



REMUNERATION TRIBUNAL

John C Conde AO
President

Ms Christine McDonald
Secretary
Senate Standing Committee on Finance
and Public Administration
Legislation Committee
Parliament House
CANBERRA ACT 2600

Dear Ms McDonald

Inquiry into the Remuneration and Other Legislation Amendment Bill 2011

Thank you for your letter of 13 May 2011 conveying an invitation from the Committee to provide a submission addressing issues that may be of relevance to the Remuneration Tribunal (the Tribunal).

Your letter notes two "reasons for referral/principal issues for consideration".

The Tribunal has no comment in relation to the first issue. That is a matter for the Parliament.

In relation to the second issue – the removal of parliament's ability to disallow parliamentary remuneration determinations – there are several observations we should like to make.

- (i) The legislation represents the Government's response, in part, to the Report of the Committee for the Review of Parliamentary Entitlements (the Report) and the adoption of its Recommendation 1 (at page 12 of the Report):

"That the government:

- (i) restore the power of the Remuneration Tribunal to determine parliamentary base salary*
- (ii) require the Remuneration Tribunal to publish reasons for its decisions in relation to parliamentary remuneration, and*
- (iii) remove the parliament's ability to disallow parliamentary remuneration determinations made by the Remuneration Tribunal."*

- (ii) The Report, in arriving at this conclusion, included the following observations (at page 51 of the Report):

"Determinations of the Remuneration Tribunal are currently disallowable instruments, meaning that they must be tabled in each House of Parliament and either House can pass a resolution that makes the determination effectively null. The Tribunal's parliamentary remuneration determinations have been opposed in the parliament in the past, and action has been taken not only to remove its power to directly determine parliamentary salary but to defer salary increases.

"On balance, the committee considered the value of the Tribunal's independence could be further enhanced if its determinations were not subject to disallowance in the parliament. The committee did not reach this conclusion lightly. Parliamentary scrutiny of proposed expenditure with the possibility of amendment and rejection is usually the ideal. Current arrangements, however, do not provide the means to ensure an appropriate level of remuneration for senators and members. The committee considered that the Tribunal's parliamentary determinations should be implemented without political intrusion. In this regard, the committee noted that a disallowance provision was not a universal feature of other tribunals' decision-making; for example, minimum wage determinations made by the wages panel of Fair Work Australia are not subject to parliamentary disallowance."

- (iii) This was consistent with the Tribunal's submission to the Committee, a full copy of which is available on the Tribunal's website, wherein we said:

"... that if Parliament wishes to rely on a truly independent view it may be appropriate to remove this provision – to make Tribunal determinations on this matter not disallowable. In the view of the Tribunal the disallowances in the 1976 to 1990 period were largely political in nature, rather than being based on sound evidence that the Tribunal had erred. With the benefit of hindsight, the undesirability of these disallowances is apparent.

"The temptation for any Government, or indeed any hostile Senate, to make political manoeuvrings on this matter remains real, and is contrary to the principle of an independent tribunal making evidence-based decisions. Disallowability of a Tribunal's determination need not be an essential feature of it; indeed disallowability may be at odds with the perception of independence."

- (iv) The non-disallowability of instruments exists already amongst tribunals responsible for setting parliamentary remuneration. There are two Australian jurisdictions, Western Australia and the Australian Capital Territory, which have tribunals that determine parliamentary base salary. In neither case does the legislation that gives the respective tribunals the power to determine parliamentary remuneration make those determinations disallowable by the relevant Parliament/Assembly. It is also relevant to note that, in some states, at least, the remuneration of parliamentarians is fixed simply by reference to that of federal parliamentarians; that is, in those jurisdictions, there is no independent mechanism for determining parliamentary remuneration.

- (v) The non-disallowability of parliamentary remuneration determinations would not in any way impede the Parliament's ability to overturn any such determinations by legislation. Again, the Report made this point in the following terms (at page 51):

"The parliament would of course retain the power to consider legislation introduced specifically to set parliamentary remuneration."

- (vi) The non-disallowability of Tribunal determinations would not affect the supremacy of the Parliament. It is the Parliament's legislative power which creates the Tribunal's responsibilities. Equally, it is the Parliament's legislative power which amends or removes them.

I should be happy to discuss these matters if that would please the Committee.

Yours sincerely

John C Conde AO
President
20 May 2011