

Department of Finance

Response to Question on Notice

SENATE LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Inquiry into Judges' Pensions Amendment (Pension Not Payable for Misconduct) Bill 2020

Hearing of 23 April 2021

Question on Notice 1

Senator KIM CARR: Can you give me any other explanation for why there is a continuing defined benefits scheme for judges and the Governor-General?

Mr Dilley: What I'm going to say next is slightly circular. The parliament has seen fit to close the other schemes. In the case of Governor-Generals and judges, that hasn't been the case.

Senator KIM CARR: It was recommended to the parliament.

CHAIR: Senator Carr, could I ask you to allow the witness to finish answering his question.

Mr Dilley: I'll be brief. As to the last part of that, the schemes that my colleague referred to have been closed to new members since the early 2000s. Senator

KIM CARR: I'm familiar with that. I'm trying to establish what the rationale was of the recommendation made to the parliament, because this is another example where actions of the parliament are taken on a bipartisan basis, not necessarily with any deep thought; they're political circumstances at the time. These were the matters raised by Mark Latham. Action was taken, and Prime Minister Howard chose to respond. Was a rationale ever given as to why judges were excluded from that decision?

Mr Dilley: I'd need to take that on notice. I don't recall—

Senator KIM CARR: I can understand that. It's a while ago. If you can take it on notice, we would appreciate your expert advice. Thank you very much.

Response

The then Senate Select Committee on Superannuation, in its September 1997 report, considered the appropriateness of the defined benefit schemes for federal parliamentarians and judges. The Committee concluded that the Judges' Pension Scheme should be retained (Conclusion 5.7). The Committee took the view that secure and adequate judicial remuneration, both during retirement as well as during service, is essential to judicial independence and impartiality. That was viewed as the basis for retention of the Judges' Pension Scheme.

The possibility of the closure of the defined benefit schemes for Judges and Governors-General was discussed but not progressed in the Senate on 16 June 2004 as part of its consideration of the *Parliamentary Superannuation Bill 2004* to close the parliamentary defined benefit scheme.

Successive governments since that time have not introduced legislation to close the defined benefit schemes for federal Judges or Governors-General.