**Information Notice**

**Act Title** **Parliamentary Salaries and Superannuation Act 1968**

**Information Title:** **Retrospective Commencements**

**Version:** **114**

The amendment made to section 7E of the **Parliamentary Salaries and Superannuation Act 1968** by section 55 of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**, No. 5/2019 is taken to have come into operation on 29 October 2018.

Section 55 reads as follows:

 55 Section 7E substituted—Separation payment

For section 7E of the Principal Act **substitute**—

 "7E Separation payment

 (1) This section applies to a person who is not a member of the Scheme under Part 3 and who—

 (a) dies whilst in office as a Member of Parliament; or

 (b) otherwise ceases to be a member of either House of the Parliament or does not seek re-election at a general election for any reason, other than corrupt conduct or a significant and wilful breach.

 (2) Subject to this section, a person to whom this section applies is entitled to a separation payment calculated in accordance with subsections (3) and (4).

 (3) The separation payment is the total amount determined in accordance with this subsection and subsection (4), as is applicable—

 (a) if the person served as a member in the Parliament for a period of up to one term or a period of one term, an amount equivalent to 3 months of the annual basic salary payable to the member immediately before the day that the person died or otherwise ceased to be a member or did not seek re-election; or

 (b) if the person served as a member for a period of 2 terms or more, an amount equivalent to 6 months of the annual basic salary payable to the member immediately before the day that the person died or otherwise ceased to be a member or did not seek re-election.

 (4) If the person served as a member in the Parliament for more than one term but less than two terms, the separation payment in relation to the period not served as a full term is to be determined on a pro rata basis in accordance with the following formula—



where—

 **A** is the number of months the person served in that term (rounded up to the nearest whole number of months);

 **B** is the number of months (rounded up to the nearest whole number of months) that the person would have served if the person had served a full term during that Parliament;

 **C** is an amount equal to 3 months of the annual basic salary.

 (5) A person must repay a separation payment received under this section if, during the term of the Parliament in which the person ceased to be a member or in the term of the Parliament immediately after the general election at which the person ceased to be a member, the person—

 (a) is declared elected as a result of a declaration of the Court of Disputed Returns under the **Electoral Act 2002**; or

 (b) is re-elected as a member of either House of the Parliament; or

 (c) becomes a member as a result of being chosen under section 27A of the **Constitution Act 1975** to fill a casual vacancy in the Council.

 (6) If a person ceases to be a member of either House of the Parliament because of their death, the separation payment to which the person would be entitled if they had not died is to be paid to—

 (a) a person or persons that had been nominated in writing to the Clerk of the relevant House of the Parliament by the member; or

 (b) if the member had not made a nomination under paragraph (a) before their death, a person or persons that the Clerk of the relevant House of the Parliament is satisfied is or are the beneficiary or beneficiaries of the member.

 (7) If a former Member is convicted of corrupt conduct in connection with their period in office as a Member, the separation payment made to the former Member becomes a debt due to the State and may be recovered by the Clerk of the relevant House of the Parliament as a debt due to the State in a court of competent jurisdiction.

 (8) If the Clerk of the relevant House of the Parliament determines that a former Member has committed a significant and wilful breach in connection with their period in office as a Member, the separation payment made to the former Member becomes a debt due to the State and may be recovered by the Clerk of the relevant House of the Parliament as a debt due to the State in a court of competent jurisdiction.

 (9) The Clerk of the relevant House of the Parliament may request a former Member by notice in writing to provide any information which the Clerk of the relevant House of the Parliament considers is reasonably necessary to determine whether the former Member has committed a significant and wilful breach in connection with their period in office as a Member.

 (10) If a former Member does not comply with a request under subsection (9), the Clerk of the relevant House of the Parliament may determine that the former Member has committed a significant and wilful breach in connection with their period in office as a Member.

 (11) If the Clerk of the relevant House of the Parliament proposes to make a determination that the former Member has committed a significant and wilful breach in connection with their period in office as a Member, the Clerk of the relevant House of the Parliament must provide the former Member—

 (a) reasonable notice of the proposed determination; and

 (b) a reasonable opportunity to make submissions in relation to the proposed determination.

