of a preferential rate. Records must be preserved and transferred within 60 days of Assent. Provisional determinations within 180 days. First information notices within 90 days. A further notice before the first reduced payment. Failure to notify does not authorise overpayment, but delays recovery of an overpayment caused solely by that failure. Transitional regulations are disallowable and sunset 24 months after commencement. They cannot restore the preference.

5 Consultation

This memorandum is circulated with ERT-P 2026/01 (v6). Departments administering the 1948 Act, the 2004 Act, the Social Security Act 1991 and the Social Security (Administration) Act 1999 remain on notice of the Covenant articles written out in the policy and in clauses 3A and 3B.

6 Statement of compatibility — conclusion

The Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. It implements articles 26, 2, 9 and 11 by removing a status preference in publicly funded retirement treatment. The limits it imposes on parliamentary beneficiaries are the same limits already imposed on ordinary Age Pension claimants. Those limits clear. Leaving the 15.4 per cent rate, or the unfunded 1948 Act excess, in place would not.