



Australian Government
Attorney-General's Department
Deputy Secretary
Legal Services and
Families Group

Committee Secretary
Senate Standing Committee on Legal and Constitutional Affairs
PO Box 6100
CANBERRA ACT 2600

Dear Secretary

Correction to and clarification of evidence given at Estimates

Having examined the draft transcript, I wish to correct evidence I gave to the Senate Standing Committee on Legal and Constitutional Affairs during the Budget Estimates hearing on 21 October 2020.

At page 23 of the draft transcript for 21 October 2020, in relation to native title compensation, I am quoted as saying:

Mr Anderson: There's been some consideration of a scheme...Queensland has done some very large regional settlements that also encompass compensation....

That reference to Queensland in the draft transcript should be a reference to Western Australia.

I also wish to clarify evidence I gave to the Committee on the same day.

At pages 49-50 of the draft transcript for 21 October 2020, in relation to judicial pensions (and following on from a discussion about allegations of sexual harassment and judicial misconduct), Senator Carr asked:

Senator Carr: Can I just follow up? If a politician's found to have acted improperly after they've retired, they lose superannuation rights, under the superannuation provisions. Does that occur for judges?

Mr Anderson: No.

Senator Carr: Why is that?

Mr Anderson: Parliament has turned its mind to the question of superannuation entitlements of members of parliament. My memory is a bit hazy on the precise provisions, but you have to be convicted of a criminal offence.

Senator Carr: Yes that's right. But if you are, if a politician is convicted of a serious offence – and you would be able to tell me what the definition of that is. The principle I'm arguing is that if a politician is convicted they lose their pensions. Why doesn't that provision apply to judges?

Mr Anderson: That's an open question. There's obviously the relationship between –

Senator Dodson: Because the law doesn't provide for it. That's the answer, isn't it?

Mr Anderson: That's currently the answer, that the law doesn't provide for it. But, certainly, retired or former judges are not immune from prosecution if they commit -

Senator Carr: They can end up in jail and still get a handsome pension. That's what you're telling me.

Mr Anderson: That's the existing position, yes.

I wish to bring to the Committee's attention by way of clarification that, while it is correct that Commonwealth judges can be convicted of a criminal offence and still receive a Commonwealth pension, Commonwealth judges are subject to the same legislation in respect of the forfeiture of pensions as are Commonwealth politicians.

Under that legislation, the *Crimes (Superannuation Benefits) Act 1989* (the CSB Act), a "Commonwealth employee" convicted of a "corruption offence" punishable by more than 12 months imprisonment can forfeit their superannuation benefits. The CSB Act includes both members of Parliament and judges of federal courts in the definition of "Commonwealth employee". The forfeiture of superannuation benefits under this legislation does not however extend to convictions for offences that do not constitute "corruption offences" as defined under the CSB Act, or to behaviour that does not result in a conviction.

Yours sincerely

Iain Anderson
1 December 2020