 (12) A former Member may within 28 days of being advised by the Clerk of the relevant House of the Parliament of the determination made by the Clerk of the relevant House of the Parliament under subsection (8) appeal in the prescribed form to the Compliance Officer against the determination.

 (13) The Compliance Officer must provide the former Member who has appealed and the Clerk of the relevant House of the Parliament who made the determination a reasonable opportunity to make submissions in relation to the appeal.

 (14) The Compliance Officer may request the former Member who has appealed or the Clerk of the relevant House of the Parliament who made the determination to provide further information in relation to the appeal.

 (15) If the former Member does not comply with a request under subsection (14), the Compliance Officer may reject the appeal and notify the former Member accordingly.

 (16) The Compliance Officer must consider any submissions under subsection (13) and any further information under subsection (14) before determining the appeal.

 (17) If the Compliance Officer determines to uphold the appeal, the Compliance Officer must notify the former Member and the Clerk of the relevant House of the Parliament.

 (18) If the Clerk of the relevant House of the Parliament is notified under subsection (17) that the Compliance Officer has upheld the appeal, the former Member retains the separation payment.

 (19) If the Compliance Officer determines to reject the appeal, the Compliance Officer must notify the former Member and the Clerk of the relevant House of the Parliament.

 (20) If the Compliance Officer determines to reject the appeal, the separation payment made to the former Member becomes a debt due to the State and may be recovered by the Clerk of the relevant House of the Parliament as a debt due to the State in a court of competent jurisdiction.

 (20A) If the Compliance Officer considers that a statement of findings and any required actions should be published in a particular case, the Compliance Officer may at any time cause the statement to be transmitted to each House of the Parliament.

 (20B) The Clerk of each House of the Parliament must cause a statement of findings and any required actions transmitted under subsection (20A) to be laid before the House on the day on which it is received or on the next sitting day of that House of the Parliament.

 (20C) If the Compliance Officer proposes to transmit a statement of findings and any required actions under subsection (20A), the Compliance Officer must publish the statement on the Tribunal's Internet site as soon as practicable after giving it to the Clerks.

 (21) A former Member is not entitled to the reimbursement of any legal costs incurred by the Member in relation to this section.

 (22) The Clerk of the relevant House of the Parliament must include the following in the annual report of the Parliament—

 (a) the number of Members who received a separation payment;

 (b) the number of determinations made under subsection (8);

 (c) the number of former Members who have not complied with a request under subsection (9).

 (23) In this section—

***corrupt conduct*** has the meaning given in section 4 of the **Independent Broad‑based Anti-corruption Commission Act 2011**;

***general election*** includes—

 (a) a supplementary election held as a result of a failed election at a general election; or

 (b) a re-election held as a result of a tied election at a general election;

***significant and wilful breach*** means a significant and wilful breach of the Code of Conduct under the **Members of Parliament (Standards) Act 1978**.".

The amendment made to sections 30 and 31 of the **Parliamentary Salaries and Superannuation Act 1968** by section 61 of the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019**, No. 5/2019 is taken to have come into operation on 1 July 2018.

Section 61 reads as follows:

 61 Amendment of sections 30 and 31—State's obligations to make contributions

 (1) In section 30 of the Principal Act **omit** "a month if all or part of the month is in".

 (2) In section 31(1) of the Principal Act **omit** "in respect of a month".

 (3) In section 31(2) of the Principal Act—

 (a) in paragraph (a)(i) **omit** "in respect of the month";

 (b) in paragraph (a)(ii) **omit** "for some or
all of the month".

 (4) After section 31(3) of the Principal Act **insert**—

 "(3A) For the purposes of determining the amount of the contribution for the financial year ending 30 June 2019, the amount of parliamentary salary and the amount (if any) of additional salary to which the member is entitled is to be determined in respect of the whole of the financial year.".

 (5) For section 31(4) of the Principal Act **substitute**—

 "(4) Despite anything to the contrary in this section, the member may request in writing that the State limit, to the amount specified in the request, employer contributions to the person's basic contributions fund to the extent that the basic contributions fund cannot receive those contributions without causing the member to exceed the concessional contributions cap published by the Australian Taxation Office in relation to superannuation contributions.".