

Senate Finance and Public Administration References Committee

Attorney-General's Department

Hearing date: 21 July 2023

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David Shoebridge asked the following question:

So is it the position of the Attorney-General's Department that, as a matter of law, the pension entitlements of former governors-general under the Governor-General Act 1974 are susceptible to being terminated under the *Crimes (Superannuation Benefits) Act 1989*?

The response to the question is as follows:

A superannuation order under the *Crimes (Superannuation Benefits) Act 1989 (Cth)* (CSB Act) may, in certain circumstances, be made in relation to an 'employee' as defined in section 7 of the CSB Act.

The department does not consider that the Governor General is an employee within the meaning of section 7 of the CSB Act. The CSB Act therefore does not apply to the pension entitlements of a Governor-General.

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Louise Pratt asked the following question:

Is misleading evidence to a royal commission an act of corruption, firstly? It's my understanding that false or misleading evidence would be against the law.

The response to the question is as follows:

The *Crimes (Superannuation Benefits) Act 1989 (Cth)* (CSB Act) only applies to a 'corruption offence', which is defined in section 2 as an offence by a person who was an employee at the time when it was committed, being an offence:

- (a) whose commission involved an abuse by the person of his or her office as such an employee; or
- (b) that, having regard to the powers and duties of such an employee, was committed for a purpose that involved corruption; or
- (c) that was committed for the purpose of perverting, or attempting to pervert, the course of justice.

It is an offence under section 6H of the *Royal Commissions Act 1902 (Cth)* for a person to intentionally give evidence that the person knows to be false or misleading with respect to any matter, being a matter that is material to the inquiry being made by the Commission. The offence is punishable on conviction by imprisonment for a period not exceeding 5 years or by a fine not exceeding 200 penalty units.

The question of whether an offence under section 6H of the Royal Commissions Act would constitute a corruption offence under the CSB Act would depend on the facts and circumstances of the individual case.

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David Shoebridge asked the following question:

I have never heard anyone suggest that the office of the Governor-General is an employment position—is an employee. Is that the position of the Department of Finance? You think it is a question of fact as to whether or not the Governor-General is an employee?

....

So does the Attorney-General's Department really think it's an open question as to the Governor-General being an employee? Is it seriously an open question in the mind of the Attorney-General's Department that the office of Governor-General is an employment relationship? Is that really an open question?

.....

Would you agree with that proposition that it's almost universally an element of employment relationships?

The response to the question is as follows:

A superannuation order under the *Crimes (Superannuation Benefits) Act 1989 (Cth)* (CSB Act) may, in certain circumstances, be made in relation to an 'employee' as defined in section 7 of the CSB Act.

The department does not consider that the Governor General is an employee within the meaning of section 7 of the CSB Act. The CSB Act therefore does not apply to the pension entitlements of a Governor-General.

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Dean Smith asked the following question:

Has the government sought constitutional law advice on this bill?

The response to the question is as follows:

The Government has not sought constitutional law advice on the Governor-General Amendment (Cessation of Allowances in the Public Interest) Bill 2023.

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Louise Pratt asked the following question:

Are you able to give us advice as to the breadth of the types of acts that could fall into 'misconduct' inside this bill?

The response to the question is as follows:

Pursuant to section 4.8.3 of the *Government Guidelines for Official Witnesses Before Parliamentary Committees and Related Matters* (Prime Minister and Cabinet: 2015) witnesses are not to provide or disclose legal advice. Any advice on what acts may, or may not, constitute serious misconduct would therefore be inappropriate.

However, the explanatory memorandum of the Bill provides, in general terms, the intended meaning of 'serious misconduct'. The explanatory memorandum states that 'serious misconduct involves inappropriate, improper, wrong or unlawful contact' and it provides examples of acts that could fall under serious misconduct including, 'corruption, sexual misconduct, sexual harassment theft, fraud and other criminal behaviour.' The scope of acts covered by serious misconduct is clarified in the Bill at s 4AGB(5) which states that serious misconduct 'includes an omission to act'.

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Louise Pratt asked the following question:

Whose responsibility is it to press charges if an offence has been made against the Royal Commissions Act? Is it the commission itself that suggests charges or is it some other body? Who is able to initiate that?

The response to the question is as follows:

In general, pursuant to section 10 of the *Royal Commissions Act 1902*, the Attorney-General or the Director of Public Prosecutions are the appropriate persons to consider instituting proceedings in the Federal Court in respect of any offence against the Act that is not an indictable offence.

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Louise Pratt asked the following question:

Secondly, does the act only apply to offences committed while in office, or does it apply to other offences, and in what institutional context might they [inaudible]?

The response to the question is as follows:

The *Crimes (Superannuation Benefits) Act 1989* (Cth) only applies to an offence by a person who was an employee (as defined in section 7) at the time when it was committed.